BEFORE THE NEW YORK STATE
PUBLIC SERVICE COMMISSION

CASE 24-G-0248 - In the Matter of a Review of the Long-Term Gas System Plans of The Brooklyn Union Gas Company d/b/a National Grid NY, KeySpan Gas East Corporation d/b/a National Grid, and Niagara Mohawk Power Corporation d/b/a National Grid.

PETITION FOR REHEARING AND CLARIFICATION OF NATURAL RESOURCES DEFENSE COUNCIL

Natural Resources Defense Council (NRDC) respectfully submits this Petition for Rehearing and Clarification (Petition) pursuant to Section 22 of the Public Service Law (PSL) and Section 3.7 of the Commission's Rules of Procedure, 16 NYCRR § 3.7, seeking rehearing of the Public Service Commission's (Commission) Order Regarding Long-Term Natural Gas Plan and Requiring Further Actions (Order), issued September 18, 2025, concerning the final long-term plan (Final LTP or Plan) filed on March 7, 2025, by Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY), KeySpan Gas East Corporation d/b/a National Grid (KEDLI) (collectively, "Downstate"), and Niagara Mohawk Power Corporation d/b/a National Grid (NMPC) (collectively, National Grid or the Company) and its Addendum, filed on July 2, 2025, which includes a supplemental report by National Grid (Supplement) and its appended study by Levitan & Associates, Inc. (LAI Study). This Petition seeks rehearing and clarification to correct errors of law and fact in the Commission's September 18 Order concerning the Northeast Supply Enhancement (NESE) pipeline.

Preliminary Statement

Pursuant to Public Service Law (PSL) § 22 and 16 NYCRR § 3.7, NRDC seeks rehearing of the Commission's September 18, 2025 Order to correct errors of law and fact that require revision and clarification. The Order concludes that NESE is "needed" and that it is "appropriate" for National Grid to contract for its capacity based on purported reliability and economic benefits.

Yet the Commission simultaneously determined that National Grid's 2024 demand forecast—the foundation of the Company's need and benefits analysis—contained "questionable results," and that the 2025 forecast "provides a more accurate projection" of Downstate demand. Under that updated forecast, existing capacity resources, including the forthcoming Iroquois ExC Project, are sufficient to meet design-day demand throughout the study period. On this record, there is no demonstrated need for incremental capacity or justification for locking customers into a significant, long-term rate increase for capacity they may never use before completion of a robust, comparative analysis of costs and alternatives and an evidentiary hearing.

The Order's finding that NESE is "needed" and that contracting for its capacity is "appropriate" lacks substantial evidence. Claimed reliability and cost benefits were not substantiated through hydraulic modeling, quantified risk reduction, or a comparative benefit-cost analysis isolating verifiable gas-customer benefits under the 2025 forecast. Indeed, the Order itself directs National Grid to submit additional forecasting data, reliability analyses, and bill-impact assessments—confirming that essential information is missing. Reaching a prudence or need conclusion before completion of this record exposes customers to long-term financial risk without a demonstrated, least-cost justification.

The Order's language operates as a de facto prudence determination, creating a presumption of cost recovery and binding customers to 15 years of fixed pipeline charges before full review of the NESE contracts, depriving them of procedural safeguards and limiting the Commission's ability to reassess prudence once it has a more complete record. Further, the proposed mechanism for cost recovery through annual gas-cost reconciliations would circumvent PSL § 66(12)'s requirement of a contested evidentiary hearing for major rate changes, undermining transparency and due process. The Commission's treatment of Climate Leadership and

Community Protection Act (CLCPA) §§ 7(2) and 7(3) compounds these legal deficiencies, as the Commission's cursory analysis cannot be squared with the enduring consequences of its prudence determination or the absence of substantial evidence given the dramatically reduced demand forecast.

On rehearing, the Commission should vacate the findings that NESE is "needed" or "appropriate," clarify that no presumption of prudence attaches, and require completion of the directed forecasting, modeling, and gas-customer-only benefit-cost analyses before any future determination. Any NESE cost recovery should occur only after a full evidentiary record under PSL § 66(12), supported by a CLCPA-consistent analysis of emissions lock-in and equity impacts.

Specification of Errors

Pursuant to PSL § 22 and 16 NYCRR § 3.7, any person interested in an order of the Commission may request rehearing within 30 days of service of the order on the grounds that the Commission committed an error of law or fact or that new circumstances warrant a different determination. The petition for rehearing must separately identify and specifically explain and support each alleged error or new circumstance said to warrant rehearing. This Petition seeks rehearing to correct the following errors of law and fact in the Commission's September 18 Order concerning the Northeast Supply Enhancement (NESE) pipeline.

I. The Order Errs by Preapproving a Major Rate Increase to Gas Customers Across New York City and Long Island Without an Evidentiary Hearing

Rehearing is warranted because the September 18 Order granted preapproval of "major changes" to National Grid's gas rates in a "notice-and-comment" planning proceeding[1] and

[1] September 18 Order at 133.

without an evidentiary hearing, as is required by PSL § 66(12) for "major changes" to rates.[2] Specifically, the Order: (1) concludes that the NESE pipeline "is needed" and that a decision by National Grid to contract for its incremental capacity is "appropriate;"[3] (2) asserts that NESE demand charges will be reviewed in the annual audit of gas costs "outside of a delivery rate proceeding,"[4] thereby circumventing PSL § 66(12)'s evidentiary hearing requirement for any "major changes" to rates; and (3) acknowledges a major customer bill impact—about 3.5% or approximately $7.50/month[5]—that triggers § 66(12). Notwithstanding the Commission's repeated disclaimer that it is not "authorizing cost recovery," the cumulative effect of its Order is to ensure that major rate increases driven by NESE demand charges, which were negotiated by National Grid and set by FERC,[6] will be passed on to ratepayers through a surcharge that flows to the commodity portion of customer bills without an opportunity for a hearing as required by state law.

A. The Order's "Needed/Appropriate" Findings Constitute a Prudence Determination that Ensures Full Cost Recovery of NESE Demand Charges

In the September 18 Order, the Commission concludes that the NESE pipeline "is needed"[7] and that "[b]ased on the current state of the record in this proceeding . . . it is appropriate for National Grid to seek capacity on NESE."[8] Those conclusions operate as a de facto prudence determination, which is a binding legal and economic judgment with enduring consequences. Specifically, they affirm the reasonableness of entering a long-term capacity commitment with

[2] Under PSL § 66(12)(c), "Major changes" is defined as "an increase in the rates and charges which would increase the aggregate revenues of the applicant more than the greater of three hundred thousand dollars or two and one-half percent."
[3] Id. at 74; see also at 3-4, 58, 83, 137.
[4] Id. at 73.
[5] Id. at 73–74.
[6] See id. at 80.
[7] Id. at 74; see also at 3-4, 58, 83, 137.
[8] Id. at 83; see also 3-4, 74, 137.

major rate impacts, thereby ensuring cost recovery, in the absence of a contested evidentiary record.

The Commission's "longstanding policy" has been to allow recovery of utility expenditures that were "demonstrated to have been prudently incurred"—this is commonly known as the "prudence standard."[9] In National Grid's most recent Downstate rate case, the Commission referred to the prudence standard as "a fundamental requirement of a rate order" and acknowledged that ensuring that expenditures are "prudent and necessary to serve ratepayers" is part of "the Commission's oversight requirements."[10]

Under the prudence standard, a utility's decision to incur costs is deemed prudent when it acted reasonably based on the information that it had and the circumstances that existed at the time.[11] Hindsight is irrelevant to a prudence analysis because the utility must make its decisions prospectively, so a utility thus has the discretion to choose among reasonable alternative courses of action.[12] Nevertheless, the utility has an affirmative obligation to make "judicious investment of its resources, and that obligation cannot be shirked" by blindly relying on its agents or independent contractors or by acting "incautiously" with regard to its expenditures.[13] For example: "It would be neither just nor reasonable for a utility's customers to bear the cost of inefficient

[9] Case 16-G-0058 et al., Order Adopting Terms of Joint Proposal and Establishing Gas Rate Plans, at 84 (issued Dec. 16, 2016); see also (In re Abrams v. Pub. Serv. Comm'n, 67 N.Y.2d 205, 214-15 (1986)) (recognizing the Commission's "longstanding" policy of generally favoring the recovery of utility expenditures that are demonstrated to have been prudently incurred).

[10] Case 23-G-0225 et al., Order Approving Terms Of Joint Proposal And Establishing Gas Rate Plans, With Minor Modification And Corrections, 2024 WL 3875936, a 14 (Aug. 15, 2024) ("The opportunity for a utility to earn a fair return on its prudently incurred infrastructure investments used to serve the public is a fundamental requirement of a rate order." At 14; "To satisfy the Commission's oversight requirements and ensure that the capital expended is prudent and necessary to serve ratepayers . . ." at 37).

[11] Natl. Fuel Gas Distrib. Corp. v. Pub. Serv. Commn. of State, 947 N.E.2d 115, 120 (N.Y. 2011); see also In re Long Island Lighting Co. v. Pub. Serv. Comm'n, 134 A.D.2d 135, 143-44 (3d Dep't 1987).

[12] Id.

[13] In re Long Island Lighting Co. v. Pub. Serv. Comm'n, 134 A.D.2d 135, 147-48 (N.Y. App. Div. 3d Dept. 1987).

management or poor planning."[14] Importantly, the Commission cannot disallow costs incurred under a "prudent decision by a utility because it believes that another course of action would have been preferable."[15] The Commission has recognized that "consistent application of the general principle allowing recovery of prudent costs is a factor in satisfying investor expectations and in maintaining a predictable regulatory environment."[16]

As NRDC noted in its Comments on the Supplement, National Grid improperly sought preapproval to contract for NESE's capacity by requesting a prudence determination in this gas system planning proceeding.[17] The Order makes clear this case is a "notice-and-comment" proceeding with "no statutory requirement for an evidentiary hearing" nor an evidentiary record as might be developed in an adjudicatory evidentiary hearing proceeding," which confirms it cannot satisfy PSL § 66(12)'s hearing requirement for a "major change" discussed below. Nevertheless, in its July 2 cover letter to the Supplement, the Company explicitly requests that the Commission confirm "that securing rights in the NESE Project, subject to Transco receiving the required federal and State approvals, is reasonable given the facts and circumstances as they stand."[18] The request mirrors the language New York courts use to define the prudence standard. As the Court of Appeals explained, "[a] utility's decision is prudent if it acted reasonably based on the information that it had and the circumstances that existed at the time."[19] In granting National Grid's request, the Order similarly used language that mirrored the prudence standard: "Based on the current state of the record in this proceeding, we conclude it is appropriate for National Grid

[14] Long Island Lighting Co. v. Pub. Serv. Commn. of State of N.Y., 523 N.Y.S.2d 615 (N.Y. App. Div. 3d Dept. 1987)(citing St. Lawrence Gas Co., Inc. v. Pub. Serv. Comm'n, 368 N.E.2d 1234 (N.Y. 1977).
[15] Id.
[16] Case 16-G-0058 et al., Order Adopting Terms of Joint Proposal and Establishing Gas Rate Plans, at 85 (issued Dec. 16, 2016)
[17] NRDC Comments On National Grid's Final Gas System Long-Term Plan And Addendum (NRDC Comments on Supplement) at 9.
[18] Supplement Cover Letter at 5.
[19] Nat'l Fuel Gas Distrib. Corp. v. Pub. Serv. Comm'n of the State of N.Y., 947 N.E.2d 115, 120 (N.Y. 2011).

to seek capacity on NESE."[20] In doing so, the Commission's conclusions operate as a de facto prudence determination, creating a strong—likely dispositive—presumption that the full costs incurred under the contract for NESE capacity will be recoverable from ratepayers, absent revising its decision on rehearing. Indeed, by pre-approving the prudence of contracting for NESE in advance of an evidentiary hearing "[b]ased on the current state of the record," the Commission preempted its ability to find imprudence once it has the benefit of more a more complete record because "The [Commission] cannot overturn a prudent decision by a utility . . ."[21]

B. The Order Errs by Routing a "Major Change" to Rates "Outside of a Delivery Rate Proceeding," Circumventing PSL § 66(12)

In its September 18 Order, the Commission states it is "not authorizing cost recovery" for NESE demand charges "at this juncture," and identifies that "[a]ll charges National Grid incurs for supply and capacity, such as, but not limited to, the NESE demand charges, are reviewed in the annual audit of gas costs, outside of a delivery rate proceeding," citing its Annual Reconciliation of Gas Expenses and Gas Cost Recoveries docket.[22] This approach is irreconcilable with Public Service Law § 66(12), which requires a contested evidentiary hearing before a "major change" in rates may take effect.[23] Indeed, the Order also acknowledges—and relies upon—National Grid's own estimate that NESE would raise the average residential bill "about 3.5 percent, or about $7.50 per month," and further specifies that the Company "would recover the costs of NESE capacity through the gas adjustment portion of customers' bills along with all other pipeline demand charges."[24] Those statements collectively confirm that the Order both recognizes a "major change"

[20] Id. at 83; see also 3-4, 74, 137.
[21] Natl. Fuel Gas Distrib. Corp. v. Pub. Serv. Commn. of State, 947 N.E.2d 115, 120 (N.Y. 2011).
[22] September 18 Order at 73 (referencing Case 22-G-0464, In the Matter of the Filing of Annual Reconciliation of Gas Expenses and Gas Cost Recoveries).
[23] PSL § 66(12)(c), (f).
[24] September 18 Order at 72.

magnitude and identifies a non-adjudicatory reconciliation mechanism for recovery—an end run around § 66(12).

Annual reconciliation is not a lawful substitute for a § 66(12) hearing when a major change is at issue. Section 66(12) requires notice and a hearing before implementing a "major change," defined to include increases that raise aggregate revenues by the greater of $300,000 or 2.5 percent. The Order's reliance on the annual gas-cost audit—an administrative true-up process in which there are no parties to the proceeding and utility filings are heavily redacted[25]—cannot lawfully displace the statute's hearing requirement for a major rate increase. The Order's own text reflects both the magnitude of the bill impact (about 3.5%) and the Commission's intention to route fixed NESE demand charges to customers via the gas adjustment mechanism, not through a delivery rate proceeding.[26] These are precisely the kinds of long-term, material cost additions that must be vetted in a § 66(12)-compliant hearing—not folded into a year-end reconciliation "outside of a delivery rate proceeding."[27] Moreover, passing NESE cost recovery through the gas adjustment portion of customers' bills along with all other pipeline demand charges" [28] serves to obscure the actual costs and rate impact of NESE, undermining the transparency, due process, and public accountability the hearing requirement of PSL §66(12) is designed to protect.

The Order's forum selection is internally inconsistent and unlawfully prejudges the recovery path. For Company-side capital to "enable maximizing the NESE capacity" (Marine Park regulator station; flow control at the Lake Success metering facility), the Order recognizes those costs must be "present[ed] … and propose[d] [for] cost recovery in the context of a future rate

[25] See Case 22-G-0464, In the Matter of the Filing of Annual Reconciliation of Gas Expenses and Gas Cost Recoveries, https://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=22-G-0464&CaseSearch=Search.
[26] September 18 Order at 72.
[27] Id. at 73.
[28] Id. at 72.

proceeding" and expressly disclaims authorizing their recovery here.[29] By contrast, for NESE's fixed pipeline demand charges—the dominant cost driver—the Order states National Grid "would recover the costs of NESE capacity through the gas adjustment portion of customers' bills" and that such capacity charges "are reviewed in the annual audit of gas costs, outside of a delivery rate proceeding."[30] The magnitude of these two cost components underscores the problem: PA Consulting estimates the NESE demand charge at ~$1.47/Dth (≈$214.6 million/year), which over the 15-year contract totals roughly $3.2 billion in fixed payments,[31] while the on-system capital additions total roughly $50–$55 million[32]— a one-time expenditure that, even when grossed up for taxes, depreciation, and the authorized rate of return and then amortized over time, remains an order of magnitude smaller than the pipeline's annual fixed charges. This disparate treatment effectively predetermines a reconciliation pathway for the largest cost component while denying customers the statutory protections of § 66(12). And the Commission's caveat that it is "not authorizing cost recovery … at this juncture" does not cure the defect where the Order simultaneously (i) identifies a recovery mechanism outside a rate case and (ii) concludes that "NESE is needed" and that proceeding "would be appropriate"—conclusions that operate as prudence determination in this "notice-and-comment proceeding" lacking "an evidentiary record as might be developed in an adjudicatory evidentiary hearing proceeding."[33]

[29] Id. at 73.
[30] Id.
[31] PA Supplement Report at 10 ($214.6 million/year x 15 years = $3.219 billion); (National Grid alleges the cost to customers of NESE is between approximately $2.2 billion and $2.6 billion. See Supplement at 34.).
[32] September 18 Order at 28.
[33] Id. at 133.

C. The Order's Need/Prudence Determination is Inconsistent with its Reliance on the 2025 Demand Forecast and the Analytical Gaps in the Record

The September 18 Order contains several factual and record-based defects underpinning its NESE "need/appropriateness" determination. First, it expressly discredited the Company's 2024 demand forecast and adopted the materially lower 2025 forecast as the more accurate basis for planning, yet it simultaneously affirmed NESE as "needed"—even though the updated forecast, together with Iroquois ExC, shows no design-day shortfall over the study horizon. Second, the Order credits reliability and economic benefits that are not supported by hydraulic modeling under the 2025 forecast or by a gas-customer-focused benefit-cost analysis; instead, the record leans on wholesale electric-market effects that do not translate into verifiable offsets to fixed pipeline demand charges. The Commission's own directives for additional forecasting documentation, updated reliability modeling, and expanded bill-impact analyses confirm that essential inputs remain incomplete. Taken together, these contradictions amount to errors of fact and an inadequate evidentiary foundation for any prudence or "need" finding.

1. Inconsistent Reliance on the 2025 Demand Forecast

The Order expressly finds that National Grid's 2024 demand forecast—used in the analyses contained in the Final LTP and Supplement—contained "questionable results," and that the 2025 forecast "provides a more accurate projection of the Downstate gas system's supply needs and, as a result, the Commission will rely on the updated demand forecast in this Order."[34] Under that 2025 forecast, PA concludes (and the Order acknowledges elsewhere) that existing capacity resources—together with the Iroquois Enhancement by Compression (ExC) Project—are sufficient to meet design-day demand throughout the study period without NESE.[35] The Order

[34] Id. at 51.
[35] Id. at 105 (Citing PA Report on the Supplement, p. 20.).

nevertheless determines that "NESE is needed and that a decision by National Grid[] to proceed with it would be appropriate,"[36] a conclusion that cannot be reconciled with the Commission's own preference for, and reliance upon, the lower 2025 demand forecast.

The quantitative record underscores the mismatch. PA's analysis shows that, under the 2025 forecast, available design-day capacity exceeds demand by approximately 195,000 Dt/day in 2025/26, growing to a peak of 559,000 Dt/day in 2029/30, and still exceeds demand by 391,000 Dt/d by 2049/50—without needing NESE to satisfy design-day requirements.[37] On this record, locking customers into a 100%/15-year NESE subscription is inconsistent with the Commission's own forecasting findings and is, at minimum, premature.

2. Winter Storm Elliott Does Not Establish "Need," and the Record Contains No Quantified Reliability Benefit from NESE

The Order invokes Winter Storm Elliott (WSE) to conclude that NESE is "needed" to ensure safe, adequate, and reliable service and would "enhance the reliability of the system," emphasizing added upstream compression, "line pack," and equiproportional curtailment on Transco during force majeure events.[38] The Order's own narrative, however, shows that service during WSE was maintained by in-state, controllable resources and operational tools—not by additional interstate pipeline laterals: the downstate utilities fully utilized available resources, implemented contingency plans, required fuel-switching by interruptible customers, and sought conservation, and the system held even though conditions "were not near a design day."[39]

At the same time, the Order uses WSE to justify shedding what it characterizes as "less reliable" capacity (e.g., CNG/LNG) and to reduce reliance on peaking services, yet it

[36] Id. at 74.
[37] Id. at 105.
[38] Id. at 58, 66–68.
[39] Id. at 61-63.

acknowledges that the Greenpoint LNG facility currently serves some customers locally and multiple regulator stations, and that any decommissioning would require detailed hydraulic analysis of distribution-system behavior.[40] This is backward on this record: during WSE, the very assets the Order now seeks to curtail (LNG/CNG/peaking and operational measures) sustained reliability, whereas major disruptions elsewhere were tied to upstream conditions that New York cannot control.[41]

Nor does the Order quantify any incremental reliability benefit from NESE under the adopted planning basis. The decision asserts that an extra 400,000 Dth/day "would have increased both pressure and supply" and "provide[d] more time to stabilize" in an Elliott-like event, but offers no hydraulic modeling or measured risk-reduction to substantiate those statements.[42] The Order elsewhere recognizes that decisions about retiring local resources (e.g., Greenpoint LNG) require "detailed hydraulic analysis" before any action, underscoring that essential reliability inputs remain incomplete today.[43] Unquantified assertions are not substantial evidence.

Finally, the WSE-based "need" rationale conflicts with the forecasting record the Order itself adopts. The Commission expressly finds the 2025 forecast "provides a more accurate projection" than 2024 and relies on it for this Order,[44] and recognizes the 2025 update "may delay the projected supply gap until 2041/42."[45] Against that backdrop, the Order's conclusion that NESE is "needed" to ensure reliability rests on generalized claims (e.g., supply diversity "throughout the country") that do not address WSE's primary risk driver—regional production

[40] Id. at 69-72.
[41] Id. at 65, 67.
[42] Id. at 66-68.
[43] Id. at 71-72.
[44] Id. at 51.
[45] Id. at 102

shortfalls in Appalachia that also feed Transco—and thus do not establish a distinct, modeled reliability benefit for downstate gas customers.[46]

In sum, WSE does not establish "need," and the Order identifies no quantified, gas-customer reliability benefit from NESE on the current record. The record instead shows: (i) reliability during WSE was maintained by New York–controlled peaking and operational measures; (ii) the Order contemplates shedding those very resources before completing the detailed modeling it deems necessary; and (iii) under the more accurate 2025 planning basis, there is no demonstrated design-day shortfall that NESE must imminently cure.

3. The economic case is speculative and not gas-customer-focused.

The Company's bill-impact effort centered on wholesale electric-price effects rather than on verifiable gas-customer benefits; the Company's own estimate excludes key portfolio offsets and rests on a $1.47/Dth NESE demand charge that drives ~3.5% average residential bill increases (~$7.44–$7.61/month). The Order itself acknowledges those ~3.5% increases and, again, directs more comprehensive bill-impact work. Moreover, the LAI Study quantifies winter-only wholesale electric price reductions driven by assumed gas-price effects, with no modeled benefits during the shoulder or summer seasons; those effects, which reflected the dramatically higher, discredited 2024 forecast do not translate into assured credits on gas bills that would offset fixed NESE demand charges borne solely by downstate gas customers. In fact, Synapse and PA both flag these electric-side effects as high-uncertainty and non-comparable to "Average Residential Bill Impact" for gas customers.

Synapse also identified that the Project imposes a net energy-cost increase on downstate gas customers across New York City and Long Island and creates an unreasonable cross-subsidy.

[46] Id. at 67-68.

Per the benefit-cost analysis ("BCA") put forth in the Supplement, the overwhelming bulk of modeled "benefits" accrue to the electric market statewide, while 100% of the Project's fixed costs would be borne by National Grid's captive Downstate gas customers.[47]

4. The Order's own directives confirm the record is incomplete.

The Commission orders a 90-day filing on forecasting methodology and updated design-day/annual forecasts and requires subsequent filings with hydraulic/comparative reliability analyses and expanded bill-impact work—explicit acknowledgments that material facts bearing on need, reliability, and customer costs remain unsettled. Premising a "needed/appropriate" determination on benefits that are (i) modeled only for winter electric markets, (ii) not mapped to gas-customer bills, and (iii) unsupported by hydraulic modeling under the Commission-preferred 2025 forecast, is an error of fact and yields an inadequate record for any prudence determination.

D. Remedy

On rehearing, the Commission should: (i) vacate or modify the text identifying annual gas-cost reconciliation "outside of a delivery rate proceeding" as the recovery forum for NESE demand charges; (ii) clarify that any recovery of NESE-related costs—including fixed pipeline demand charges and any associated Company capital—may occur only after a full evidentiary proceeding under PSL § 66(12) on a complete record; and (iii) confirm that no presumption of prudence or cost recovery attaches from this planning docket. These clarifications are necessary to align the Order with § 66(12)'s hearing requirement given the material bill impact acknowledged in the Order and the nature and scale of the NESE charges at issue.

[47] Supplement at Figure 4-1: 2028-2042 Estimated Benefits & Costs Summary Table, at 32.

II. The Order's CLCPA Analysis Is Legally and Analytically Deficient

The Order's treatment of the Climate Leadership and Community Protection Act (CLCPA) is both procedurally and substantively flawed. While acknowledging that agencies must assess whether actions are inconsistent with statewide greenhouse gas (GHG) limits, the Commission concludes—without analysis—that this Order "is not inconsistent with nor would it interfere with the CLCPA" because it "is not taking any final agency actions to approve any particular project identified in National Grid's long-term plan, including the construction of the NESE project, in this proceeding."[48] Yet, as explained above, the same Order finds that NESE "is needed," that National Grid "should seek capacity," and that the project would improve reliability, which operates as a de facto prudence determination signifying that full cost recovery will be granted if the project is constructed.

This reasoning fails to satisfy CLCPA §7(2), which requires detailed justification and identification of mitigation measures when an action may be inconsistent with the statute's emission limits. By determining the need for/prudence of NESE without a quantitative GHG assessment or analysis of alternatives, the Commission advanced fossil expansion without demonstrating consistency with statewide emission limits.

Record evidence underscores this gap. PA Consulting reiterated that the Company's estimates that NESE could reduce GHG emissions from the downstate gas system by approximately 13,000 MTCO2e from 2025-2042, and that the LAI Study quantified emission reductions from the power sector of approximately 23,200 to 88,800 short tons of CO2e, dependent on the level of oil displacement per year.[49] However, both estimates rely on the 2024 forecast, which materially compromises the validity of the results.

[48] Id. at 126-127.
[49] PA Supplement Report at 48.

In addition, the Synapse Analysis appended to NRDC's comments on the Supplement points out that National Grid touts the avoided emissions from NESE without assessing the emission reduction potential of alternatives, and that National Grid's calculations of avoided emissions from NESE are likely overstated for several reasons. First, in response to discovery, the Company issued revised values of its estimated GHG reduction for the downstate gas system showing that the number of oil-to-gas customer conversions is only half of what was initially claimed.[50] In a footnote, PA noted this change reduces emissions by 3,685 MTCO2e, which it characterized as "an immaterial amount";[51] however, it is also approximately 28% of the total emission reductions for the Downstate system, which underscores both how minor the alleged emission reductions are and the level of uncertainty associated with these projections.[52] Accordingly, Synapse concluded that the utility's emissions analysis is critically flawed, and claims about NESE not hindering progress towards achieving CLCPA targets should be disregarded.[53]

The Order's cursory analysis of §7(3) likewise fails to meaningfully evaluate distributional impacts or how long-term gas investments burden disadvantaged communities.[54] This omission contrasts with the Order's recognition elsewhere that better data on gas decommissioning and heat pump adoption are central to meeting CLCPA mandates.[55]

Finally, because this proceeding was a SAPA notice-and-comment process—not an evidentiary adjudication—it lacked the record development required for prudence or CLCPA consistency findings under PSL §66(12). Without sworn testimony or cross-examination, the

[50] Synapse Supplement Analysis at 17.
[51] PA Supplement Report at 48, fn 108.
[52] Synapse Supplement Analysis at 17.
[53] Id. at 9.
[54] September 18 Order at 127-128.
[55] See id. at 3, 113, 126, 128-129.

Commission's CLCPA conclusions regarding NESE rest on a procedural error and on analytical gaps. By disclaiming project approval while simultaneously endorsing NESE as "needed," the Commission effectively sanctioned new fossil infrastructure without the rigorous climate analysis the CLCPA requires. However, the remedies NRDC requests elsewhere in this Petition—vacating the "needed/appropriate" findings, clarifying that no presumption of prudence attaches, and requiring completion of forecasting and emissions analyses before any determination—would, if granted, effectively moot the Order's errors under CLCPA §§7(2) and 7(3).

Dated: October 20, 2025

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