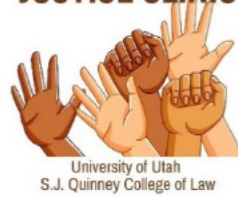




ENVIRONMENTAL  
JUSTICE CLINIC



December 14, 2022

VIA EMAIL AND ELECTRONIC FILING

Hon. Michelle L. Phillips, Secretary  
New York State Public Service Commission  
Three Empire State Plaza  
Albany, NY 12223

Re: Case 19-G-0309: Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of The Brooklyn Union Gas Company d/b/a National Grid NY for Gas Service.

Dear Secretary Phillips,

Earthjustice and Environmental Justice Clinic, on behalf of Sane Energy and Alliance for a Green Economy (“AGREE”), respectfully submit the following comments opposing the cost recovery of the proposed Greenpoint Liquefied Natural Gas Vaporizers 13 and 14 Long Term Capacity Project (“Proposed Project” or “LNG Vaporizers 13 and 14”). Sane Energy seeks a just transition to a renewable and democratic energy system while reducing the negative and racially disproportionate health impacts of fossil fuel infrastructure by replacing them with renewable energy, storage solutions and thermal energy networks. AGREE works for safe, affordable energy and the development of a green economy in New York State. Seeking a prosperous, safe, and healthy New York, AGREE’s goal is to fulfill the promise of conservation, energy efficiency, and safe, clean renewable energy sources to end the state’s reliance on wasteful and environmentally destructive forms of energy.

National Grid’s Proposed Project does not satisfy the strict criteria the Companies agreed to by signing the Joint Proposal and that the Commission Ordered when adopting the Joint Proposal. Further, the Proposed Project inflates the purported safety and reliability benefits and downplays the costs that the Proposed Project creates for the New York metropolitan area. First and foremost, National Grid’s artificially limited analysis fails to fully account for the existing supply resources which can meet future demand and ignores the exiting decline in gas demand. The Proposed Project is at odds with the climate goals and policies of New York State. Lastly, National Grid omits required information about how the Proposed Project will disproportionately impact the surrounding, overburdened community residing adjacent to the Greenpoint, Brooklyn site.

## A. PROCEDURAL BACKGROUND ON THE PROPOSED PROJECT.

The Brooklyn Union Gas Company d/b/a National Grid NY (“KEDNY”) and KeySpan Gas East Corporation d/b/a National Grid (“KEDLI”) (collectively, “National Grid” or “Companies”) filed a report on August 29, 2022 (“Report”), seeking Independent Consultant review and cost recovery for the Proposed Project.<sup>1</sup> On October 27, 2022, the Independent Consultant, PA Consulting, filed its required review of the Proposed Project (the “Assessment Report”),<sup>2</sup> evaluating the Companies’ request and need for cost recovery, pursuant to Section 5.3 of the Joint Proposal from May 14, 2021 in cases 19-G-0309 and 19-G-0310 (the “Joint Proposal”),<sup>3</sup> as modified and approved by the New York Public Service Commission (“Commission” or “PSC”).

In its Order adopting the Joint Proposal, the PSC determined the Climate Leadership and Community Protection Act (“CLCPA”) sections 7(2) and 7(3) apply to rate cases and outlined a process whereby National Grid may seek cost recovery through a Demand Capacity Surcharge Mechanism for certain Long-Term Capital (“LTC”) Capacity Projects, only when other solutions “cannot timely, reliably or economically meet forecast demand.”<sup>4</sup> The Joint Proposal also provides “for an [] assessment of the need for [the project]” by a qualified, independent consultant to be selected, in consultation with the Companies, and to work at the direction of Department of Public Service Staff.<sup>5</sup> The Independent Consultant will consider several factors, including:

- (1) the Companies’ need for the project to meet a reasonable forecast of customers’ peak demand, based on the Companies’ most recent forecast available;
- (2) any safety and/or reliability benefits from the project;
- (3) viable alternatives to the project that would ensure reliable service;
- (4) the All-In Cost of the project and a comparison of the All-In Cost of viable alternatives;
- (5) the greenhouse gas (“GHG”) emissions attributable to the project and any viable alternatives; and
- (6) any comments and analysis submitted by intervening parties and the public.<sup>6</sup>

To recover costs for a LTC Capacity Project, the Companies are required to file a report and demonstrate that the project(s) are necessary to ensure reliable service and that they have met the Capacity Demand Metrics.<sup>7</sup> The specific performance targets, which the Companies must meet

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<sup>1</sup> *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of National Grid for Gas Service*, N.Y. Dep’t of Pub. Serv., Case Nos. 19-G-0309 & 19-G-0310, Greenpoint Vaporizers 13&14 Long Term Capacity Project Report (Aug. 29, 2022) (“LNG Vaporizer Report”), <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={CC96D172-0305-47D2-834D-7994CBFECC80}>.

<sup>2</sup> Case Nos. 19-G-0309 & 19-G-0310, PA Consulting’s Review of National Grid’s Greenpoint Vaporizer 13 & 14 Report (Oct. 27, 2022) (“Assessment Report”), <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={AC0E4FD9-0421-4B38-9DE4-41A2B8C5A69F}>.

<sup>3</sup> Case Nos. 19-G-0309 & 19-G-0310, Joint Proposal at 43 (May 14, 2021) (“Joint Proposal”), <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={049A7777-4BE8-41FC-B958-6D9EE1C13DD3}>.

<sup>4</sup> Joint Proposal at 43.

<sup>5</sup> *Id.* at 42.

<sup>6</sup> Joint Proposal at 45.

<sup>7</sup> *Id.* at 43–44.

include (1) energy efficiency targets identified by the Commission in the 2020 New Efficiency: New York (“NE:NY”) Order,<sup>8</sup> (2) demand response participation, (3) consideration of one non-pipe, third party solution each rate year, (4) 1,500 customer electrification referrals to Consolidated Edison and the Long Island Power Authority (“LIPA”), and (5) annual identification of potential LPP abandonment segments.<sup>9</sup> National Grid is not permitted to recover the costs of any LTC Capacity Project during the term of the rate plan if the Independent Consultant determines that such project is not needed at the time National Grid submits its report.<sup>10</sup>

The Independent Consultant’s Assessment Report confirms that National Grid can still maintain and provide safe and reliable service and protect public health and welfare without the construction of the Proposed Project. After evaluating the Capacity Demand Metrics, analyzing National Grid’s existing supply stacks and demand forecasts, and exploring the non-infrastructure alternatives, the Independent Consultant concluded the Proposed Project would not be required until at least the 2027–28 winter season.

Therefore, the PSC must deny National Grid’s request for cost recovery. The Proposed Project is not needed at this time. Approving cost recovery for this project would be imprudent and place an undue burden the Companies’ customers who would pay for this unnecessary Proposed Project. Further, as detailed below, the Proposed Project violates Section 7(3) of the Climate Leadership and Community Protection Act by disproportionately impacting the surrounding and designated disadvantaged community.

### **1. National Grid Improperly Segmented the Metropolitan Reliability Infrastructure Project from the Greenpoint Energy Center.**

Among the projects included in National Grid’s LTC Capacity Portfolio, is the Greenpoint Vaporization Expansion Project located within the Greenpoint Energy Center in Brooklyn, NY. This depot is the epicenter for multiple fossil fuel expansion projects (“Greenpoint Expansion Projects”) proposed by National Grid. The proposed projects consist of: (1) the Metropolitan Reliability Infrastructure Project (“MRI Project”) Phases 4 and 5, also known as the North Brooklyn Pipeline; (2) the Greenpoint LNG Trucking Station; (3) the Greenpoint Vaporizer station with two additional LNG Vaporizers 13 and 14; and (4) two new Compressed Natural Gas (“CNG”) injection heaters (National Grid removed the CNG injection heaters in a revised application to the New York State Department of Environmental Conservation (“DEC”) in February 2021). Construction of the LNG trucking station is complete and the Greenpoint depot would house the proposed new LNG Vaporizers and CNG injection

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<sup>8</sup> See *In the Matter of a Comprehensive Energy Efficiency Initiative*, N.Y. Dep’t of Pub. Serv., Case No. 18-M-0084, Order Adopting Accelerated Energy Efficiency Targets (Dec. 13, 2018), <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={B330F932-3BB9-46FA-9223-0E8A408C1928}>.

<sup>9</sup> *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of The Brooklyn Union Gas Company et al.*, N.Y. Dep’t of Pub. Serv., Case Nos. 19-G-0309, 19-G-0310, & 18-M-0270, Commission Order Approving Joint Proposal at 74–75 (Aug. 12, 2021) (“Commission Order”), <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={CC550437-3EC4-4F79-8F83-CFA85C572020}>.

<sup>10</sup> Commission Order at 115–116.

heaters and is also the destination point for the North Brooklyn Pipeline. Completion of the Greenpoint Expansion Projects requires multiple permits and approvals from DEC, the Commission, and the City of New York.

In an attempt to obtain an air permit approval for the Proposed Project from the DEC and cost recovery from the PSC, National Grid has tactically segmented the Greenpoint Expansion Projects and has claimed each proposed project is independent of one another. However, to ensure New York State is on track to meet the aggressive climate mandates laid out in the CLPCA and to prioritize the reductions of greenhouse gas and co-pollutant emissions in disadvantaged communities as required by law, the PSC must evaluate the Greenpoint Vaporizers 13 & 14 as part of a “whole action,” rather than an isolated project. When analyzing the four proposed projects as a whole, the PSC should come to the conclusion that the Greenpoint and MRI Projects are part of a large-scale fossil fuel expansion project to deepen New Yorkers’ reliance on natural gas rather than necessary infrastructure to meet today’s supply and demand needs.

Although National Grid would have the PSC believe that the MRI and the Greenpoint projects are not related,<sup>11</sup> the facts do not support the Companies’ narrative. National Grid’s Greenpoint depot is the destination point for the North Brooklyn Pipeline.<sup>12</sup> National Grid intended the MRI Project, Phases 4 and 5, to bring millions of gallons of natural gas each day to the Greenpoint facility.<sup>13</sup> In April 2020, National Grid asserted that the benefits of CNG injection at the Greenpoint depot were contingent on completion of Phase 4 of the MRI Project.<sup>14</sup> Later, the Companies asserted that the utility of the Greenpoint LNG and CNG expansion would be limited if Phase 5 of the pipeline were not approved.<sup>15</sup> National Grid also explained that Phases 1-4 of the MRI Project needed to be in service and operational in order to be able to add additional capacity to the system from Vaporizer 13 and 14.<sup>16</sup> Finally, National Grid made clear that by increasing potential gas flow, the MRI Project would allow National Grid to deliver gas

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<sup>11</sup> PA Consulting’s Assessment Report at 79; *see also* Case Nos. 19-G-0309 & 19-G-0310, Comments of National Grid in Response to PA Consulting’s Review of National Grid’s Greenpoint Vaporizer 13 & 14 Report (Dec. 2, 2022) (“National Grid’s Response to PA Consulting”), <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={CBDE36EE-2DD8-4053-8CD8-488F93EFE9F6}>.

<sup>12</sup> Commission Order at 43 n.76.

<sup>13</sup> Case Nos. 19-G-0309 & 19-G-0310, Response to IR DPS-1091, request 13 (Apr. 17, 2020), <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={5DD62E97-36D6-41DD-BF67-AA3E98525A9B}> (“Once MRI is in service, the new flow path will allow gas to flow south from Greenpoint into the heart of KEDNY’s system without reducing the flow from Con Edison, thereby enhancing the effectiveness of the additional LNG vaporization output or CNG injections in supporting KEDNY customer additions.”).

<sup>14</sup> Nat’l Grid, *National Grid Monitorship: Second Quarterly Report* 12 (Apr. 17, 2020), <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7BBBD57A36E-AEE6-444C-9BBF-E7DF21D97AF6%7D>.

<sup>15</sup> Case Nos. 19-G-0309 & 19-G-0310, Response to IR DPS-1091, requests 10 & 11.

<sup>16</sup> Case Nos. 19-G-0309 & 19-G-0310, Response to SANE IR-44, request 1(a), (Nov. 14, 2022), attached as Exhibit A.

to more new customers, making the LNG Vaporizer upgrade a necessity in order to process and sell additional gas to customers.<sup>17</sup>

## **2. National Grid's Basis for the Proposed Project is to Expand Fossil Fuel Infrastructure, Not to Close an Existing Supply-Demand Gap.**

National Grid's claim that the Proposed Project is needed to meet the projected gas demand and close the supply gap is unsupported and does not provide a basis to propose a specious request for expensive cost recovery from its rate payers. National Grid has made a series of questionable public statements about dwindling gas supply and filed several mercurial LTC Capacity Reports on gas demand forecasts, in an attempt to justify the Companies' expansion of fossil fuel infrastructure, including the Proposed Project. National Grid admits that demand for gas is *decreasing*<sup>18</sup> and that new non-fossil-fuel solutions are being developed,<sup>19</sup> and yet National Grid continues to push the narrative that new additions to fossil fuel infrastructure are necessary. National Grid continues to build and advocate for more pipelines, push for long-term investments in natural gas infrastructure, and ignore the mandates of the CLCPA. Despite changes to the supply and demand landscape, National Grid's plans have not evolved with the times and the Companies steadfastly insist the Proposed Project is necessary regardless of changed circumstances. Instead, what has changed is the Companies' justification for the Proposed Project. Following National Grid's erratic justifications for the Proposed Project would confuse even the most diligent follower of the Companies' many reports and filings. The convoluted path the Companies ended up selecting to justify the need for the Proposed Project and additional fossil fuel infrastructure is illogical. Below is a timeline of the Companies' public statements and reports which has shifted and evolved over the past four years:

- In its initial April 2019 rate filing, the Company stated they had signed a precedent agreement with Transcontinental Gas Pipeline Company LLC (Transco) for the Northeast Supply Enhancement ("NESE") Project. The Company asserted that the NESE Project was necessary to relieve current supply constraints in its service territories.<sup>20</sup>
- DEC denied the NESE Project on May 15, 2019.<sup>21</sup> Following the denial, the Companies denied gas service to thousands of existing customers, imposing a moratorium on gas connections in their service territories.<sup>22</sup>
- In July 2019, National Grid stated that if the NESE pipeline was not available by the 2020/21 winter season, the Companies would not be able to satisfy new or additional

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<sup>17</sup> See, e.g., Case Nos. 19-G-0309 & 19-G-0310, Response to IR DPS-1091, request 13 ("Once MRI is in service, the new flow path will allow gas to flow south from Greenpoint into the heart of KEDNY's system without reducing the flow from Con Edison, thereby enhancing the effectiveness of the additional LNG vaporization output or CNG injections in supporting KEDNY customer additions.").

<sup>18</sup> LNG Vaporizer Report at 20.

<sup>19</sup> *Id.* at 6.

<sup>20</sup> Commission Order at 11–12.

<sup>21</sup> *Id.* at 12–13.

<sup>22</sup> *Id.* at 13.

service requests. On July 8, 2019, the Companies sent out a letter saying they would not be able to expand gas service unless the NESE pipeline was approved.<sup>23</sup>

- In December 2019, the Companies filed Second Supplemental Testimony and said that in order to support increased customer demand beyond the 2020/21 winter, two additional vaporizers, Vaporizers 13 and 14, must be added to the Greenpoint site.<sup>24</sup> The Companies also stated that construction of the MRI Pipeline must be accelerated by a year in order to enable new customer connections.<sup>25</sup>
- At the Commission's direction, the Companies filed their first LTC Capacity Report in February 2020 assessing the alleged gas supply constraints in downstate New York and identifying potential options for meeting future demand.<sup>26</sup> The projected baseline Design Day gas demand growth for the service territory was 1.8% per year between February 2020 and 2035.<sup>27</sup>
- On March 9, 23, 24, 25, 30 and 31, 2020 public hearings were held on the Companies' LTC Report as part of Case 19-G-0678. The Companies presented large scale fracked gas infrastructure projects including an LNG port that they admitted would likely never be permitted while leaving out smaller projects like the Greenpoint LNG vaporizers that they were actively pursuing. The Companies stated at those hearings that the MRI Pipeline was not a part of their Action Plan to meet long-term capacity. In the May 8, 2020 LTC Supplemental Report, the Companies explained that the NESE Project and targeted deployment of distributed gas and non-gas infrastructure would meet demand.<sup>28</sup>
- DEC denied the water quality certification application for the NESE Pipeline on May 15, 2020.<sup>29</sup> After this denial, the Companies stopped including the NESE Pipeline in their potential supply resources.
- The June 2021 Second Supplemental LTC Report revealed an updated assessment of the gas demand forecast and a further evaluation of potential supply resources to meet demand. The Companies would rely on portable CNG capacity and the Proposed Project,

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<sup>23</sup> See Jarrett Murphy, *Doubts About Pipeline Proponents' Claims of a Gas Shortage*, City Limits (May 15, 2019), <https://citylimits.org/2019/05/15/doubts-about-pipeline-proponents-claims-of-a-gas-shortage/>; David Moore, *National Grid Asks Customers to Help it Lobby for a New Fracked Gas Pipeline*, Sludge (July 9, 2019), <https://readsludge.com/2019/07/09/national-grid-presses-customers-to-help-it-lobby-for-a-new-fracked-gas-pipeline/>.

<sup>24</sup> Case Nos. 19-G-0309 & 19-G-0310, Second Supplemental Testimony of Gas Infrastructure and Operations Panel at 14 (Dec. 13, 2021), <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={302CBAB8-36A3-4E5D-8BF4-5024FEE9F4F3}>.

<sup>25</sup> *Id.* at 6.

<sup>26</sup> *Proceeding on Motion of the Commission to Investigate Denials of Service Requests by National Grid et al.*, N.Y. Dep't of Pub. Serv., Case No. 19-G-0678, National Grid's Long-Term Capacity Report (Feb. 25, 2020), <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={B2700CBD-5523-4B9F-ACAD-A04F0ED89D0A}>.

<sup>27</sup> *Id.* at 7.

<sup>28</sup> Case No. 19-G-0678, National Grid Long-Term Capacity Supplemental Report (May 8, 2020), <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={819A8DB8-5BED-4E61-A8A4-8A6854A6DA35}>.

<sup>29</sup> Letter from Daniel Whitehead, DEC to Joseph Dean, Transco Gas Pipeline Co. LLC, "Notice of Denial of Water Quality Certification" (May 15, 2020), [https://www.dec.ny.gov/docs/permits\\_ej\\_operations\\_pdf/nese\\_wqcd denial05152020.pdf](https://www.dec.ny.gov/docs/permits_ej_operations_pdf/nese_wqcd denial05152020.pdf).



the Greenpoint LNG vaporization project and the Enhancement by Compression Project by the Iroquois Gas Transmission System.<sup>30</sup> The MRI Pipeline was not included, and in fact, National Grid stated that it was not part of the plan to meet long-term capacity, despite the fact that the Companies continued to build the MRI Pipeline.

- The August 2021 Third Supplemental LTC Report provided an update on its projected baseline Design Day gas demand growth for its service territory to 1.5% per year between 2021 and 2035, down from the 1.8% in the February 2020 report.<sup>31</sup>
- In the Companies' most recent filing in August 2022, the updated projected baseline Design Day gas demand growth for its service territory fell to 1.3% per year between 2022 and 2035.<sup>32</sup> Despite this decrease in demand, National Grid did not re-analyze whether the Proposed Project would still be needed to meet demand.
- In PA Consulting's Assessment Report from October 27, 2022, peak demand using National Grid's forecast results in a 5.2% decrease in the 2022–23 winter season and a 6% decrease in the 2034–35 winter season.<sup>33</sup> PA Consulting's forecast shows an even greater decrease in both of those seasons, leading PA Consulting to conclude that the Proposed Project would not be needed until at least the 2028–29 winter season<sup>34</sup> and that there is no need for National Grid to receive cost recovery for the Proposed Project so many years before it could become necessary.

In reality, as determined by PA Consulting, there is no supply gap in National Grid's service territory and the existing sources of natural gas supply are more than able to meet the Design Day Demand gas forecast. Unrelenting, after the Assessment Report called the supply-demand justifications for the Proposed Project into question, National Grid filed over twenty pages of comments lambasting PA Consulting and insisting that the Companies' most recent forecasting should not be used when evaluating the Proposed Project.<sup>35</sup> Instead, the Companies claim the Commission should use an older forecast and ignore the decreasing gas demand trends. The Commission should reject this argument. Continued growth and expansion in gas infrastructure is counterproductive to a safe and sustainable climate future for New York and charging customers for unnecessary projects is unjust and unreasonable.

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<sup>30</sup> Case No. 19-G-0678, Natural Gas Long-Term Capacity Second Supplemental Report (June 30, 2021), <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={54D8C151-52D5-4BF4-B402-6EB0E2887F36}>.

<sup>31</sup> Case No. 19-G-0678, Natural Gas Long-Term Capacity Third Supplemental Report at 17 (Aug. 25, 2021), <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={41F2240B-B63F-4287-93ED-FB75C94FBB40}>.

<sup>32</sup> LNG Vaporizer Report at 19.

<sup>33</sup> PA Consulting's Assessment Report at 13.

<sup>34</sup> *Id.* at 14–15.

<sup>35</sup> See National Grid's Response to PA Consulting.

**B. THE FACILITY WILL HAVE DISPROPORTIONATE IMPACTS ON DISADVANTAGED COMMUNITIES IN VIOLATION OF CLCPA SECTION 7(3).**

Section 7(3) of the CLCPA prohibits agencies from imposing disproportionate impacts on disadvantaged communities (“DACs”) through the issuance of permits, licenses, and other administrative decisions. The PSC has confirmed that Section 7(3) applies to rate cases.<sup>36</sup> According to the interim DAC criteria, the Proposed Project is located in a DAC.<sup>37</sup> Although National Grid did prepare a Public Participation Plan under DEC’s CP-29 policy, National Grid did not do any analysis of impacts on DACs from the Proposed Project. This blatantly ignores the mandates of Section 7(3) of the CLCPA.

**1. PSC Must Not Approve a Project That Disproportionately Impacts Overburdened Communities Under CLCPA Section 7(3).**

**a. CLCPA 7(3) Requirements**

Under the CLCPA, all of New York’s agencies must avoid imposing disproportionate adverse environmental impacts on overburdened low-income communities and communities of color. Section 7(3) of the CLCPA contains two complementary requirements. First, state agencies, “in considering and issuing permits, licenses, and other administrative approvals and decisions . . . shall not disproportionately burden disadvantaged communities.”<sup>38</sup> Second, state agencies “shall also prioritize reductions of greenhouse gas emissions and co-pollutants in disadvantaged communities.”<sup>39</sup> Together, these mandates make state agencies and other state entities responsible for ending and reversing the environmental racism that has unjustly put the health and safety of disadvantaged communities at risk, and otherwise caused environmental harms. Agency decisions must not only avoid harm to overburdened and climate-vulnerable communities but must also prioritize localized reductions of co-pollutants to improve public health and advance equity.

Section 7(3) holds state agencies accountable to the numerous equity goals enshrined throughout the CLCPA. The law recognizes that communities where fossil fuel combustion has been concentrated have experienced decades of poor air quality from co-pollutants and that a transition to clean energy should prioritize these communities. It creates a Climate Justice Working Group tasked with defining criteria to designate “disadvantaged communities” within the state for special protection and prioritization.<sup>40</sup> Disadvantaged communities are defined as communities “that bear burdens of negative public health effects, environmental pollution, impacts of climate change, and possess certain socioeconomic criteria, or comprise high-

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<sup>36</sup> Commission Order at 69 (“we are persuaded that Sections 7(2) and 7(3) are applicable to the Commission’s actions.”).

<sup>37</sup> *Disadvantaged Communities Map*, N.Y. Climate Act, <https://climate.ny.gov/Our-Climate-Act/Disadvantaged-Communities-Criteria/Disadvantaged-Communities-Map> (last visited Dec. 12, 2022).

<sup>38</sup> CLCPA § 7(3).

<sup>39</sup> *Id.*

<sup>40</sup> ECL § 75-0111(1)(b).



concentrations of low- and moderate- income households.”<sup>41</sup> Although the working group has not yet finalized the criteria or list of disadvantaged communities, New York developed an interim definition on March 9, 2022 to guide agency decisions and policymaking until a definition is finalized.<sup>42</sup>

The CLCPA requires the state to target benefits and protections to disadvantaged communities in all measures related to achieving the law’s GHG reduction mandates. For example, to the extent practicable, the PSC must allocate resources so that DACs receive a target of 40%, and no less than 35% “of the overall benefits of spending on clean energy and energy efficiency programs, projects, or investments.”<sup>43</sup> The CLCPA also requires that the PSC design programs “in a manner to provide substantial benefits for disadvantaged communities, including low to moderate income customers, at a reasonable cost while ensuring safe and reliable electric service.”<sup>44</sup> Finally, the law also directs the PSC, in designing energy efficiency programs to procure renewable energy and storage resources, “that energy storage projects be deployed to reduce the usage of combustion-powered peaking facilities located in or near disadvantaged communities.”<sup>45</sup> Although this provision specifically applies to electric generation, it speaks to the legislature’s commitment to reduce fossil fuel-powered infrastructure in disadvantaged communities, particularly peaking facilities. Similarly, the gas system also utilizes peaking facilities that use fossil fuels (such as the Proposed Project) that can be replaced with non-infrastructure alternatives such as electrification and demand-side response management. The Commission should therefore consider denying cost recovery for the Proposed Project under this principle.

In addition to the newly created obligations under CLCPA Section 7(3), DEC Commissioner Policy 29 (“CP-29”) requires a full analysis of cumulative and disproportionate adverse impacts in an Environmental Impact Statement under the State’s Environmental Quality Review Act (“SEQRA”) where a proposed project or major permit modification may impact Potential Environmental Justice Areas (“PEJAs”).<sup>46</sup> An agency must ensure that the applicant conducts a screen to determine whether any census block groups within the geographic area that might be impacted by the proposed project have at least 52.42% minority population (in urban environments) or at least 22.82% population living below the federal poverty level. If such areas are identified, the applicant must set up an enhanced participation process. The EIS itself must review the existing environmental burdens impacting any PEJAs and evaluate the additional

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<sup>41</sup> ECL § 75-0101(5).

<sup>42</sup> See Press Release, NYSEDA, *New York State Releases Draft Disadvantaged Communities Criteria to Advance Climate Justice* (Mar. 09, 2022), <https://www.nyserda.ny.gov/ny/disadvantaged-communities>; <https://www.nyserda.ny.gov/About/Newsroom/2022-Announcements/2022-03-09-New-York-State-Releases-Draft-Disadvantaged-Communities-Criteria>.

<sup>43</sup> ECL § 75-0117.

<sup>44</sup> *Proceeding on Motion of the Commission Assessing Implementation of and Compliance with the Requirements and Targets of the Climate Leadership and Community Protection Act*, N.Y. Dep’t of Pub. Serv., Case No. 22-M-0149, Order at 5 (May 12, 2022), <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={5F73F855-B506-41B3-AB05-3CF66F736497}>.

<sup>45</sup> N.Y. Pub. Serv. Law § 66-p(7)(a).

<sup>46</sup> DEC, *CP-29 Environmental Justice and Permitting* (2003), [https://www.dec.ny.gov/docs/permits\\_ej\\_operations\\_pdf/cp29a.pdf](https://www.dec.ny.gov/docs/permits_ej_operations_pdf/cp29a.pdf). (“CP-29”).

burdens the proposed project might create.<sup>47</sup> Any adverse environmental impact identified through this analysis must be “avoided or minimized to the greatest extent practicable.”<sup>48</sup>

## **2. CLCPA Section 7(3) Applies to the Project Because it is Located in a DAC.**

Taken together, the CLCPA and CP-29 demonstrate that projects must be scrutinized for disproportionate impacts on low-income communities and communities of color. The Proposed Project is located at 287 Maspeth Avenue in Brooklyn. This is a PEJA, as is most of the neighborhood surrounding it, from Newtown Creek to the east, past the Brooklyn-Queens Expressway to the north, to at least Morgan Avenue to the west, and at least Johnson Avenue to the south.<sup>49</sup> 287 Maspeth and the surrounding area designated a PEJA is also identified as a DAC according to the interim criteria.<sup>50</sup> According to the U.S. Environmental Protection Agency (“EPA”), neighborhoods near the Proposed Project are in high percentiles for Particulate Matter 2.5, ozone, diesel particulate matter, cancer risk from air toxics, and respiratory health impacts from air toxics.<sup>51</sup> EPA also puts 287 Maspeth and the surrounding area in the 80–90<sup>th</sup> percentile for heart disease and asthma.<sup>52</sup>

Due to the fact that the Proposed Project is located in a PEJA, DEC implemented CP-29 when National Grid applied for a Title V air permit. As part of those requirements, National Grid created and implemented a Public Participation Plan.<sup>53</sup> National Grid does not mention in that plan that the Proposed Project is located in a PEJA, nor any of the factors that led to the PEJA designation. Instead, National Grid only states: “Particular emphasis has been placed on identifying stakeholders within potential environmental justice areas and community members and residents that represent minority and low-income populations for outreach during the public participation process.”<sup>54</sup> When characterizing the area around the Proposed Project site, National Grid makes no mention of race, ethnicity, income, or history of environmental pollution in any neighborhood near the Proposed Project. Clearly, National Grid is not considering the effect of the Proposed Project on DACs; the company does not mention whether the Proposed Project is located in a DAC, nor does it analyze whether the project will disproportionately impact a DAC. This is not consistent with Section 7(3).

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<sup>47</sup> *Id.* § V(J).

<sup>48</sup> *Id.* § V(M).

<sup>49</sup> See DEC, *Potential Environmental Justice Area PEJA Communities*, ArcGIS, [https://www.arcgis.com/home/webmap/viewer.html?url=https://services6.arcgis.com/DZHaqZm9cxOD4CWM/ArcGIS/rest/services/Potential\\_Environmental\\_Justice\\_Area\\_PEJA\\_Communities/FeatureServer&source=sd](https://www.arcgis.com/home/webmap/viewer.html?url=https://services6.arcgis.com/DZHaqZm9cxOD4CWM/ArcGIS/rest/services/Potential_Environmental_Justice_Area_PEJA_Communities/FeatureServer&source=sd) (last updated June 6, 2022).

<sup>50</sup> NYSEDA, *Disadvantaged Communities*, <https://www.nyserda.ny.gov/ny/disadvantaged-communities> (last visited Dec. 12, 2022).

<sup>51</sup> See EPA, *EJScreen*, <https://ejscreen.epa.gov/mapper/> (last visited Dec. 12, 2022).

<sup>52</sup> *Id.*

<sup>53</sup> National Grid, *Greenpoint Energy Center Air State Facility Permit Public Participation Plan* (Sept. 2021), [https://greenpointenergycenter.com/wp-content/uploads/2021/10/2021-09-30\\_NG-Greenpoint\\_PPP\\_COMPLETE\\_4Website\\_FINAL.pdf](https://greenpointenergycenter.com/wp-content/uploads/2021/10/2021-09-30_NG-Greenpoint_PPP_COMPLETE_4Website_FINAL.pdf).

<sup>54</sup> *Id.* at 2.

### **3. The Proposed Project Violates Section 7(3) of the CLCPA and the PSC Must Deny Cost Recovery.**

#### **a. National Grid's Report Arbitrarily Excludes Existing Sources of Pollution**

Determining how a project will impact a community requires an environmental justice analysis to identify all existing sources of pollution and ambient pollution levels within the area, and then an analysis of how impacts from the proposed project would add to the existing burden on a community.<sup>55</sup> Despite the Proposed Project's location in a DAC and a PEJA, neither PA Consulting nor National Grid performed such an analysis. National Grid claims that there will be minimal impact to the surrounding community from the Proposed Project because it will be constructed in the vicinity of the existing vaporizers within the existing footprint of the LNG facility and because it will have only "periodic emissions."<sup>56</sup> However, this does not take into account the impact of the existing vaporizers or the myriad other pollution sources located in the area that already affect the surrounding community and that these "periodic emissions" will be adding on to.

First, Greenpoint is also home to Newtown Creek, a Superfund site located very close to the Project.<sup>57</sup> While cleanup of Newtown Creek is ongoing, contaminants include raw sewage, oil, and arsenic.<sup>58</sup> EPA states that human exposure pathways are not under control, meaning that "an unsafe level of contamination has been detected at the site and a reasonable expectation exists that people could be exposed."<sup>59</sup> Newtown Creek is also the site of one of the nation's largest oil spills, which went undetected for almost thirty years.<sup>60</sup> The spill caused dangerous levels of benzene, a cancerous agent, in the soil vapor near the spill. While DEC supervised cleanup of the spill, cleanup is still ongoing its effects continue to be dangerous to public health, and Kinder Morgan still operates a terminal near the spill.<sup>61</sup> In March 2022, EPA recognized a second Superfund site in the area, the Meeker Avenue Plume site.<sup>62</sup> According to EPA, "[s]oil and groundwater at the Meeker Avenue Plume site are contaminated with chlorinated volatile

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<sup>55</sup> CP-29 § V(J).

<sup>56</sup> National Grid, *Greenpoint Vaporizers 13&14 Long Term Capacity Project Report 29* (Aug. 29, 2022), [https://ngridolutions.com/docs/Report\\_%7BCC96D172-0305-47D2-834D-7994CBFECC80%7D.pdf](https://ngridolutions.com/docs/Report_%7BCC96D172-0305-47D2-834D-7994CBFECC80%7D.pdf).

<sup>57</sup> EPA, *Newtown Creek Superfund Site Community Update* (2021), <https://semspub.epa.gov/work/02/629943.pdf>.

<sup>58</sup> Peter Smith, *Liquid Cow and Black Mayo*, *New York Magazine* (Dec. 6, 2013), <https://nymag.com/news/intelligencer/newtown-creek-2013-12/>.

<sup>59</sup> EPA, *Newtown Creek, Brooklyn, Queens, NY, Health & Environment*, <https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.Healthenv&id=0206282> (last visited Dec. 12, 2022).

<sup>60</sup> Newtown Creek Alliance, *Greenpoint Oil Spill*, <http://www.newtowncreekalliance.org/greenpoint-oil-spill/> (last visited Dec. 12, 2022).

<sup>61</sup> DEC, *Greenpoint Petroleum Remediation Project FAQ*, <https://www.nysdecgreenpoint.com/FAQs.aspx> (last updated July 14, 2022).

<sup>62</sup> Press Release, EPA, *EPA Updates Superfund National Priorities List to Clean Up Pollution, Address Public Health Risks, and Build a Better America* (Mar. 17, 2022), <https://www.epa.gov/newsreleases/epa-updates-superfund-national-priorities-list-clean-pollution-address-public-health-3>.

organic compounds (“CVOCs”), including tetrachloroethylene (“PCE”), trichloroethylene (“TCE”), cis-1,2-dichloroethylene (“DCE”), and vinyl chloride.”<sup>63</sup>

Additionally, the Brooklyn-Queens Expressway runs through the community near the Proposed Project site. This highway carries 129,000 vehicles per day, including many trucks spewing diesel particulate matter.<sup>64</sup> There are also multiple other industrial facilities with health and environmental impacts in the neighborhood, such as a concrete supplier, a trucking company, a scrap metal recycling facility, and a waste transfer station and Department of Sanitation garage. National Grid fails to mention any of these pollution sources in its reports, likewise, PA Consulting does not discuss them either, so the Companies do not engage with an analysis of how the Project would exacerbate existing pollution in the community

In addition to ignoring existing sources of pollution, National Grid and PA Consulting also fail to mention the makeup of the surrounding community. National Grid refers to the area as “industrial”<sup>65</sup> without mentioning that residential housing is located nearby. While the census tract containing the Proposed Project is entirely industrial/commercial, the census tracts directly adjoining are residential, and contain public schools, senior centers, public housing, and a homeless shelter. Many of them are also NYC Environmental Justice areas, which is a race and income-based determination.<sup>66</sup> Cooper Park Houses, a public housing complex with about 1,538 residents, is directly across from the LNG Facility.<sup>67</sup> Over 42% of residents are on fixed incomes.<sup>68</sup> The Barbara Kleiman Residence, an adult homeless shelter with 200 beds, is also less than a mile from the LNG facility.<sup>69</sup> Both NYCHA housing and New York City’s homeless shelters have been plagued by issues; NYCHA has lagged in remediating lead paint, asbestos, black mold, and vermin infestations, some of which is detailed in multiple lawsuits.<sup>70</sup> Most shelters for adults are congregate housing, meaning that residents share sleeping, dining, and bathroom spaces, which allows airborne viruses like COVID-19 to spread rapidly.<sup>71</sup> In addition to those who live in the vicinity, the Cooper Park Community Center is less than a mile from the National Grid LNG facility.

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<sup>63</sup> EPA, *EPA Investigates Vapor Intrusion at the Meeker Avenue Plume Superfund Site 2* (Oct. 2022), <https://semsub.epa.gov/work/02/653851.pdf>.

<sup>64</sup> See Winnie Hu, “The B.Q.E. Is Crumbling. There’s Still No Plan to Fix It.” *N.Y. Times* (June 13, 2022), <https://www.nytimes.com/2022/06/13/nyregion/brooklyn-queens-expressway-construction-plan.html>.

<sup>65</sup> National Grid, *Greenpoint Energy Center Air State Facility Permit Public Participation Plan* at 2.

<sup>66</sup> Tanya Stasio et al., Applied Economics Clinic, *Cumulative Impact Assessment of the North Brooklyn Pipeline Project* (Dec. 2022) (“AEC Report”) attached as Exhibit B at 39–40.

<sup>67</sup> Performance Tracking and Analytics Dep’t, NYCHA, *Development Data Book 27* (2020), <https://www1.nyc.gov/assets/nycha/downloads/pdf/pdb2020.pdf>.

<sup>68</sup> *Id.*

<sup>69</sup> *Barbara Kleiman Residence*, Shelterlist, [https://www.shelterlist.com/details/ny\\_11211\\_barbara-kleiman-residence-homeless-shelter](https://www.shelterlist.com/details/ny_11211_barbara-kleiman-residence-homeless-shelter) (last updated May 27, 2022).

<sup>70</sup> See, e.g., Complaint for Declaratory and Injunctive Relief, *Baez et al. v. NYCHA*, WL 6632355 (S.D.N.Y. 2013) (No. 13 Civ. 8916) (alleging that NYCHA failed to effectively abate mold and moisture in tenants’ apartment, exacerbating asthma); Complaint at 2, *United States v. NYCHA*, (S.D.N.Y. 2018) (No. 18 Civ. 5213) (alleging that NYCHA failed to protect children from lead paint and generally failed “to provide residents decent, safe, and sanitary housing.”)

<sup>71</sup> Coalition for the Homeless, “State of the Homeless 2022: New York at a Crossroads” (March 2022), pg 26-27, <https://www.coalitionforthehomeless.org/wp-content/uploads/2022/03/StateofThe-Homeless2022.pdf>.

**b. National Grid’s Report Fails to Consider a Representative Health Baseline and Arbitrarily Concludes There are No Adverse Environmental Health Impacts**

PA Consulting only mentions public health in the context of describing and responding to the public comments, that raised the issue. In response, PA Consulting points out that the neighborhoods adjacent to the Proposed Project have high health impacts and burdens as well as high environmental burdens and climate change risk.<sup>72</sup> PA Consulting’s Assessment Report also quotes a letter from New York Law School stating that the PSC never reviewed the environmental impacts of the combined MRI pipeline, the LNG facility, and the proposed trucking station and only looked at the immediate Greenpoint community adjacent to the LNG facility.<sup>73</sup>

To supplement the record, AEC has done a cumulative impacts assessment focusing on MRI Phase 5 and the LNG facility. According to AEC’s cumulative impacts analysis, which analyzes health outcomes, financial burdens, housing characteristics, and social vulnerability, the Proposed Project would negatively burden communities with already high cumulative impact indexes.<sup>74</sup> Because the area of the Proposed Project is already home to a major highway, fossil-fuel pipelines, and two Superfund sites, adding even more fossil fuel infrastructure such as the Proposed Project will exacerbate existing socioeconomic and health burdens, including asthma and other respiratory diseases.<sup>75</sup>

In particular, AEC recommends doing a detailed risk assessment including uncertainty analysis to assess the possible future impacts on the community from the Proposed Project and any other expansion of fossil fuel infrastructure in the area.<sup>76</sup> Neither National Grid nor PA Consulting has done such an analysis, which leaves open many questions about who would be most affected by project construction, accidents, error, and the inevitable risks of natural gas storage and combustion.<sup>77</sup> “A clear, detailed accounting of potential harms under a range of potential future circumstances (intended and unintended), made publicly to community members and other stakeholders is essential to good decision making regarding all infrastructure projects.”<sup>78</sup> As stated above, National Grid never did such an analysis and instead concluded that the Proposed Project would have no significant impact on the environment. Likewise, without such an analysis, it is difficult if not impossible to know whether or not approving cost recovery for the Proposed Project would comply with Section 7(3) of the CLCPA, because the Commission cannot say exactly how the Proposed Project would exacerbate existing burdens on the DACs surrounding the Proposed Project. PA Consulting has already concluded that the Proposed Project is not imminently needed, and concludes that if forecasting changes, then National Grid can apply for cost recovery at a later date if the Proposed Project is needed then. If

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<sup>72</sup> PA Consulting’s Assessment Report at 77.

<sup>73</sup> *Id.* at 78.

<sup>74</sup> AEC Report at 40.

<sup>75</sup> *Id.* at ii.

<sup>76</sup> *Id.* at ii, 42.

<sup>77</sup> *See id.* at 42.

<sup>78</sup> *Id.*

the Commission follows PA Consulting's recommendation, then National Grid could also be required (either by PSC or possibly DEC) to do a detailed risk assessment that included the potential impacts on the community if the Companies ever reapplied for cost recovery for Vaporizers 13&14 in the future.

As AEC noted in its report, the census tracts near the Proposed Projects score highly on their cumulative impacts analysis and are disproportionately burdened by existing sources of pollution.<sup>79</sup> A key element in determining whether disparate impacts or already burdened groups can be justified or allowed as unavoidable under civil rights laws is whether less discriminatory alternatives are available. Here, there is a clear alternative that would align with overall CLCPA mandates and with Section 7(3): not building these vaporizers is a feasible alternative that would avoid disproportionate burdens of additional air pollution on DACs. The no-build alternative is viable because there is no immediate supply/demand gap. National Grid has time to pursue non-infrastructure alternatives that avoid disproportionate impacts on DACs. Approving the Proposed Project would mean unnecessarily subjecting a disadvantaged and overburdened community to adverse impacts from the project.

### **C. PROPOSED PROJECT IS NOT NEEDED TO MEET CURRENT DEMAND-SUPPLY NEEDS OF THE NEW YORK METROPOLITAN AREA.**

PA Consulting concluded, after completing a thorough analysis, that the Proposed Project is not currently needed to address any current gas supply constraints or future customer demand.<sup>80</sup> For the Proposed Project to be approved by the PSC and move forward successfully, National Grid was required to comply with the Capacity Demand Metrics and demonstrate a need for the project.<sup>81</sup> In an attempt to justify the project, National Grid artificially limited its gas supply analysis, ignored decreasing gas demand trends, and overstated the safety and reliability benefits. Guided by the terms of the Commission's Order, PA Consulting's Assessment Report analyzed and discussed National Grid's purported justifications but did not fully embrace them. Upset with not getting the green light, National Grid unsuccessfully tries to discredit the Assessment Report's conclusions by questioning the expertise of PA Consulting.<sup>82</sup> The PSC should deny the Companies' request for cost recovery and reject National Grid's flawed justifications, as set forth below.

#### **1. National Grid Dramatizes Potential Supply Risks and Ignores Existing Supply Resources That Obviate the Need for the Proposed Project.**

National Grid's argument that the LNG Vaporizers 13 and 14 are needed to close the supply gap is illogical. Had National Grid genuinely evaluated and assessed the available resources, as PA Consulting did, it would have determined that LNG Vaporizers 13 and 14 would not be needed until, at the earliest, the 2027–28 winter season.<sup>83</sup> National Grid assessed its

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<sup>79</sup> *Id.*

<sup>80</sup> PA Consulting's Assessment Report at 8.

<sup>81</sup> Commission Order at 113.

<sup>82</sup> See National Grid's Response to PA Consulting.

<sup>83</sup> PA Consulting's Assessment Report at 30.



existing supply in a vacuum, assuming the Companies would be unable to (1) renew existing peaking and cogeneration contracts and (2) assume additions to components to existing facilities to meet its Design Day Demand forecast.<sup>84</sup> In addition to conducting a narrow supply assessment, National Grid irrationally purports there is a “constant and increasing risk of upstream supply curtailments”<sup>85</sup> but provides no evidence to support this assertion.

**a. National Grid’s Artificially Limited Supply Stack Analysis Fails to Fully Account for a Renewed Cogeneration Supply to Relieve Potential Supply Gaps.**

The Commission must disregard National Grid’s Supply Stack Analysis because it omits key information and mischaracterizes the Companies’ actual supply availability. National Grid purports it will lose cogeneration peaking contracts with (1) Cogen Partners (“NCP”), (2) Brooklyn Naval Yard Cogen Partners (“BNY”), and (3) City Gate Peaking Supply which collectively provide approximately 105–123 MDth per day of cogeneration peaking capacity.<sup>86</sup> The NCP contract is set to expire in the 2025–26 winter season and two contracts with BNY will expire in the winter season of 2026–27.<sup>87</sup> However, National Grid fails to disclose that the Companies have had a historical relationship with both NCP and BNY. Given that National Grid has renewed these contracts previously and there are three to four years of lead time for negotiations, it seems likely National Grid will not lose these peaking capacity contracts.

National Grid’s analysis around renewed and incremental peaking supply from City Gate is likewise flawed. In its Second Supplemental LTC Report, National Grid purports system limitations behind City Gate will limit the amount of peaking supplies National Grid can contract for and concludes City Gate will no longer be a viable option.<sup>88</sup> While it is true that after the 2026–27 winter season, the City Gate peaking capacity contracts are scheduled to expire and re-contracting those volumes is not certain due the contract’s lack of a Right of First Refusal,<sup>89</sup> however, National Grid has acquired City Gate peaking capacity in the past and is familiar with the process for renewing the contract.

**b. The Existing CNG Injection Sites and the Newly Constructed Farmingdale Site Further Obviate the Need for the Construction of the Proposed LNG Vaporizers 13 & 14.**

The existing CNG injection sites further undercut the purported need for the Proposed Project. National Grid already transports CNG on specialized trailers to injection sites across its service territory. Currently, four CNG injection facilities exist (Riverhead, Glenwood, Inwood, and Barrett) with contracts that can support up to 61.6 MDth per day, with a fifth site,

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<sup>84</sup> See Case No. 19-G-0678, Natural Gas Long-Term Capacity Second Supplemental Report at 55–56; PA Consulting’s Assessment Report at 29.

<sup>85</sup> National Grid’s Response to PA Consulting at 4.

<sup>86</sup> Case No. 19-G-0678, Natural Gas Long-Term Capacity Second Supplemental Report at 56.

<sup>87</sup> PA Consulting’s Assessment Report at 27.

<sup>88</sup> Case No. 19-G-0678, Natural Gas Long-Term Capacity Second Supplemental Report at 56.

<sup>89</sup> PA Consulting’s Assessment Report at 29.

Farmingdale, set to be operational in Q1 of 2023.<sup>90</sup> The Farmingdale site will provide up to 17.6 MDth per day of additional peaking capacity.<sup>91</sup>

National Grid in its supply analysis fails to explain or provide the amount of peaking capacity that the CNG injection sites will provide. Rather, National Grid mainly focuses on risks associated with CNG, such as lack of labor, materials, and the requirement of truck deliveries.<sup>92</sup> However, since 2018, National Grid has called on CNG for demand purposes on three separate days and has called for CNG testing for 22 days.<sup>93</sup> There has been a clear historical precedent for relying on CNG to support demand needs, and National Grid has yet to suffer from the alleged risks it claims are associated with complex projects such as CNG. Failure to consider these CNG supply options greatly undermines the Companies' claims around the need for the Proposed Project.

## **2. The New Vaporizers, 13 & 14, Are Not Justified as Necessary to Meet the Declining Demand in Natural Gas.**

Demand for natural gas is declining in National Grid's service territory. Because there is a sufficient supply to meet the current demand for natural gas in National Grid's service territory, the Proposed Project is not needed; rather it prolongs and deepens New York State's problematic overreliance on burning natural gas. The Company's own Baseline Demand Forecasts have decreased by 6% from February 2020 to August 2022.<sup>94</sup> Even more, National Grid's anemic demand forecast analysis failed to include important market, environmental, and socio-economic data that further reduces the forecasted gas demand,<sup>95</sup> including a decline in population, a decline in new construction, and a decline in the financial economy.<sup>96</sup> PA Consulting quantified the implications of the weakening economic and demographic forecasts, the long-term effect of COVID-19 on gas usage patterns, and the potential electrification impact of Local Law 154 and Local Law 97 and determined there will be a further decline in Design Demand.<sup>97</sup> The decreased gas demand results in an increase in time until additional supply resources would be required to meet demand, providing even more time for National Grid to implement non-gas solutions to comply with Section 7(3) of the CLCPA and assist in achieving the greenhouse gas emissions requirements under the CLCPA.

## **3. National Grid's Claim Regarding Improved Safety and Reliability Benefits from the Proposed Project are Small and Overstated.**

Nearly all of National Grid's claimed benefits associated with the Proposed Project are small and overstated. National Grid arbitrarily claims the Proposed Project will deliver reliable, incremental supply on Design Day to the distribution system to the extent required to meet

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<sup>90</sup> PA Consulting's Assessment Report at 28.

<sup>91</sup> *Id.*

<sup>92</sup> LNG Vaporizer Report at 27, 45.

<sup>93</sup> PA Consulting's Assessment Report at 28.

<sup>94</sup> See Case No. 19-G-0678, National Grid's Long-Term Capacity Report at 39 (reporting National Grid's peak-day load in winter 2034/35 to be 3,340 MDth/day); Case Nos. 19-G-0309 & 19-G-0310, LNG Vaporizer Report at 19 (finding that in the Companies' most recent filing the peak-day load declined to 3,230 MDth/day).

<sup>95</sup> PA Consulting's Assessment Report at 35.

<sup>96</sup> *Id.*

<sup>97</sup> PA Consulting's Assessment Report at 39.

customers’ needs up to a peak demand scenario.<sup>98</sup> First, as discussed in the previous section, PA Consulting’s PA Baseline forecast of Design Day is lower than the most recent forecast by National Grid. The existing infrastructure is adequate through at least the 2024–25 winter season,<sup>99</sup> and National Grid has multiple other options for supplementing the existing infrastructure to meet future demand such as renewing existing contracts, supporting customers in the adoption of heat pumps, energy efficiency, and demand response, or other gas supply options

National Grid also contends a “spare” low-pressure vaporizer is needed to improve the safety and reliability of the system, however there are currently no reliability or safety concerns with the existing units.<sup>100</sup> The existing facility is currently supported by six vaporizers (Vaporizers 7, 8, 9, 10, 11, and 12), the oldest of which, 7 and 8, were commissioned in 1980.<sup>101</sup> The previously used and now retired Vaporizers 1–6 were in service for 52 years.<sup>102</sup> The low pressurized Vaporizers 9 and 10 were commissioned in 1986 and Vaporizers 11 and 12 were commissioned in 2022.<sup>103</sup> Based on a Design Day forecast, a spare vaporizer exists on the high-pressure side of the system but because the three low-pressure vaporizers are currently in use, National Grid insists the Proposed Project is needed because there is no “spare” vaporizer on the low-pressure side. According to PA Consulting, the most recent decommissioning involved Vaporizers 3 and 4, which were in service for 52 years.<sup>104</sup> Historical records show that 30+ year old technology is still viable and useful and that as vaporizers 9 and 10 approach 40 years of service, additional vaporizers may be useful, as the reliability and usability of new systems would be superior to older technology.<sup>105</sup> National Grid mistakes preference with actual need. The existing vaporizers are viable and useful and approving cost recovery for new and unnecessary infrastructure would not be a prudent investment for rate payers.

#### **4. National Grid Mischaracterizes the Role of the Independent Consultant.**

Both the Commission’s Order and the Joint Proposal have definitively stated that one of the Independent Consultant’s roles is to address the need for the long-term capital capacity projects over the term of the rate plan.<sup>106</sup> The Commission adopted the Joint Proposal’s Capacity Demand Metrics to incentivize National Grid to take aggressive energy efficiency, demand response, electrification and other measures that could offset gas capacity needs and reduce demand.<sup>107</sup> Contrary to National Grid’s Response to PA Consulting, the Independent Consultant

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<sup>98</sup> LNG Vaporizer Report at 7.

<sup>99</sup> PA Consulting’s Assessment Report at 49.

<sup>100</sup> *Id.* at 53.

<sup>101</sup> *Id.* at 55.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> Commission Order at 121; Joint Proposal at 52.

<sup>107</sup> Commission Order at 113.

was required to evaluate whether the Proposed Project is needed today, not at the time the project was initially proposed back in December 2019.<sup>108</sup>

National Grid's compliance with the Capacity Demand Metrics "could delay or *entirely mitigate the need* for the projects and additional gas supply infrastructure."<sup>109</sup> As explicitly stated by the Commission, the Independent Consultant was tasked to "timely address the critical capacity needs for the New York metropolitan area" by confirming the need for a long-term project and determining whether the "Companies' forecast of peak demand is reasonable and requires project implementation to meet demand."<sup>110</sup> PA Consulting did exactly what was ordered by the Commission, it: (1) evaluated National Grid's purported supply stack; (2) evaluated National Grid's purported demand forecast; (3) compared National Grid's projections with PA Consulting's supply stack and demand forecasts; and (4) concluded the Proposed Project was not required or needed to meet the demand of the New York metropolitan area. National Grid is simply challenging the Independent Consultant's role because it did not conclude that the Proposed Project was needed.

National Grid should not be permitted to represent to the Commission that the Independent Consultant does not have the expertise to fully understand the supply and delivery risks, nuances of the market for peaking supply contracts, or "concerns" with certain supply solutions.<sup>111</sup> In accordance with the Joint Proposal, National Grid agreed to retain the Consultant that was selected by the Department of Public Service.<sup>112</sup> The Joint Proposal gave National Grid a consultation role in choosing the Consultant and the right to object to the Consultant that was chosen.<sup>113</sup> In order to be retained by the Company, the Commission required the Independent Consultant to be a "nationally or regionally recognized individual() or firm() in the area of gas engineering and possess the requisite experience in planning and constructing natural gas distribution infrastructure."<sup>114</sup> Had National Grid genuinely believed that PA Consulting was unqualified, it would have been more effective to challenge their expertise when the firm was chosen.<sup>115</sup> Instead, National Grid filed a letter in support of PA Consulting's findings in its Comments to the Independent Monitor's Closing Report<sup>116</sup> and then signed and entered into an Independent Consultant Agreement with PA Consulting on November 12, 2021.<sup>117</sup> In reality,

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<sup>108</sup> Case Nos. 19-G-0309 & Case 19-G-0310, Second Supplemental Testimony of Gas Infrastructure and Operations Panel at 6.

<sup>109</sup> Commission Order at 121, (emphasis added).

<sup>110</sup> *Id.* at 122, 115.

<sup>111</sup> National Grid's Response to PA Consulting at 5.

<sup>112</sup> Joint Proposal at 44.

<sup>113</sup> *Id.* at 44–45 (stating that the Companies retain the right to object to DPS Staff's selection of the independent consultant and will then "confer in good faith to discuss the potential replacement" of the selected consultant).

<sup>114</sup> Joint Proposal at 44.

<sup>115</sup> Case No. 19-G-0678, PA Consulting's Assessment of National Grid's Second Supplemental Report (Sept. 10, 2021), <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={A329E1D0-00AB-41A0-926D-F6BAC85DD247}>.

<sup>116</sup> Case No. 19-G-0678, National Grid Monitorship: Closing Report at 3 (Sept. 16, 2021), <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={EE34ED0A-547B-4F5E-AA22-FA277A1021DC}>.

<sup>117</sup> Case Nos. 19-G-0309 & 19-G-0310, Independent Consultant Agreement (Nov. 12, 2021), <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={73185268-9C0D-40EE-96C3-40507A53154B}>.

National Grid is attacking the expertise of PA Consulting only because they did not conclude the Proposed Project was needed.

##### **5. The Proposed Project Will Become a Stranded Asset.**

The Proposed Project interferes with the emissions reductions mandated in the CLCPA and is contrary to the goals of Local Law 97 and Local Law 154. The Climate Action Council, which is tasked with charting the path for CLCPA compliance has conducted an analysis showing that under every compliance scenario, demand for gas in buildings must dramatically drop over the next several years, and the State is developing multiple policies to incentivize and mandate electrification in order to meet those targets.<sup>118</sup> All of the climate and energy measures and targets adopted in New York to date provide a clear directive to the Commission that it must oversee a dramatic reduction in the use of all fossil fuels, including gas.<sup>119</sup> Allowing National Grid to undertake an expansion program at the LNG Facility based on an outdated demand forecast that is wildly mismatched with the State's own analysis for CLCPA compliance would be completely at odds with where the Commission should be heading, especially given that this investment is not needed to meet a supply or demand gap.

Gas demand is down because customers are leaving the gas system in order to meet the State's climate goals. Customer departure from gas to the electric system means fewer gas customers, fewer gas sales, and fewer future capital investments in gas infrastructure. With the increase of electrification, the Companies' costs and investments will be recovered among fewer customers and sales, so rates for the remaining gas customers are likely to increase even more over time – less customers paying for the same amount of costs and investments. Inevitably, the investments will become uneconomic and stranded, with too few remaining customers to support the massive costs, leaving the question of who will foot the bill. Given the known risks and the State's climate and energy laws which require radical cuts in emissions, the Commission must not saddle rate payers with additional debt and grant the cost recovery for an unnecessary and imprudent investment.

Respectfully submitted,

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<sup>118</sup> Energy & Env't Econ. (E3) & Abt Assoc., *Draft Scoping Plan: Integration Analysis Technical Supplement* Section I, Annex 2: Techno-Economic Analysis Key Drivers and Outputs, S1–S4 Energy by Fuel Sector Tabs (Dec. 2021), <https://climate.ny.gov/-/media/Project/Climate/Files/Draft-Scoping-Plan-Appendix-G-Integration-Analysis-Technical-Supplement.pdf>.

<sup>119</sup> See NYSERDA, *Clean Energy Standard*, <https://www.nyserd.ny.gov/All-Programs/Clean-Energy-Standard> (last visited Dec. 13, 2022).

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