GAS SAFTEY AND RELIABILITY PANEL

BEFORE THE
NEW YORK STATE
PUBLIC SERVICE COMMISSION

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Joint Petition of IBERDROLA, S.A.,
Energy East Corporation, RGS Energy Group, Inc.,
Green Acquisition Capital, Inc.,
New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation for Approval of the Acquisition of Energy East Corporation by IBERDROLA, S.A.

Case 07-M-0906
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REBUTTAL TESTIMONY OF
GAS SAFETY AND RELIABILITY PANEL

Michael D. Eastman
Alan L. Matthews

January 31, 2008

I. **INTRODUCTION**

Q. Please state the names of the members on this Gas Safety and Reliability Panel (the “Panel”).

A. Michael D. Eastman and Alan L. Matthews.

Q. Mr. Eastman, please state your current position and business address.

A. My current position is Vice President - Gas Assets for New York State Electric & Gas Corporation ("NYSEG") and Rochester Gas and Electric Corporation ("RG&E"). My business address is 1300 Scottsville Road, Rochester, NY 14624.

Q. Please summarize your educational background and work experience.

A. I have an A.S. degree in Engineering Sciences from Broome Community College and a Bachelor of Mechanical Engineering Technology degree from the State University of New York at Binghamton. I have 27 years of utility gas experience in field operations, field and corporate engineering and gas business management functions. In addition, I was U.S. Business Development Manager for natural gas materials manufacturer UPONOR Aldyl of Oklahoma.

Q. Have you previously testified in other proceedings before the New York State Public Service Commission (“PSC” or the “Commission”) or other state or federal regulatory agency or court?

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A. Yes, I have previously testified in other gas proceedings before the New York State Public Service Commission, the Maine Public Utilities Commission and the Vermont Public Service Board.

Q. Mr. Matthews, please state your current position and business address.

A. I am currently Director – Gas Engineering for NYSEG and RG&E. My business address is 1300 Scottsville Road, Rochester, NY 14624.

Q. Please summarize your educational background and work experience.

A. I graduated from Pennsylvania State University in 1977 with a Bachelor's of Science degree in Civil Engineering. I received a Masters in Business Administration from Alfred University in 2003. I am a licensed Professional Engineer in New York State. I have been employed in the utility operations and engineering field for over 29 years. I have worked in gas operations and engineering for 17 years, including management positions in field operations, field engineering and corporate engineering. In addition, I worked in the electric generation field for 12 years at NYSEG and Penelec.

Q. Have you previously testified in other proceedings before the Commission or other state or federal regulatory agency or court?

A. No, I have not.

Q. What is the overall purpose of the Panel's testimony?

A. The purpose of our testimony is to respond to the direct testimony of the Department of Public Service Staff ("Staff") Gas Safety Panel, which consists of

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the testimony of Steven Blaney and Christopher R. Stolicky. In addition, Mr. Meehan, on behalf of the Joint Petitioners, addresses the Gas Safety Panel's comparison between the proposed transaction and the recent National Grid/KeySpan merger (Case 06-M-0878 – <u>Joint Petition of National Grid PLC and KeySpan Corporation for Approval of Stock Acquisition and other Regulatory Authorizations</u>, Order Authorizing Acquisition Subject to Conditions and Making Some Revenue Adjustments for KeySpan Energy Delivery New York and KeySpan Energy Delivery Long Island (issued Sept. 17, 2007) (the "GRID/KeySpan Merger")), and explains why the comparison is inappropriate. Our testimony rebuts Staff's recommendations to implement more stringent safety-related metrics and revenue adjustments for NYSEG and RG&E than are currently in place under each company's rate plan. We demonstrate that each of the revised gas safety performance measures proposed by Staff is arbitrary, unnecessary, excessive and punitive because NYSEG and RG&E consistently meet or exceed the current safety and reliability targets, and consistently out-perform most of the other local distribution companies ("LDCs") in the state in every category. We rebut Staff's erroneous assertion that the acquisition of Energy East by Iberdrola proposes "business as usual" and provides no benefits to customers, and we demonstrate the inappropriateness of Staff's comparison of the proposed transaction with the recent KeySpan/National Grid Merger As Mr. Meehan explains in his rebuttal testimony, the financial risks that the Commission

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identified in the GRID/KeySpan Merger are not present in this transaction. Accordingly, there is no justification for increasing the gas safety and reliability standards applicable to NYSEG and RG&E.

Q. Does the Proposed Transaction create gas safety and reliability issues?

A. No, it does not. No changes to NYSEG's and RG&E's operations are anticipated as a result of the transaction, and therefore, the issue of gas safety and reliability is irrelevant in the context of this proceeding. Staff admits that at least some of its proposed enhancements are irrelevant to the transaction on page 18 of the Gas Safety Panel testimony where it states,"[T]he need to replace leak-prone pipe on a more expedited basis is not dependent on a merger or related to what business entity owns the LDC." We believe Staff's admission on this point is true of all of the Gas Safety Panel's proposed enhancements. It is inappropriate for Staff to attempt to use this proceeding as an opportunity to impose more stringent gas safety and performance standards on NYSEG and RG&E than are currently required.

Q. Do you agree that Staff's proposed measures are necessary in order to provide incentives to the Companies not to deteriorate in the area of safety and reliability following the acquisition of Energy East by Iberdrola?

A. No. In light of the Companies' excellent safety record there is no need to change their performance metrics or associated revenue adjustments because of the pending transaction with Iberdrola. Staff's assumption that the acquisition will

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cause NYSEG and RG&E's safety and reliability standards to deteriorate is arbitrary and without foundation. In fact, because no change in operations is anticipated as a result of the transaction and because NYSEG's and RG&E's customer bases will not change, the evidence indicates that the Companies' performance will continue to be excellent and to improve.

Q. Is this Panel sponsoring any exhibits?

A. Yes, Staff's response to Information Request DPS-120 is attached as Exhibit __(GSRP-1). The 2006 Gas Safety Performance Measures Report (the "2006 Safety Report"), prepared by Staff, is provided as Exhibit ___(GSRP-2).

Q. Are NYSEG and RG&E subject to safety-related targets pursuant to their current gas rate plans?

A. Yes. NYSEG is subject to targets and associated revenue adjustments related to infrastructure enhancements, leak management, damage prevention and emergency response times, established in Case 01-G-1668, as modified in 2005 (Case 01-G-1668 -- Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of New York State & Electric Corporation for Gas Service, Order Establishing Steel Mains Replacement Program (issued November 7, 2005) ("2005 NYSEG Order and JP"). RG&E is subject to similar targets and revenue adjustments adopted by the Commission in Case 03-G-0766, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Rochester Gas and Electric Corporation for Gas Service (issued

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May 20, 2004) ("2004 RG&E Order and JP"). The targets for both companies continue in effect through 2008, and from year to year unless modified by the Commission. It is inappropriate for Staff to attempt in the context of this transaction to reopen the gas safety and reliability targets it agreed to in prior proceedings.

Q. Explain the purpose of the Gas Safety Performance Measures Report, Exhibit __(GSRP-2).

A. The Gas Safety Performance Measures Report, attached as Exhibit __(GSRP-2), which is prepared and issued annually by Staff, examines the performance of all LDCs in the state of New York in the areas pertaining to safety, damage prevention, emergency response and leak management. The 2006 Safety Report displays performance data for every LDC for every year from 2003 through 2006 for each category and reports the results for 2006. The purpose of the gas safety performance measures is to improve gas delivery system safety by measuring the performance of LDCs in the areas identified as presenting the greatest risks. See Exh. __(GSRP-2) at 2. The 2006 report demonstrates that NYSEG and RG&E have consistently met or exceeded their current safety-related targets, and consistently matched or out-performed the top performing LDCs in the state in every area pertaining to safety and reliability.

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Q. Does the Panel have any preliminary comments regarding the Staff's proposed "enhancements" to the current safety and performance measures applicable to NYSEG and RG&E?

A. Yes. The proposed measures are unnecessary, excessive and, in many instances, redundant because NYSEG and RG&E have demonstrated a commitment to gas safety and reliability and do not need additional "incentives" in the form of harsher standards and higher revenue adjustments to continue this commitment. As more fully discussed below, the evidence is uncontroverted that RG&E's and NYSEG's performance has improved significantly over the last five years, and in 2006, the Companies ranked among the top performers in the state in virtually every area. Neither NYSEG nor RG&E is cited in the 2006 Safety Report for poor performance in any category, and neither company is singled out as requiring improvement for any safety measure. In fact, there are several instances in the report where Staff acknowledges the superior performance of NYSEG or RG&E. (e.g., NYSEG is among the better performers in the state in the area of leak repairs; NYSEG improved 42% in the total damages per ticket measure; and NYSEG and RG&E are "among the best in the State" in the damage mismarks category). It is noteworthy that in the Recommendations section, NYSEG and RG&E are the only LDCs in the State in 2006 that were not required to "self-assess their performance" and "respond with action plans on how to improve performance in the future." See Exhibit. __(GSRP-2) at 27.

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Q. Please comment on Staff's assertion that the transaction promises "business as usual" with no demonstration of benefits for customers in the area of safety and reliability.

A. As an initial matter, "business as usual" seems to mean continued strong performance using the metrics referred to above. Moreover, Messrs. Azagra, Rude, and Laurito have testified and, as identified in the Joint Petition and in the Petitioners' initial testimony, the acquisition of Energy East by Iberdrola will provide benefits to NYSEG's and RG&E's customers. In addition, notwithstanding the pending acquisition, NYSEG and RG&E continually strive to find ways to improve the quality and safety of their service by instituting safety related-improvements that are necessary for system safety and reliability.

II. **TESTIMONY**

A. **Leak-Prone Mains and Services**

Q. What are NYSEG and RG&E’s current requirements for Infrastructure Enhancements?

A. Pursuant to the 2005 NYSEG Order and JP relating to NYSEG's cast iron mains replacement program, NYGEG is currently required to replace 15 miles of bare steel mains (defined as "uncoated steel mains, wrought iron mains and ineffectively coated mains") each year, and is subject to a $100,000 revenue adjustment for failure to meet this target (JP, Section III.B.1.a). Under the 2002

Joint Proposal in Case 01-G-1668, NYSEG is required to replace a minimum of 1,900 leak prone services annually, and to replace an average of 2,000 services per year over the period of 2003-2008. Failure to meet this requirement is subject to a revenue adjustment of $150,000. Pursuant to the 2004 RG&E Order and JP, RG&E is required to replace 15 miles of cast iron and bare steel leak-prone pipe and 1,000 miles of services. Failure to achieve these metrics will subject RG&E to a revenue adjustment of $50,000.

Q. Does Staff base the need for NYSEG and RG&E to expedite the replacement of leak-prone mains and services on the pending transaction with Iberdrola?

A. No. In fact, Staff admits on page 18 of the Gas Safety Panel testimony that the new measures have no relevance to the transaction between Energy East and Iberdrola. Specifically, Staff states, "the need to replace leak-prone mains and services on a more expedited basis is not dependent on a merger or related to what business entity owns the LDCs." Therefore, Staff appears to be inappropriately using this docket as an opportunity to reopen NYSEG's and RG&E's existing targets although it expresses no concerns related to the transfer of control.

Q. Have NYSEG and RG&E met or exceeded its mains and services targets during the last five years?

A. Yes. NYSEG has exceeded the leak-prone main replacement and bare steel service replacement targets currently in effect. From 2003 to 2005, in accordance with the requirements then in effect for Cast Iron Main Replacements under the

December 2002 Order in Case 01-G-1668, NYSEG replaced 8.51, 8.44 and 8.28 miles of cast iron pipe each year. For the years 2006 through 2007, under the increased levels established in the 2005 NYSEG Order and JP, NYSEG exceeded the 15-mile minimum requirement and replaced 15.67 miles of leak prone main in 2006 and 15.37 miles in 2007. With respect to bare steel services, NYSEG exceeded its minimum requirement of 1,900 and met the required average for the period of 2,000 by replacing 2,173 services in 2003, 2,148 in 2004, 2,167 in 2005, 2,093 in 2006 and 1,954 in 2007. RG&E has also exceeded its leak-prone main replacement target for the years 2004 through 2007. RG&E's bare steel and cast iron main replaced as part of the priority pipe replacement program from 2004 through 2007 are as follows: 16.60, 16.24, 15.69 and 16.21 miles for each year from 2004 through 2007. The yearly bare steel services that RG&E replaced over the same period total 1,388, 1,225, 1,278 and 1,222 for each year.

Q. Summarize Staff’s proposal with respect to Infrastructure Enhancement – Replacement of leak-prone pipe and services.

A. Staff recommends that effective in 2008, at a minimum, NYSEG replace 20 miles of leak-prone main and 2,500 leak-prone services. RG&E should be required to replace 20 miles of leak-prone main and 2,000 leak-prone services. Failure to meet either of these targets will result in a pre-tax revenue adjustment of $344,000 and $240,000 to NYSEG and RG&E, respectively.

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Q. Did the Commission revise NYSEG's incentives for cast iron main replacements two years ago?

A. Yes. The 2005 NYSEG Order and JP adopted revised gas safety metrics for NYSEG, including the requirement that NYSEG increase the minimum mileage of bare steel mains replaced annually from 8 miles to 15 miles. The Commission noted that the purpose of the 2005 Joint Proposal was to "refocus the rate plans incentives onto other gas safety activities." Id. at 2. Staff's attempt to reopen the terms of NYSEG's 2005 Joint Proposal in this proceeding is inappropriate.

Q. Are Staff's proposed "enhancements" to the infrastructure measures (leak-prone mains and services) reasonable?

A. No, it is unreasonable to expect an increase in mains replacements of approximately 30 percent at both companies and an increase in services replacements of 25 percent and 100 percent for NYSEG and RG&E, respectively. It is also unreasonable to expect the Companies to absorb the additional cost for potential backsliding in their performance for which no evidence exists. In addition, selecting a mileage and number of services to be replaced without considering the currently very low number of outstanding and newly discovered leaks by each company is arbitrary and unsupported by the performance data.

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Q. What additional steps do NYSEG and RG&E take to improve their mains and services?

A. NYSEG and RG&E were the first LDCs in the state to proactively implement a bare steel isolation program, the purpose of which is to take proactive steps to prolong the useful service life of bare steel gas mains. The bare steel main isolation program eliminates electrical contacts between bare steel gas main facilities and foreign underground structures, increasing the cathodic protection on the existing gas main, prolonging the useful life of the gas facilities and preventing future leaks from occurring. In many cases, this also prolongs the useful life of the gas services that are attached to the isolated mains.

Q. Please comment on Staff's statement that the infrastructure proposals would increase capital spending by $1.6 million for each company.

A. Staff attempts to justify no rate base treatment of its estimated $1.6 million for the increase in capital spending levels for each company for mains based upon its arbitrary assumption that *"the relative dollar amount of our recommendation is very small compared to the approximately $1 billion that shareholders and company management are slated to receive if the merger is approved."* Gas Safety Panel Test., p. 18. In fact, the capital spending increase of $1.6 million calculated by Staff for each company does not reflect the continuing escalation of construction costs in the periods between rate cases. Staff's calculation of $1.6 million for each company also relates to mains only, and does not include the capital cost for the significant increase in services replacements that Staff proposes. Staff's calculation in the work papers provided with its response to IR DPS-120 (Exhibit ___(GSRP-1)) of the incremental costs for NYSEG to replace an additional five miles of pipe is not correct because the average cost per mile Staff uses does not take into account costs that NYSEG incurs to replace the bare steel pipe as required for highway projects.

Q. Is Staff correct that its proposed infrastructure enhancements would escalate NYSEG's performance levels by only 18 percent and RG&E's by 50 percent?

A. No. Staff is attempting to minimize the harshness of its proposal by mischaracterizing the percentage increase in the required performance levels for the infrastructure measure. The percentage increases of 18 percent for NYSEG and 50 percent for RG&E on page 12, lines 21-22 of Staff's testimony are based on the Companies' historical performance levels, which exceed their current targets. Staff is attempting to make its proposal appear more reasonable by using the Companies' actual performance levels instead of the metrics. Using the metrics established in the Companies' rate plans, the increase over the current metrics would be 25 percent for NYSEG, not 18 percent, and 100 percent for RG&E, not 50 percent.

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B. **Leak Management**

Q. Describe the current leak management requirements.

A. Under the Commission's regulations, 16 NYCRR Part 255, only Types 1, 2A and 2 leaks are measured and reported, i.e., leaks that are categorized as requiring immediate effort to protect life and property, or to eliminate a hazard, and which require repair at least within one year. Type 3 leaks are minor leaks that do not require repair, but should be monitored annually in case they develop into Type 1, 2A or 2 leaks.

Q. Describe the requirements under NYSEG's and RG&E's current rate plans for leak management.

A. The requirements for each company are different. Under its current rate plan adopted in Case 03-G-066, RG&E's requirements are to maintain a level at or below 4 percent for Types 1, 2 and 2A leaks pending repair as a percentage of leaks repaired at the end of each calendar year. Under NYSEG's rate plan, as updated by the 2005 NYSEG Order and JP, NYSEG's year-end total leak backlog for Types 1, 2A, 2 and 3 leaks, must not exceed 165 in 2007 and 150 in 2008. Failure by either company to meet these targets will result in a pre-tax revenue adjustment of $100,000 for that year.

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Q. Have NYSEG's and RG&E met or exceeded its leak management performance requirements over the past 5 years?

A. Yes. NYSEG and RG&E are leading the state in the backlog of leaks requiring repair for Types 1, 2 and 2A leaks. Moreover, unlike other LDCs in the state that only repair Types 1, 2 and 2A leaks, NYSEG is required, and it is RG&E's practice, to go beyond the minimum requirements under the Commission's regulations, and to repair all leaks, including Type 3 leaks.

Q. Summarize Staff's proposal with respect to Leak Management.

A. Staff recommends that, at a minimum, NYSEG achieve a year-end backlog of total leaks no greater than 125, and for RG&E, the year-end backlog of <u>total</u> leaks must not exceed 175. Taking into account that RG&E 's current requirement includes only Types 1, 2 and 2A leaks, extending its requirement to no more than 175 <u>total</u> leaks at year end (i.e., including Type 3 non-priority leaks) is a significant increase. With respect to NYSEG, the backlog maximum under the 2005 Joint Proposal is set to decrease gradually each year (<u>i.e.,</u> no more than 175 in 2006, no more than 165 in 2007 and no more than 150 for 2008), but Staff's proposed maximum of 125 leaks starting in 2008 would implement a reduction of 40 leaks for NYSEG in a single step. This is an unreasonable target that appears to be designed to set NYSEG up for failure in its leak management program. It is also an inappropriate attempt to reopen NYSEG's 2005 Joint Proposal agreed to by Staff and approved by the Commission only two years ago.

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Q. Is Staff's proposal to increase the requirements relating to leak backlogs reasonable?

A. No, it is unnecessary, unreasonable and punitive to reduce dramatically the level of leak backlogs for NYSEG and RG&E. The Companies have demonstrated that they have implemented a rigorous program for repairing leaks. In 2006, when NYSEG's required target was a backlog not to exceed 175 leaks requiring repair, NYSEG's year-end backlog total was only 142. Based on preliminary data, under its 2007 target of no more than 165 leaks requiring repair, NYSEG's year-end result was 64. In the 2006 Gas Safety Report, Staff noted that "NYSEG remains among the better performers in this area. The company's level of repair activity remained relatively constant in 2006 compared to 2005 as it discovered approximately 10 percent fewer potentially hazardous leaks and repaired about 11 percent fewer." RG&E's performed equally well in 2006 and 2007. In 2006, RG&E's level of leaks pending repair was 2.7 percent, <u>i.e.</u>, significantly below its required 4 percent threshold, and its 2007 level is at 1.5 percent, based upon the preliminary year-end figures. Figure 9 on page 24 of the 2006 Safety Report illustrates that the Companies are out-performing most of their peers. In light of the Companies' aggressive efforts to manage their leaks and to complete repairs early, it is unreasonable to impose a backlog of no more than 125 total leaks on NYSEG and 175 total leaks on RG&E.

C. **Damage Prevention**

Q. Describe the damage prevention requirements that NYSEG and RG&E is subject to under their current rate plans.

A. For RG&E, failure to maintain a level at or below 4.0 for excavation damages per 1000 gas One-Call Tickets will result in a pre-tax revenue adjustment of $100,000 for that year. NYSEG is required to maintain an overall excavation damages per 1000 One Call Tickets of 5.0, and failure to maintain the required level for any calendar year will result in a pre-tax revenue adjustment of $50,000. NYSEG is also subject to $50,000 for failure to maintain 1.0 for mismark damages.

Q. How have RG&E and NYSEG performed under the current damage prevention measures?

A. The 2006 Safety Report demonstrates that NYSEG and RG&E are among the best performers in the state under the Damage Prevention measure, which include damages per 1000 tickets, damages due to Mismarks, damages due to Company and Company Contractors, Damages to Excavation Error, and Damages due to No-Calls. NYSEG's and RG&E's performance in each of these sub-categories of damage prevention was above the statewide average. In the area of total damages, for example, although every LDC improved in this measure, NYSEG improved by approximately 42 percent, significantly exceeding the improvement achieved by the other top performers in this category. 2006 Safety Report, p. 8. Similarly, in the area of mismarks, NYSEG improved its performance by greater than 50 percent over prior years, and was acknowledged by Staff as being “among the best in the state,” with Orange and Rockland. Id. at 11. The report also cites RG&E’s 46 percent improvement in its performance in Company and Contractors Damages, and NYSEG's improvement of 43 percent for damages due to Excavator Error. Id at 12 and 14.

Q. Please comment on Staff's allegation at pages 27-29 of its testimony that in 2007 NYSEG's and RG&E's performance appears to have slipped compared to 2006.

A. The data do not reflect the fact that major construction projects that would have occurred in 2006 were deferred to 2007 because of the widespread flooding that occurred in June, 2006. With additional construction in 2007, therefore, the opportunity for damage was increased, which affected the Companies' 2007 results under their performance metrics when compared to 2006 when there was less construction. Even with the backlog of construction projects from 2006, however, the performance of both companies in 2007 exceeded their current targets, and exceeded the levels in 2003, 2004 and 2005.

Q. Please comment on whether the implementation of the new federally-mandated 811 nationwide telephone number may have had an impact on NYSEG's and RG&E's performance in 2007

A. It is also possible that the implementation in April, 2007 of the new nationwide 811 telephone number (mandated by the Federal Communications Commission) has impacted the Companies' performance under the damage prevention metrics

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because of the increase in the number of calls from excavators. Although the new, three-digit telephone number is expected to relieve excavators from having to remember multiple telephone numbers if they work in areas covered by different one-call centers, as the rate of excavator calls to request a mark out of underground facilities increases, LDCs may be required to dedicate more resources in order to continue to meet their required targets. It is too early, however, to quantify the impact, if any, the implementation of the 811 call-in number may have had on NYSEG's and RG&E's performance.

Q. Summarize Staff's recommendations relating to the damage prevention measures.

A. Staff recommends that NYSEG should be required to maintain a level of overall excavation damages of 2.0 or below per 1000 One-Call Tickets, and RG&E should be required to maintain a level of 2.5 or below excavation damages per 1000 One-Call Tickets. Failure to achieve this target will result in revenue adjustments of $172,000 and $120,000 for NYSEG and RG&E, respectively. For damages due to mismarks, Staff recommends that both NYSEG and RG&E be required to maintain a level equal to or below .50 excavation damages due to mismarks per 1000 One Call Tickets. The mismarks revenue adjustment is $430,000 for NYSEG and $300,000 for RG&E. And for damages caused by Company Crews and Contractors, both companies should be required to maintain a level equal to or below .20 excavation damages per 1000 One Call Tickets.

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Failure to achieve this target will result in a revenue adjustment of $172,000 and $120,00 for NYSEG and RG&E, respectively.

Q. Please comment on Staff's revised damage prevention measures.

A. The proposed changes to the damage prevention metrics cause the most concern to the Companies. At page 26 of its testimony, Staff states, "If a company is performing worse than the statewide performance level, we typically recommend they improve to at least that level. *If a company is performing better than the statewide performance level, we recommend a performance target that generally discourages the company from backsliding while also providing a reasonable cushion*" (emphasis added). Contrary to the Staff's statement, the proposed increases do not provide a "reasonable cushion." Gas Safety Panel Test. p. 26. There is no evidence that any other LDC could achieve the levels Staff is proposing for NYSEG and RG&E, i.e., 2.0 and 2.5 for excavation damages per One-Call Tickets for NYSEG and RG&E, respectively, and 0 .50 for mismarks for each company.

Q. How does NYSEG's and RG&E's performance in the area of damage prevention compare to the other LDCs in the state?

A. In the 2006 Safety Report referenced in Staff's response to DPS-120 (Exhibit ___(GSRP-1)), Central Hudson, KeySpan, NGRID, National Fuel Gas, Corning and Orange & Rockland were each required to submit action plans to the Commission with proposals for improving their performance related to either

Mismarks, Excavator, Company, or Company/Contractor Damages. Because the evidence demonstrates that RG&E's and NYSEG's performance in this area presents no current cause for concern, there is no basis for imposing more stringent damage prevention requirements on NYSEG and RG&E. In neither its testimony nor its responses to discovery, Staff cited no examples of other LDCs either in New York, or elsewhere in the country that are subject to and meets such stringent damage prevention levels. Staff's proposal seeks to penalize NYSEG and RG&E for its superior performance by raising the bar to an unreasonable height and needlessly increases the likelihood of the companies failing.

D. **<u>Emergency Response</u>**

Q. Does Staff propose any changes to the existing Emergency Response measures.

A. No. Staff acknowledges that both companies are currently exceeding the targets. Therefore, its recommendation is to maintain the current level to "encourage" NYSEG and RG&E "to avoid significant deterioration in performance."

Q. Does Staff propose changes to the existing revenue adjustments associated with the Emergency Response metrics for NYSEG and RG&E?

A. Yes. Staff proposes substantial increases in the revenue adjustments for NYSEG and RG&E over current levels. Failure to respond to 75 percent of all gas leak and odor calls within 30 minutes will result in a revenue adjustment of $344,000 for NYSEG and $240,000 for RG&E. Failure to 90% of calls within 45 minutes, will result in revenue adjustments of $172,000 and $120,000 for NYSEG and

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RG&E, respectively, and failure to respond to 95% of calls within 60 minutes will result in revenue adjustments of $86,000 for NYSEG and $60,000 for RG&E. Currently, RG&E's failure to respond to on-site gas emergency calls will result in a maximum annual pre-tax revenue adjustment of $50,000 for that year, regardless whether RG&E fails to meet one of the three measures or all three. NYSEG is subject to a $50,000 revenue adjustment for each measure, and therefore faces a maximum potential annual revenue adjustment of $150,000.

E. **Revenue Adjustments**

Q. What does Staff's Gas Safety Panel recommend with regard to revenue adjustments?

A. The chart below provides a comparison of the current targets and revenue adjustments that NYSEG and RG&E are subject to and Staff's recommended changes to the targets and revenue adjustments:

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Measure/Revenue Adjustment	NYSEG Present	NYSEG Proposed	RGE Present	RGE Proposed
Replacement of Leak-Prone Main	15 miles	20 miles	15 miles	20 miles
Revenue Adjustment	$100,000	$344,000	$75,000	$240,000
Replacement of Leak-Prone Services	1900 Min/2000 AVG	2500	1000	2000
Revenue Adjustment	$150,000	$344,000	$50,000	$240,000
Leak Management	150 Total	125 Total	4%	175 Total
Revenue Adjustment	$100,000	$516,000	$100,000	$360,000
Overall Damages	5.0	2.0	4.0	2.5
Revenue Adjustment	$50,000	$172,000	$100,000	$120,000
Damage due to Mismarks	1.0	0.5	NA	0.5
Revenue Adjustment	$50,000	$430,000	0	$300,000
Damages Caused by Co and Co Contractors	NA	0.2	NA	0.2
Revenue Adjustment	0	$172,000	0	$120,000
Emergency Response				
Within 30 minutes	75%	75%	75%	75%
Revenue Adjustment	$50,000	$344,000	$50,000	$240,000
Within 45 minutes	90%	90%	90%	90%
Revenue Adjustment	$50,000	$172,000	$50,000	$120,000
Within 60 minutes	95%	95%	95%	95%
Revenue Adjustment	$50,000	$86,000	$50,000	$60,000
Emergency Response Maximum Annual Penalty	$150,000	$602,000	$50,000	$420,000
Total Potential Revenue Adjustments	$600,000	$2,408,000	$375,000	$1,680,000

Note that the proposed for NYSEG does not address BS pipe isolation and QA Program

Note: RGE Leak Measure is pending Type 1, 2A, 2 leaks as % of total leaks repaired (type 1, 2A, 2 and 3)

As the chart demonstrates, the amount at risk under the infrastructure enhancements measure (mains and services) would more than triple for NYSEG and would more than double for RG&E under Staff's proposal. Under the leak management measure, the proposed total amount at risk for NYSEG is five times more than the current total amount at risk ($100,000 compared to $516,000), and more than three times the amount of RG&E's current risk ($100,000 compared to $360,000). For mismarks, NYSEG's revenue adjustment would increase from $50,000 to $430,000 under Staff's proposal and a new mismark revenue adjustment would be implemented for RG&E in the amount of $300,000. Because there is no change in the customer base of either company due to the acquisition and no changes in operations, there is no need to increase the revenue adjustments to these extraordinary levels.

Q. Does Staff provide any justification for the increased revenue adjustments?

A. No, other than vague and arbitrary statements that increasing the costs to the Companies "would not adversely affect Iberdrola." See Gas Safety Panel Testimony, p. 17. The Gas Safety Panel also assumes that the proposed transaction carries the same risks as the National Grid/KeySpan merger. As addressed in Mr. Meehan's testimony, the comparison between the transactions is inappropriate. In particular, there is no justification for imposing on NYSEG and RG&E the doubling, tripling, quadrupling mechanism adopted in the KeySpan/National Grid merger for failure to meet gas safety and reliability targets. As previously demonstrated, there is no comparison between the performances of NYSEG and RG&E and that of GRID or KeySpan in the area of safety and reliability. In the 2006 Safety Report, Staff acknowledged that

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NYSEG and RG&E out-perform KeySpan and NGRID in virtually every safety–related measure. For example, in the area of mismarks, Staff states, "NGRID remains an outlier . . . with the lowest measure of performance among the LDCs." In excavation errors, the Staff also notes, "KeySpan continues to experience more than double this type of damage than most of the other LDCs." Finally, in the area of backlogs, the Staff noted that KeySpan "continues to have high repairable leak backlogs." A review of the various tables throughout the report, for every category measured, demonstrates that NYSEG's and RG&E's performance does not present any cause for concern, and certainly does not warrant the same level of revenue adjustments adopted in the GRID/KeySpan merger -- LDCs that Staff admits require significant improvements in their safety-related performance.

Q. Does NYSEG or RG&E earn rewards or incentives for superior performance under the current safety-related measures?

A. No. Not only are there no incentives/rewards under current Commission policy for utilities that exceed their performance targets, but Staff's proposal would also effectively penalize NYSEG and RG&E for consistently exceeding their targets and out-performing their peer LDCs. Staff's proposal punishes NYSEG and RG&E by holding them to higher standards than the other companies, while requiring them to absorb the incremental capital and O&M expense costs to implement the standards. Even if the Companies needed an incentive, which they do not, the existing gas safety and performance measures and revenue adjustment levels already provide it.

F. **Reporting**

Q. Please comment on Staff's recommendation that the Commission direct NYSEG and RG&E to submit a report to the Director of the Office of Electric, Gas and Water on their gas safety and reliability performance under the proposed targets within 30 days following the end of each calendar year.

A. Staff's proposal should be rejected. A formal report would be duplicative of the Gas Safety Performance Measures Report prepared and published annually by Staff, which is based upon data provided to Staff by the LDCs. Therefore, layering additional reporting requirements on NYSEG and RG&E would be unnecessary, costly, ineffective and counter-productive. Moreover, 30-days from the end of the calendar year is an unreasonable and unworkable timeframe within which to prepare and produce such a report.

III. **CONCLUSION**

A. Does this complete your rebuttal testimony at this time?

A. Yes, it does.