STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 20-G-0131 – Proceeding on Motion of the Commission in Regard to Gas Planning Procedures.

ORDER ADOPTING MORATORIUM MANAGEMENT PROCEDURES

Issued and Effective: May 12, 2022

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on May 12, 2022

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
Diane X. Burman, concurring in part and dissenting in part
James S. Alesi
Tracey A. Edwards
John B. Howard
David J. Valesky
John B. Maggiore

CASE 20-G-0131 – Proceeding on Motion of the Commission in Regard to Gas Planning Procedures.

ORDER ADOPTING MORATORIUM MANAGEMENT PROCEDURES

(Issued and Effective May 12, 2022)

BY THE COMMISSION:

INTRODUCTION

By this Order, the Public Service Commission (Commission) approves the moratorium management procedures as set forth in detail below. Recent experience with moratoria in various gas utilities' service territories demonstrates the need to have clear procedures in place should moratoria be deemed necessary in the future. The moratorium management procedures adopted in this Order will ensure that customers throughout the State understand when, where, and how a natural gas moratorium may be imposed, and will provide details and a Customer Bill of Rights to ensure that all moratoria are invoked, managed, and released in a fair, equitable, and transparent manner for all consumers, including underserved and disadvantaged communities.

BACKGROUND

Gas utilities, also referred to as Local Distribution Companies (LDCs), have recently claimed natural gas supply constraints that prevent or otherwise create a concern about the ability to accept and act upon applications for new firm gas service in several regions of New York State. These constraints are location specific, can be limited to one or only a few municipalities, and do not apply to non-firm service customer load.[1] LDCs have invoked moratoria on new service connections in these specific locations, leading, in some cases, to customer hardships.[2] Following the issuance of an Order to Show Cause by

[1] Non-firm service, also known as interruptible service, is the provision of natural gas service subject to curtailment for situations such as high demand, emergencies, or where system reliability is threatened. In comparison, firm service is intended to be always available during an agreed period. Typically, residential, small commercial, and small industrial service is designated as firm service.

[2] On January 17, 2019, Consolidated Edison Company of New York, Inc. (Con Edison) notified the Commission of a moratorium on new firm gas service in most of Westchester County, commencing March 15, 2019. Beginning November 2018, The Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY), serving Brooklyn and parts of Queens, and KeySpan Gas East Corporation d/b/a National Grid (KEDLI), serving areas of Long Island and the Rockaways (collectively, National Grid) began informing high-usage applicants for new service that National Grid would be unable to provide firm service unless a pending supply project was approved. As of May 15, 2019, National Grid stated that it would not fulfill applications for new firm service connections, or requests for additional firm load from existing customers on Long Island, Queens, and Brooklyn. Based on a settlement adopted and approved by the Commission, National Grid ended its moratorium as of November 26, 2019. Case 19-G-0678, Proceeding on Motion of the Commission to investigate Denials of Service by National Grid, Order Adopting and Approving Settlement (issued November 26, 2019); Case 19-G-0678, supra, Confirming Order (issued December 12, 2019).

the Commission,[3] and based upon negotiations and discussion, the Commission-adopted settlement rescinded the moratoria invoked by KEDNY and KEDLI and required those specific LDCs to develop a "Long-Term Capacity Report" to identify and offer solutions on the long-term capacity constraints affecting their operations.[4] Similarly, and likewise based upon capacity constraint concerns, New York State Electric & Gas Corporation (NYSEG) invoked a moratorium in the Town of Lansing in Tompkins County in 2015, which remains in effect today.[5]

These invocations of moratoria demonstrate that conventional natural gas planning and operational practices adopted by LDCs have not kept pace with recent developments and demands on energy systems. Natural gas utilities need to learn from recent experience and adopt improved planning and operational practices that enable them to meet current and future customer needs and expectations in a transparent and equitable way while minimizing infrastructure investments, maintaining safe and reliable service, and, if necessary, implementing, maintaining, and revoking moratoria in a fair and consistent manner. Additionally, planning must be conducted in

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[3] Case 19-G-0678, supra, One Commissioner Order Instituting Proceeding and to Show Cause (issued October 11, 2019).

[4] Case 19-G-0678, supra, Order Adopting and Approving Settlement (issued November 26, 2019), exhibit A, p. 5; Case 19-G-0678, supra, Confirming Order (issued December 12, 2019).

[5] Case 17-G-0432, Petition of NYSEG Regarding a Natural Gas Compressor Pilot Project in Tompkins County (filed July 19, 2017), Appendix A to Petition, p. 2.

a manner consistent with the Climate Leadership and Community Protection Act (CLCPA) and associated legislation.[6]

We recognize that moratoria can create adverse customer impacts, as by their very nature, they prevent applicants from receiving firm gas service. While some types of development projects and customers may have access to viable alternatives, others may have more difficulty without access to firm gas service. Additionally, reliance on alternatives can have emission impacts – reduced emissions impacts may result where the alternative to natural gas is efficient use of clean electricity while increased emission impacts may result where the alternative to natural gas is oil or propane.

Given these potential impacts, the public interest demands that gas utilities provide information to, and communicate with, customers in a way that promotes effective customer planning, reduces confusion, and avoids inequities or the appearance of inequities. Similarly, the public interest requires that gas utilities provide information to and communicate with the Department of Public Service (Department), with other government entities and agencies, and with stakeholders, all to promote effective planning and best consideration of alternatives, thereby reducing costs and emissions while minimizing negative impacts upon economic development. More broadly, incomplete or insufficiently transparent planning can lead to adverse consequences beyond moratoria, including infrastructure expenditures that are costly

[6] Chapter 106 of the Laws of 2019. The CLCPA became effective on January 1, 2020. The Climate Action Council released a Draft Scoping Plan, serving as an initial framework for how the State will reduce greenhouse gas emissions and achieve net-zero emissions, increase renewable energy usage, and ensure climate justice, on December 20, 2021. That document is currently subject to ongoing public comment.

to customers; unneeded, misplaced, or misaligned capital development; and use of fuel choices both at odds with the CLCPA and other State energy policies and which increase overall emissions.

Based upon the above, and in furtherance of the Commission's statutory mandates, the Commission issued an Order on March 19, 2020, directing (1) LDCs to file locational supply and demand analyses; (2) LDCs to file proposals for moratorium management issues within 120 days; (3) Staff to file a proposal for modernizing gas system planning processes within 150 days; and (4) LDCs to file status reports and any useful proposals to address areas of supply/demand imbalance within 150 days.[7] On February 12, 2021, Staff issued both a Moratorium Management Proposal and a Gas System Planning Process Proposal.[8]

While initiated through a single process, Staff delivered its Staff Moratorium Management Proposal as a separate document from the Staff Gas System Planning Proposal, and the matters were separately noticed pursuant to the State Administrative Procedures Act (SAPA). This separation reflected Staff's understanding of the individualized nature of the issues, and in keeping with that approach, the Commission deems it appropriate to implement its decision-making process in two distinct orders – this one, concerning the moratorium process, and a separate order addressing the gas planning processes. As such, this Order will primarily limit its discussion to the moratorium issues.

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[7] Case 20-G-0131, Order Instituting Proceeding (issued March 19, 2020).

[8] Case 20-G-0131, Staff Moratorium Management Proposal (issued February 12, 2021) (Staff Proposal); Case 20-G-0131, Staff Gas System Planning Process Proposal (issued February 12, 2021).

Order Instituting Proceeding

The Order Instituting Proceeding noted the ongoing concerns with moratoria and associated planning issues, expressed the Commission's concerns, and set forth eight multi-point issues for consideration.[9] For purposes of this Order, the primary concern was Issue 5 – Standards governing moratoria.[10] Regarding moratoria, the Order Instituting Proceeding identified issues including declaration of moratoria; treatment of customers and applicants; communications standards; and practices, prioritization, and lifting of moratoria. Additionally, the Order set forth a schedule with milestones and obligations for the LDCs, Staff, and interested entities.

LDC Moratorium Management Proposal

On July 17, 2020, the Joint Local Distribution Companies (JLDCs)[11] submitted their filing in response to the Order Instituting Proceeding for moratorium management.[12] Specifically, Section Four of this filing centered upon the moratorium management obligations identified by the Commission. In this submission, the JLDCs noted their agreement that a moratorium should be called as a "last resort."[13] With that in mind, the JLDCs provided the following outline for moratorium management procedures: (1) justification for declaring a

[9] Case 20-G-0131, Order Instituting Proceeding.

[10] Id. at pp. 8-10.

[11] The JLDCs consist of: Con Edison; KEDNY; KEDLI; Niagara Mohawk Power Corporation d/b/a National Grid; NYSEG; Rochester Gas and Electric Corporation; National Fuel Gas Distribution Corporation; and Orange and Rockland Utilities, Inc.

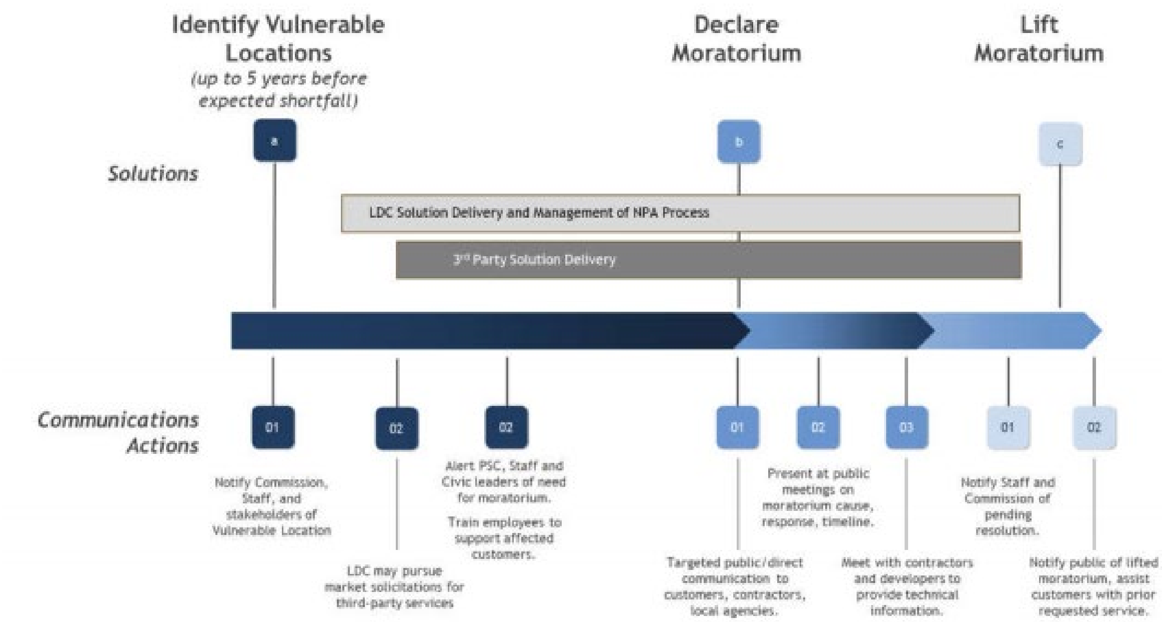
[12] Case 20-G-0131, Modernized Gas Planning Process: Standards for Reliance on Peaking Services and Moratorium Management (filed July 17, 2020).

[13] Id. at p. 21.

moratorium; (2) communication and customer engagement during the moratorium; (3) reporting during and after the moratorium; and (4) when to end the moratorium.

Prior to declaring a moratorium, the JLDCs proposed to engage in an assessment of supply, demand, and available resources, concentrating on long-term supply and demand forecasts based upon commodity experts and geographic zones, as well as testing the market to ensure and locate reliable resources. In each case, the JLDCs noted that reliability for existing customers would not be compromised. The JLDCs proposed that, when this analysis indicated that the utility will be unable to provide supply, an LDC would declare a moratorium. The JLDCs proposed that such a declaration would occur six months or longer before the anticipated shortfall.

Once the situation reached a point where an LDC believed a moratorium must be called, the JLDCs asserted that the moratorium should apply consistently to all firm customers across the constrained geographic region in an equitable manner. The JLDCs also proposed a framework for a Moratorium Customer Bill of Rights. Likewise, the JLDCs proposed to prepare a Public Communications Plan to address the necessary messaging required surrounding the declaration, operation, and lifting of a moratorium. The intention was to identify the timing, purpose, target audience(s), and internal LDC departments responsible for preparing the messages. The following flowchart and timeline summarized the overall proposed approach:



The communication process was designed to begin with the identification of vulnerable locations, which will then be communicated to the Commission, Staff, public officials, and community leaders of the impacted geographic area. Upon this notification, the LDC will work with the impacted stakeholders to identify solutions on both an LDC and a third-party basis. If a moratorium is determined to be necessary, the LDC will notify, prior to the formal declaration, the Commission, Staff, the Governor, as well as the County Executive(s), Town Supervisor(s), and Mayor(s) in the affected area.

Upon declaration of a moratorium, targeted and direct communications will be provided to customers, including those with pending work orders; local plumbers, contractors, developers, and regional economic development organizations; local agencies with jurisdiction over customer or utility work; social media accounts; and customers with specific needs and interests in the information. This communication will include outbound calling, bill messages and inserts, social media, email, and radio/television. The intent is to provide neighborhood or zip code level information in an easily accessible manner. Significantly, once the moratorium is lifted, this same communication plan will be used with updated information.

During the time that a moratorium is in effect, the LDC will offer to present at public hearings and meetings throughout the impacted communities. In addition, the LDC will work with the real estate and construction industries on technical issues and will provide education on alternatives and workarounds, including offering an opt-in to third party providers for non-gas solutions. Similarly, the LDC will have an ongoing obligation to provide progress reports on implementing steps to resolve the moratorium to the Commission, Staff, and other policymakers.

Finally, the JLDCs committed to lifting any moratorium once the LDC has confidence in the ability to provide service long term. Towards this end, in reviewing supply constraints and market conditions, the JLDCs will only consider customer transitions to non-gas alternatives to be permanent if they are expected to last 20 years or more. Likewise, any new sources and reliability-enhancing projects must be in place and operational, and not planned or in-process, before the LDC will consider it a solution sufficient to release the moratorium.

Staff Proposal

Staff issued its Proposal on February 12, 2021, setting forth an overall foundation for the process and proposed steps for planning, implementing, operating, and rescinding natural gas moratoria in the State. The Staff Proposal explained that it was and is designed to provide a framework in the event a moratorium is needed to protect reliability for existing customers.

The Staff Proposal centered upon the moratorium issues in the Commission's Order Instituting Proceeding. Specifically, the Staff Proposal provided recommendations on: (1) the process surrounding the declaration of a moratorium; (2) the treatment of applicants and customers during the pendency of a moratorium; (3) communications standards and practices; (4) prioritization during a moratorium, including who and what services should be allowed during a partial moratorium; and (5) the lifting of a moratorium.[14] Additionally, the Staff Proposal discussed the joint filing made by the JLDCs, addressing the JLDCs' ideas and concerns on moratorium issues. The Staff Proposal also noted the individual submissions made by Liberty Utilities (St. Lawrence Gas) Corp. (SLG) and Corning Natural Gas Corporation (Corning), who foresaw no moratorium issues based upon the nature of their individual systems.

These submissions, coupled with Staff's experience and the input from the public through various proceedings,[15] resulted in several recommendations for moratorium management procedures. Once again, Staff strove to propose a set of rules that ensured that both the public and individual LDC's potential and existing customers receive sufficient notice of the possibility, need, extent, criteria, and revocation process for any moratorium on a consistent basis across the State. As such, the Staff Proposal

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[14] Case 20-G-0131, Staff Proposal, at 3-4.

[15] By reference here to input from the public, Staff includes the comments and other filings and feedback from entities and individuals in various proceedings such as: Case 19-G-0080, <u>In the Matter of Staff Investigation into a Moratorium on New Natural Gas Services in the Con Edison Service Territory</u>; Case 17-G-0606, <u>Petition of Con Edison for Approval of the Smart Solutions for Natural Gas Customers Program</u>; Case 19-G-0678, <u>supra</u>; Cases 19-E-0065 and 19-G-0066, <u>Con Edison – Electric and Gas Rates</u>; Cases 19-G-0309 and 19-G-0310, <u>KEDNY and KEDLI – Gas Rates</u>; and the instant proceeding.

recommended that the Commission adopt moratorium management procedures applicable to all LDCs, including the JLDCs, SLG, and Corning.

The Staff Proposal recommended that each LDC be required to develop metrics to serve as indicia of the need for a moratorium. These metrics should be analogous to those used by electric utilities for purposes of calling for load shedding or deployment of demand response assets. Specifically, each LDC would identify the reliability metrics and criteria that would necessitate the calling of a moratorium, including "trigger values" that would begin the process. Likewise, the LDCs were called upon to develop a prioritization schedule for customers for use before, during, and after a moratorium is called. Furthermore, the LDCs would be required to develop moratorium management services; rules for determining if, when, and how to lift a moratorium; and comprehensive communication plans for every stage of the process, designed well before a moratorium is called for or even considered.

The Staff Proposal recommended that each LDC be directed to develop a comprehensive customer communication plan, covering initial notice of potential moratorium through to the point at which the LDC has resolved any remaining requests for service at the conclusion of the moratorium. The Staff Proposal recommended that the plan should include, at a minimum: a media strategy, including the use of a dedicated webpage, to ensure that residents in the impacted municipalities, particularly those residing in low- and moderate-income areas, are aware of their consideration of a moratorium; explanations and details of how the LDC will notify officials of the municipalities affected by a moratorium; explanations of how the LDC will use bill inserts and bill messages to existing customers to inform them of the upcoming moratorium and gas supply constraints; details on how the LDC will maintain communications with local permitting agencies to ensure that planned development is considered by the LDC and that developers receive notice of the potential moratorium; explanation of how the LDC will engage local community groups and social media to ensure customer engagement; and, with regard to lifting the moratorium, an explanation of the LDC's proposed outreach campaign that will alert stakeholders that the moratorium has been lifted.

In consideration of the steps an LDC should take prior to the implementation of a moratorium, Staff agreed with the JLDC Proposal on the development and implementation of a statewide Moratorium Consumer Bill of Rights, and thus requested the JLDCs to provide one in their comments. Additionally, Staff proposed a number of steps that must occur prior to the implementation of a moratorium. At least two years in advance of the potential implementation date of a moratorium, the LDC must make a filing with the Commission and give all stakeholders notice, including the expected scope, likely duration, identification of affected customers, and available assistance programs. This notification should include a history of all actions the LDC has taken to avoid or mitigate the potential for a moratorium, including both demand and supply-side measures, and these filings should be updated with the Commission every six months, with notification to all local officials, existing, and potential customers. No more than 60 days after filing the notice of a potential moratorium, the LDC should issue a request for proposals for non-pipe alternatives (NPAs) that can be used to relieve or mitigate the potential moratorium, and within 120 days of the issuance of the request for proposals, the LDC should determine which, if any, NPAs will be effective and have a reasonable benefit-cost ratio.

Additionally, the LDC should ensure that all customers who have received natural gas service within 24 months of the date the LDC proposes to begin the moratorium, but are presently not receiving service, will be able to resume natural gas service, with or without a moratorium, to prevent undue hardship. The LDC will conduct in-person public information sessions throughout its service territory to advise the public of the upcoming moratorium. The LDC will make it clear that large customers who have taken service from a gas marketer or an Energy Services Company (ESCO) or have not used upstream pipeline capacity provided by the LDC since 1998 will have no right to expect to be able to use upstream pipeline capacity in the future. Finally, if the Commission decides that the LDC has not adequately demonstrated the need for a moratorium, it may deny the utility's plan to implement a moratorium.

Beyond this, at least 120 days before the implementation of any moratorium, the LDC must provide a Notice of Moratorium to the Commission, which will be issued for comment pursuant to the SAPA. This Notice of Moratorium is a substantive and significant filing, and includes the following minimum elements:

- The specific municipalities, or portions thereof, that will be impacted.
- The estimated timeframe and/or number of customers expected to be impacted.
- The communications plan that the LDC will implement, generally conforming to the communications plan described in the general framework section of the Staff Proposal, including any details and outreach materials specific to the moratorium the LDC proposes to call.
- Whether all new potential customers will be impacted, or only potential customers of a certain size (e.g., potential non-residential customers).
- Whether new non-firm service requests will be accepted and the amount of load a customer must have to qualify for non-

firm service (e.g., could a residential customer who wishes to install a pool heater apply for non-firm service).

- Whether new seasonal customers will still be allowed (e.g., asphalt distributors who only use gas in the warmer months).
- Sufficient data to illustrate the reliability impact if the moratorium is not implemented as requested by the utility, including historical information on distribution system pressures and a demonstration that distribution system upgrades, such as adding pressure regulation, will not eliminate the need for a moratorium. The LDC may seek confidential treatment, as appropriate, if the LDC claims it would expose critical infrastructure information.
- The LDC's plan for lifting the moratorium, addressed in greater detail below, including identifying how much demand reduction in terms of dekatherms on a design day is needed to lift the moratorium.
- A history of the LDC's engagement with demand-side and supply-side solutions designed to avoid a moratorium, why the LDC chose those steps, including whether the LDC anticipated that those steps would be sufficient to avoid a moratorium, and why they ultimately were not sufficient, or an explanation of why the LDC took no such steps. The Notice of Moratorium must include how much peak day load is currently being met using delivered or peaking services and how that can or cannot change to accommodate load growth from accepting new customers.
- How low- and moderate-income customers and disadvantaged communities will be protected, including all programs that assist them in acquiring energy and energy efficiency measures.
- The effect on greenhouse gas emissions from imposing a moratorium, including the increased use of alternate fuels, such as low sulfur diesel fuel, as well as the increased use of alternatives to fossil fuels such as ground- and air-source heat pumps.
- The impacts on economic development from the moratorium, especially any job losses from impacted customers or increases in hiring by firms that provide energy efficiency or renewable heating and cooling applications.

Staff proposed that, while the Commission may issue an Order regarding the LDC's Notice of Moratorium before the LDC actually initiates a moratorium, the absence of such an order would not eliminate the Commission's ability to pursue action against the LDC if further investigation proves imprudence on the part of the LDC.

The Staff Proposal identified that, during the moratorium, the primary concern for the LDC is to ensure that entities seeking natural gas service are treated appropriately while the LDC works towards termination of the moratorium. To do so, Staff recommended that the LDC continue to accept applications for gas service and to consider each to ensure approval, where appropriate, or else issue to the customer written notification of the moratorium restriction and indicate that the customer has been added to any waitlist. Denied customer requests should be subject to an appeal process, especially for those who were previous customers of the LDC and are seeking to restart natural gas service. The above waitlist should be maintained and provided to the Commission quarterly, with a breakout detailing service class and separating out low- and moderate-income customers from general population customers. This submission to the Commission, however, should not contain personally identifiable information. Likewise, the LDC should report to the Commission all opportunities evaluated and explored to reduce system gas demand through demand-side management, including NPAs, energy efficiency, electrification, weatherization, and clean demand response alternative solutions.

Staff also recommended that any LDC initiating a moratorium should provide a set of moratorium management services, including establishing an ombudsman with direct communication channels for customers seeking service, as well as a list of services and providers of alternative energy options and demand response programs. These alternatives should be offered to the customers at either customer cost or may be provided by the LDC at no or reduced cost to the customer. The

LDC would be required to continue to work with affected municipalities to address economic development issues and to reduce negative consequences, including upon impacted potential development projects. Finally, at least semi-annually, any LDC operating a moratorium would be required to report to the Commission a listing of all alternative solutions offered, how many customers took part, how many customers on the wait list indicated they were no longer interested in service, as well as any economic development issues addressed and utility program / ratepayer dollars used to address these issues.

Once an LDC is ready to lift a moratorium, the Staff Proposal recommended a series of steps. If the LDC has identified a specific project, or mix of measures, that will enable it to lift the moratorium, the LDC should indicate to the Commission how success will be measured, such as whether a necessary permit is issued, or local distribution system pressure reaches a predetermined level at a certain temperature. Likewise, the LDC should explain how its use of the metrics established above demonstrate that the need for the moratorium has been alleviated and that it can ensure the provision of reliable service. At least two weeks prior to the date the LDC intends to lift the moratorium, the LDC must make a filing with the Commission that demonstrates the LDC's ability to provide safe and adequate service while lifting the moratorium. The filing must include a listing of all customers still waiting to receive natural gas service and when the LDC will provide service to those customers and how much load such customers will add on a design day. If the moratorium can only be partially lifted, e.g., only for a segment of the customer base or certain locations, the LDC should clearly state which types and sizes of customers will not be served after the moratorium is partially lifted. Public information sessions shall be conducted in those affected areas. Finally, the Staff Proposal further recommended that the Commission may deny the request to lift the moratorium if the LDC has not satisfactorily demonstrated that it can provide safe, adequate, and reliable service if the moratorium were lifted.

With these recommendations, Staff posited that the implementation, operation, and lifting of a moratorium can be done in a transparent, fair, and effective manner, all while continuing to believe that moratoria should be a rare and last-choice option.

NOTICE OF PROPOSED RULE MAKING

Pursuant to SAPA §202(1), a Notice of Proposed Rulemaking was published in the State Register on March 3, 2021 [SAPA No. 20-G-0131SP2] (SAPA Notice). The time for submission of comments pursuant to the SAPA Notice expired on May 3, 2021. Additionally, a Notice of Stakeholder Forum and Soliciting Comments was issued February 12, 2021,[16] informing the public that a Stakeholder Forum would be held on March 25, 2021, providing an opportunity for interested entities to engage with Staff to better understand both the Staff Gas System Planning Process Proposal and the Staff Moratorium Management Proposal. In addition, the Notice Soliciting Comments provided that initial written comments were due on May 3, 2021, and reply comments were due no later than June 4, 2021. Finally, public

[16] Case 20-G-0131, Notice of Stakeholder Forum and Soliciting Comments (issued February 12, 2021) (Notice Soliciting Comments).

statement hearings were conducted on May 12, 2021, and May 13, 2021.[17]

The comments received from the JLDCs, Fossil Free Tompkins, New York City, and Multiple Intervenors addressed both the Staff Moratorium Management Proposal and the Staff Gas System Planning Process Proposal. As this Order addresses only the Staff Moratorium Management Proposal, the discussion below covers only those specific comments associated with that. The comments associated with the Staff Gas System Planning Process Proposal will be addressed in a separate order.

SUMMARY OF COMMENTS

In their initial comments,[18] the JLDCs commit to briefing Staff on the potential for vulnerable locations and state that they will not wait upon standing long-term planning reports or proceedings to provide this information and initiate the planning phase of the moratorium management process. The JLDCs reassert their timeline for key actions and decision-making, note their continued commitment to informing and engaging stakeholders in advance, agree to provide significant stakeholders with notification of an impending moratorium prior to making an official written announcement to the Commission, and plan to provide front-facing employees with additional information to aid individuals as any moratorium moves forward.

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[17] Case 20-G-0131, Public Statement Hearing Transcript – Wednesday, May 12, 2021 – Teleconference (filed June 7, 2021); Case 20-G-0131, Public Statement Hearing Transcript – Thursday, May 13, 2021 – Teleconference (filed June 4, 2021).

[18] The JLDCs also filed reply comments; however, the JLDCs' reply comments did not substantively address issues related to the Staff Moratorium Management Proposal.

In responding to Staff's identification of a need for details on the metrics to be used to identify vulnerable systems and locally constrained areas, the JLDCs provided a description of two proposed categories. In Category 1, deficiencies in the supply system will be identified through forecasted design day supply/demand imbalances, as seen through: MMBtu[19] per day available for delivery; expected equivalent number of typical new residential or commercial & industrial customers; and the estimated years of expected growth that the system can absorb. Those systems or portions of systems where supply will be insufficient to meet design day demand within the next five years will be flagged as "vulnerable," and therefore under consideration for the declaration of a moratorium.

Category 2 will look at the deficiencies of infrastructure support in existing service areas, identified by a lack of available natural gas pressure in the system. Criteria to be considered are pressures at distribution system lateral endpoints for forecasted design day and consecutive day cold snap peak hours, looking specifically at: minimum endpoint pressure for each geographic zone; minimum endpoint pressure as a percentage of Maximum Allowable Operating Pressure (MAOP) for each geographic zone; and the average endpoint pressure as a percent of the MAOP for each geographic zone. The JLDCs propose that each LDC determine its own thresholds for these metrics based upon the individual distribution system and network flow modeling. For those systems or portions thereof that trigger these Category 2 metrics but which do not experience low supply, the LDC will first look to infrastructure and NPA options prior to implementing any new gas service moratorium. The JLDCs state

[19] A Metric Million British Thermal Unit (MMBtu) is a unit used to measure heat content or energy value. One MMBtu is also known as one dekatherm.

that the prior use and prevalence of existing infrastructure, NPAs, and other efficiency and/or demand response solutions, however, may result in additional infrastructure and NPA solutions being ineffective and thus not considered.

Regarding a Moratorium Customer Bill of Rights, the JLDCs did not provide a substantive Moratorium Customer Bill of Rights document, but instead included generic concepts in support of the JLDC's prior July 17, 2020, comments. These concepts, carried over from those comments, include: (1) a methodology for potential tenants, lessees, or owners to determine the volume of gas available before signing a rental agreement, lease, or purchasing a premises; (2) applications, service requests, or work requests submitted before a moratoria should be honored, contingent upon the customer(s) proving progress towards milestones in the development process; (3) applications, service requests, and work requests received during the open application period should remain "valid," so as to remain consistent with similar customers outside the moratorium area; (4) a customer may submit a request for restoration of service if the service has been off for up to two years due to renovation or vacancy, contingent upon the customer not increasing demand levels from those prior to service being halted; (5) customers can reallocate gas to tenants or occupants, so long as all laws regarding access to heat, hot water, and cooking are adhered to, and any changes must be conveyed to the utility so that billing changes may be made accordingly; (6) customers or interested entities seeking to connect to the gas network should be given information on non-gas alternatives, which will include utility programs that may be applicable during the moratorium; and (7) customers should be provided a method to express interest in service once the moratorium is lifted, and should not be required to hire a professional to complete this expression of interest, and any expression of interest should not be used for marketing purposes without express consent.

In the Staff Proposal, Staff called upon the JLDCs to provide a description of their moratorium management services, to ensure that customers can work with the LDC during the pendency of the moratorium. The JLDCs provided little detail in their comments, other than assertions that each LDC will commit to providing additional services to assist in navigating the moratorium process, including moratorium-specific hotlines, LDC-hosted web pages, and assistance in finding alternative services and service providers.

Finally, in terms of lifting any moratorium, the JLDCs indicate that upon the implementation of a permanent solution to meet supply and demand imbalances in the system, the LDC should first officially end the moratorium and then inform customers of the change through the Public Communications Plan.

Fossil Free Tompkins, in its comments, notes that the Staff Proposal calls upon an LDC to notify the Commission at least two years in advance of a potential moratorium; within two months of that notification, the LDC should issue an RFP for NPAs; and within four months of the RFP, a candidate NPA should be selected. Fossil Free Tompkins believes this timeframe is too optimistic, especially with communities not familiar with the options and opportunities. Fossil Free Tompkins proposes that the Commission, in conjunction with the New York State Energy Research & Development Authority (NYSERDA), the New York Power Authority, and the affected LDC, provide educational forums for stakeholders to understand the issues and possible solutions. Fossil Free Tompkins asserts that costs associated with facility review, demand response, and fuel switching should be paid by the LDC or NYSERDA as they will not have been budgeted for by the individual customer.

New York City, in its comments, notes its approval of the Staff Proposal and declares it a strong framework to ensure a consistent approach across LDCs. New York City supports the emphasis upon non-infrastructure solutions, the long-term planning and notification requirements to stakeholders, and a Bill of Rights that will provide "robust stakeholder protections." New York City did present concerns over the cost of electrification, most notably as it applied to the low- and moderate-income consumers during its gas planning process comments, but this concern also comes into play as applied to electrification as a solution for and/or option to avoid or lift a moratorium. In total, New York City strongly supports the Staff's Moratorium Management Proposal.

Corning Natural Gas, in its comments, notes its unique nature and accordingly askes to be "treated differently" than other LDCs. While primarily discussing the Planning process, Corning indicates that it has no difficulty with the acquisition of supply, that it operates in a region where the electric system is winter peaking, and thus moving customers to electric heat could create a significant rate cost to customers. Corning took no further position beyond that on the moratorium process.

In its initial comments, Multiple Intervenors state that the "Moratorium Proposal, if approved, would represent a material improvement in the evaluation, implementation, administration, and termination of potential gas moratoria." In its reply comments, Multiple Intervenors register concerns about the JLDCs' proposal that an LDC give notice of a potential moratorium five years in advance of instituting it. Multiple Intervenors questions whether that would lead to premature implementation of a moratorium before it was known if potential solutions would be successful.

LEGAL AUTHORITY

The Public Service Law (PSL) contains several provisions related to the Commission's authority concerning supply constraint issues. PSL §65(1) requires that gas service provided to customers must be safe and adequate at rates that are just and reasonable. PSL §66-a specifies that, if a shortage of gas causes an LDC to be unable to meet the reasonable needs of its consumers and of applicants for new or additional gas service, the Commission can authorize the utility to cease providing new or incremental gas service to applicants. Further, PSL §66-a provides that this should be done in a manner that avoids undue hardship.

Assuming the existence of adequate supply, PSL §31(1) requires that utilities provide residential customers with service upon a proper application.[20] This requirement is also found in PSL §31(4), which requires utilities to provide the first 100 feet of line extension without charge to the individual residential customer. The requirements for serving new customers are further detailed in the rules and regulations adopted by the Commission in Title 16 of the New York Code of Rules and Regulations (NYCRR). Part 230 of 16 NYCRR governs extension of mains and service lines and addresses requests for service from commercial & industrial customers as well as residential customers.

[20] Transportation Corporations Law §12 also addresses the obligation to provide new service connections.

DISCUSSION AND CONCLUSION

The Commission reasserts its continued position and hope that the issuance of a moratorium on providing applicants with gas service would be a last step, not a first option. However, should a moratorium be required, the Commission continues to believe that the procedures surrounding a moratorium should be fair, equitable, and transparent for all stakeholders. Declaration of a moratorium by a gas utility without adequate notice does not allow time for prospective customers to choose other options like heat pumps and energy efficiency programs. As such, the proposed timeframe further ensures that the Commission's action in this Order will not result in increased greenhouse gas emissions. Although some commenters would like to see a Statewide moratorium on new natural gas service connections, prospective customers have been making decisions based on the continued availability of natural gas and would be significantly harmed by such an action at this time. The guidelines established through this Order will protect customers, allow them to plan effectively, and potentially avoid moratoria by including communities in planning for other options, such as NPAs.

Staff issued a comprehensive Proposal detailing procedures for the initiation, operation, and lifting of any future moratoria on new gas customer connections in the State. The Staff Proposal, as issued, provides a model for the implementation process, considering the importance of providing customers the option to receive natural gas service if desired, while creating the opportunity and understanding that the natural gas distribution system can be augmented not only through additional input of natural gas, but also through NPAs. While calling a moratorium comes down to recognizing a fundamental mismatch between supply and demand, the proposed moratorium process moves much deeper than that, looking beyond simply "build more pipelines" into options that can provide innovative, forward-thinking, and modern solutions to the issue of supplying a resource to customers who seek it. Generally, the comments submitted in this proceeding regarding moratorium management issues were supportive of the Staff Proposal.

Accordingly, and based upon the submissions, consideration, and need for a universal system in the State, the Commission determines that the Staff Proposal issued on February 12, 2021, is adopted, subject to the following discussion and modifications.

Moratorium Customer Bill of Rights

The Staff Proposal asked that the LDCs propose the substance of a Moratorium Customer Bill of Rights in their comments on the Staff Proposal. However, the JLDCs, Corning, and St. Lawrence did not do this. Therefore, as a requirement of this Order, the LDCs shall jointly develop a standard Moratorium Customer Bill of Rights for use statewide. A standard Moratorium Customer Bill of Rights will ensure consistent treatment for customers throughout New York State. LDCs providing notice of a potential moratorium would add appropriate utility-specific content, such as contact information to the standard Bill of Rights. Importantly, the Bill of Rights will provide a clear statement of rights and options to customers and applicants for gas service who are impacted by a moratorium.

In developing the standard Moratorium Customer Bill of Rights, the LDCs shall include the recommendations provided by the JLDCs in the July 17, 2020, filing, along with the following information, at a minimum. First, the Bill of Rights shall state that within five business days after a service application is received, the LDC will provide the following to the applicants: (a) clear information on the moratorium and what that means for the applicant; (b) a timeline of when gas service will become available, if applicable; (c) information on alternative energy sources, such as heat pumps or electricity, and an offer to provide referrals to NYSERDA for alternatives if requested by the applicant; and, (d) the process(es) to be followed by the LDC if/when the moratorium is lifted, including if the prospective customer will have to re-apply for gas service. Second, the Bill of Rights shall state that no payment penalties will be applicable if the applicant cancels a service request due to the moratorium. Third, the standard document shall include a provision explaining any written documents (e.g., applications, contracts, marketing materials, and the Bill of Rights itself) will be translated in accordance with the Home Energy Fair Practices Act, or HEFPA.[21] Fourth, the Bill of Rights shall inform prospective customers that they have the right to file a complaint regarding the LDC with the New York State Public Service Commission through the New York Department of Public Service’s Office of Consumer Services by calling 800-342-3377 or going to www.dps.ny.gov.

Within 45 days of the date of this Order, the LDCs shall submit a draft of the Moratorium Customer Bill of Rights to the Secretary to the Commission under this proceeding, Case 20-G-0131, for approval by the Commission. Staff and interested entities will be provided with the opportunity to comment on this Bill of Rights.

[21] Home Energy Fair Practices Act (HEFPA) 16 N.Y.C.R.R., §11(17)(b) (effective December 2008).

Energy Affordability / Disadvantaged Communities

A moratorium on new gas connections may require would-be gas customers to pursue electrification for appliances, such as furnaces and hot water heaters. Both Corning and New York City stated in their comments that customers may be unable to financially afford electrification. Affordability issues related to electrification for various customer groups exist, especially those who are low-income or live within disadvantaged communities.[22]

Considering the potential for acute impacts of gas service moratoria on low- and moderate-income customers and customers residing in areas classified as disadvantaged communities, when identifying a specific potential moratorium, the LDC shall report additional information, to ensure that impacts to these populations are appropriately addressed and that they are not disproportionately burdened by either the moratorium itself, or any actions taken to lift the moratorium. LDCs providing a notice of potential moratorium must include with that notice information including, at a minimum: (1) low- and moderate-income customer and disadvantaged community customer population numbers; (2) low- and moderate-income customer and disadvantaged community customer gas usage; (3) a method for landlords, prospective owners, or prospective renters to determine gas availability at a premise prior to the execution of a rental agreement, lease, or purchase; and, (4) the number of submitted applications, service requests, or work

[22] Disadvantaged Communities as defined by CLCPA §75-0101(5) are "communities that bear burdens of negative public health effects, environmental pollution, impacts of climate change, and possess certain socioeconomic criteria, or comprise high-concentrations of low- and moderate- income households, as identified pursuant to section 75-0111 of this article."

requests that have been approved, denied, or are pending within the past five years.

Should any LDCs be incapable of accurately capturing the information identified above, the LDC(s) shall provide notice of any anticipated difficulties within 60 days of the date of this Order. Staff will then schedule a meeting with the LDC(s) and interested stakeholders to discuss the nature of difficulties and how best to capture the data from the various LDCs' service territories. The affected LDCs shall submit a report within 30 days of the meeting explaining any alternative information or means of gathering necessary information that they will pursue.

Moratorium Need Criteria

As provided by the JLDCs in their comments, additional criteria have been described to allow for the determination of need for a moratorium. Specifically, the JLDCs proposed to identify forecasted design day supply/demand imbalances through: MMBtu per day available for delivery; expected equivalent number of typical new residential or commercial & industrial customers; and the estimated years of expected growth that the system can absorb. The JLDCs noted that, in those systems where the above criteria determine that supply will be insufficient to meet design day demand within the next five years, a moratorium may need to be considered.

Similarly, when considering deficiencies of infrastructure support in existing service areas, the JLDCs look to overall pressure availability. The criteria the JLDCs suggested be considered are pressures at distribution system lateral endpoints for forecasted design day and consecutive day cold snap peak hours, looking specifically at: minimum endpoint pressure for each geographic zone; minimum endpoint pressure as a percentage of Maximum Allowable Operating Pressure (MAOP) for each geographic zone; and the average endpoint pressure as a percent of the MAOP for each geographic zone.

These criteria are reasonable, rational, significant, and shall be used as part of the analysis to determine the need and extent of any proposed moratorium. The LDCs shall file these criteria within 90 days of this Order. The filing shall include draft tariff leaves incorporating the criteria into their respective tariff schedules. When a specific moratorium is declared, the LDCs should file, as part of their notification to the Commission, the metrics and their associated values within the community(ies) where the moratorium will be in effect. This data would be filed two years before the moratorium will be enacted to demonstrate the need and allow interested entities to work with the LDC on NPAs such as electrification or energy efficiency. This report should be updated within 30 days of the moratorium taking effect.

We agree with Multiple Intervenors that the JLDCs' proposal to provide notice of a potential moratorium five years in advance of implementation may result in a moratorium being declared prematurely. Additionally, while the Staff Proposal provides for notice a minimum of two years prior to implementation of a moratorium, it does not preclude earlier notification. Accordingly, we see no need to modify that aspect of the Staff Proposal.

Outreach

If a moratorium cannot be avoided, proactive customer outreach is paramount. In the JLDCs' July 17, 2020, filing, the JLDCs committed to executing communications plans to provide "adequate notice to policymakers, civic leaders, customers, and other stakeholders to minimize any adverse impacts”[23] of a pending moratorium. The Staff Proposal recommends that the LDCs be required to include “[t]he communications plan that the LDC will implement” in the “Notice of Moratorium” that must be filed at least 120 days before the institution of a moratorium. Further, the Staff Proposal requires that the communications plan for a specific moratorium must generally conform to an LDC’s initial communications plans developed in advance of the consideration of any particular moratorium.

We adopt the following requirements regarding communications plans to ensure that stakeholders have adequate time to review the plans in advance of a moratorium, while also providing sufficient time for the affected LDC to enact the plan. Accordingly, within six months of the date of this Order, each LDC shall provide a draft of the initial comprehensive communications plan, also referred to as a Public Communications Plan, consistent with the description in the Staff Proposal and the discussion below, to the Director of the Office of Consumer Services for preliminary review. Forty-five days thereafter, each LDC shall file a final version of the comprehensive communications plan with the Secretary to the Commission. Additionally, the LDCs shall file the annual updates and revisions to the Public Communications Plans with the Secretary to the Commission. Finally, as part of the “Notice of Moratorium” required at least 120 days prior to the institution of a moratorium, the LDC shall provide the communications plan the LDC will implement, which shall generally conform to its then current Public Communications Plan and include details and outreach materials specific to the impending moratorium.

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[23] Case 20-G-0131, Modernized Gas Planning Process: Standards for Reliance on Peaking Services and Moratorium Management (filed July 17, 2020), p. 21.

The Public Communications Plan shall provide a process for stakeholder engagement, as reflected in the JLDCs' comments. The Public Communications Plan shall also include proposed outreach methods, the standard Customer Bill of Rights as modified for the individual LDC, media strategies to inform customers who are unaware of the moratorium (to include, but not limited to, webpages, social media, radio messages and advertisements), bill insert and bill message templates (including the language to be used and frequency of the mailings), how the LDC will work with community-based organizations to encourage customer engagement, educational forums, methods by which customers and applicants interested in connecting to the distribution network will be provided information on non-gas alternatives (including information on any non-gas alternative utility or utility partner programs), and details of the LDC's outreach and engagement strategies for communicating with customers once the moratorium has been lifted. Within the Public Communications Plan, the LDC shall also identify its strategies for notifying and maintaining communication with municipal officials, local officials, potential developers, and local agencies that may be affected by the moratorium. Finally, the Public Communications Plan shall include a comprehensive list of the various energy efficiency programs and energy alternative resources available within the LDC's service territory.

Training Materials

In the JLDC's comments, they committed to instituting hotlines that will be available to customers through which customer service representatives (CSRs) can answer questions related to the moratorium.[24] As such, the LDCs shall provide the training materials that will be used for the CSRs assigned to these dedicated lines when they are developed and/or updated as an appendix to their respective Public Communications Plan. Another service the LDCs stated they will provide to customers is additional information on alternative energy resources, which include electrification options and energy efficiency programs.[25] The LDCs shall also file examples of training materials used in training CSRs regarding how to inform customers of their energy service and energy efficiency options with the Notice of Moratorium required at least 120 days prior to the start of a moratorium.

Consistency with CLCPA

As discussed above, and in furtherance of the mandates set forth in the CLCPA, this Order adopts moratorium management procedures that consider the impact of emissions. Nothing in this determination interferes with the attainment of the statewide greenhouse gas emissions limits, as emissions are explicitly considered in terms of replacement fuels and NPAs. Likewise, the Commission is explicitly requiring significant data and analysis on potential impacts moratoria may have on low- and moderate-income customers and gas service applicants, as well as disadvantaged communities, to ensure that if a moratorium is called, it will not disproportionally burden any disadvantaged community in the State. With these considerations, the moratorium management procedures adopted by this Order are consistent with the CLCPA.

[24] Case 20-G-0131, JLDCs' Initial Comments, p. 34.

[25] Id. at p. 34.

The Commission orders:

1. Consolidated Edison Company of New York, Inc.; The Brooklyn Union Gas Company d/b/a National Grid NY; KeySpan Gas East Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc.; Central Hudson Gas & Electric Corporation; Niagara Mohawk Power Corporation d/b/a National Grid; New York State Electric & Gas Corporation; Rochester Gas and Electric Corporation; National Fuel Gas Distribution Corporation; Liberty Utilities (St. Lawrence Gas) Corp.; and Corning Natural Gas Corporation shall comply with the moratorium management procedures set forth in the Staff Moratorium Management Proposal issued on February 12, 2021, and consistent with the discussion in the body of this Order.

2. Consolidated Edison Company of New York, Inc.; The Brooklyn Union Gas Company d/b/a National Grid NY; KeySpan Gas East Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc.; Central Hudson Gas & Electric Corporation; Niagara Mohawk Power Corporation d/b/a National Grid; New York State Electric & Gas Corporation; Rochester Gas and Electric Corporation; National Fuel Gas Distribution Corporation; Liberty Utilities (St. Lawrence Gas) Corp.; and Corning Natural Gas Corporation shall file with the Secretary to the Commission a standard Consumer Bill of Rights within 45 days of the issuance of this Order.

3. Consolidated Edison Company of New York, Inc.; The Brooklyn Union Gas Company d/b/a National Grid NY; KeySpan Gas East Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc.; Central Hudson Gas & Electric Corporation; Niagara Mohawk Power Corporation d/b/a National Grid; New York State Electric & Gas Corporation; Rochester Gas and Electric Corporation; National Fuel Gas Distribution Corporation; Liberty Utilities (St. Lawrence Gas) Corp.; and Corning Natural Gas

Corporation shall, within six months of the date of this Order, provide initial drafts of the LDC's Public Communication Plans to Staff for preliminary review, and then a final version shall be filed with the Secretary to the Commission 45 days thereafter.

4. Consolidated Edison Company of New York, Inc.; The Brooklyn Union Gas Company d/b/a National Grid NY; KeySpan Gas East Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc.; Central Hudson Gas & Electric Corporation; Niagara Mohawk Power Corporation d/b/a National Grid; New York State Electric & Gas Corporation; Rochester Gas and Electric Corporation; National Fuel Gas Distribution Corporation; Liberty Utilities (St. Lawrence Gas) Corp.; and Corning Natural Gas Corporation shall each file individual draft tariff leaves containing the criteria identified in the body of this Order within 90 days of the issuance of this Order.

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

6. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary