NYS ALIGNING LONG-TERM PLANNING FOR GAS UTILITIES WITH CARBON NEUTRALITY MANDATE

Hodgson Russ Renewable Energy Alert
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How will New York State align natural gas infrastructure planning by its utilities [1] with State climate policy, which requires economy-wide carbon neutrality by mid-century? The Public Service Commission ("PSC" or "Commission") issued an order on March 19, 2020 instituting a new proceeding (the "Order") meant to take on that knotty issue, and forthcoming filings will further frame the analysis.

The Commission's Order states that the proceeding will assess the challenges that led several utilities to impose moratoria on new gas hookups last year while considering solutions that align with the State's 2019 Climate Leadership and Community Protection Act ("CLCPA") emissions reduction targets. The Commission stated "conventional gas planning and operational practices… have not kept pace with recent developments and demands on energy systems."[2] For several years, clean energy stakeholders have urged the Commission to consider cleaner alternatives to natural gas and pipeline infrastructure. Now, resources that will be needed to achieve the CLCPA's carbon neutral goals – like geothermal, heat pumps, and energy efficiency – must also be considered by the State's gas utilities for their ability to alleviate gas constraints.

The proceeding is likely to be highly contested, as shown by recent comments from environmental groups including the Natural Resources Defense Council, the Alliance for Clean Energy New York, and New Yorkers for Clean Power criticizing National Grid's Natural Gas Long-term Capacity Downstate NY Report for overstating demand and understating gains from energy efficiency and non-pipe alternatives.[3] The proceeding could also create markets for clean heating and cooling technologies, demand-response and other efficiency providers, which sectors are currently at different levels of maturity.

What will the proceeding cover?

Last year, Consolidated Edison and National Grid declared moratoria on new gas service in parts of their service territories, citing the need for additional gas pipelines to supply the new demand. This position was highly controversial, particularly because it left some customers in need of gas service without an affordable alternative. Since then, the Commission has recognized the need for utilities to factor alternatives to gas supply and demand into their long-term plans, particularly in the context of the State's clean energy and emissions reduction goals.

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The gas planning process traditionally has been opaque. Utilities are required to submit planning materials in a gas proceeding, but they often request that the information be treated as confidential and trade secret, thereby providing little-to-no transparency to customers and stakeholders about the underlying data that informs the utility's gas plans. As an entrée to a broader range of issues, the new framework seeks to reevaluate the sensitivity of this data with the goal of encouraging stakeholder input and providing accurate cost information to customers. To develop this framework, the proceeding will consider, but not be limited to, the following:

- An analysis of gas constraints in each utility territory, with a priority on the most vulnerable locations;
- Obtaining transparent data and information from utilities on supply costs and alternatives. This will require Department of Public Service ("DPS") Staff to opine on the confidentiality of the utilities' gas planning materials;
- Assessing how recent State policy has challenged conventional gas system planning, such as the CLCPA's policy directions and the viability of cleaner alternative solutions to gas supply and demand. This will require that gas planning account for the useful life of alternatives, the resulting costs, and potential risks;
- Integrating non-pipe solutions into the planning process using criteria that account for reliability, environmental impact, avoided need for infrastructure investments, locational community impacts, and emissions, among other factors;
- Establishing standards for declaring a gas moratorium and when gas utilities may rely on expensive peaking services;
- Developing methods of peak reduction that do not rely on oil as an alternative fuel, that avoid infrastructure investment, and that avoid or minimize to the maximum extent possible the localized impacts of air pollution; and
- Rules and regulations that will need to change to effectuate this framework, such as the rules governing extensions of mains and service lines to customers upon request.

What will gas utilities be required to do?

The Order directs the gas utilities to begin assessing their system capacity and customer needs and file reports of their findings in the new docket. The filings will be open for stakeholder comment upon notice. By June 17, 2020, gas utilities are required to file analyses of the supply constraints in for the most vulnerable areas of their service territories. By July 17, 2020, gas utilities must file analyses of their entire service territories. They must also file a proposal describing the criteria for relying on peaking service and declaring gas moratoria. Proposals may be filed by individual utilities or jointly, which will likely depend on the specific challenges faced by utilities in different parts of the State.

By August 16, 2020, the gas utilities must file status reports and proposals describing the extent to which they use or anticipate using demand reducing measures such as energy efficiency, electrification, demand response, non-pipe solutions, and other measures to address supply and demand imbalances. These filings must assess the potential to reduce future infrastructure investments and emissions, which will require the utilities to assess ways in which alternatives may be most cost-effective than supplying gas to certain locations or at certain peak demand times.

What does this mean for alternative solutions?

Heat pumps, geothermal, energy efficiency, and demand response resources have the opportunity to play a much larger role as alternatives to gas. Where these resources can be used to offset the need for peaking services – which are often short-term, high-cost, fossil-fuel based solutions – these resources could provide a lower-emission, lower-cost option for alleviating gas constraints. The Order notes that these "non-pipe" solutions can reduce or eliminate the need for gas infrastructure and investments, and thus, should be built into utilities' long-term plans. The proceeding will require utilities to evaluate the costs and benefits of these alternatives, which have seen cost declines over the last several years. In January 2020, the PSC issued an order requiring the utilities to administer a heat pump incentive program.[4] The New York State Energy Research and Development Authority is required to compliment these programs with market-enabling and supply chain programs, which together, can make alternatives to gas service more affordable for customers. Thus, alternative clean energy and demand response resources could very well make their way into the utilities' proposals as long-term solutions.

<u>What's Next?</u>

In June, 2020 National Grid is required to have submitted an agreed-upon Long Term Capacity Report pursuant to the settlement reached between the utility and the Public Service Commission in October, 2019.[5] This report,

shall present and analyze comprehensively and clearly all reasonably available options for meeting long-term demand, including but not limited to pipeline construction, LNG facilities, CNG facilities, renewable energy sources, conservation strategies, and inter-operable systems, and shall include recommendations as well as an identification of actions needed (including but not limited to policy and regulatory changes) to implement each option or options.[6]

Interested stakeholders may continue to submit comments on the National Grid's initial Long Term Capacity Report until May 1, 2020.[7] All utilities' initial assessments of system vulnerabilities will be filed by June 17, 2020, with additional reports and assessments to follow. These reports will no doubt engender significant comment and guide the Proceeding.

By August 16, 2020, DPS Staff must issue a proposal for a forward-looking gas planning process that evaluates system infrastructure and costs in light of the State's policy goals. The proposal will set forth a recommended framework for the utility gas planning process for Commission consideration that will likely take the form of a Staff Whitepaper and will be open for public comment for at least 60 days upon notice. Thus the Commission could issue an Order in late 2020. Interested stakeholders may subscribe to the docket to track the proceeding at: http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=20-G-0131&submit=Search.

To learn more about the gas planning proceeding and how it may affect your business, please contact Noah Shaw (518.7362924) or Dan Spitzer (716.848.1420) in Hodgson Russ's Renewable Energy Practice.

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[1] The gas utilities that are subject to the Commission's Order are Consolidated Edison Company of New York, Inc.; The Brooklyn Union Gas Company d/b/a National Grid NY; KeySpan Gas East Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc.; Central Hudson Gas & Electric Corporation; Niagara Mohawk Power Corporation d/b/a National

Grid; New York State Electric & Gas Corporation; Rochester Gas and Electric Corporation; National Fuel Gas Distribution Corporation; St. Lawrence Gas Company, Inc.; and Corning Natural Gas Corporation.

[2] Case 20-G-0131, Proceeding on Motion of the Commission in Regard to Gas Planning Procedures, *Order Instituting Proceeding* at 2 (issued March 19, 2020).

[3] Case 19-G-0678, Proceeding on Motion of the Commission to Investigate Denials of Service Requests by National Grid USA, The Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corporation d/b/a National Grid, Comments of NRDC et al (April 17, 2020).

[4] *See* Case 18-M-0084, In the Matter of a Comprehensive Energy Efficiency Target, *Order Authorizing Utility Energy Efficiency and Building Electrification Portfolios Through 2025*, (issued Jan. 16, 2020).

[5] Case 19-G-0678, supra, *Order Adopting and Approving Settlement* (issued and effective Nov. 26, 2019); *see also* National Grid, *Our Long-Term Solutions Options*, https://ngridlongtermsolutions.com/.

[6] *Order Adopting and Approving Settlement* at Exhibit A, *Settlement* ¶ IV(a).

[7] *See* Case 19-G-0678, supra, *Notice Extending Comment Period* (issued April 17, 2020).