STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 14-M-0565 – Proceeding on Motion of the Commission to Examine Programs to Address Energy Affordability for Low Income Utility Customers.

CASE 20-M-0266 – Proceeding on Motion of the Commission Regarding the Effects of COVID-19 on Utility Service.

ORDER AUTHORIZING PHASE 2 ARREARS REDUCTION PROGRAM

Issued and Effective: January 19, 2023

Table of Contents

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on January 19, 2023

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
Diane X. Burman
James S. Alesi
Tracey A. Edwards
John B. Howard
David J. Valesky
John B. Maggiore

CASE 14-M-0565 – Proceeding on Motion of the Commission to Examine Programs to Address Energy Affordability for Low Income Utility Customers.

CASE 20-M-0266 – Proceeding on Motion of the Commission Regarding the Effects of COVID-19 on Utility Service.

ORDER AUTHORIZING PHASE 2 ARREARS REDUCTION PROGRAM

(Issued and Effective January 19, 2023)

BY THE COMMISSION:

INTRODUCTION

The COVID-19 pandemic, which hit New York in or around March of 2020, resulted in the State suffering a rapid and broad loss of employment and associated contraction of its economy. To address the sudden loss of income by many New York residents from jobs lost, the State enacted a moratorium, effective on June 17, 2020, prohibiting the jurisdictional utilities from discontinuing electric and gas delivery services to residential customers for failure to pay their bills.[1]

From the beginning of the moratorium, the Public Service Commission (Commission) made it a priority to address the COVID-19 pandemic and its devastating economic effects on utility consumers. In light of the unprecedented nature of this crisis, and despite the fact that the moratorium would allow and ultimately result in unprecedented levels of unpaid bills for service and the accumulation of associated arrears,[2] the public interest required balancing the temporary financial impact on the utility industry against the need for millions of New Yorkers to be able to shelter safely in their homes with access to essential services. Prior to the COVID-19 pandemic, residential and non-residential arrears greater than 60 days totaled $677 million and $117 million, respectively. By April of 2022, residential and non-residential arrears greater than 60 days totaled $1.696 billion and $647 million, respectively, or had increased by 150 percent and 453 percent, respectively.

The Commission decided to implement a two-staged approach to address the arrears associated with the moratorium on utility shutoffs. On June 16, 2022, the Commission issued an Order Authorizing Phase 1 Arrears Reduction Program (Phase 1 Order), directing the regulated gas and electric utilities to apply a credit to the accounts of residential low-income utility customers enrolled in utility bill discount programs (Energy

---

[1] Chapter 108 and 126 of the Laws of 2020 (adding PSL §§32, 89-b, 89-l, and 91), effective June 17, 2020. The initial moratorium was extended by Chapter 106 of the Laws of 2021, effective May 11, 2021.

[2] For the purpose of this Order, and consistent with Phase 1, "utility arrears" means the totality of money from customer bills that remains past due by at least 60 days associated with gas and electric service.

Affordability Program or EAP).[3] As of the filing of the Phase 2 Report, the Phase 1 program has assisted nearly 311,000 residential EAP customers by providing $463.7 million in relief.

The Commission issued the Phase 1 Order to address arrears held specifically by low-income customers, although with the understanding that the outstanding arrears held by the utility’s other customers would be addressed through a separate order. Indeed, the Phase 1 Order supported the proposal prepared by the Energy Affordability Policy Working Group (Working Group) to develop a program designed to reduce arrears for customers who were not otherwise eligible for arrears relief under the Phase 1 program.[4] As of May 2022,[5] residential and non-residential arrears greater than 60 days totaled $1.753 billion and $658 million, respectively.[6] Moreover, the State’s economic recovery from the COVID-19 pandemic remains persistently slow as businesses continue to struggle to get back up and running and some households slowly recover from loss of income due to job losses, furloughs, or underemployment. Taken together, these facts, along with persistent upward price pressure in the energy supply markets, argue for swift commonsense action to address unaffordability affecting moderate-income and working families in addition to low-income/fixed-income households.

---

[3] Cases 14-M-0565 et al., Order Authorizing Phase 1 Arrears Reduction Program (issued June 16, 2022) (Phase 1 Order).

[4] Phase 1 Order, p. 42.

[5] While the Phase 2 Report presents arrears figures through September 2022 due to the timing of utility’s required arrears reporting and the desire to show the current amounts of the arrears crisis, the Commission here only provides targeted relief for arrears accrued through May 2022.

[6] Following the implementation of Phase 1, by September 2022, residential and non-residential arrears greater than 60 days totaled $1.344 billion and $601 million, respectively.

The Working Group has been working diligently since issuance of the Phase 1 Order to address the problem of the remaining arears. Their work culminated on December 23, 2022, through the filing of the Phase 2 Arrears Report (Phase 2 Report),[7] which presents seven recommendations for Commission consideration as follows:

(1) Implement a Phase 2 Utility Arrears Relief Program (Phase 2 program) that would provide one-time arrears credits of approximately $672.1 million across the service territories of the Joint Utilities.[8] The credits would provide some relief to all residential non-EAP and small-commercial customers in arrears during the qualifying COVID-19 period, which would eliminate all arrears for over 75 percent of residential non-EAP and small-commercial customers.

(2) The qualifying COVID-19 period noted in the prior paragraph represents arrears held through May 1, 2022 – the same period used with respect to the Phase 1 program.

(3) Provide a one-time credit to all residential non-EAP and small-commercial customers with eligible arrears. The credit is subject to an "up to" cap for each utility, which would be designed to eliminate COVID-19 period arrears for at least 75 percent of eligible customers.

(4) Provide automatic relief, subject to a cap, to all residential non-EAP customers who did not receive relief under the Phase 1 program and all small-

---

[7] Case 15-M-0565, et al., Energy Affordability Policy Working Group Phase 2 Arrears Report (filed December 23, 2022)

[8] The JU is comprised of the following utilities: Central Hudson Gas and Electric Corporation (Central Hudson); Consolidated Edison Company of New York, Inc. (Con Edison); National Fuel Gas Distribution Corporation (National Fuel); The Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY); Keyspan Gas East Corporation d/b/a National Grid (KEDLI) and Niagara Mohawk Power Corporation d/b/a National Grid (NMPC, collectively with KEDNY and KEDLI, National Grid); New York State Electric and Gas Corporation (NYSEG); Rochester Gas and Electric Corporation (RG&E); and Orange & Rockland Utilities, Inc. (O&R).

commercial customers with certain usage characteristics.

(5) Allow reinstatement, through June 30, 2023, of accounts held by residential non-EAP customers who previously had their service terminated in 2022 for non-payment, so that their eligible arrears might be resolved.

(6) Require the utilities proposing an uncollectible reconciliation within the context of this proceeding to make a filing with the Commission to address the potential for over- or under-collection of such expenses.

(7) Adopt the proposal arrived at by the Working Group to suspend residential terminations of service for non-payment while the credits are being applied to accounts, for the period through March 1, 2023, or 30 days after credits have been applied by the incumbent utility, whichever is later.

By this Order, the Commission adopts the recommendations in the Phase 2 Report, as elaborated herein, and directs arears relief for residential non-EAP and small-commercial customers to be implemented through a one-time bill credit on eligible customers' electric and/or gas utility bills.

BACKGROUND

Establishment of the Working Group

The Commission established the Working Group in August 2021 to address the need for improvements to the utilities' energy affordability programs and develop solutions to the COVID-19 arrears crisis. On September 28, 2021, Department of

Public Service Staff (Staff) assembled the Working Group.[9] Staff has convened Working Group meetings on a bi-weekly basis since September 2021 and focused the discussions on adopting potential solutions regarding several key issues, including identification of low-income customers through data sharing and file matching between the Joint Utilities and the Office of Temporary and Disability Assistance (OTDA), enhancement of customer self-certification mechanisms, and the development of a solution to address the increase in customer arrears resulting from the COVID-19 pandemic.

State Actions Related to the COVID-19 Pandemic

1. Moratorium Against Utility Service Shutoffs

On March 7, 2020, as a result of the World Health Organization designating the COVID-19 outbreak a "Public Health Emergency of International Concern," the Governor issued Executive Order No. 202, declaring a "State disaster emergency for the entire State of New York."[10] In order to address the serious financial harm caused by the COVID-19 pandemic on residential utility customers, the Governor also signed into law amendments to the Public Service Law (PSL), including an

[9] EAP Working Group participants include the Staff; the New York State Department of State Utility Intervention Unit (UIU); the New York State Energy Research and Development Authority; the New York State Office of Temporary and Disability Assistance (OTDA); the JU; PSEG – Long Island; the Long Island Power Authority (LIPA); the Public Utility Law Project (PULP); the City of New York (City); the Association for Energy Affordability; CMC Energy Services; the New York Municipal Power Agency; AARP New York (AARP); the Alliance for a Green Economy (AGREE); Citizens for Local Power (CLP); Oracle; the Green and Healthy Homes Initiative; the Long Island Progressive Coalition (LIPC); and the New York Energy Democracy Alliance.

[10] N.Y. Exec. Order No. 202 (2020), https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.pdf.

amendment to subdivision 7 of §32 which, which specified that "no utility corporation or municipality shall terminate or disconnect the service of a residential customer because of defaulted deferred payment agreements or arrears owed to the utility corporation or municipality when such customer has experienced a change in financial circumstances due to the COVID-19 state of emergency, as defined by the department."[11] PSL §32(7), as amended, protected such customers from having their utility services disconnected "[f]or a period of [180] days after the COVID-19 state of emergency is lifted or expires."[12] As defined by the Department of Public Service (Department), a customer that experienced a "a change in financial circumstances due to the COVID-19 state of emergency" were able to self-certify their financial circumstances to his or her utility to prevent service terminations.[13]

PSL §32(7) also mandates that each "utility corporation or municipality shall provide such residential customer with the right to enter into, or restructure, a deferred payment agreement without the requirement of a down payment, late fees, or penalties."[14] Pursuant to authority granted under PSL §32(7) related to defining "a change in financial circumstance due to the COVID-19 state of emergency," on August 11, 2020, the Department issued a notice and administrative guidance, explaining that the amendments to the PSL established a timeframe for ongoing moratorium protections,

---

[11] PSL §32(7).

[12] Id.

[13] Matter 20-01676, COVID-19 State of Emergency, Notice of Department of Public Service Guidance Relating to the COVID-19 Utility Moratorium on Terminations and Disconnections (issued August 11, 2020) (citing PSL §§32(6) and (7)).

[14] PSL §32(7).

starting on March 7, 2020, and ending after the state of emergency is lifted or expired.[15] The Department's guidance directed the utilities to accept and document a residential customer's self-certification that he/she experienced a change in financial circumstances due to the COVID-19 state of emergency.

The Department issued additional guidance between September 2020 and July 2021, notifying the utilities of updates to the PSL amendments and state of emergency timeframes.[16] The last COVID-19 state of emergency – included as part of Executive Order 202.111 - expired along with that Executive Order on June 23, 2021. Thus, under PSL §32(7), the additional 180 days of protection afforded to residential customers holding COVID-related arrears expired on December 21, 2021.[17] Since the expiration of the statutory moratorium on service disconnections for non-payment, some utilities began field collection activities and service disconnections for non-residential and residential customers unable to pay their bills in whole or part. However, shortly after the expiration of the shutoff protections in December 2021, the Joint Utilities committed to pause disconnections of low-income residential customers through September 1, 2022, while the Working Group worked out Phase 1 program requirements.

---

[15] Matter 20-01676, supra, Notice of Department of Public Service Guidance Relating to the COVID-19 Utility Moratorium on Terminations and Disconnections (issued August 11, 2020).

[16] Matter 20-01676. Chapter 106 of the Laws of 2021.

[17] Matter 20-01676, supra, Updated Notice Requiring Filings in Response to Department of Public Service Guidance Relating to the Covid-19 Moratorium on Utility Service Terminations and Disconnections (issued July 6, 2021).

2. Legislative Actions Addressing the Arrears Problem

During the COVID-19 pandemic, residential and small-commercial customer arrears grew to unprecedented levels. The Joint Utilities publicly report arrears greater than 60 days via monthly Collection Activity Reports in Case 91-M-0744.[18] In December 2020, the number of residential customers in arrears was 1,263,742 for a total arrears balance of $1.247 billion. Since that time, although the number of residential customers in arrears has decreased, the monetary amount of the arrears has increased. In April 2022, the number of residential customers in arrears was 1,151,442 for a total of $1.695 billion. The utility arrears crisis led the Governor and Legislature to work together in the context of both the 2021-22 and 2022-23 State budgets to appropriate funds to assist in addressing the growth in arrears held by customers eligible for an energy affordability program.

(a) ERAP and RAS Programs

The Fiscal Year 2021-22 State budget included the Emergency Rental Assistance Program (ERAP) – an income-based assistance program administered by OTDA to address the financial hardships brought on by the COVID-19 pandemic.[19] The ERAP program provided relief of up to 12 months of rent and electric or gas utility arrears payments that accrued on or after March 13, 2020, for eligible residential customers.

OTDA also provided an enhancement – called the "Regular Arrears Supplement" (RAS) benefit – to its existing Home Energy Assistance Program (HEAP. The RAS program provided

[18] Case 91-M-0744, Collection practices of the major gas and electric utilities in New York, Order Instituting Proceeding (issued July 30, 1991).

[19] Part BB, Subpart A of Chapter 56 of the Laws of 2021.

a one-time assistance benefit to eligible residential customers of up to $10,000 for 12 months of utility arrears.

The HEAP, RAS, and ERAP programs all required utility customers to file an application with OTDA or local social services providers to determine eligibility. HEAP and RAS benefits were made available to customers of all gas utilities, electric utilities, municipal utilities, and LIPA, with household incomes at or below 60 percent of the State median income.[20] ERAP benefits were made available to rental households of gas utilities, electric utilities, municipal utilities, and LIPA with household incomes at or below 120 percent of the area median income.

The Fiscal Year 2022-23 State budget included additional funds to support ERAP. As a result of the additional funding, OTDA is still processing eligible ERAP applications submitted through September 30, 2022.[21] The additional ERAP funding is being applied to the accounts of residential utility customers and those funds were successful in reducing some of the customers' arrears. As required under the 2022-2023 State budget, the funds from the OTDA-administered programs were to be applied first to customer accounts and to "supplement, but not duplicate funding to residential customers who have already received energy assistance funding to pay off or credit the utility arrears accumulated during the period March 7, 2020, through March 1, 2022."[22] The OTDA programs can therefore be considered as part of the overall package to reduce and/or eliminate arrears held by low-income customers.

---

[20] The HEAP, RAS, and ERAP programs are currently closed and not accepting applications.

[21] See www.otda.ny.gov/programs/emergency-rental-assistance/#overview.

[22] Part BB, Subpart A of Chapter 56 of the Laws of 2021, p. 1143.

(b) The Department's Utility Arrears Relief Program

The Department also received funds to provide arrears relief in the 2022-23 State budget. The budget appropriation, entitled, "Utility Arrears Relief Program (UARP)," provided $250 million to the Department for an arrears relief program. UARP directed the Department to establish an arrears reduction program in a manner that "prioritize[s] the allocation of funds to customers eligible for an energy affordability program," which includes the Commission's EAP Program, HEAP, RAS, and the ERAP (i.e., all programs focused upon low-income customers).[23] The UARP budget language also provided the Department with the discretion to reduce overall customer arrears through a broader program beyond the $250 million appropriation.[24]

Notably, UARP provided that arrears subject to the $250 million appropriation are those that have accumulated for a specific period: from March 7, 2020, through March 1, 2022.[25] In accordance with the Phase 1 Order, the Department disbursed monies appropriated under UARP first to the jurisdictional utilities, then the municipal utilities, and then LIPA, based on each such entity's proportional share of statewide eligible utility arrears, as determined by the Department. As explained in the Phase 1 Order, the Department also negotiated contracts with each of these entities to ensure that the UARP funds were disbursed in accordance with the budget appropriation.

---

[23] UARP, p. 1142.

[24] Id. (indicating that "[t]he Department may establish any necessary conditions for utilities to reduce overall customer arrears, including incentives to forgive arrears through an arrears management plan or place arrears on a deferred payment agreement pursuant to section 37 of the public service law").

[25] Id.

While UARP included language authorizing the use of allocated funds beyond low-income customers,[26] the Department per the Phase 1 Order devoted the entire $250 million allocated on low-income customers due to the overwhelming need and high level of arrears for this group of vulnerable customers. Nevertheless, the language of UARP made clear that the Legislature intended the Department to provide relief to all customers (i.e., not just to low-income customers) that accumulated arrears between March 7, 2020, through March 1, 2022.

3. Phase 1 Program

In the Phase 1 Order, the Commission expanded eligible relief through May 1, 2022, and directed the Joint Utilities to eliminate arrears through a one-time bill credit for participating customers in the utility's EAP or identified through the OTDA administered RAS or ERAP programs. The Commission also directed the Joint Utilities to provide the same one-time bill credit relief to customers who enrolled in the utility's energy affordability discount program on or before December 31, 2022.

The Phase 1 Order required the utilities and municipalities under Commission jurisdiction to first avail themselves of OTDA-administered RAS and ERAP arrears relief programs before using their allocation of the $250 million UARP funds, consistent with the terms of the contract entered into with the Department. The funds used to support the Phase 1 program was a combination of the $250 million appropriated under UARP and approximately $185 million in ratepayer funds.

[26] See id.

PHASE 2 REPORT

The Working Group arrived at its recommendation to the Commission by thoroughly examining all the policy, fiscal and administrative implementation factors of the two potential alternatives of action versus maintaining the status quo. First, the higher estimated cost to ratepayers, a projected amount of costs attributable to programmatic inaction, and the impact upon consumers and the utilities of taking programmatic action to address arrears were used as the overall basis for determining the recommended course of action. Each of the Phase 2 program options were measured against several policy goals, including balancing the costs associated with the recommended program against the costs of maintaining the status quo (otherwise referred to as the cost of inaction), providing a credit that relieves partial or total arrears of as many customers as possible, and otherwise reducing arrears to manageable levels for the remaining customers.

The analysis and discussions resulted in the Working Group issuing the Phase 2 Report on December 23, 2022. The Phase 2 Report starts by noting that the COVID-19 pandemic greatly undermined New York utility customers' ability to pay their utility bills. It states that, while the Phase 1 program was successful in reducing arrears for low-income customers enrolled in utility bill discount programs, the overall arrears throughout the State remain far above pre-pandemic levels, in part because most of the COVID-related arrears were held by non-low-income customers. The Report states that, without further action to address residential non-EAP and small-commercial customers' arrears, many of those customers may not be able to manage their utility bill balances accrued during the pandemic. Of course, customers unable to pay their utility bills would be subject to the collection process and potential service terminations in the upcoming months and years, resulting in increased utility collection costs and uncollectible expenses for which all customers would ultimately pay through future utility delivery rates.[27]

The Phase 2 Report recommends that the Commission take a proactive approach to aid struggling customers and adopt the recommended Phase 2 program that provides arrears relief to the broader residential non-EAP and small-commercial customer populations. The Phase 2 Report asserts that the proposed approach would substantially reduce terminations and collection activities and prevent economic hardship in the State's communities by reducing customers' arrears balances to a more manageable level. The Phase 2 Report states that if the Commission adopts the Phase 2 program, the relief would help customers move past the financial impacts of COVID-19 and, in turn, avoid larger increases to utility delivery rates associated with the cost of collection activities and recouping uncollected debt. The Phase 2 Report states that the Phase 2 program would provide certainty to both existing utility customers and the utilities by proactively managing and limiting utility bill impacts and promote the public interest by assisting customers by reducing their arrears, ensuring relatively insignificant bill impacts to existing customers, and avoiding the higher costs of no action.[28]

Attachment A of the Phase 2 Report indicates that arrears levels for residential customers remain about double the pre-pandemic levels as of September 2022, and the problem is even more pronounced for non-residential customers. The Working Group, therefore, explored approaches with several

---

[27] Phase 2 Report, pp. 1-3.

[28] Id., p. 2.

considerations in mind, including the cost of inaction to the utilities and ratepayers, the goals of reducing terminations, making deferred payment agreements (DPAs) more affordable, and bringing arrears down closer to pre-pandemic levels, the speed of relief, and the complexity of any recommended solution.[29]

The three primary elements of the cost of inaction are: (1) incremental uncollectible expense; (2) incremental financing associated with higher arrears balances; and (3) incremental operating and maintenance (O&M) costs. The Phase 2 Report explains that many of the costs associated with inaction are highly variable and dependent on multiple factors that are beyond the control of the utilities (e.g., inflation, general economic conditions, and further governmental relief, such as local tax relief or appropriation of federal or State funds earmarked to reduce utility-based arrears).[30] Thus, the Working Group developed a range of cost estimates that reasonably account for such risk and variability.

The Phase 2 Report indicates that the statewide estimates for the incremental costs of inaction to utilities and customers range from a low of $1.011 billion to a high of $1.346 billion, as shown in Attachment C to the Phase 2 Report.[31] The Phase 2 Report totaled the costs associated with the elements identified above, factoring in the utilities service territory variability, to arrive at this range. The largest element of such costs are the incremental uncollectible expenses, which represent the additional utility write-offs forecasted over the next five years. Given the current economic climate, the Phase 2 Report determined that between 40 and 60 percent of the

[29] Id., pp. 9-10.

[30] Id., pp. 10-11.

[31] Id., Attachment C, p. 2.

incremental outstanding arrears would be unpaid if no action was taken. Applying that range to arrears balances results in estimated outstanding arrears ranging from $468.3 million to $702.4 million. Regarding incremental financing costs, which are the costs associated with utilities financing the gap in cash flow from the marked reduction in customer payments, the utilities estimate a range of $488.3 million to $564.1 million for future COVID-19 arrears-related incremental financing costs based on current arrears balances and economic conditions. Additionally, the utilities estimated a 10-15 percent increase in O&M costs, which reflect the costs associated with increased termination and collection process activity. Over five years, this leads to estimated incremental costs ranging from $54.9 million to $79.5 million across the Joint Utilities' service territories.[32]

The Phase 2 Report next compares the cost of inaction to the proposed Phase 2 program of $1.010 billion, which recommends one-time arrears credits to provide relief for all residential non-EAP and small-commercial customers across the Joint Utilities' service territories. The total cost of the credits is approximately $672.1 million. The financial carrying costs associated with amortizing the cost of the proposed Phase 2 program are estimated to be approximately $168.9 million.[33]

The credits that will be applied under the Phase 2 program would offset the entire arrears accrued by eligible customers through May 1, 2022. However, all customers served by the Phase 2 program would still have some residual incremental arrears that have accumulated since May 1, 2022, except for

[32] Id., Attachment C, pp. 3-5.

[33] Id., p. 12.

those customers that have regained their ability to pay their utility bills in whole or part.

The residual incremental arrears would be resolved through the DPA or standard collections/terminations process. This would entail estimating a level of uncollectible write-off costs, incremental O&M for call center and collections activity, and incremental financing costs. In total, these costs are estimated to be approximately $169 million. The Phase 2 Report estimates that the statewide cost regarding the recommended course of action would be $1.010 billion,[34] just under the lowest range of the cost of inaction. For this reason, the Phase 2 Report finds that the recommended course of action is in the public interest and should be adopted.[35]

Because the cost of alternative utility action is overall less than the cost of inaction, the Phase 2 Report recommends the Commission adopt the proposal to issue one-time arrears credits to provide relief for all residential non-EAP and small-commercial customers across the Joint Utilities' service territories. Similar to the Phase 1 program, the primary goals of the proposed Phase 2 program are to reduce the level of arrears that were accrued during the pandemic and avoid widespread service terminations by making DPAs more affordable. Attachment A to the Phase 2 Report also details the average arrears balance per customer prior to May 1, 2022, by utility.

Phase 2 Program Recommendation

The Phase 2 Report recommends that the Commission take immediate action to provide arrears relief and recognized the need to streamline the Phase 2 program relief to customers who were not eligible for the Phase 1 program. As such, the Phase 2

[34] This sum includes incremental financing costs as is explained below.

[35] Id., pp. 11-13.

Report recommends that arrears credits be applied directly to customers' accounts. The cost of the one-time credits as noted above is approximately $672.1 million. This amount excludes deferrals, offsets and carrying charges that will lower the program cost to customers. The one-time credit would provide an "up to" credit specific to each utility, which is projected to eliminate COVID-19 period arrears, not to exceed a designated amount, for at least 75 percent of eligible customers throughout the State. These "up to" amounts for each utility are listed in Attachment E of the Phase 2 Report. For a relatively small group of customers with notably higher arrears amounts, the "up to" credit would not cover the full arrears balance accrued during the pandemic; however, for these customers the arrears credit would make the arrears balance more manageable particularly should the customer enter into a DPA subsequent to receiving Phase 2 program arrears credit.[36]

Customer Eligibility

The Phase 2 Report recommends that the proposed course of action be applied to all residential non-EAP customers who did not receive relief under the Phase 1 program and all small-commercial customers with, with certain usage characteristics, that: (1) received multiple disconnect notices that were left unresolved; or (2) have active payment agreement; or (3) are coded as either blind, elderly, or disabled, or as a life-support equipment user; or (4) submitted a Financial Assistance Attestation under the COVID-19 Moratorium Law. The Phase 2 Report also notes that COVID-19 period arrears are now at least seven months older than the close of the eligibility period

[36] Id., pp. 4, 19-20; Attachment E.

(i.e., May 1, 2022), and customers still carrying such arrears are likely experiencing added financial difficulty.[37]

The Phase 2 Report recommends that the arrears credits be directly applied to customer accounts, concluding that this approach is more efficient and effective than one in which a customer must affirmatively apply or submit certification in order to receive relief.[38]

Eligible Arrears

The Phase 2 Report recommends the same definition for arrears as the one used in the Phase 1 program: an active customer account that is greater than 60 days past due, including those that have an arrears balance subject to an existing DPA that is in good standing. Active accounts that are on a level or budget payment program but may have a difference between total charges accrued versus total charges paid would be excluded from the proposed Phase 2 program regardless of their current actual account balance because these accounts are currently in good standing and are not subject to termination of service for non-payment.[39]

Focusing upon the economic impact of the COVID-19 pandemic, the Phase 2 Report recommends limiting the proposed Phase 2 program to accounts with arrears through the COVID-19 pandemic, which is defined in the report as the period through May 1, 2022. This would also align the proposed Phase 2 program with the relief period approved by the Commission for the Phase 1 program, as the Working Group determined it would be appropriate to align the relief periods even though the programs would be implemented at different times. Additionally, the

[37] Id., p. 4.

[38] Id., pp. 17-18.

[39] Id., pp. 18-19.

Phase 2 Report recommends that residential non-EAP customers who previously had their service terminated in 2022 for non-payment be allowed to reinstate their account through June 30, 2023, so that their eligible arrears could be resolved upon contacting the utility to reestablish service. The Phase 2 Report makes this recommendation in order to provide relief to customers who would be eligible for the Phase 2 program, but for the fact that their utility service has been terminated. While such an accommodation was not needed in Phase 1 because service terminations on low-income customer accounts had not commenced, service terminations have resumed for residential non-EAP customers. Thus, it would be imprudent to preclude customers from receiving arrears relief under Phase 2 because their service was terminated for failure to pay off arrears that would be covered, at least in part, by the Phase 2 program.[40]

Terminations

The Phase 2 Report recommends that the Commission adopt the proposal to suspend residential service terminations for non-payment while arrears credits are applied to accounts through March 1, 2023, or 30 days after credits have been applied by the incumbent utility, whichever is later. This would prevent terminations while the credits are being applied to customer accounts, which may eliminate the need for the termination altogether.[41]

Uncollectibles

In the Phase 1 Order, the Commission noted that, although a significant reduction in arrears could lower uncollectible expenses incurred by the utilities to an amount below the level established in each utility’s delivery rates,

---

[40] Id.

[41] Id., pp. 5, 21.

the Phase 1 program would not be broad enough to materially lower uncollectible expenses included in the utilities' delivery rates.[42] The Phase 2 Report states that the combination of the Phase 1 and Phase 2 programs could be extensive enough to impact the uncollectible expenses incurred by the utilities. Several utilities already have reconciliation mechanisms or are proposing such mechanisms in rate proceedings that would alleviate any concerns.[43]

National Grid and National Fuel, however, each propose an uncollectible expense reconciliation within the context of this proceeding. National Grid proposes with respect to NMPC, KEDNY, and KEDLI to use a two-way uncollectible expense reconciliation mechanism from the period of March 2020 through the end of its current rate plans. National Grid indicates that, for the period of March 2020 to May 2022, the amount recovered through base rates exceeded the amount of actual write-offs by approximately $59.4 million in total for its three affiliates. Upon approval of a two-way uncollectible expense reconciliation mechanism, National Grid proposes to reduce the amount to be recovered through the proposed Phase 2 program surcharge by the amount it has over recovered in base rates through May 2022 (i.e., returning the over-collection to ratepayers), as shown on Attachment F to the Phase 2 Report.[44]

For its part, National Fuel proposes an uncollectible expense reconciliation mechanism for the period of March 2020 through September 2024, to capture the impact of any write-offs

[42] Phase 1 Order, p. 36.

[43] Central Hudson and O&R currently have uncollectible reconciliation mechanisms as part of their current rate plans. Con Edison, NYSEG, and RG&E have requested such a mechanism in the context of an ongoing rate proceeding.

[44] Phase 2 Report, p. 27.

that would occur once terminations resume in full during the spring of 2023.[45] Upon approval of an uncollectible expense reconciliation mechanism, National Fuel proposes reducing its proposed Phase 2 program surcharges by the net amounts that have been reserved as credits in its allowance for uncollectible accounts over the course of the COVID-19 pandemic to cover the anticipated increase in future write-offs or an estimated $2.0 million.[46] In addition, National Fuel proposes reducing its surcharge by the earnings impact of implementing a surcharge mechanism assuming such a mechanism was in effect during the period of March 2020 through March 2022, which equals approximately $4.9 million.[47]

Considering that these proposals involve more complex analysis, the Phase 2 Report recommends that National Grid and National Fuel be required to make a filing with the Commission in this proceeding, describing their proposed reconciliation mechanism. The Phase 2 Report recommends that the filing include: (a) the period covered by the uncollectible reconciliation mechanism; (b) a recovery mechanism (e.g., surcharge or deferral) and, if a surcharge mechanism is proposed, the utility should indicate whether it would be a separate surcharge or be included in an existing surcharge mechanism (e.g., Monthly Adjustment Clause) and whether the surcharge should be subject to a cap; (c) the proposed carrying cost rate on any deferred balances; and (d) the impact on prior period earnings resulting from an uncollectible reconciliation

[45] If the uncollectible reconciliation mechanism is not approved the bill impacts and/or collection periods associated with National Fuel’s program reflected herein would change.

[46] Phase 2 Report, pp. 27-28.

[47] The $4.9 million consists of $2.5 million in earnings sharing owed to customers and $2.4 million in earnings sharing owed to shareholders.

assuming such a reconciliation was in effect during the proposed reconciliation period. In addition, the Phase 2 Report recommends that the filing include the actual amount of any over/under recoveries (i.e., net write-offs vs base rate allowance) for the period of March 2020 through October 2022 and a forecast of the over/under recoveries for the period of November 2022 to the proposed reconciliation end date.[48]

Economic Development Funds & Other Deferrals

The Joint Utilities have programs to support economic development in their service territories. These economic development programs generally take the form of business incentive rates or grants. The Phase 2 Report notes that, due to the periodic timing of rate cases, the utilities with economic development grant programs maintain unspent funds that have been deferred for the benefit of customers. To mitigate the costs associated with the proposed Phase 2 program therefore, the Phase 2 Report proposes that any deferred economic development funds be used to the benefit of small-commercial customers to offset the costs of the Phase 2 program to those entities. As shown in Attachment F to the Phase 2 Report, the aggregate amount of economic development funds available to mitigate the costs of the proposed Phase 2 program is approximately $11.1 million. In addition, National Fuel proposes to use previously deferred low-income program costs in the amount of $5.8 million to mitigate the costs of the proposed Phase 2 program.[49]

Shareholder Contributions

The utilities have committed to providing shareholder contributions in an effort to mitigate the costs associated with

[48] Phase 2 Report, pp. 28-29.

[49] Id., p. 23; Attachment F.

the Phase 2 program. During the COVID-19 moratorium, the Joint Utilities collectively financed a cash shortfall due to the pandemic-related increase in arrears of over $1.1 billion and incurred the associated financing costs (interest and return on equity). For each utility, with the exception of National Fuel,[50] the shareholder contribution includes the full value of incremental financing costs on the incremental arrears through 2022 (exclusive of those incremental carrying costs committed in the Phase 1 program). As shown in the Phase 2 Report, in aggregate, the utilities have committed to providing shareholder contributions of over $101 million.[51]

Cost Recovery

The Phase 2 Report proposes the program costs be recovered through a surcharge with the goal of minimizing customer bill impacts. To develop the surcharge, the Phase 2 Report recommended the costs to each service class consistent with how uncollectible costs are allocated in base delivery rates, if practicable, which is consistent with how Phase 1 program costs were allocated. The Phase 2 Report noted that certain utilities cannot reasonably allocate the costs as directed by the Commission for Phase 1 program costs because some members of the Joint Utilities are currently undergoing a transition to a new billing system. These companies would allocate costs in a manner that is allowed within the limits of the existing billing system and would transition to an

[50] In addition to forgoing $2.4 million in carrying costs associated with the arrears balances, as previously discussed, if an uncollectible reconciliation mechanism is approved, National Fuel has agreed to apply an additional $2.4 million in shareholder earnings.

[51] Phase 2 Report, pp. 23-24. National Grid has also committed $7 million in incremental philanthropic funds to help New York customers and communities navigate winter supply costs.

allocation consistent with base delivery rates once the new billing systems are deployed.[52]

The Phase 2 Report proposed setting a recovery period for each utility that targets estimated residential bill impacts of approximately 0.5 percent. The proposed surcharge recovery would remain in place for the duration of the recovery period, which may differ by utility due to differences in the levels of arrears in each utility's service territory and the requirement to limit bill impacts to approximately 0.5 percent.

Standardized Deferred Payment Agreements

The Phase 2 Report recognizes the importance of working with customers to keep service on. After the relief from the proposed Phase 2 program credits, customers would be able to obtain more affordable DPAs to manage their arrears. To improve consumer messaging, the Working Group conducted a thorough review of each utility's standard DPA language and recommended changes to more prominently highlight language that describes customers' rights under the Home Energy Fair Practices Act (HEFPA) to an equitable and affordable payment agreement based on the customer's ability to pay, with terms as low as zero down payment and $10 a month. Each of the Joint Utilities has implemented, or will be implementing, the Working Group's recommended changes.[53]

Customer Outreach

The Phase 2 Report recommends a multifaceted outreach plan to foster utility customers' understanding of the Phase 2 program. Specifically, the Phase 2 Report specifies that the Joint Utilities, the Department, and stakeholders would implement a multi-channel plan to raise awareness about the

---

[52] Id.

[53] Id., p. 26.

Phase 2 program, including details about customer eligibility, eligible arrears, relief credit caps, information about payment assistance, DPAs, and communications to inform recipients of the relief credits to be applied to their accounts. The proposed multi-channel outreach plan includes dedicated email blasts to eligible customers, press releases, website pages with Phase 2 program credit information, social media posts, bill messages/inserts, letters, inbound call center messaging, newsletters, and community outreach presentations.[54]

Outside of a disagreement over the level of shareholder contributions – which is discussed in the Phase 2 Report, the Phase 2 Report indicates that the Working Group reached a consensus on how to approach the overall residential non-EAP and small-commercial arrears problem, through the seven recommendations summarized at the outset of this Order.

NOTICE OF PROPOSED RULEMAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202 (1), a Notice of Proposed Rulemaking was published in the State Register on June 22, 2022 [SAPA No. 14-M-0565SP17] (Arrears Notice). The time for submission of comments pursuant to the Arrears Notice expired on August 22, 2022. Comments were submitted within the Phase 2 Report by the Joint Utilities, the City of New York, AGREE, PULP, UIU, CLP, LIPC, AARP, and LIPA.

COMMENTS

On July 6, 2022, the Secretary to the Commission issued a Notice of Working Group meetings. The Notice explained that Staff convened bi-weekly meetings beginning on September 28, 2021, and continued such meetings until the Commission

[54] Id., p. 25.

issued its Phase 1 Order, on June 16, 2022. The Notice stated that the Working Group was turning its focus away from addressing arrears accrued by low-income customers to addressing arrears of other customers. All interested entities were encouraged to attend Working Group meetings and actively participate.

Stakeholder Positions Contained in the Phase 2 Report

All participants in the Working Group support the need to provide relief to eligible customers in arrears, although a number of stakeholders were disappointed by the level of utility shareholder contributions. The Joint Utilities provided comments in support of the program recommended in the Phase 2 Report. The Joint Utilities explained that arrears grew to current levels because utilities ceased collection activity that would have resulted in customers losing service during the pandemic. The consequence of ceasing collection activity, however, is that many customers accrued significant arrears balances. The Joint Utilities states that without a Phase 2 program, returning to the normal routine of collection activity would result in a large number of customers who are unable to pay their utility bills (even with the most flexible payment agreement terms). The Joint Utilities asserts that it is in the public interest for ratepayers to instead pay for an arrears relief program that would decrease terminations and put customers impacted by the COVID-19 pandemic in position to better manage their bills.

On issue of shareholder contributions, the JU state that, given the unprecedented circumstances associated with the COVID-19 pandemic, the utilities collectively have already taken the extraordinary action of agreeing to shareholder contributions of over $101 million, which it claims is an amount that far exceeds what the Joint Utilities have observed in other jurisdictions. The Joint Utilities state that a number of parties advocated for significantly higher shareholder, contending that the utilities have been benefiting from the current economic environment. In response, the Joint Utilities detailed the potential risks associated with increasing shareholder contributions beyond the $101 million already committed. Most notably, the Joint Utilities assert that additional shareholder support would degrade each utility's credit quality metrics and the investment community's view of the New York regulatory environment.[55] The Joint Utilities suggest that credit downgrades could result in a significant increase in their cost of capital, which would make future investments, particularly those necessary to meet the State's clean energy goals, more costly for utility customers. Additionally, the Joint Utilities state that, if further consideration is given to additional contributions, stakeholders should consider more holistically where such contributions should come from, especially considering that taxes and fees assessed by governmental entities to the utilities – which are outside of the control of utilities – represent large parts of customer bills.

The City noted its general support of the proposed Phase 2 program, stating that it would prevent mass amounts of collections and service terminations, put ratepayers in a better position to manage their utility bills and, according to data provided by the Joint Utilities, result in lower costs to ratepayers versus a "no-action" scenario. The City expressed concerns regarding bill impacts in the context of continued energy market volatility and the anticipated increase in supply

[55] See Moody's November 11, 2022, adoption of a negative outlook for U.S. utilities contained in Attachment H to the Phase 2 Report.

prices, as well as future rate requests. The City also noted its disappointment with the level of shareholder contributions offered by the utilities.

AGREE stated that it is highly supportive of the proposed Phase 2 program, recognizing the need to work together with Staff and the Joint Utilities to resolve the arrears problem to avoid terminations during the cold-weather season. However, AGREE expressed concerns regarding the utilities' shareholder contributions and emphasized that shareholders were largely protected from the impacts of the pandemic through regulatory mechanisms. AGREE encouraged the Joint Utilities and PSEG-Long Island to think about additional ways to find money for debt relief that does not place the burden of the pandemic solely on New Yorkers, and recommended the utilities adopt another moratorium on shutoffs while they look for additional funding.

In its comments, PULP commended the Working Group's analysis of the arrears problem and stated it finds much of the Phase 2 Report's recommended solutions sensible and in the public interest. PULP noted that it agrees with the Phase 2 Report's assessment, including the "cost of inaction" and the proposed "up-to credits." Additionally, PULP asserts that the Phase 2 Report makes the case for immediate relief for customers in arrears with indicators of financial need in their utility account histories. PULP also identified two of its priorities for which agreement with the Working Group has not been reached: (1) ensure that low-income ratepayers pay for relief only for customers having indicators of financial need; and (2) achieve an equitable sharing of Phase 2 costs between ratepayers and shareholders.

PULP states that, because low-income households already suffer a high energy burden, they should only be required to pay a surcharge for eligible customers based on evidence of need. PULP states that the Joint Utilities only captured evidence of need (beyond just the issuance of final termination notices) for 81 percent of eligible households, which it states is a healthy majority but not sufficient to ensure that low-income ratepayers only pay for relief for customers with indicators of financial need. To be more precise about providing relief to customers in arrears, PULP recommends expanding screenings back to May 1, 2017, and involving OTDA. PULP proposes that OTDA conduct a match identifying customers in arrears through May 1, 2022, that received any form of OTDA assistance over the same period. To ensure that low-income ratepayers only pay for relief to customers evidencing need, while separately providing immediate relief for all affected customers, PULP recommends that shareholders fund contributions for customers who, upon completion of these analyses, were still not identified in the screening process as having financial need.

Further, PULP advocates for larger shareholder contributions, although it acknowledges such contributions could negatively impact the Joint Utilities' costs of capital. PULP, however, states it is not convinced that any incremental negative impacts on costs of capital to ratepayers would result from its proposal for shareholder contributions.

UIU expressed support of the Phase 2 proposal. UIU states that, while the Phase 1 and proposed Phase 2 programs provide unprecedented relief, it expects this to be a one-time occurrence. UIU states that the total arrear balances are staggering, and so too are the average customer arrears. UIU states that, for a customer to eliminate its debt, it could enter into a DPA for potentially many years and potentially decades. However, under the inflationary conditions now being experienced, UIU questions how likely those customers would be able to maintain a DPA. UIU notes that, even if customers are current on their DPAs, the utilities have options to recover the DPA arrears balances, including continuing to finance the arrears, petitioning the Commission for the financing cost, or increasing the arrears expense in its next rate case – all likely to be funded from ratepayers. While the proposed Phase 2 program would not eliminate all customers' arrears, UIU expects the remaining balances and corresponding DPAs should be more manageable.

CLP expressed strong support of the Phase 2 Report's recommendations but opined on the costs to ratepayers for the proposed Phase 2 program. Without arrears relief, CLP continues, the cost of inaction would also fall on ratepayers. CLP claims that the Joint Utilities support the proposed Phase 2 program because it would ultimately save them money. CLP claims that ratepayers would pay for 85 percent of the program for up to 10 years, while utility shareholders would only cover 15 percent of the program. CLP claims there is a fundamental unfairness here that sheds an unfortunate and "harsh light on the structure of regulated, investor-owned utilities and that illuminates the inequity at the heart of our economic and financial system."[56] CLP notes that, even after administration of the proposed Phase 2 program, residential and small-commercial customers would still owe an estimated $1.128 billion, which is $343 million more than customers owed prior to the pandemic. CLP states that there is a limit to the amount of money that can be extracted from a population that has no guaranteed sources of income or wealth, much less profit, and

[56] Phase 2 Report, p. 40.

that increasingly includes large numbers of people who are immiserated through no fault of their own.

AARP supports the proposed Phase 2 program and believes many of its aspects constitute major steps toward helping New Yorkers maintain essential utility services. AARP notes that utility bills are increasing dramatically and that the State has not contributed to the relief for the proposed Phase 2 program. AARP notes that, while the proposed Phase 2 program would add another 0.43 percent to utility bills for as long as ten years, the costs for a Phase 2 program are lower than taking no direct action. AARP restates its argument made as part of the Working Group process that a one-third contribution by shareholders is appropriate.

LIPC states its general support of the Phase 2 Report's recommendations and believes they will serve as a model for PSEG-Long Island and LIPA. LIPC expressed its concerns that the Working Group did not make special considerations to ensure that PSEG-Long Island and LIPA were on board with the process and conducting a similar process for the advocates on Long Island and the Rockaways. Moreover, LIPC noted it has concerns regarding the cost of the program for ratepayers.

LIPA stated that it and its service operator, PSEG-Long Island,[57] have participated in the Working Group's discussions and considerations of a Phase 2 program. LIPA expressed its support for the Phase 2 Report's recommendations and stated its intent to propose a similar Phase 2 arrears relief program to LIPA's Board in the first quarter of 2023. LIPA noted that, because it does not have shareholders, its Phase 2 proposal would not be supplemented by shareholder

[57] LIPA is a not-for-profit public power utility governed by a Board of Trustees appointed by the Governor and Legislature. LIPA is not subject to the jurisdiction of the Commission.

contributions. LIPA, however, does expect to provide comparable relief to Phase 2 eligible customers while minimizing the impact on non-participating customers by utilizing its existing bad debt reserve and recovering additional costs over time. Additionally, LIPA states that interested stakeholders would have opportunities to comment on LIPA's Phase 2 proposal as well as opportunities to speak directly to LIPA's board when it considers the proposal.

Over fifty public comments were received in response to the Notice of Proposed Rulemaking. The majority of comments shared a uniform template and stated concerns regarding bill impacts associated with assisting non-low-income customers. The commenters requested greater contributions from shareholders as an option to reduce the program's burden to ratepayers, commonly citing a debt relief program in Minnesota where Xcel Energy's shareholders covered 100 percent of the $17.5 million cost of the limited program the utility proposed.[58]

On August 23, 2022, Ulster County Executive Patrick K. Ryan and Senator Michelle Hinchey submitted a comment addressed to the Chair. They noted that both of their offices have received numerous complaints from constituents about additional surcharges and ongoing issues with Central Hudson's billing systems. On December 13, 2022, Acting Ulster County Executive Johanna Contreras and Senator Michelle Hinchey submitted a comment reiterating the need for additional shareholder contributions. They shared concerns regarding Central Hudson's shareholder contributions in the Phase 1 program, stating that the Phase 2 program cannot have a similar cost structure. They also stated that they encourage the Commission to complete an audit of Central Hudson's customer accounts that are in arrears

[58] See https://www.startribune.com/xcel-customers-who-owe-thousands-to-get-help-settling-their-debt/600033231/.

or behind on payments, suggesting that account errors could result in misallocated relief funds.

LEGAL AUTHORITY

The Commission's authority derives from the PSL, through which the Legislature delegated numerous legislative powers. Pursuant to PSL §5(1), the "jurisdiction, supervision, powers and duties" of the Commission extend to the "manufacture, conveying, transportation, sale or distribution of . . . electricity." PSL §§4(1) and 5(2) also provide the Commission with "all powers necessary or proper to enable [the Commission] to carry out the purposes of [the PSL]" including, without limitation, a guarantee to the public of safe and adequate service at just and reasonable rates, environmental stewardship, and the conservation of resources.[59] Further, PSL §65 provides the Commission with authority to ensure that "every electric corporation and every municipality shall furnish and provide such service, instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable." PSL §66(2) provides that the Commission shall "examine or investigate the methods employed by [] persons, corporations and municipalities in manufacturing, distributing and supplying . . . electricity . . . and have power to order such reasonable improvements as well as promote the public interest, preserve

[59] See Consolidated Edison Co. v Public Service Comm'n, 47 N.Y.2d 94 (1979) (describing the broad delegation of authority to the Commission and the Legislature's unqualified recognition of the importance of environmental stewardship and resource conservation in amending the PSL to include §5); Int'l R. Co. v. Pub. Serv. Comm'n, 264 A.D 506, 510 (3rd Dep't 1942) (determining that the "public interest" standard is directly related to and limited by the general purpose of the agency's enabling legislation).

the public health and protect those using such gas or electricity. . .”

DISCUSSION

The COVID-19 pandemic has had a profound impact on New York's utility customers. To protect the health and safety of New Yorkers, in June 2020, the Legislature imposed a statutory moratorium on utility disconnections to residential customers, which expired on December 21, 2021. While the statutorily-imposed moratorium protected over a million residential customers from the loss of vital utility services, it resulted in an unprecedented growth in unpaid utility bills. As discussed above, the Phase 1 program adopted in June 2022 for EAP customers was the first step to resolving the overall arrears crisis. In the Phase 1 Order, the Commission encouraged a second proposal addressing arrears from other customers impacted by the COVID-19 pandemic.

Prior to the COVID-19 pandemic, the number of residential non-EAP residential and non-residential customers in arrears greater than 60 days totaled 596,584 and 68,427, respectively. By April of 2022, the number of residential non-EAP and non-residential arrears greater than 60 days totaled 824,283 and 126,328, respectively, or had increased by 38 percent and 85 percent, respectively.[60] This data clearly indicates that many customers, not just low-income customers, are still experiencing the negative financial impact of COVID-19. This underscores the importance of the Phase 2 program’s focus on arrears held by residential non-EAP and non-residential customers.

[60] Case 14-M-0565, May 23, 2022 Arrears Report (filed May 23, 2022), p. 4.

Further straining energy affordability and the ability of customers in arrears to recover and avoid service termination is the fact that commodity prices rose sharply in 2022 for a variety of reasons, including the war in Ukraine and unexpected economic growth. The unprecedented nature of the utility arrears crisis requires a broad-based solution.

In this Order, the Commission adopts the Phase 2 Report’s recommendation to provide immediate and automatic arrears relief for residential non-EAP customers and small-commercial customer groups. The severe impacts of the COVID-19 pandemic have persisted for too long and with commodity cost increases and inflationary pressures making energy affordability more challenging, it’s time for the Commission to take action to provide a solution for struggling utility customers. The application of the Phase 2 credits will help over 75 percent of eligible customers move past their COVID-period utility arrears and allow all customers in arrears to enter into more affordable DPAs to avoid terminations. The Commission, moreover, finds that the cost of authorizing the utilities to take an alternative course of action as proposed in the Phase 2 Report is less expensive than the cost of inaction, and allows the Commission to proactively manage the Phase 2 program’s cost recovery bill impacts to customers.

Cost of Inaction

As noted above, the Phase 2 Report reported the statewide estimates for the cost of inaction range from $1.011 billion to $1.346 billion. It is important to understand what is meant here by inaction. As explained in the Phase 2 Report, inaction means not adopting an arrears relief program for residential non-EAP and small commercial customers and leaving the balances held by these customers to be addressed through utility collections and termination processes, with significant costs to be passed on to all ratepayers. The Phase 2 Report explains that it is difficult to precisely predict the cost of inaction because the pandemic-created utility arrears problem is unique and unlike any economic impact experienced by the utilities. The Phase 2 Report explained that there are three primary elements to the cost of inaction: (1) potential costs of incremental uncollectible expense; (2) incremental financing associated with the higher arrears; and (3) incremental operation and maintenance (O&M) costs. The largest component of the cost of inaction is incremental uncollectible expense. To prevent this undesirable outcome, it is preferable for the Commission to implement an option that results in less costs than the costs of inaction.

With the statutory moratorium on service terminations lasting over two years, high forecasted commodity prices for 2022 and projected into 2023, and inflation rates not seen since the 1970s, Attachment C to the Phase 2 Report projected a range of 40 percent (best case) to 60 percent (worst case) of the incremental outstanding arrears would be unpaid if the Commission took no action. The Phase 2 Report states that, without action to address the remaining residential non-EAP and small-commercial customer arrears, many customers would be left with unmanageably large balances accrued during the pandemic and face service termination. Keeping potential economic hardship in mind, the Working Group set out to develop a meaningful, cost-effective, and commonsense program to address the arrears crisis. The Working Group arrived at program sizes that would hold the total cost estimates of the Phase 2 program, inclusive of carrying costs and addressing residual arrears, below the low end of cost estimates of inaction.

The Commission carefully reviewed the Phase 2 Report's analysis of the cost of taking no action to address the arrears crisis versus adopting a Phase 2 program. The Commission believes the $1.011 billion to $1.346 billion range for inaction is reasonable for the reasons explained in the Phase 2 Report.

Cost of Authorizing Alternative Utility Action

A Phase 2 program would substantially reduce the risk of terminations for customers that have pandemic related arrears, reduce associated collection activities, and prevent economic hardship in all regions of the State by either entirely eliminating arrears through May 1, 2022, or reducing customers' arrears balances to a more manageable level. However, the costs of the Phase 2 program need to be reasonable and cost effective to avoid unduly burdening all customers.

To evaluate the reasonableness of the proposed Phase 2 program, the Commission considered the Working Group's comparison of the cost of the Commission authorizing the utilities take an alternative course of action to the cost of inaction. Given that the aggregate $1.010 billion cost estimate associated with the proposed Phase 2 program is essentially the same as the $1.011 billion lowest projected cost of inaction, the Commission finds the proposed Phase 2 program to be a more reasonable and economical solution than the cost of inaction.[61] Furthermore, this proposed solution is widely supported by the stakeholders that have been involved in the Working Group and equitably balances the interests of customers that are economically distressed and struggling to afford their utility

[61] Small utilities and municipalities have not participated in the Working Group meetings that developed the recommendations contained in the Phase 2 Report. Like the Phase 1 program, the Phase 2 program will be optional for small utilities and municipalities, however a filing with arrears data, proposed up to credits, eligibility screens and bill impacts must be made by any small utility or municipality that proposes to implement a Phase 2 program.

bills against the overall cost to all ratepayers of providing such relief to customers.

The Commission appreciates LIPC's concern for struggling customers on Long Island and the Rockaways that are served by PSEG-Long Island. The Phase 2 Report did not propose specific relief for residential non-EAP and small-commercial customers served by PSEG-Long Island because the Phase 2 Report recommends Commission action, and the Commission does not have rate jurisdiction over PSEG-Long Island. LIPA and its contractor, PSEG-Long Island, have participated actively in the Working Group's meetings and considerations of a Phase 2 program and stated their support for the Phase 2 Report's recommendations. LIPA stated its intent to propose a similar Phase 2 arrears relief program to LIPA's Board in the first quarter of 2023 where interested stakeholders will have opportunities to comment on LIPA's Phase 2 proposal as well as opportunities to speak directly to LIPA's board when it considers the proposal.

Customer Eligibility

The Working Group considered customer classifications that should be subject to arrears relief, and the process by which to provide such relief. The Phase 2 Report proposes that residential non-EAP customers who did not receive relief under the Phase 1 program require relief, as well as small-commercial customers, that meet certain usage criteria. Additionally, the Phase 2 Report proposes to define "small-commercial" based on certain usage characteristics (e.g., 16 NYCRR Part 13.5 et seq.). The Commission agrees that residential non-EAP customers and certain small business customers that have accrued arrears resulting from the economic downturn associated with the COVID-19 pandemic should obtain relief here because of the importance of small business to our communities and the reality that small businesses are engines of job creation and community amenities.

The Commission also adopts the definition of "small-commercial" proposed in the Phase 2 Report for the purpose of determining eligible small businesses because such definition is simple to administer, requires no customer application, and requires no prior verification of data. Specifically, a small-commercial electric customer under 16 NYCRR Part 13.5(b) is defined as an account taking service under non-residential service classes, with the exception of an electric account that, during the previous 12 months had a combined average demand in excess of 20 kilowatts (kw), or who registered any single demand in excess of 40kw. For a small-commercial gas customer, the Commission has defined those customers as using less the 750 dekatherms of gas per year.[62]

The Phase 2 Report described the several customer credit options considered by the Working Group to address concerns about validating the financial need of customers. For example, the Phase 2 Report considered an option that would require an eligibility determination to be based on applications filed by customers. The Report notes several problems with this approach that make it unworkable, including that customer application would be costly to administer, delays would inevitably result from establishing the application process and validating customer eligibility, the utilities may lack appropriate staffing to process applications, and it would be burdensome to customers to submit income documentation to the utilities.

[62] Case 15-M-0127, et al., Retail Access, Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process (issued December 12, 2019).

The Phase 2 Report focused on a process by which customer eligibility would be determined by application of appropriate metrics and a credit toward customer arrears would be applied automatically. In this respect, the Phase 2 Report considered several analytical metrics for determining eligibility and developed a screening process using existing utility data to determine a customer’s financial need. The Phase 2 Report applied several screens to determine customers with financial need, including customers that: (a) have received multiple disconnect notices that are unresolved; (b) are in an active payment agreement with a utility; (c) are coded as either blind, elderly, or disabled, or as a life-support equipment user; or (d) submitted a Financial Assistance Attestation under the COVID-19 Moratorium Law.

PULP argues that the Joint Utilities only captured evidence of need (beyond just the issuance of final termination notices) for 81 percent of eligible households and recommends expanding screenings back to May 1, 2017, and involving OTDA. The results of the Working Group’s analysis however indicate that more than 95 percent of the residential non-EAP customers with arrearages and more than 87 percent of small-commercial accounts, meet at least one or more of the criteria for financial need.[63]

After considering the options discussed above, the Phase 2 Report recommends a program that provides automatic relief through direct bill credits to all residential non-EAP and small-commercial customers who have eligible arrears and who

[63] Because of issues with Central Hudson’s billing system upgrade it has not yet resumed the collection process for residential customers, and it possessed no data available related to final disconnect notices during the period of this analysis. As a result, Central Hudson's percentages vary from the other utilities.

did not receive relief under the Phase 1 program. The Commission agrees that an application process would be unduly expensive and administratively burdensome to implement and thus should not be applied to eligible Phase 2 customers. The Phase 2 Report finally states that the resulting program design is consistent with the Phase 1 program and would allow relief to reach customers as quickly and cost-effectively as possible.

With regard to eligibility, the Commission agrees with the Phase 2 Report recommendation to provide relief to residential customers who did not receive Phase 1 relief and to small-commercial customers that meet the usage characteristics definition, without a need for an application. The Commission also finds, as it did in the context of the Phase 1 Order, that screens for financial need are reasonable and guard against residential non-EAP and small-commercial customers that may not need relief receiving a credit.

Of note, the Working Group reached a broad consensus regarding Phase 2 customer eligibility with the exception of PULP. As noted above, PULP raised a concern that the Joint Utilities only captured evidence of need for 81 percent of eligible households and recommended expanded screenings back to 2017. PULP additionally recommended that shareholders fund contributions for customers who, upon completion of the eligibility analyses, could not be definitively identified in the screening process as having financial need. The Commission disagrees with PULP and believes that the time frame used to calculate the customer’s immediate financial need, from the beginning of the COVID-19 state of emergency on March 7, 2020, is a sufficient time frame for calculating arrears relief.

PULP’s concern appears to cite to the results of a portion of Con Edison’s residential eligibility screens to support its position that there is not sufficient evidence of financial need for the vast majority of potentially eligible customers. As noted, the financial screens developed by the Working Group provide the appropriate timeframe and metrics of financial need and guard against credits be applied to customers that are not in financial stress. The eligibility criteria used to screen customers to determine financial need included customers: that have received multiple disconnect notices that were left unresolved; with an active payment agreement; that are coded as either blind, elderly, or disabled, or as a life-support equipment user; or that submitted a Financial Assistance Attestation under the COVID-19 Moratorium Law. Indeed, the analysis undertaken in this Phase 2 Report with respect to this issue demonstrates that 95 percent of residential customers with arrears within the covered period are in need of financial relief. Similar analyses of the eligibility screens for small-commercial customers also demonstrates that these customers also overwhelmingly have financial need.[64]

Regarding residential non-EAP customers who had their service disconnected for non-payment in 2022, the Commission agrees that those customers shall be allowed the opportunity to have their service reinstated through June 30, 2023. This provision will allow more equitable treatment of customers regardless of when utilities began their collection process. Customers who contact the utility to re-activate service, consistent with HEFPA, will receive the Phase 2 program credit allowing the customer to enter into a more affordable DPA while maintaining their service connection, if eligibility has been determined through the eligibility screen criteria cited above.

---

[64] Phase 2 Report, p. 15.

Eligible Arrears

As discussed in the Phase 1 Order, residential and non-residential customers arrears totaled $2.3 billion at that time, of which $587 million was attributable to low-income recipients, leaving over $1.7 billion in arrears attributed to non-Phase 1 customers. It is evident that a substantially larger amount of the total arrears extends to non-low-income customer groups.

Regarding the eligible arrears and the credits to be applied to those arrears, the Commission agrees with the recommendation that the same definition of "eligible arrears" as used in the Phase 1 program be adopted for the Phase 2 program as discussed above, and the covered period align with the adopted covered period from the Phase 1 program for consistency and to be fair. Moreover, as indicated in Attachment A to the Phase 2 Report, only a small portion of customers' arrears still remain prior to March 7, 2020. To streamline the administration of the program and make the Phase 2 program easy to understand for customers, the Commission adopts the Phase 2 Report recommendation that eligible arrears include the period through May 1, 2022.

The Commission acknowledges that all customers that receive the credit will continue to have some arrears after the credit is applied, however, customers will be better positioned to manage their utility bills going forward and enter into more affordable DPAs.

Arrears Relief Credits

A key concern for the Commission is balancing the overall cost of the program that is borne by all ratepayers versus providing meaningful and swift support to customers in need of arrears relief. In order to achieve reasonable program costs, the Commission agrees with the recommendation to establish a cap on the "up to" credit for eligible arrears. Historically, the Commission has established program budget caps in utility affordability programs. For example, in the May 2016 Order, the Commission capped the statewide energy affordability program budgets at two percent of total utility revenue, balancing the needs of EAP participants and the interest of non-income-eligible customers who pay for the program. The Commission finds establishing a cap for the "up to" credit to eligible arrears appropriate to manage overall program costs for the Phase 2 program.[65]

In establishing the cap amount for the "up to" credit,[66] the recommendation relied on two analyses. First, a "cap" analysis shows the percent of customers whose eligible arrears would be completely resolved at varying "up to" credit amounts. For example, 75 percent of NMPC's residential non-EAP eligible customers would have their eligible arrears completely resolved at a credit cap of $2,750, while only 53 percent of eligible customers would have their arrears resolved at a credit cap of $1,250. Second, the Working Group relied upon the "cost of inaction" analysis as it provides a reasonable and rational basis for the proposed credit cap.

Acknowledging the uniqueness of the "cost of inaction" analysis, the Phase 2 Report established a range for the "cost of inaction" estimates, from $1.011 billion to $1.346 billion. A key goal of the Working Group was to find ways to provide

---

[65] Case 14-M-0565, Order Adopting Low Income Program Modifications and Directing Utility Filings (issued May 20, 2016).

[66] Customers with eligible arrears less than the up to credit cap will receive a credit equaling their actual eligible arrears balances. Customers with eligible arrears greater than or equal to the up to credit cap will receive a credit equal to the up to credit cap.

meaningful relief – including complete arrears resolution for as many customers as practicable, while limiting overall program costs to ratepayers. In consideration of the data and completed analyses, the Phase 2 Report recommended that the cap of the "up to" credit for each utility be set at an amount per utility where at least 75 percent of eligible accounts would have their covered arrears fully resolved. The Commission agrees with this approach and adopts the recommended "up to" credit caps because they achieve the balance of providing much needed financial relief to customers while keeping overall program costs below the more conservative "cost of inaction" estimate.

The Phase 2 Report notes, however, that a different approach is necessary for Con Edison and KEDNY, as well as their eligible customers. Specifically, Con Edison and KEDNY would maintain significantly higher arrears on a percentage basis than the State's other regulated utilities under the scenario where full arrears relief is provided for 75 percent of eligible New York City-based customers. The Phase 2 Report thus recommends that a higher percentage of Con Edison and KEDNY customers receive full relief for arrears accrued through May 1, 2022.

Data provided in Attachment A of the Phase 2 Report indicates arrears levels as of September 2022 were at 287 percent of pre-pandemic levels for Con Edison customers and 328 percent of pre-pandemic levels for KEDNY customers. The State's remaining utility customers were at levels below 200 percent, with the exception of KEDLI at 235 percent and Central Hudson at 795 percent.[67] The New York State Department of Labor's statistics also indicate New York City has experienced consistently higher unemployment rates since the pandemic began compared to the rest of State. Recognizing the unique impacts

---

[67] See footnote 63, <u>supra</u>.

felt to customers in New York City, the Commission finds it reasonable to provide an arrears relief "up to" credit addressing the full arrears of approximately 89 percent of eligible New York City-based utility customers, as depicted in Attachment E of the Phase 2 Report. Doing so results in comparable levels of arrears remaining after the application of Phase 2 credits at each utility. In other words, the higher arrears relief credits will move total remaining customer arrears balances for Con Edison and KEDNY customers closer to those of the rest of the State. The Commission therefore directs the Joint Utilities to apply appropriate credits capped at the "up to" credit amounts for each utility shown in Attachment E, page 4 of the Phase 2 Report, to the residential non-EAP and small-commercial customers.

The Phase 2 Report estimates that the statewide cost of the Phase 2 program arrears credits would be $672.1 million, which would provide relief to 478,074 residential non-EAP customer accounts and 56,007 small commercial customer accounts. To derive the estimated cost of the total eligible arrears credits, the JU first provided eligible arrears based on data showing that residential non-EAP and small-commercial customers still have arrears of $740 million through May 1, 2022, as of November 2022, as shown on Attachment E to the Phase 2 Report. The Phase 2 Report assumed that customers would continue to pay down past due balances as the Commission considered the Phase 2 Report. Understanding that arrears payments are applied to the oldest amounts owed by the customer, the Phase 2 Report assumes a 10 percent reduction to the November 2022 eligible arrears balances or $74 million in payments that would reduce the arrears credits needed to achieve the Phase 2 program objectives. This $74 million in projected payments was thus subtracted from the $740 million to arrive at $666 million. In addition, National Fuel's budget includes an increase of approximately $6.1 million associated with a projection of customers that were terminated in 2022 and may take advantage of the Phase 2 program. Adding this cost results in an overall financial outlay or arrears credit cost of $672.1 million. These credits, combined with the $168.9 million in carrying costs and the $169 million in residual incremental arrears, encompass the program budget of $1.010 billion. Of note, there will be no administrative costs associated with the approach adopted here because there are no applications, and the one-time credit is automatically applied to eligible customer bills.

Terminations

The Phase 2 Report states that the utilities plan to apply program credits to eligible customers as soon as practicable, with the goal of providing the credit to the majority of such customers within 90 days of Commission issuance of an order.

The Joint Utilities shall work expeditiously to process the majority of Phase 2 program credits within 90 days of the effective date of this Order. To protect customers while the credits are being issued, and to allow adequate time for the utilities to apply the arrears relief credits, the Commission adopts the proposal to suspend residential terminations while credits are being applied to accounts through March 1, 2023, or 30 days after credits have been applied to the account, whichever is later in time.

Uncollectibles

In the Phase 1 Order, the Commission noted that a significant reduction in arrears could lower uncollectible expenses incurred by the utilities to an amount below the level established in each utility's delivery rates. The Commission agrees with the Phase 2 Report's assessment that the combination of the Phase 1 and Phase 2 programs could be broad enough to materially lower the uncollectible expenses included in utilities' rate plans. Several utilities are already authorized to reconcile their uncollectible expenses or are pursuing a reconciliation in a separate proceeding.

Nonetheless, National Grid and National Fuel have proposed an uncollectible expense reconciliation mechanism in the context of this proceeding and shall make a filing with the Commission, no later than 30 days from the effective date of this Order, describing the proposed mechanism. At a minimum the filing is to include: (a) the period covered by the uncollectible expense reconciliation mechanism; (b) whether a surcharge or deferral mechanism would be proposed and, if a surcharge mechanism is being proposed, the utility should indicate whether it would be a separate surcharge or be included in an existing surcharge (e.g., Monthly Adjustment Clause), as well as whether the surcharge should be subject to a cap; (c) the proposed carrying cost rate on any deferred balances; and (d) the impact on prior period earnings resulting from an uncollectible reconciliation had such a reconciliation been in effect during the proposed reconciliation period. Further, the filing shall include the actual amount of any over or under recoveries (i.e., net write-offs versus base rate allowance) for the period of March 2020 through October 2022 and a forecast of the over or under recoveries for the period of November 2022 to the proposed reconciliation end date.

Economic Development Funds & Other Deferrals

The Phase 2 Report proposes the cost of the Phase 2 program be mitigated by using approximately $11.1 million in previously collected economic development funds. These funds represent monies collected from customers that are no longer needed to fund the utilities' current economic development programs. In addition, National Fuel has proposed to further reduce the costs of its Phase 2 program by using $5.8 million in deferred low-income program funds. Under normal circumstances, these funds in all likelihood would be returned to customers in each utility's next base rate proceeding. Thus, the Commission finds it appropriate to use the deferred economic development and low-income program funds to mitigate the cost of the Phase 2 program. Such a measure would not only reduce the cost of the program but utilize the funds in a manner that provides economic relief to customers when it is most needed.

Shareholder Contributions

In the Phase 1 Order, the Commission noted that the arrears to be addressed in Phase 2 are likely to be significant, thus, material shareholder contributions from the utilities will be necessary towards resolving those arrears. As shown in Table 4 of the Phase 2 Report the utilities, in aggregate, have committed to providing over $101 million in shareholder contributions. This contribution would be on top of the utility shareholder contributions of $36.2 million made in the context of the Phase 2 program. Similar to Phase 1, the shareholder contribution at issue here would represent the carrying costs associated with the incremental arrears through calendar year 2022.

Several of the members of the Working Group expressed concerns regarding the level of shareholder contributions being committed to addressing the arrears accrued by residential non-EAP and small commercial customers. PULP, AGREE, CLP, and LIPC proposed that shareholders contribute at least 50 percent of the costs of the Phase 2 arrears relief credits and related carrying costs. AARP proposed one third of the Phase 2 program costs be covered by shareholders. The City advocated for greater shareholder contributions to minimize the bill impacts to customers and more equitably split the Phase 2 program costs between shareholders and customers. In addition, several of the stakeholders argued that additional shareholder contributions are necessary given that the utilities have largely protected from the cost impacts associated with the COVID-19 pandemic as a result of various regulatory mechanisms.

The Joint Utilities assert that they have provided a significant shareholder funds that far exceed what has been done in other jurisdictions to address the increase in arrears as a result of the COVID-19 pandemic. Further, the Joint Utilities argue that any additional shareholder contributions would result in a reduction in each utility's credit quality metrics and negatively impact how the investment community views the New York regulatory environment, leading to an increase in the cost of capital that would ultimately be borne by customers.

The Commission considered several factors in deciding whether the proposed shareholder contributions provided by the utilities toward the Phase 2 program are sufficient. The Commission finds that the policy analysis used in the Phase 1 Order is also applicable here. In the Phase 1 Order, the Commission examined the shareholder contribution against several criteria, including whether it assisted in providing an equitable resolution of the arrearage problem between shareholders and customers, the potential effects on the credit rating of individual utilities and the utilities in total, and the fact that the moratorium on shutoffs was imposed on the utilities by statute, resulting in the utilities be required to provide service to over a million customers potentially unable to pay their bills in whole or in part for the entire duration of the 2020-2021 and 2021-2022 moratoria.[68] The Commission also

[68] See Phase 1 Order, p. 33-37.

considered the fact that the shareholder contributions being provided towards the Phase 2 program exceed what is or could be required under the utilities' existing tariffs. Additionally, the Joint Utilities' concern regarding credit quality metrics and how the investment community views the New York regulatory environment is a factor to consider.

While it would be difficult to predict with total certainty the cost impact of a credit downgrade, the Joint Utilities asserted that "regulatory support for proactively addressing the arrears issue through an arrears reduction program will be looked favorably upon by credit rating agencies."[69] The Working Group discussed the possibility that the utilities' respective credit quality metrics could be impacted by Commission action on the proposed Phase 2 program; however, whether program implementation results in a negative or positive impact on credit ratings would likely be dependent on the level of additional shareholder contributions.

The Commission finds that, taking into consideration all of the factors noted above, the level of shareholder contributions committed by the utilities to address the Phase 2 program is reasonable. The moratorium on shutoffs was imposed by statute and for a period of almost eighteen months. Outside of the housing rental business which received almost $2 billion in public funds in New York to stabilize its financial situation, and no shareholder contribution(s), no similarly lengthy moratoria and financial burdens were imposed on any other industries in New York by action of New York law during the COVID-19 pandemic. The moratorium resulted in the utilities financing their operating costs during the moratorium when many customers were unable to pay their utility bills in whole or in

[69] Phase 2 Report, p. 11.

part. These carrying costs that the shareholders have agreed to contribute to the Phase 2 program are significant. It is also more likely than not that the utility rating agencies and investment community could view additional shareholder contributions unfavorably, thus downgrading the utilities and increasing the costs of their access to credit, a factor that was presumably examined by other states' public service and public utility commissions considering similar issues.[70] The Commission finds that the balance struck here between shareholder contributions, utilization of other deferrals and charitable inputs on the one hand, and ratepayer contributions on the other, achieves historic and significant arrears relief statewide and lowers overall future costs to ratepayers statewide without imposing undue burdens upon ratepayers.

Recovery of Program Costs

The Commission finds the recommendation to recover the Phase 2 program costs through a surcharge to be reasonable, up to the estimated program budget of $672.1 million, excluding deferrals and offsets and associated carrying charges, as shown in Attachment F to the Phase 2 Report. The proposed recovery is consistent with the methodology the Commission adopted for Phase 1 program costs and minimizes the bill impacts to approximately 0.5 percent by recovering the program costs over time. The program costs consist only of the arrears credits and the associated carrying charges, are lowered by deferral (and potentially offsets), and do not include additional administrative costs.

National Grid proposes to offset the program costs by $59.4 million, in total for its affiliates – NMPC, KEDNY, and KEDLI. National Fuel proposes reducing its Phase 2 program cost

[70] See Minnesota Public Utilities Commission docket No. E,G999/CI-20-492 at https://bit.ly/3invDG3.

by $12.7 million. These utilities proposed these offsets as part of the uncollectible reconciliation proposal, shown on Attachment F to the Phase 2 Report, and the offsets were shown to reduce the collection periods because the bill impacts are constrained to approximately 0.5 percent. Because the uncollectible expense reconciliation proposals will require further review and approval from the Commission, the application of the proposed offsets and collection periods will be determined when the Commission rules on the uncollectible expense reconciliation filings.

For utilities that cannot allocate costs as described in the EAP report because they are currently undergoing a transition to a new billing system, these companies shall allocate the costs in a manner that is allowed within the limits of the existing billing system. However, these utilities shall transition to an allocation consistent with base delivery rates once the new billing systems are deployed. To track this issue, the utilities at issue must file with the Secretary to the Commission by March 31, 2023, an estimated date by which the new billing system is expected to go live must be filed. Annually thereafter, these utilities shall provide an update on the status of the implementation of the new billing system, and when the allocation methodology would be updated. If the allocation methodology is unchanged because the new billing system has not yet been implemented, the reporting will continue until December 31, 2032.

As previously noted in comments, many stakeholders agree with providing relief to customers impacted by the pandemic but are concerned with the overall impact the program costs will have on all ratepayers. Table 3 in the Phase 2 Report provides the projected program cost as provided by each utility. Understanding that any arrears payment made are applied to the oldest arrears, the program costs in Table 3 would be expected to decrease going forward. However, to ensure program costs are held at no greater than the amounts presented in the Phase 2 Report, the Commission finds it appropriate to implement a cap on the program costs for each utility, excluding deferrals, offsets and carrying charges, as shown in Attachment F to the Phase 2 Report.

The Commission has concerns with the accuracy of some of the data reported by the utilities, due to issues – still under review by the Commission – regarding the implementation of new complex billing systems in some areas of the State.[71] The Commission thus directs the Joint Utilities to verify by each utility's Chief Operating Officer (or an agent with the capacity to bind the corporation) any and all reports and financial data submitted to the Secretary to the Commission pursuant to this. The actions taken in this Order are made in reliance upon the accuracy of the data submitted by the utilities, and thus the filings made pursuant to this Order are subject to any and all legal recourse available to the Commission for verification and enforcement. If any of the reports or financial data filed with the Commission are later found by a utility to be inaccurate in any way, that utility has a duty to immediately notify the Commission of the inaccuracies.

<u>Accounting Treatment</u>

To effectuate the Phase 2 program, the utilities shall defer the amount of the arrears relief being provided, net of

---

[71] See one example, Case 22-M-0645, <u>Proceeding on Motion of the Commission Concerning Central Hudson Gas & Electric Corporation's Development and Deployment of Modifications to its Customer Information and Billing System and Resulting Impacts on Billing Accuracy, Timeliness, and Errors</u>, Order to Commence Proceeding and Show Cause, (issued December 15, 2022).

any economic development funds or additional deferrals, for recovery from customers. The deferred balance, net of tax, shall accrue carrying costs at each utility's Commission-authorized weighted average cost of capital. The utilities shall amortize the deferred balances over the proposed recovery periods to achieve the estimated residential bill impacts of approximately 0.5 percent.

Standard Deferred Payment Agreements

Currently in New York, DPAs are the most important tool for customers to help manage their arrears. Under HEFPA, utilities must offer DPAs that are tailored to the customer's financial circumstances and with terms as low as zero down payment with $10 per month payments, a "Minimum DPA", or a "Standard Offer Deferred Payment Agreement." The Working Group reviewed each of the utility's communications to customers when it provided a standard DPA, including communications related to modifications that emphasized the customers' rights under the HEFPA. The improved communications highlighted the development of a payment agreement based on the customer's ability to pay, with terms of a minimum DPA, or zero down payment and $10 per month.

The Commission acknowledges that customers who receive the Phase 2 program relief credit will still have some arrears after the credit is applied because it will only resolve arrears accrued through May 1, 2022, and thus customers receiving arrears relief under this program will likely need to enter into a payment agreement to avoid termination of service. Therefore, the Commission agrees with the Phase 2 Report's recommendation to make improvements to the utility's communications surrounding DPA offerings as contained in Attachment G to the Phase 2 Report. The Commission reviewed the proposed revisions, which more prominently specify the customers' rights under HEFPA to an equitable and affordable agreement based on the customers' ability to pay. The Commission directs the Joint Utilities to make these communication improvements. The Joint Utilities shall implement their revised communications within 30 days of the effective date of this Order.

Outreach and Education

The Phase 2 Report includes plans for a multi-pronged outreach effort designed to foster customer understanding of the Phase 2 program "up to" credit, the eligibility criteria, and the applicable arrears timeframe. The Phase 2 Report recognized that the various stakeholders intend to utilize multiple outreach and education channels, including, but not limited to, bill inserts, letters, social media, and postings on individual websites. Also, the Joint Utilities will continue their communication efforts regarding information about payment assistance, including DPAs. The Joint Utilities shall file their Phase 2 outreach and education plans, including information regarding payment assistance and DPAs, within 30 days of the effective date of this Order.

Tariffs

The Joint Utilities shall file tariff amendments, if necessary, and statements, effective February 1, 2023, to effectuate the recovery of the Phase 2 program costs as authorized in this Order. The tariffs shall be filed on no less than five days' notice and shall be effective on a temporary basis until approved by the Commission. The requirements of Section 66(12)(b) of the PSL and 16 NYCRR Section 720-8.1 that newspaper publication be completed prior to the effective date of the tariff amendments are waived. However, the utilities are directed to file with the Commission in Case 14-M-0565, no later than six weeks following the amendments' effective date, proof that a notice to the public of the changes made by the amendments has been published once a week for four successive weeks in newspapers having general circulation in the areas affected by the amendments. To the extent practicable, the Joint Utilities shall convene and develop common tariff language to promote consistency across utility service territories.

Reporting

The Commission directs that the Joint Utilities provide the total number of customer accounts receiving Phase 2 program credits and the total costs associated with the Phase 2 program. The information shall be reported in Cases 14-M-0565 and 20-M-0266 on a monthly basis, until all credits are applied, consistent with the monthly reporting schedule adopted in the Phase 1 Order. Each report shall show the prior month's data as well as all prior month's data since the inception of the Phase 2 program. A final Phase 2 monthly report shall be filed by each utility by August 31, 2023.

For the utilities that implement the ratepayer-funded arrears reduction program, each shall file an annual arrears reduction report, in a manner to be specified by Staff, no later than March 31 of each year on the costs (carrying charges) and recoveries of the Phase 2 program and address any reconciliations necessary. Such arrears reduction reports shall also include the actual journal entries recorded by the utilities to account for the costs and recoveries during the previous year. This annual report will continue until recoveries and reconciliations are completed. To the extent practicable, utilities shall file Phase 1 and Phase 2 program data in the same report and delineate between the programs.

CONCLUSION

New York is emerging from going on three-years' worth of economic and social impacts associated with the COVID-19 pandemic, particularly with respect to its most vulnerable residents. As explained here and in the Phase 1 Order, the pandemic resulted in billions of dollars-worth of utility arrears. The Commission must continue to take comprehensive action to resolve the remaining utility arrears that have accrued through May 1, 2002, which is key to ensuring that New York's utilities have sufficient financial tools to continue meeting both their obligation to provide safe and adequate service and the State's renewables and decarbonization mandates. In short, the Commission finds that this Order reasonably addresses the remaining arrears that have accrued through May 1, 2022. Moreover, the Commission firmly believes that this Order – along with the Phase 1 Order – are necessary predicates to restoring normal processes and outcomes to utility customers and the utility industry. The Commission expects that the Working Group will remain intact for the purpose of monitoring the reports to be submitted through this Order and otherwise consider additional measures to advance utility bill affordability in New York.

<u>The Commission orders:</u>

1. The Phase 2 Utility Arrears Relief Program developed by the Energy Affordability Policy Working Group is approved, as discussed in the body of this Order.

2. Central Hudson Gas and Electric Corporation, Consolidated Edison Company of New York, Inc., National Fuel Gas Distribution Corporation, The Brooklyn Union Gas Company d/b/a National Grid NY, Keyspan Gas East Corporation d/b/a National Grid, Niagara Mohawk Power Corporation d/b/a National Grid, New York State Electric and Gas Corporation, Rochester Gas and Electric Corporation, and Orange & Rockland Utilities, Inc. are directed to address arrears on (1) residential non-energy

affordability program ratepayer accounts that did not receive a credit under the Commission's Phase 1 program, and (2) small-commercial ratepayer accounts, by issuing a one-time bill credit, with contemporaneous notice, to such customers to reduce or eliminate accrued arrears through May 1, 2022, consistent with the discussion in the body of this Order. These utilities shall process the Phase 2 Utility Arrears Relief Program credits within 90 days of the effective date of this Order, provided that residential non-EAP customers who had their service disconnected for non-payment in 2022 shall be allowed the opportunity to have their service reinstated in order to receive a Phase 2 Utility Arrears Relief Program Credit through June 30, 2023, consistent with the discussion in the body of this Order.

3. Prior to applying Phase 2 Utility Arrears Relief Program credits to customer accounts, and within 30 days of the effective date of this Order, the utilities identified in Ordering Clause No. 2 shall file a sworn attestation under penalty of perjury by the utility's Chief Operating Officer to identify and certify the accuracy of customers' arrears balances for (1) residential non-energy affordability program ratepayer accounts that did not receive a credit under the Commission's Phase 1 program, and (2) small-commercial ratepayer accounts, accrued through May 1, 2022.

4. The utilities identified in Ordering Clause No. 2 shall suspend residential service terminations for non-payment while arrears credits are applied to accounts through March 1, 2023, or 30 days after credits have been applied by the incumbent utility, whichever is later, consistent with the discussion in the body of this Order.

5. Beginning March 1, 2023, and continuing on a monthly basis through August 31 2023, the utilities identified in Ordering Clause No. 2 and recovering funds under the Phase 2

Utility Arrears Relief program authorized by this Order shall file reports on the disbursement of such funds including the total number of customer accounts receiving arrears credits, and total dollars associated with arrears credits, with any and all reports and financial data filed pursuant to this Order verified by the utility's Chief Operating Officer, consistent with the discussion in the body of this Order.

6. The utilities identified in Ordering Clause No. 2 shall file an annual arrears reduction report, beginning in 2024, no later than March 31 of each year on the costs (carrying charges) and recoveries of the Phase 2 arrears reduction program and address any reconciliations necessary, with any and all reports and financial data filed pursuant to this Order verified by the utility's Chief Operating Officer, consistent with the discussion in the body of this Order. Such arrears reduction report shall also include the actual journal entries recorded by the utilities to account for the costs and recoveries during the previous year, and the receipt and usage if applicable of any additional federal, state, or other government funds appropriated or allocated for use to resolve customer arrears.

7. The utilities identified in Ordering Clause No. 2 shall file, in conformance with the discussion in the body of this Order, revised tariff leaves on not less than five days' notice to become effective, on a temporary basis, on February 1, 2023.

8. The requirements of Public Service Law §66(12)(b) and 16 NYCRR §720-8.1, that newspaper publication of the tariff amendments required in Ordering Clause No. 11 be completed prior to the effective date of the tariff amendments, are waived. The utilities identified in Ordering Clause No. 2 are directed to file with the Commission, not later than six weeks following the amendments' effective date, proof that a notice to the public of

the changes made by the amendments has been published once a week for four successive weeks in newspapers having general circulation in the areas affected by the amendments.

9. Consistent with the discussion in the body of this Order, utilities that have proposed an uncollectible expense reconciliation mechanism in the context of this proceeding shall, no later than 30 days from the effective date of this Order, make a filing describing their proposed reconciliation mechanism. At a minimum the filing shall include: (a) the period covered by the uncollectible reconciliation mechanism; (b) a recovery mechanism (e.g., surcharge or deferral), whereby if a surcharge mechanism is being proposed the utility should indicate whether it would be a separate surcharge or be included in an existing surcharge (e.g., Monthly Adjustment Clause) as well as whether the surcharge should be subject to a cap; (c) the proposed carrying cost rate on any deferred balances; and (d) the impact on prior period earnings resulting from an uncollectible reconciliation had such a reconciliation been in effect during the proposed reconciliation period. Further, the filing shall include the actual amount of any over/under recoveries (i.e., net write-offs versus base rate allowance) for the period of March 2020 through October 2022 and a forecast of the over/under recoveries for the period of November 2022 to the proposed reconciliation end date.

10. The utilities identified in Ordering Clause No. 2 are authorized to utilize the identified deferred economic development funds to mitigate the cost of the Phase 2 Utility Arrears Relief Program, consistent with the discussion in the body of this Order. Additionally, National Fuel Gas Distribution Corporation is authorized to utilize deferred low-income program costs to mitigate the cost of the Phase 2 Utility

Arrears Relief Program, consistent with the discussion in the body of this Order.

11. Any utilities identified in Ordering Clause No. 2 that must update the allocation methodology following the implementation of a new billing system shall file by March 31, 2023, an estimated date by which the new billing system is expected to go live. Annually thereafter, these utilities shall provide an update on the status of the implementation of the new billing system, and when the allocation methodology would be updated. This reporting shall continue until December 31, 2032 if the allocation methodology is unchanged because the new billing system has not yet been implemented.

12. The utilities identified in Ordering Clause No. 2 shall, within 30 days of the effective date of this Order, file confirmation that the revised deferred payment agreements and communications process have been implemented, consistent with the discussion in the body of this Order.

13. The utilities identified in Ordering Clause No. 2 shall, within 30 days of the effective date of this Order, file their Phase 2 outreach and education plans, including information regarding payment assistance and DPAs, consistent with the discussion in the body of this Order.

14. In the Secretary's sole discretion, the deadlines set forth in this Order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least three days prior to the affected deadline. In addition, given the potential for an extension of the deadlines set forth in this Order to impact overall program costs, any request for an extension must also address the cost impact, if any, of granting such an extension.

15. Case 20-M-0266 is closed.

16. Case 14-M-0565 is continued.

By the Commission,

(SIGNED) MICHELLE L. PHILLIPS
Secretary