

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

2016 Annual Gas Cost Reconciliations)	Case 16-G-0431
Petition of The Brooklyn Union Gas Company)	Case 16-G-0554
d/b/a National Grid NY for Waiver of its)	
Annual Reconciliation of Gas Costs Mechanism)	

COMMENTS OF THE
NATIONAL ENERGY MARKETERS ASSOCIATION

The National Energy Marketers Association (NEM)¹ hereby submits these Comments pursuant to the Notices of Proposed Rulemaking on the Annual Reconciliation of Gas Expenses and Gas Cost Recoveries published in October 19, 2016, State Register pertaining to the above-referenced proceedings. The New York gas utilities submitted their annual gas cost reconciliation filings with the Commission in October 2016 for the twelve-month period ending August 31, 2016. Relatedly, KEDNY filed a petition on September 29, 2016, requesting that it be permitted to temporarily suspend collection of the annual reconciliation of gas costs mechanism in its Gas Adjustment Clause. NEM submits these comments to recommend that the Commission reevaluate and revise its regulations pertaining to the utilities' gas cost reconciliation processes and procedures because of the serious longstanding negative impact that the utilities' gas cost estimates coupled with

¹ The National Energy Marketers Association (NEM) is a non-profit trade association representing both leading suppliers and major consumers of natural gas and electricity as well as energy-related products, services, information and advanced technologies throughout the United States, Canada and the European Union. NEM's membership includes independent power producers, suppliers of distributed generation, energy brokers, power traders, global commodity exchanges and clearing solutions, demand side and load management firms, direct marketing organizations, billing, back office, customer service and related information technology providers. NEM members also include inventors, patent holders, systems integrators, and developers of advanced metering, solar, fuel cell, lighting, and power line technologies.

corresponding retroactive adjustments to utility commodity rates have had on the competitive retail gas market in the State of New York.

The gas utilities' under/overcollections for the twelve-month period ending August 31, 2016, and resulting proposed surcharges/refunds to be collected during calendar year 2017 as set forth in their filings are as follows:

Central Hudson - \$3,582,817 undercollection resulting in a surcharge of \$0.50854 per Mcf
ConEd - \$23,086,882 undercollection resulting in a surcharge of \$0.027729 per therm
KEDLI - \$432,056 undercollection resulting in a surcharge of \$0.00062 per therm
KEDNY - \$43,010,888 undercollection resulting in a surcharge of \$0.0501 per therm
NFG - \$10,143,025 overcollection resulting in a refund of \$0.2161 per Mcf
NIMO - \$583,074 undercollection resulting in a surcharge of \$0.00109 per therm
NYSEG - \$3,144,892 overcollection resulting in a refund of \$0.013775 per therm
O&R - \$3,226,949 undercollection resulting in a surcharge of \$0.3395 per Mcf
RG&E - \$1,343,290 overcollection resulting in a refund of \$0.005579 per therm

In addition, KEDNY filed a petition with the Commission on September 29, 2016, requesting a waiver to allow it to suspend collection of the annual reconciliation of gas costs mechanism in its Gas Adjustment Clause. The KEDNY petition specifically requests permission to suspend the collection of the surcharge for three months, until April 1, 2017. Any resulting unrecovered costs would be addressed in KEDNY's 2018 reconciliation, with such costs estimated to be approximately \$21 million, plus carrying costs. KEDNY's reason for the request is to, "manage the customer bill impacts associated with recovering \$43 million of unbilled gas commodity costs set to be recovered through the annual reconciliation beginning January 1, 2017, thereby avoiding a sharp increase in the commodity portion of customers' bills that would coincide with an anticipated increase in base delivery rates." (KEDNY Filing at page 1).

For the reasons explained herein, NEM recommends that the Commission’s gas cost reconciliation regulations and processes should be reviewed and revised to support the following goals:

- making utility commodity rates more reflective of current market conditions and pricing;
- making the impact of the utility rate reconciliations less disruptive and confusing to consumers, particularly to ensure consumers understand the nature of and reason for the adjustments;
- providing more transparent disclosure of utility pricing; and
- contributing to the more accurate presentation of a utility “Price to Compare” against which ESCOs can develop and market competitive products and services to consumers who may then make better-informed purchasing decisions.

The Gas Cost Reconciliation Regulations and Processes Should Be Reviewed and Revised

The utility gas cost reconciliation process is set forth in the Commission’s regulations at 16 NYCRR 720-6.5(g).² The annual reconciliation process pre-dates the introduction of retail

² 16 NYCRR 720-6.5(g) provides as follows:

Actual gas cost recoveries shall be reconciled with actual gas expenses each year, and a surcharge or refund to recover gas adjustment under-recoveries or refund gas adjustment over-collections shall be computed as follows:

(1) Taking the cost of gas, adjusted for supplier refunds, and liquefied propane consumed, as recorded on its books during the determination period, adjusting that cost to reflect a level of purchased gas commensurate with actual sales and the fixed factor of adjustment as determined in the preceding rate proceeding, and subtracting therefrom an amount equal to:

- (i) the base cost of gas, as defined in paragraph (a)(2) of this section, multiplied by the quantities of gas purchased;
- (ii) gas adjustment revenues recorded during the determination period, adjusted to eliminate associated revenue tax recoveries;
- (iii) costs recorded during the determination period assignable to gas sold to customers not subject to gas cost adjustments; and
- (iv)

(a) the previous year's over-collection, including interest, to the extent not refunded; or

(b) adding the previous year's under-collection, including interest, to the extent not recovered.

competition. In 1999, the Commission revised the Gas Adjustment Clause regulations with the intention of making changes to reflect the restructuring of the industry, but the fundamental precepts of the reconciliation process were not changed.³ Even at that time, the Commission acknowledged that, “Large GAC imbalances distort prices: once in the year incurred and again in the year reconciled. Even if the . . . revisions are made to the GAC methodology so that large over/under collections are less likely, a combination of price changes and abnormal weather can still result in substantial over-under collections imbalances.”⁴

In the Commission’s 1998 Policy Statement Concerning the Future of the Natural Gas Industry in New York State it recognized that, “[t]he most effective way to establish a competitive market in gas supply is for local distribution companies to cease selling gas.”⁵ It was expected that through a series of transitional market measures that this would eventually be achieved. Given the goal and expectation that gas utilities would soon exit the commodity merchant function, the need for

(2) The amount derived in paragraph (1) of this subdivision shall be divided by the quantities of gas to be sold by the utility to its customers during the surcharge/refund period.

(3) Appropriate adjustment shall be made to eliminate the effect of net credits which have been included in the gas adjustment due to interruptible or other flexibly priced sales.

(4) Surcharge or refund amounts shall bear interest, at a rate prescribed by the commission, on unamortized balances.

(5) The determination period to be used in the computation of the surcharge or refund shall be the 12 months ended August 31st of each year. The computation shall be filed with the commission on or before October 15th. The resulting surcharge or refund shall be effective with the first January billing cycle date.

(6) Interim refunds or surcharges during the 12-month period ended August 31st will be permitted for the purpose of preventing large over-collection or under-collection balances from accruing at August 31st. The methodology used to determine the amount of over-collection or under-collection and the method of refund or surcharge shall be determined by the utility and filed with the commission.

³ Case 97-G-1178, Memorandum and Resolution Revising 16 NYCRR Section 270.55, issued April 13, 1999.

⁴ Id. at 5-6.

⁵ Case 93-G-0932 and 97-G-1380, Policy Statement Concerning the Future of the Natural Gas Industry in New York State and Order Terminating Capacity Assignment, issued November 3, 1998, at page 4. The Commission also correctly predicted at that time that, “[w]ithout separation of the monopoly gas distribution function and the competitive merchant function the LDCs would likely remain dominant providers. The elimination of regulated LDC merchants would also address ‘level playing field’ issues between LDCs and marketers. Thus, separation of the LDC distribution function from the competitive merchant function would maximize competition and customer benefits.” Id.

a significant revision to the utilities' gas cost reconciliation process may not have been perceived to have been as urgent or necessary, particularly since the gas cost reconciliation mechanism would have been rendered moot by the utilities exit from the merchant function, and also given all of the other issues that required stakeholder attention to implement what was then a bold new vision. However, two decades later the utilities still remain in the commodity merchant function role.⁶ So long as this remains the case, the antiquated processes and regulations that were conceived of and designed in an era when energy competition and energy choice did not exist, in order to accomplish historic objectives that may be in conflict with current Commission policy, should be reviewed to ensure that they are not contrary to the functioning of today's retail marketplace and the public interest.⁷

The current gas cost reconciliation process simply does not serve or protect consumers in the context of today's competitive retail natural gas market. It makes the market less robust by distorting pricing signals. Indeed, consistent with the Commission's Reforming the Energy Vision goals, price signals are a prerequisite to achieving consumer participation in meaningful demand reduction. It also harms consumers that pay interest on the utilities' estimates with resulting deferrals. For example, ConEd explains that \$3.5 million of its \$23 million undercollection for the twelve month period ended August 31, 2016, stems from an over-refund of the reconciliation for the twelve month period ended August 31, 2014. In other words, mistaken gas cost estimates

⁶ The need for and recurrence of utilities under/over collections is compelling evidence in support of the Commission's 1998 conclusion that the utilities should exit the merchant function.

⁷ In Ohio, beginning in the service territory of Dominion East Ohio and then subsequently followed by the other natural gas utilities in the state, the utilities utilized a transitional, phased process to exit the gas merchant function. An impetus for the transition was the recognition that the Gas Cost Recovery Mechanism, and corresponding reconciliation adjustments that had been in place, were hampering retail market development. See, e.g., Public Utilities Commission of Ohio, Case No. 05-474-GA-ATA, In the Matter of the Application of The East Ohio Gas Company, dba Dominion East Ohio, for Approval of a Plan to Restructure Its Commodity Service Function; Case No. 07-1224-GA-EXM, In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services.

and subsequent reconciliations continue to distort the prices consumers see and pay year after year after year.

Allowing the gas cost reconciliation process to continue unchanged has undermined the very functioning of the retail natural gas market. This is because an artificially stated and/or retroactively adjusted utility rate obfuscates the true value of ESCO-provided products that are priced based on current market conditions. The gas cost reconciliation process that permits utility collection of deferrals with interest underscores the inequity of allowing utilities to compete to provide commodity with ratepayer-backed guarantees versus ESCOs that compete to provide commodity to consumers with at-risk capital.

KEDNY's gas cost reconciliation for the twelve-month period ended August 31, 2016, reports a significant undercollection of over \$43 million of gas purchase costs. Specifically, the utility reports that, "Purchase gas expenses exceeded recoveries resulting in an under recovery of \$55.1 million to be surcharged to customers," against which off-system revenues, power plant revenues, pipeline refunds, TC penalties and marketer penalties were credited resulting in the \$43 million balance to be surcharged to customers. (KEDNY Work Papers Response 15). In other words, KEDNY's commodity rate was understated for the period, sending an inaccurate price signal to consumers and undercutting ESCO efforts to compete with market-based product offerings. KEDNY then seeks to compound the damage by requesting the Commission allow it to temporarily suspend the annual reconciliation of gas costs surcharge for the three-month period of January 1, 2017, through March 31, 2017, at the peak of winter heating season, with unrecovered costs to be addressed in the following year's reconciliation in 2017 to be reflected in 2018 pricing. When a utility can understate its commodity rate and then defer collecting the costs over a span of years, it damages and destabilizes the competitive marketplace. The Commission should

encourage and rely upon the competitive marketplace to best serve customers when a utility's commodity rate is high relative to current market conditions.

The impact of artificial utility commodity rates coupled with retroactive adjustments to make up the shortfall is also directly relevant to the Commission's proceeding on ESCO service to Low Income Consumers and the Market Reset proceeding because the practice has distorted the utility Price to Compare.⁸ It has created a misleading basis upon which consumers make energy purchasing decisions and causes consumers to misapprehend the value of ESCO offerings relative to the value of artificially stated utility commodity rates. It is one of the factors that has prevented a meaningful comparison of utility and ESCO rates.

In view of these reasons, NEM recommends that the gas cost reconciliation regulations and processes should be reviewed and revised to support the goals of:

- making utility commodity rates more reflective of current market conditions and pricing;
- making the impact of the utility rate reconciliations less disruptive and confusing to consumers, particularly to ensure consumers understand the nature of and reason for the adjustments;
- providing more transparent disclosure of utility pricing; and
- contributing to the more accurate presentation of a utility "Price to Compare" against which ESCOs can develop and market competitive products and services to consumers who may then make better-informed purchasing decisions.

⁸ The comments set forth herein should not be construed as a waiver of any rights, issues, or claims being adjudicated by the Court in the pending litigation concerning the ESCO Service to Low Income Customers and the Market Reset proceedings, all of which are expressly reserved.

Conclusion

For the reasons set forth above, NEM respectfully requests that gas cost reconciliation regulations and processes should be reviewed and revised consistent with the recommendations set forth herein.

Sincerely,

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