



November 20, 2023

Via Electronic Filing

NYC Department of Transportation
55 Water Street
9th Floor
New York, NY 10041

rules@dot.nyc.gov and <http://rules.cityofnewyork.us>

Re: Comments of The Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corporation d/b/a National Grid on New York City Department of Transportation's Proposed Dining Out NYC Program Rules

The Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corporation d/b/a National Grid (collectively National Grid or the Company) appreciate the opportunity to provide these comments on the New York City Department of Transportation's Proposed Dining Out NYC Program Rules ("Proposed Rules"). National Grid supports the purpose of the Proposed Rules "to support small businesses, while creating vibrant public spaces that improve quality of life for all New Yorkers." Essential to this goal is assuring the safety of restaurant employees and patrons, utility customers, and of the general public. National Grid provides natural gas service to many NYC based homes and businesses, and works alongside the Department of Transportation (DOT) every day to ensure the safety of New Yorkers. To enable the continued provision of safe and reliable gas service, the Company requires access to our facilities for both planned and emergency work.

National Grid's comments on the Proposed Rules are focused on revisions intended to enable the successful development of outdoor dining opportunities while facilitating ready access to essential infrastructure to enable the continued provision of safe and reliable utility service in the City. Although the Proposed Rules include provisions aimed at avoiding undue interference with certain utility assets and operations, the Company proposes several revisions to more fully encompass the utility assets and operations that may be impacted and assure that the final rules are appropriately protective of outdoor dining businesses and their customers, utility customers, utility employees, and the general public. In general, and as the revisions below indicate, National Grid recommends that utility-related concerns be more explicitly considered as part of the DOT's licensing and revocable consents process so there are no surprises for the businesses or the utility when access to utility infrastructure is needed.

Proposed Rules Sections and Recommended Revisions

§ 5-04 Requirements for Revocable Consent of Sidewalk and Roadway Cafes

Subpart (c)(2): Site plans should identify the location of any identifiable utility infrastructure or assets (e.g., manholes, handholes, valve covers, vent poles, control cabinets, etc.) in the proposed area of the café and indicate how the applicant intends the minimum clearance perimeter will be maintained.

§ 5-05 Sidewalk Cafe Revocable Consent Review Process

Subpart (c)(4): The Department should also be required to send each applicant’s petition to the relevant electric, gas, and communications utilities that provide service in the area where the café is proposed for information purposes.

§ 5-07 Roadway Cafe Revocable Consent Review Process

Subpart (c)(4): The Department should also be required to send each applicant’s petition to the relevant electric, gas, and communications utilities that provide service in the area where the café is proposed for information purposes.

§ 5-10 Operation and Management Requirements

Subpart (k): Secure café. Add the following: “ . . . ; provided, however, that such secured furnishings or decorative elements shall not be located in a manner that impedes or blocks access to utility infrastructure or assets (e.g., manholes, handholes, valve covers, vent poles, control cabinets, etc.).”

§ 5-11 Design Requirements

Subpart (a)(1)(ii): Revise first sentence as follows: “Clearances. The following minimum distances shall be required between the sidewalk cafe and the specified element or object:” Further, the final rules should not allow waivers of any utility minimum clearances.

Add the following to the clearances table:

<u>Element or Object</u>	<u>Required Distance</u>
Utility vent poles; control cabinets, protective bollards, etc.	5 Feet

Subpart (a)(1)(iii): After “transformer vaults” add the following: “. . . handholes, valve covers, utility vents, . . .”.

Subpart (a)(2)(ii): Revise last sentences as follows: “No platforms, ~~or~~ flooring, or other ground covering (e.g., rugs, artificial turfs, etc.) are permitted.”

Subpart (b)(1)(ii): Add the following to the clearances table:

Element or Object	Required Distance
Manholes, <u>Handholes</u> , Transformer Vaults, <u>Valve Covers</u> , At-Grade Ventilator Grates	1 Foot 6 Inches

Subpart (b)(1)(ix): This section should be revised as follows: Utility Hardware. A roadway café whose area includes installed over utility coverings or hardware must not prevent visual location of such coverings or hardware and any furniture or decorative elements in such roadway café must be easily moveable so as to not restrict access to such coverings or hardware, provided that no such ~~covering or hardware~~ furniture or decorative elements may be installed over manholes, handholes, transformer vaults, valve covers, grates, or at-grade ventilator grates.

§ 5-13 Temporary Outdoor Dining Structures

Subpart (c)(10): Secure café. Add the following: “ . . . ; provided, however, that such secured furnishings or decorative elements shall not be located in a manner that impedes or blocks access to utility infrastructure or assets (e.g., manholes, handholes, valve covers, vent poles, control cabinets, etc.).”

Although the Proposed Rules do not authorize cafes to permanently affix such café elements to sidewalk or road surfaces, National Grid is aware that some outdoor dining operations have drilled into roadway or sidewalk surfaces to secure structures. The final rules should require that anytime a licensee proposes to break the cap of the roadway that they are required to call 811 before they do so, and failure to do so should potentially subject the licensee to revocation of such license.

National Grid also recommends that the final rules include appropriate insurance requirements to protect the City as well as the relevant utility service providers from claims related to the use of sideways or roadways for café purposes, and further recommends that licensees be required to indemnify the City and relevant utility service providers for any actions or claims connected with such sidewalk or roadway cafés.

National Grid appreciates the DOT’s development of the Proposed Rules and the public safety considerations they are intended to address. The Company respectfully requests that the DOT accept the recommended changes presented here to improve the regulations and enhance public safety and utility operational considerations for the benefit of New York City residents and businesses. We look forward to continuing to work closely with the DOT to ensure a vibrant City with safe and reliable utility services for its residents.