

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York for Gas Service

Case 06-G-1185

Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island for Gas Service

Case 06-G-1186

STATEMENT OF THE
NEW YORK STATE CONSUMER PROTECTION BOARD
IN SUPPORT OF JOINT PROPOSAL

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Dated: October 12, 2007
Albany, New York

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STATEMENT OF THE
NEW YORK STATE CONSUMER PROTECTION BOARD
IN SUPPORT OF JOINT PROPOSAL

The New York State Consumer Protection Board (“CPB”) submits this statement in full support of the Gas Rates Joint Proposal (“Proposal”) filed by KeySpan Energy Delivery New York (“KEDNY”) and KeySpan Energy Delivery Long Island (“KEDLI”) on October 11, 2007. In conjunction with the three joint proposals previously approved by the Public Service Commission (“PSC” or “Commission”) in these proceedings, this Proposal results in a complete post-merger five-year rate plan for KEDNY and KEDLI, with the exception of certain energy efficiency and revenue decoupling issues. It is supported by a broad spectrum of parties representing diverse interests and fairly balances the interests of consumers and shareholders. The CPB recommends that it be approved expeditiously.

Overview

National Grid plc (“National Grid”) and KeySpan Corporation entered into an agreement on February 25, 2006, under which National Grid would acquire KeySpan for cash. The companies requested PSC approval of the transaction, which was granted in an order issued August 23, 2007, in Case 06-M-0878.¹ The merger was consummated on August 24, 2007.

In conjunction with the merger application, KEDNY and KEDLI proposed substantial rate increases for the 12-month period ending March 31, 2008. The PSC initiated these proceedings in response to those filings, and consolidated these issues with the merger filing for consideration based upon a common evidentiary record.

The CPB filed detailed testimony on January 29, 2007, in which we raised a number of concerns about the proposed rate plans and their potential impact on consumers. Thereafter, we, along with numerous other parties with diverse interests and concerns, participated in lengthy settlement discussions with the merging companies. Participants included the Department of Public Service Staff, the Public Utility Law Project, the City of New York, Nassau and Suffolk Counties, representatives of labor unions, and several energy service companies. The current Proposal is the broadly-supported result of those efforts.

¹ Case 06-M-0878 - Joint Petition of National Grid PLC and KeySpan Corporation for Approval of Stock Acquisition and other Regulatory Authorizations, “Abbreviated Order Authorizing Acquisition Subject to Conditions and Making Some Revenue Requirement Determinations for KeySpan Energy Delivery New York and KeySpan Energy Delivery Long Island,” issued August 23, 2007; followed by the full order issued September 17, 2007 (“Merger Order”).

The CPB's objective in this case has been to ensure that the interests of consumers are adequately considered at all stages in the process and that the resulting rate plans provide them with fair and equitable treatment. The Proposal achieves that objective and, for the reasons we discuss herein, it fully satisfies the PSC's Settlement Guidelines.

The Settlement Guidelines

The Commission has adopted standards to evaluate whether negotiated proposals for the resolution of contested proceedings are in the public interest.²

Among those Settlement Guidelines are the following:

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

The current Proposal is a well-balanced resolution of a wide range of discrete issues that had remained unresolved in these cases after the earlier joint proposals. It would have been difficult to achieve other than through negotiation and compromise, and it would not likely have been improved upon through full litigation. As stated above, it is supported by a broad range of parties whose

² Cases 90-M-0255 and 92-M-0138, Settlement Procedures and Guidelines ("Settlement Guidelines"), Opinion No. 92-2, issued March 19, 1992.

³ Id., Appendix B, at 8.

positions are often adversarial. For all these reasons, the Commission should conclude that the Proposal fully satisfies the Settlement Guidelines.

Specific Provisions

As noted above, the Proposal contains a score of diverse provisions, all of which are acceptable to the CPB in the context of the overall agreement. We comment here only on a subset of issues that we addressed in our testimony and that are of particular significance for consumers.

Energy Efficiency

At the start of the negotiations that led to the Proposal, there were substantial differences among the parties as to the appropriate size and scope of energy efficiency programs for KEDNY and KEDLI, the degree of coordination required with government agencies and other entities, the methodology for recovery of program costs and the design of a revenue decoupling mechanism. While the Proposal does not resolve these issues permanently, it does provide for a reasonable process to achieve that goal.

The re-establishment of energy efficiency promotion as a primary function of utilities in New York State is a relatively new initiative and its parameters remain undefined. The Commission's Energy Efficiency Portfolio Standard proceeding is intended to resolve many issues including the scope of the energy efficiency effort and the role of utilities in meeting the State's energy efficiency goals. That effort is ongoing and is not likely to be completed before the Spring

of 2008.⁴ In the context of the diverse, complex issues associated with the merger that had to be resolved on an expedited basis, the parties to these cases simply could not devote adequate time to these continually evolving issues to be able to reach full agreement on programs for KEDNY and KEDLI.

With the resolution of the merger and rate cases, there is now time to address these questions more thoroughly, particularly since the decision on the interim energy efficiency joint proposal in this case has assured that a basic portfolio of programs will be implemented and ramped-up for the winter of 2007-2008.⁵ The Proposal takes advantage of this opportunity in two ways. First, it directs the utilities to coordinate their program design efforts with existing providers of energy efficiency programs in their service territories in order to minimize duplication, take advantage of existing opportunities, and customize their programs to fulfill the unmet requirements of their customers. Then, it establishes two collaboratives, in which all parties may participate, to discuss the details of those programs and resolve a number of important open issues.

The first collaborative, on program design, will address conservation goals for the programs, in the form of therm savings, and will evaluate both the level of program funding during the rate plans, and the mechanisms for recovery of program costs. The second will deal with the design of revenue decoupling mechanisms for the two utilities.

⁴ Case 07-M-0548 - Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard.

⁵ "Order Authorizing Interim Gas Energy Efficiency Programs and Related Deferrals," issued July 18, 2007.

The CPB considers this plan to be appropriate and worthwhile. It will provide all parties a full opportunity to present their ideas and air their concerns and incorporate the results of the PSC's generic Energy Efficiency Portfolio Standard proceeding. Even if it does not result in consensus on all issues, it should significantly reduce the number and scope of the questions that will have to be resolved by the Commission.

The proposal also requires both KEDNY and KEDLI to provide all active parties in the rate cases with quarterly reports on each of the energy efficiency programs they operate including the number of participants, expenditures, efficiency savings and lost revenue. This is the type of reporting and transparency that the CPB has long advocated. The information provided should permit interested parties to identify any changes in direction or emphasis that may be needed to optimize the ratepayer benefits produced by these programs.

Low-Income Programs

Under the Proposal, the discounted minimum charge for low-income residential customers of KEDNY will be continued, and a comparable discount will be established for customers of KEDLI. The discounts will be funded at levels sufficient to accommodate 60,000 and 30,000 customers on KEDNY and KEDLI, respectively. Balancing accounts will be established to reconcile over and under-expenditures annually. If a positive balance greater than \$2 million accrues in the account for KEDNY, or \$1 million for KEDLI, any party may propose to the Commission that the excess funds be applied to some other

program for the benefit of low-income customers. The utilities will report annually on the operation of the programs.

The CPB considers this program to be an important means of assisting low-income customers. Its extension to KEDLI, which did not feature such a discount in the past, is particularly valuable. The design of these programs, as defined in the Proposal, will assure that all funds included for them in rates will ultimately reach the intended beneficiaries. Additionally, as with the energy efficiency program, the transparency provided by regular reporting will facilitate monitoring and recommendations for improvement from interested parties.

Site Investigation and Remediation (“SIR”) Expenses

In the Merger Order, the Commission expressly acknowledged that the Department of Environmental Conservation (“DEC”) has primary jurisdiction over SIR matters and will ultimately determine the timing and level of expenditures made by KEDLI and KEDNY at sites for which they are responsible.⁶ As a consequence, the amounts actually incurred by the utilities will almost certainly deviate over time from those provided in rates for SIR costs under this Proposal, perhaps substantially. This raises the concern that ratepayers may experience a “hockey stick” effect at the end of the five-year term of the rate plans if rates have to be adjusted sharply upwards to provide for SIR cost recovery.

To provide the parties with an opportunity to head off any such problem, the Proposal features a “re-opener” in year three of the rate plans, at which time any party may petition the Commission to re-examine the rate allowances for SIR

⁶ Merger Order, p. 152.

costs. The CPB considers this an appropriate compromise for ratepayers. Given the legal obligations impelling the remediation of former manufactured gas sites, and the environmental benefits accruing from the work, it is unreasonable to expect that ratepayers will not ultimately bear responsibility for costs prudently incurred by the utilities pursuant to DEC directives. Thus, an intermediate re-opener avoids the equally undesirable alternatives of raising rates currently for SIR costs that may not materialize, or ignoring increases in costs until their accumulation requires a major rate hike.

Gas Cost Incentive Program

The Proposal would increase consumers' share of revenues generated by KEDNY and KEDLI from off-system sales and capacity release transactions from 80% to 85%. Sharing would begin with the first dollar of revenue, as is the case currently.

The CPB has argued that the optimization of gas supply assets (pipeline capacity, storage and supply contracts) has become a fundamental function of all gas utilities over the last decade and a half. Some minimum level of performance should be expected, and should not earn any special reward. Incentives should be reserved for the achievement of excellent results. We recommended that some level of revenue from optimization activities be imputed for purposes of setting rates, or be set as a threshold below which all revenue inures to the benefit of ratepayers.

In this case, however, the 5% reduction in the utilities' sharing percentage called for by the Proposal is worth about \$2 million per year to ratepayers,

assuming off-system sales and capacity release revenues in the future are comparable to what they have been in recent years. That is a very substantial benefit, and it is equal to what ratepayers would realize if a minimum performance threshold of \$10 million in revenues were established before utility sharing began at the current 20% rate. In the context of the overall settlement proposed, we see no reason to elevate theory over substance. Therefore, we fully support this provision.

CONCLUSION

For the reasons set forth herein, the CPB recommends that the broadly supported Joint Proposal submitted to the Commission in these proceedings be approved in its entirety.

Respectfully submitted,

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Chairperson and Executive Director

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