STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on April 17, 2002

COMMISSIONERS PRESENT:

Maureen O. Helmer, Chairman
Thomas J. Dunleavy
James D. Bennett
Leonard A. Weiss
Neal N. Galvin

CASE 00-G-1456 - Petition of Consolidated Edison Company of New York, Inc. for Approval of a Response to the Commission's Policy Statement Issued November 3, 1998, filed in C 97-G-1380.

CASE 97-G-1380 - In the Matter of Issues Associated with the Future of the Natural Gas Industry and the Role of Local Gas Distribution Companies.

ORDER CONCERNING GAS RATES, RESTRUCTURING, COMPETITION, AND OTHER ISSUES

(Issued and Effective April 22, 2002)

BY THE COMMISSION:

INTRODUCTION

This order establishes a three-year rate plan for Consolidated Edison Company of New York, Inc.'s regulated gas business. In it, we discuss the procedural background of these cases, summarize a rate plan proposal by seven parties, summarize the arguments presented in support of and in opposition to adoption of the proposed rate plan, and resolve all the issues presented.

PROCEDURAL BACKGROUND

On February 15, 2002, six parties filed a "Joint Proposal" concerning revenue requirement, rate design, incentives, market restructuring, and gas operations of Consolidated Edison Company of New York, Inc. (Consolidated Edison or the company) for the three rate years ending September 30, 2004.[1] The initial six signatories comprise Consolidated Edison, Department of Public Service Staff (DPS Staff), the New York State Consumer Protection Board (CPB), the Small Customer Marketer Coalition, Smart Energy, Inc. (a marketer), and Consolidated Edison Solutions, Inc. (a marketer affiliated with Consolidated Edison). Subsequently, in a letter dated March 15, 2002, the City of New York advised that it also signed the Joint Proposal, making a total of seven signatories.

The Joint Proposal is the product of negotiations following our Order Ameliorating Winter Gas Bills and Restructuring Gas Rates and Operations.[2] Both that prior order and this one stem ultimately from the company's July 19, 2000 Response to the November 3, 1998 Gas Policy Statement.

At the time the Joint Proposal was submitted, comments supporting adoption of its terms were filed by Consolidated Edison, DPS Staff, and CPB. Pursuant to a notice issued February 15, 2002, comments in opposition to the Joint Proposal were timely submitted by the Public Utility Law Project of New York, Inc. (PULP) and the Utility Workers Union of America, AFL-CIO, Local 1-2 (the Union).

On February 26, 2002 and March 1, 2002, respectively, DPS Staff and Consolidated Edison provided further supporting

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1 The Joint Proposal, a copy of which is Appendix I, calls for a decrease in base rates and, thus, the case does not involve a major rate change within the meaning of PSL §66(12)(c) and (f). No proposed tariffs have been filed and, thus, there is no suspension date.

2 Case 00-G-1456 (issued November 29, 2000). That order primarily addressed the anticipated high winter 2000-2001 commodity costs by accelerating the return of some credits to customers and considered a number of restructuring issues as well.

information in the form of answers to written questions posed by the Administrative Law Judge. For the most part, these answers provide a further explanation of the Joint Proposal's terms and the reasons for them.[3] The veracity of the factual information in those submissions is attested to in thirteen affidavits submitted on or about March 14 and March 20, 2002.

Following these submissions, and after obtaining authorization, PULP augmented its comments in opposition on March 5, 2002. Thereafter, in pleadings submitted on or before the due date of March 8, 2002, Consolidated Edison and DPS Staff responded to all the comments opposing adoption of the Joint Proposal.

At the time the Joint Proposal was filed, the signatories assumed new rates could be in effect by April 1, 2002. That assumption turned out to be wrong for several reasons and, as a result, there are now previously unanticipated additional deferred revenues of approximately $2.4 million available for the benefit of ratepayers due to a May 1 effective date. This reflects the portion of the $25 million annual reduction in base rate revenues customers would have experienced had new rates gone into effect a month earlier. By letter dated April 4, 2002, Consolidated Edison suggests these additional deferred revenues are available to mitigate bills in the winter of 2002-2003.

On April 10, 2002, Consolidated Edison filed a draft supplemental environmental assessment form. This was intended to address impacts of the Joint Proposal under the State Environmental Quality Review Act (SEQRA), in light of the Notice of Determination issued in connection with the November 3, 1998 Gas Policy Statement.

We conducted an analysis under SEQRA prior to our deliberations in these cases and we have determined that there will be no significant environmental impact from adoption of the terms of the Joint Proposal. The Notice of Determination is Appendix II.

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[3] The responses to some of these questions are cited below.

SUMMARY OF JOINT PROPOSAL[4]

Base Rate Revenues

Commencing on May 1, 2002, rates would be reduced for retail gas sales and gas transportation delivery service to reduce base rate revenues by $25 million on an annual basis. This revenue decrease is the end result of a process that started with the company's income statement for an historic period, and that reflects known changes and reasonable expectations regarding expense increases, revenue growth, plant investment, and the cost of capital. The proposed decrease may also be compared with Consolidated Edison's original proposal that current rates remain in effect through September 2004.[5]

The general revenue decrease, the first in over 15 years for gas service, could have been effective on October 1, 2001. However, the September 11, 2001 attack on the World Trade Center prevented this from happening. Approximately $17.3 million of the revenue decrease customers did not experience in the first rate year because of this delay would be deferred. This amount is discussed further below.

The decreased revenue requirement would be achieved initially by lower usage rates and, in the second and third rate years, by small (10¢ and 9¢ per month or 1.7% cumulatively) increases in monthly customer charges matched by block rate decreases that would be revenue neutral on the company. Estimated bills for almost all affected customers would go down or be the same, while approximately 92 customers using between 4 and 90 therms per month would see modest bill increases because of a refinement of the gas cost adjustment to reflect differing load factors, discussed below.

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[4] This summary is provided only for the reader's convenience. Binding legal significance, of course, attaches neither to the Joint Proposal itself nor to this summary, *per se*, but only to our order.

[5] See Responses to Question No. 7.

World Trade Center Costs

A total of approximately $36.4 million of revenues that otherwise might be flowed back to customers would be deferred as a source of funds in the event the company's various gas system costs related to the September 11, 2001 attack on the World Trade Center are not fully recovered from the federal government or insurance carriers.

The $36.4 million comprises the customers' $8 million portion of equity earnings sharing for the rate year ending September 30, 2001, $4.8 million of power generation transportation revenues deferred for the benefit of ratepayers, $6.4 million of deferred late payment charges, and the previously referenced $17.3 million of revenue decreases ratepayers would have experienced if the rate plan proposed in the Joint Proposal had gone into effect on October 1, 2001.

Whether Consolidated Edison would actually be able to use the $36.4 million to offset World Trade Center costs would be determined by us in the future in another proceeding, Case 01-M-1958.[6] To the extent we might ultimately determine to allow Consolidated Edison to use the $36.4 million for costs related to the attack on the World Trade Center, and any portion of the $36.4 million is not needed for such purposes, the company would be under an obligation to file a proposal before the end of 2002 for the disposition of that remaining amount. Should the $36.4 million be insufficient to match any World Trade Center costs we allow recovery of in the other proceeding, the company would be permitted to petition in the third rate year to recover any remaining amounts by surcharge and we would evaluate such a petition at that time.

Equity Earnings Sharing

Capital costs are relatively low now in comparison with recent past years and this is a major factor in the reduced

[6] Case 01-M-1958, Petition of Consolidated Edison Company of New York, Inc. for Permission to Defer the Costs Related to Emergency Response and the Restoration of Service Related to the World Trade Center Disaster, filed in C9187.

base rate revenue requirement. As a result of lower capital costs, for example, the Joint Proposal recommends that the equity earnings sharing trigger be reduced from 14.0% to 11.5%.[7] The Joint Proposal does not express an overall cost of equity, though Section C-3 suggests a cost in the 10% range is implicit in it.[8]

The manner in which earnings would be shared would also change. If the overall level of equity earnings is greater than 11.5% for the entire three rate years, ratepayers would benefit by 100% of any equity earnings between 11.5% and 12.0% and there would generally be 50/50 sharing between ratepayers and shareholders over 12% in each year of the rate plan in which equity earnings exceed 11.5%. If the overall level of equity earnings is below 11.5% for the entire three rate years, there would be no sharing. The sharing feature provides an incentive for the utility to manage costs for the benefit of ratepayers and shareholders alike.

Reconciliations

A variety of costs would be subject to reconciliation or deferral and amortization, subject to conditions, including property taxes, interference costs not associated with the September 11, 2001 attack on the World Trade Center, the cost of capital and associated operation and maintenance costs if the utility does not make incremental annual capital expenditures of $85.448 million (over the annual base capital expenditure of $97.583 million) assumed by the signatories, and the costs of complying with any new federal or state requirements for baseline integrity of gas facilities.[9]

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[7] The equity earnings sharing trigger had been 13.0% prior to the rate year ended September 30, 2001. See also DPS Staff's Response to Question No. 25.

[8] The company disagrees with the latter point.

[9] The Joint Proposal assumes capital expenditures of $2 million and operation and maintenance expenses of $1 million for the latter item, while some pending federal legislation would apparently require capital outlays and expenditures of $13.5 million and $13.0 million, respectively.

Performance Incentives and Penalties

Several incentive and penalty mechanisms are proposed. First, a penalty of up to 15 basis points at $120,000 per basis point could be assessed if the company fails to meet an annual customer satisfaction target for the handling of calls to the company's Emergency Response Center related to gas service. Second, under provision G(2), the company could achieve a .1 percentage point increase in the 12.0% equity earnings sharing trigger each year if 15,000 or more customers migrate in that year from firm service to firm transportation service.[10] The incentive would be proportionately lower than .l percentage points in years in which less than 15,000 customers migrate. Third, a one-time environmental health-risk-based penalty of up to 10 basis points would be applied if 2000 or more of the existing 32,000 company-owned mercury gas regulators remain on its system after December 31, 2003, exclusive of those where multiple attempts to access such regulators fail. Fourth, a one-time penalty of up to 100 basis points would apply if the company has not replaced at least 300,000 feet of distribution piping. The piping targeted for replacement includes 4", 6", and 8" medium pressure cast iron piping, small diameter bare or unprotected piping, and 4" cast iron piping in the vicinity of schools. Finally, four separate small incentives or penalties would be aimed at reducing delays associated with repairing certain gas leaks.

Rate Design

The rate design changes that would implement the base rate revenue decrease are described above. Other rate design changes proposed include that gas commodity and related supply costs would be unbundled from firm minimum charges and sales rates and recovered through separate rate components. As a result, delivery rates for firm service and firm transportation

[10] DPS Staff advises that the company currently serves 95% of all customers within its service territory. DPS Staff's Response to Question No. 38.

customers for residential and religious non-heating (S.C. 1); general firm service, heating (S.C. 2), residential and religious heating (S.C. 3); and seasonal off-peak firm sales service (S.C. 13) will be the same. Henceforth, minimum charges would be the same for comparable firm service and firm transportation customers.

Associated refinements would also be made to the gas adjustment mechanism. Specifically, a monthly Gas Cost Factor would recover the average cost of gas, the cost of lost gas, the annual reconciliation of gas costs, and gas supply related (e.g. hedging) costs currently recovered in base rates and the gas adjustment mechanism. Three different gas cost factors would also be established each month to reflect different load factors for heating, non-heating, and cooking-only customers. Additionally, a Monthly Rate Adjustment would recover via surcharge or return to customer via a credit items not relating directly to gas costs, such as the Transition Cost Surcharge and New York Facilities Cost Credits.[11] The current factor of adjustment, a measure of gas losses, would also be reduced from 3.0% to 2.3%. These changes would collectively make it easier for customers to compare Consolidated Edison's costs unrelated to delivery with the alternatives presented by marketers.[12]

Several new service fees would also be adopted, including a $12.00 per instrument dishonored check charge on gas-only accounts, a charge for customer requested meter or auxiliary metering equipment based on the costs of equipment, labor, material, overheads, and taxes for such work, and a charge of $160 for investigating tampered equipment.[13]

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[11] The Transition Cost Surcharge is the currently effective mechanism for recovery of stranded capacity costs. See Responses to Question No. 18.

[12] The Joint Proposal also calls for a process by which the best way to present and explain these changes in bills will be developed.

[13] The latter charge would only be $115 for dual service customers in instances where the applicable electric fee for investigating tampered equipment--currently $293--would also apply.

Disposition of Non-Firm Revenue

Non-firm revenues have historically ranged from $50 to $70 million per year. Such revenues are generated in part by interruptible and power generation customers. This case initially presented the possibility that such revenues would increase markedly because of the development of new gas-fueled electric generation facilities in the company's gas service territory. The probability of such a large increase is relatively lower now, however, because of the slippage of proposed in-service dates for some planned electric generation.

Under the terms of the Joint Proposal, substantial non-firm revenues would be allocated for the benefit of ratepayers. Thus, for example, 100% of the first $35 million, 80% of non-firm revenues between $35 million and $70 million, and 90% of all non-firm revenue over $70 million would be allocated for the benefit of ratepayers. The portion of non-firm revenue retained by the company is an incentive for it to maximize non-firm revenue in each rate year.

In the first instance, however, the ratepayers' share would be used, in lieu of base rate increases or other revenue generating means, to meet a variety of costs associated with furthering competition (discussed under the next heading), meeting new federal- or state-imposed gas pipeline integrity requirements, and for depreciation on plant serving interruptible customers. Such costs, to the extent they are not covered by the ratepayers' share of non-firm revenue and other sources, could be deferred by the company for future disposition.

Retail Competition

The Joint Proposal includes a number of provisions intended to increase retail gas service competition in the company's service territory. Such provisions include the unbundling and gas adjustment clause rate design changes mentioned above. Programs would also be funded to further the development of a retail gas market. These include annual expenditures of approximately $1.26 million or $1.25 per customer per year for the company to increase awareness and understanding of residential, small commercial, and large customers of the competitive choices and programs available to them. Approximately $284,000 of similar outreach and education costs deferred from 2001 would also be covered in this way, as would $100,000 of deferred costs of implementing Virtual Storage Option and Imbalance Trading Service.[14] Up to $300,000 could also be used by the company to implement daily Imbalance Trading Services, which the company is committed to attempting.

Among the most important provisions affecting retail competition would be one calling for the $.24 per decatherm (dth) competitive retail choice credit, which DPS Staff contends is cost justified.[15] At current levels of retail competition, approximately $3.5 million per year funds available for the benefit of ratepayers would be used to support the $.228 portion of the credit that would be allocated to ratepayers.[16]

Given that the proposed rate plan could not be implemented by October 1, 2001, provision would also be made to put transportation customers in a position as if this credit became effective at that time.

The Joint Proposal anticipates that this credit would be discontinued during the three-year term, once full unbundling is effectuated in another proceeding, Case 00-M-0504.[17] DPS

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[14] These offerings were approved by us for the 2001 rate year in response to marketer interest. Case 00-G-1456, supra, Order (issued November 29, 2000), Attachment, pp. 9-10.

[15] DPS Staff's Response to Question No. 51 and the related Attachment. The Company does not agree with this contention.

[16] The $.228 per dth portion would be further funded, as necessary, by pipeline refunds recovered, revenues generated by customers' failure to comply with interruptible and off-peak service terms and conditions, and other sources.

[17] Case 00-M-0504 - Proceeding on Motion of the Commission Regarding Provider of Last Resort Responsibilities, the Role of Utilities in Competitive Energy Marketers, and Fostering the Development of Retail Competitive Opportunities.

Staff anticipates decisions will be rendered in that proceeding in 2002.

A principle that is critical to the company's support for the Joint Proposal is that if implementation of further unbundled rates or other rate design changes are adopted in Case 00-M-0504 or any like proceeding, we will provide it a reasonable opportunity to recover prudently-incurred costs that are not avoided and that could not reasonably have been mitigated consistent with the company's service obligations.[18] As we understand it, we are asked to adopt that principle now, outside of Case 00-M-0504.

A market power monitoring mechanism would also be implemented: (1) should up to 35% of the company's total firm customers (excluding residential and religious non-heating and comparable firm transportation customers) take service from marketers; and (2) should any individual marketer also exceed 25% of the company's firm sales and firm transportation customers (with the same exclusions as above). In such circumstances, a process would be initiated and followed to determine what, if any, further actions are warranted to address market power concerns.

Gas marketer satisfaction surveys would be conducted each year to gauge satisfaction with and understanding of the utility services available to marketers. Several of the company's and DPS Staff's responses to the Judge's questions clarify the extent to which interested parties rather than only signatories may participate in collaborative discussions to implement any further order on unbundling and obtain copies of high level reports resulting from the marketer satisfaction survey.[19]

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[18] Joint Proposal, p. 22, Section H-2, and Consolidated Edison's Response to Question No. 52.

[19] See the Responses of both to Question Nos. 53 and 56.

Other Provisions

The Joint Proposal includes numerous provisions typical to other long-term rate and restructuring proposals. Examples include requests that the Joint Proposal be adopted in its entirety or remanded for further negotiations, that the terms not be cited as precedent, that gas base rates will not otherwise change prior to October 1, 2004 except where we find existing rates are too high or too low, authorizing deferral of any expenses resulting from a regulatory or legal changes that costs the company more than $2 million per year per item, authorizing deferral for recovery of the gas portion of incremental site investigation and remediation costs if they exceed $5 million already recognized company-wide, authorizing deferral of the effects of state, city or local tax law or fee changes, reserving the utility's right to seek deferral of extraordinary expenses, and reserving its right to seek revenue-neutral rate design changes during the three-year term.[20]

SUMMARY OF ARGUMENTS

General

Comments in support of the Joint Proposal terms were submitted by Consolidated Edison, DPS Staff, and CPB. In addition to restating and explaining the various provisions of the Joint Proposal, these parties maintain adoption of the Joint Proposal will: (1) result in just and reasonable rates; (2) foster reasonable service quality; and (3) encourage the development of retail competition in the company's service territory for a variety of general reasons. The basic reasons they offer in support may be summarized as follows:

1. Substantial revenue requirement, rate design, customer satisfaction, and safety issues would all be resolved reasonably;

2. The interests of many normally adversarial parties, including several who ultimately did not become a signatory, would be met

[20] Any revenues from the latter changes would be deferred for the term of the rate plan for uses described above.

in a manner that is fully consistent with law and policy and in ways that would be consistent with what might have resulted had the case been fully litigated;

3. Consolidated Edison's gas base rates would be decreased and stabilized over three years during which time almost all customers' bills for delivery service would go down;

4. New fees would be imposed so that some costs that are not generally necessary for the provision of reasonable gas service would be allocated exclusively to those causing such costs;

5. Various reconciliations would be established for categories of costs that are relatively more difficult to project;

6. A variety of incentive and penalty provisions, including, for example, those pertaining to earnings sharing, would be adopted so the company would have a substantial incentive to reduce controllable operating costs, improve service reliability and increase safety through accelerated main replacement and other means, further the development of a more rigorous competitive retail gas market, be highly responsive to customers' concerns, maximize reasonably non-firm revenues, and reduce gas losses;

7. A variety of methods heretofore used by which net revenues from a variety of non-firm sources are allocated differently would be replaced by a single mechanism that would provide the company consistent incentives; and

8. Deferred amounts that could be returned to customers or otherwise used for their benefit would be designated for the possible use to cover costs associated with the September 11, 2001 attack on the World Trade Center--to the extent they are not paid in full by insurance carriers or the federal government--so as to reduce the need to keep base rates higher at this time for this purpose.

PULP's Criticisms of the
Joint Proposal and Responses

1. World Trade Center

The Public Utility Law Project raises four general objections to the proposed treatment of costs related to the September 11, 2001 attack on the World Trade Center.

To begin, PULP asserts as a matter of general principle that it would be premature for us to indicate now whether ratepayers are or will be the insurer of last resort for World Trade Center related costs. PULP argues that we should say nothing here that would prejudge in any way the questions that we will address soon in Case 01-M-1958, the World Trade Center cost deferral case. Moreover, PULP asserts that at the time the pending deferral petition is considered in that other proceeding, the company should be required to: (1) meet its burden of proof; (2) show that the costs in question are material in the context of the company's overall actual earnings, including consideration of whether other previously forecast costs were not incurred by the company as a result of its focused efforts on World Trade Center related activities; (3) prove that it was insured properly; (4) establish that all such costs were prudently incurred; and (5) show that it first reasonably exhausted its rights to full recovery of the relevant costs from insurers or the federal government.

As further support for its contention that it would be premature to address which World Trade Center costs, if any, should be recovered from ratepayers, PULP notes that no funds have been or are proposed to be set aside for electric and steam services. PULP also points to several press accounts from early and mid-March 2002 in which spokespersons for Consolidated Edison are quoted as saying it was premature for anyone to suggest the company would seek recovery from ratepayers for any World Trade Center related costs. PULP sees an inconsistency between these public statements and the terms of the Joint Proposal.

Second, PULP contends that adoption of any principle that ratepayers will bear all World Trade Center costs that are not recovered from insurance companies or the federal government would increase the probability that the company would less aggressively pursue full recovery from these resources. Likewise, in its supplemental comments, PULP asserts that the fact that ratepayers might end up paying twice for the same costs could reduce the resolve of the federal government to provide full compensation in the face of competing budget demands.

Third, for a variety of reasons, PULP contends the $36.4 million to be set aside for possible use to offset World Trade Center related costs would properly be better off in the hands of ratepayers immediately. PULP argues, for example, that use of the $8 million ratepayer share of earnings from the 2001 rate year would amount to a retroactive change in a rate plan and that the $4.8 million of deferred generation transportation revenues should flow back through the gas adjustment mechanism in place. PULP also suggests the $6.5 million of deferred late payment charge revenue should be used to fund an affordability program for low-income customers. Similarly, it maintains the $17.2 million of deferred rate reductions would be better off in the hands of consumers now, to help them meet basic, local needs and to help stimulate the local economy.

Finally, PULP asserts the $25 million base rate reserve reduction is a quid pro quo for setting aside $36.4 million for the company to potentially offset World Trade Center related costs. PULP suggests the benefit is not worth the cost and reiterates that the $36.4 million should be returned to ratepayers now.

Consolidated Edison and DPS Staff both respond to PULP's comments. Both note initially that PULP has offered nothing to suggest that costs incurred as a result of the attack on the World Trade Center are not necessary or reasonable or to show that the utility's insurance coverage was inadequate. DPS Staff adds, however, that the burden of proof will not be shifted away from the company as PULP fears, and it stresses that the simple earmarking of dollars in this case for a possible future use in another case would not prejudge in any way the issues to be decided in that other case.

Consolidated Edison similarly emphasizes in its response that any authorization to defer costs associated with its emergency response and restoration efforts, as well as for future costs for measures to increase security, would take place in Case 01-M-1958. However, a fundamental principle enunciated by the company's response to question 9 seems to be that it wants us to indicate now that ratepayers are and should be 100% responsible for World Trade Center costs not otherwise recovered. This same theme seems to be reiterated in the company's responsive comments when it says any action we take in this case would constitute "our authorization" for the company to recover unreimbursed costs related to the World Trade Center attack that are authorized in the other proceeding. For these reasons, the company opposes consideration of any materiality, burden of proof, or prudence issues in this case.

Consolidated Edison also sees no inconsistency between the relief it seeks here and statements attributed to its spokespersons in news articles. The company maintains there still is uncertainty over whether it will recover all of its World Trade Center related costs from the federal government or insurers. Additionally, it asserts it expects to incur substantial incremental costs as the City and others rebuild infrastructure. Finally, in this same vein, Consolidated Edison suggests that news reports about a possible substantial federal package to cover World Trade Center costs undermines PULP's contention that deferral of $36.4 million here will lead the federal government or others to be less forthcoming with relief.

Consolidated Edison and DPS Staff both disagree also with PULP's suggestion that deferral of the $36.4 million of revenue would reduce the company's interest in seeking full recovery elsewhere. The company claims that PULP failed to articulate any specific reasons why the utility would take such a tack while DPS staff observes that any failure by the company in this regard would be imprudent.

Responding to the concerns expressed about the sources of funds comprising the $36.4 million, DPS staff contends the use of ratepayers' portion of shared equity earnings would not involve illegal retroactive ratemaking as no rate would change. Consolidated Edison, meanwhile, emphasizes that we did not previously determine any disposition for the $8 million of shared equity earnings for 2001 or for any of the other sources of the $36.4 million. Accordingly, it denies anything would be unfairly or illegally changed retroactively.

Consolidated Edison, likewise, suggests it would not be proper to set aside the $6.5 million of deferred late payment charge revenues for a low-income or affordability program, in part, as no specific proposal for such a program was offered by PULP or any other party.

2. Overall Reasonableness of Customers' Bills

PULP observes that the base rate revenue decrease, while welcome, only pertains to the delivery component of rates and that the Joint Proposal would not ensure sharp commodity price pikes would not be experienced during the three-year term of the proposed rate plan.

PULP contends that the Joint Proposal's proponents should divulge what overall bills will be experienced in the event of low, medium, and high spot market prices. PULP asserts that without this information, it is not possible to assess the overall reasonableness of rates for firm retail service which most customers take.

In connection with these comments, PULP observes that Consolidated Edison has an outstanding obligation to manage its gas supply portfolio to reasonably minimize the risk of abrupt changes in gas commodity prices by not tying them too closely to spot prices. PULP asks that we require Consolidated Edison to set a stable commodity price as it says NYSEG has done, so that customers can be protected against an unwarranted risk of market price changes.

Responding to the suggestion that Consolidated Edison should be required to set a stable price, DPS Staff notes that marketers may offer fixed prices overall and that some marketers consider it a competitive advantage that they do so while the company does not. DPS Staff explains that additional costs for hedging could be incurred, increasing bills. It asks rhetorically whether PULP favors such an approach and it notes that fixed price arrangements present other problems that may work against the best interests of ratepayers.

In this same vein, Consolidated Edison contends that a fixed utility commodity price can result and has resulted in consumers paying substantially more than market prices. It contends that such a result occurred in its service territory pursuant to an order issued in October 1997, much to the ultimate consternation of some of its customers.

DPS Staff contends further that any concerns about the reasonableness of the company's gas procurement practices should be raised in the context of its annual review of such practices or in its ongoing review of gas adjustment clause filings. The company agrees with DPS Staff on the latter point, asserting that its gas procurement efforts are consistent with our established policy.

Consolidated Edison also disagrees with the implication that it buys all of its gas on the spot market, pointing out some of the various mechanisms it employs to minimize volatility in gas prices. It also suggests there are other means that can be used to address significant commodity price spikes, such as those implemented by us to ameliorate anticipated high commodity costs in the 2000-2001 winter.

3. Provisions Intended to Foster Competition

PULP asserts that we should reject multiple provisions in the Joint Proposal that are intended to foster competition.

To begin, PULP claims the $.24/dth competitive retail choice credit is simply an extra discount for customers taking transportation service. PULP contends this discount improperly skews customer choice decisions toward alternative providers that assertedly have thus far been unable to attract customers by offering service as good or better than Consolidated

Edison's. It maintains the credit should not be adopted as it is not cost justified and is not otherwise rationally based. PULP also sees this credit as a disproportionate allocation of benefits to some transportation customers that would be more fairly allocated to a broader class of customers. Finally, PULP suggests this arrangement would be inconsistent with PSL §§66(12-b)(b)'s requirement that the provision of transportation service for some customers will not prejudice ratepayers taking full service.

PULP argues, moreover, that the earnings sharing trigger should not be increased by .1 percentage points as an incentive for Consolidated Edison to encourage customer migration, contending this is another form of general ratepayer subsidization of those seeking alternative service providers. Consolidated Edison should be stimulated to improve service and rates, PULP argues, not to drive customers away.

PULP views the planned expenditures of up to $1 million per year to promote retail choice as another example of how the Joint Proposal would disadvantage the general body of ratepayers contrary to the legislative intent behind PSL §66(12-b)(b). If the rate plan is nevertheless adopted, PULP suggest the promotional program should be required to disclose that: (1) while the customer retail choice credit might reduce delivery rates, overall bills could be higher; (2) the full customer rights and remedies afforded full service customers will no longer be available if transportation service is taken; and (3) deposits or prepayments may be lost in the event of a default or bankruptcy of the alternative provider.

DPS Staff replies that there is a cost basis for the proposed competitive retail choice credit set forth in its response to question No. 51 and an associated attachment. The credit makes good sense in the short run, DPS Staff continues, so that transportation customers do not pay twice--both to the company and to a marketer--for the same services and thereby underwrite unfairly in part the costs of serving firm sales customers.

Consolidated Edison, on the other hand, points out that the same credit was previously approved by us subject to the express condition that we did not intend to indicate in any way what level of costs the utility should be able to avoid reasonably. It argues as well that application of the credit would not be unfairly discriminatory to the extent any customer is eligible to receive it and notes, in any event, that it is strictly a temporary mechanism, pending further unbundling.

DPS Staff maintains that the requirements of PSL §66(12-b)(b) are different from what PULP claims and require instead that we find only that transportation arrangements pursuant to contract for industrial and commercial customers must be in the overall best interests of the relevant company's ratepayers and that the rates and fees for such service would adequately compensate the utility. This PSL section, DPS Staff notes, does not expressly apply to customers taking service under tariff rates.

DPS Staff asserts, moreover, that any incentive the utility achieves for increasing customer migration would cost customers nothing directly to the extent their bills would not increase. Consolidated Edison, meanwhile, emphasizes that PULP's objections to the migration incentive and funding arrangement for the retail choice promotional programs fail to point to any changed circumstances since the time we adopted similar provisions for the rate plan for the year ending September 30, 2001.

4. Dishonored Check Fee

The Public Utility Law Project claims that the proposed dishonored check fee is prohibited by PSL §42(2), which imposes a blanket prohibition against any "penalty, fee, interest, or other charge of any kind for any late payment, collection effort, service disconnection, or deferred payment agreement occasioned by the customer's failure to pay for gas or electric service."

DPS Staff replies that a dishonored check fee is not barred by PSL §42(2), because it is not based on a late payment, collection effort, service disconnection, or deferred payment agreement. The company adds that this same conclusion was reached in another proceeding in September 1982 in the face of a similar argument by PULP and CPB.

The Union's Criticisms of the Joint Proposal and Responses

1. The Union's Comments

The Union represents 9,000 people employed by Consolidated Edison who, it asserts, are uniquely exposed to the negative aspects of the ongoing energy industry restructuring. The Union expresses broad concern to the extent it believes the Joint Proposal focuses on the provision of financial benefits to the company's shareholders, marketers, and ratepayers while not adequately addressing specific safety and operations issues and general job security concerns of its members.

Specific provisions of the Joint Proposal of the greatest concern to the Union include the migration incentive of up to .1 percentage points on the earnings sharing trigger. The Union asks that this provision be rejected, contending this would be a substantial reward for eliminating commodity customers, in a manner that will increase stranded costs and put pressure on the company to eliminate positions that have historically dealt directly with commodity customers. The Union asserts that this would ultimately leave its members "to spin in the changing regulatory winds" even though they have helped provide safe and adequate service over past years.

The Union agrees some of the Joint Proposal's provisions would tend to increase safety by ensuring general system infrastructure improvements. However, it denies that adequate safety is ensured overall to the extent work operating environment issues and an asserted inconsistency in the application of safety related requirements on work performed by Union members and outside contractors are not adequately addressed.

The Union states that in calendar year 2001, approximately 109 equivalent contractor laborers worked for the company, workers the Union claims are neither sufficiently trained nor experienced to perform work to the same standards of quality as its members. It suggests this claim is based on personal observation, by its members, of contractor laborers improperly fusing plastic mains, thus requiring re-excavation and repairs, improperly failing to wear appropriate safety equipment, and excavating unsafely. The Union refers to a recent safety problem caused by a contractor that it says could have resulted in a serious injury to workers and the general public. Additionally, the Union maintains the superior work quality and efficiency of its members was proven in a recent pilot program, further details about which it does not provide.

The Union goes on to propose specific requirements it says we should adopt if the terms of the Joint Proposal are to become effective, so that its members' interests would be addressed to the same degree as others'. These include the proposed creation of a new employee classification, called "Construction Representative," for qualified union employees. Consolidated Edison, the Union continues, should also be required to apply all standards, policies, and procedures consistently, regardless of whether represented union employees or outside contractor labor performs the work. Any contractors that violate any construction, operational, work, or safety standard in the performance of electrical, gas, or steam work should also have to be suspended from performing any work for Consolidated Edison, according to the Union, and a second violation in five years should result in the removal of the contractor from the list of eligible bidders for not less than two years. Finally, the Union contends we should require Consolidated Edison to increase its present union workforce to provide safer and more efficient gas operations. Implementation of all these steps, the Union claims, will place contractors and Union personnel on an "equal footing" and improve the safety and quality of work overall.

The Union also expresses concerns about three other specific provisions of the Joint Proposal. For example, the Union contends the mechanics of the proposed customer satisfaction survey penalty and two proposed safety performance penalty provisions (the latter of which are intended to minimize the time between a gas leak call and commencement of repairs) are not specified sufficiently and that these clauses, accordingly, should not be adopted at this time. Additionally, the Union complains that any process for implementing unbundled rates should be open to more interested persons and that high level reports on survey results should be accessible to more than the signatories of the Joint Proposal.

2. Comments Responding to the Union

DPS Staff replies generally that many issues raised by the Union are properly the subject of collective bargaining rather than this proceeding. The company agrees with DPS Staff, arguing that what the Union ultimately wants is for Consolidated Edison to have more union workers and to rely less on outside contractors, matters that it says are covered by the existing collective bargaining contract between it and the Union and that are preempted by federal law.

DPS Staff maintains that the customer migration incentive advances customer choice of a commodity supplier, consistent with the terms of the November 3, 1998 Gas Policy Statement. The company points out that the same incentive provision was adopted by us in its last gas case after we questioned why the Union had failed to present any suggestions about how precisely the rate plan under consideration at the time could be modified to reflect better the interests of Union members. Consolidated Edison suggests the Union similarly failed to make an adequate showing here.

Turning to the safety concerns raised in the Union's comments, DPS Staff observes that applicable DPS safety rules apply to all work, whether performed by contractor labor or union employees. DPS Staff argues any safety related issues that come up should be resolved, but suggests the best process for doing this includes an investigation by the DPS Gas Safety Section. DPS Staff contends that sufficient information to reach conclusions about specific alleged safety failures has not been presented in this case.

Consolidated Edison also replies to the comments about the Union's safety concerns, asserting that it requires its contractors to comply with the same "operational environmental health and safety standards" it directs its employees to meet, and that contractors and employees both must comply with all applicable local, state, and federal laws and regulations.

DPS Staff goes on to suggest that any implementation issues for incentive or penalty mechanisms could be resolved in an open process as the programs are set up. The company, however, points out that the customer satisfaction survey penalty provision would be the same as one adopted before and which the Union has offered no specific suggestions for changing. For the safety performance penalty mechanisms, the company states that the start time would be the time when a customer calls and the termination time for calculation purposes would be when one or more qualified persons arrive at the relevant location who can both assess the situation and mitigate the hazard.

Finally, both DPS Staff and Consolidated Edison are open to more parties participating in further proceedings or in reviewing the high level reports on various survey results, contrary to what the terms of the Joint Proposal might have indicated.[21]

DISCUSSION AND CONCLUSION

The ultimate question we are presented with is whether adoption of the Joint Proposal's terms would result in just and reasonable rates, safe and adequate service, and otherwise be in the public interest and supported by a rational basis. Our review of the company's July 19, 2000 filing, the Joint Proposal, the comments submitted, and all the responses to the Judge's questions and the associated affidavits, leads us to conclude that the overall answer to this question is yes.

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[21] See Responses to question nos. 53 and 56.

At the outset, it is clear that the Joint Proposal would have numerous positive effects which are not contested by any party. Lower base rates would be in effect to reduce the company's annual gas revenues by approximately $25 million prospectively. Nearly all gas customers will experience gas delivery bill decreases for this reason. Reconciliation clauses would be implemented for several categories of costs in a manner that minimizes some risks of forecasting error for both ratepayers and shareholders. The company would undertake to remove up to 32,000 mercury gas regulators and replace a significant amount of distribution piping, particularly in the vicinity of schools, to increase safety, improve reliability, and avoid possible environmental problems.

A lower level of gas losses would be assumed than in the recent past, as reflected in the proposed reduction in the Factor of Adjustment from 3.0% to 2.3%. Reduced gas losses translate into lower costs for customers. Ratepayers would also benefit from a significant portion of any non-firm revenues, including 90% of all such revenues over $70 million per year, and a panoply of incentive mechanisms in place for sharing such revenue would be replaced by one. A new daily imbalance trading service would be developed to help serve gas marketers better and different gas cost factors would be implemented to help reflect in rates the differing costs of serving customers with different load factors.

New charges for customer requested metering or auxiliary metering equipment or in instances of tampering would be adopted so that costs for these generally unwarranted activities would be allocated properly to those causing them. Finally, as clarified, certain processes to implement unbundling and evaluate market power would be opened up to interested parties and interested parties would also have access to high level reports concerning various survey results.

A major issue presented in the comments opposing adoption of the Joint Proposal concerns whether it is reasonable for us to set aside $36.4 million of credits for a possible future use, either to offset World Trade Center costs, or for such other purposes as we might deem warranted. We conclude that for now it is.

Given the horrific September 11, 2001 attack on the World Trade Center, we clearly would prefer to order immediate refunds or credits to customers of the $36.4 million. Given the potential magnitude of costs involved and existing uncertainty about the total amount of recompense that will be recovered ultimately from other sources, however, we see no benefit in returning these funds to ratepayers now.[22]

The comments in opposition offer a variety of arguments about why we could not or should not set aside the $36.4 million at this time. The arguments suggesting we "cannot retroactively change" the disposition of these funds are clearly wrong for a variety of reasons, including that no specific disposition has heretofore been determined for any of these funds. The suggestion that the funds would be better off in the hands of customers to meet their needs and stimulate the economy must also be balanced with how important it is ultimately to have a reliable and secure gas delivery system to serve residential, commercial and other customers and support economic stability and growth. Likewise, the suggestion that $6.5 million be set aside instead for an affordability program is not persuasive as no specific proposal for such a program has been offered for our consideration.

A related question raised involves whether we should be announcing here any policy concerning the extent to which ratepayers will or will not ultimately be responsible for some or all of the World Trade Center related costs. Consistent with the express terms of the Joint Proposal, as explained in the comments of the proponents, that issue will be resolved in Case 01-M-1958.

[22] The mere fact that funds are being set aside for this purpose now does not dictate how they will be used ultimately. Also, as DPS Staff suggests, the company has a continuing obligation to pursue full recompense of its World Trade Center related costs.

We find that the terms of the Joint Proposal are reasonable even though we do not know for certain the exact costs of gas through September 30, 2003. The information provided in support of the Joint Proposal amply shows that delivery rates would be just and reasonable and lower than they are now. The overall reasonableness of the company's gas procurement practice will also continue to be reviewed to help ensure on an ongoing basis that the company will continue to meet its obligations under applicable law and our policies.

Action in this case with respect to either the company's gas procurement practices or the proposed institution of a stable market price option for Consolidated Edison's full service customers is also not warranted now. Not a single specific gas procurement problem or issue has been raised and no party has outlined a specific stable rate proposal or explained its impacts for our consideration.

We have also reviewed all of the provisions of the rate plan that are intended to foster retail gas competition, including the proposed competitive retail choice credit, the possible .1 percentage point increase in the 12.0% equity earnings sharing trigger, and educational and promotional program funding. We find that they are all reasonable. These initiatives are all designed to increase retail gas commodity competition for the long run benefit of all customers, consistent with our Gas Policy Statement. Arguments about whether some specific customers are supporting this transitional effort more than others improperly focuses only on the short run.

As Consolidated Edison suggests, the customer retail choice credit is one that any customer can take advantage of and PULP's comments ignore this fact. Additionally, as DPS Staff argues, it is appropriate that customers taking services from marketers should not have to pay twice for costs that either can ultimately be avoided by the company or that are more properly allocated to remaining full service customers.

Other arguments in opposition to these retail gas competition provisions include PULP's contention that the Joint

Proposal would conflict with PSL §66(12-b)(b), the Union's contention that the impact of the earnings sharing trigger is to force the company to reduce Union personnel, and PULP's alternative suggestion that promotional program content should include information about some risks customers are taking when they choose a competitive retail gas supplier. PULP's arguments under PSL §66(12-b)(b) are wrong because, among other things, the statute concerns transportation arrangements for industrial and commercial customers taking service under a contract rather than a tariff.

Our continuing goal is to ensure reasonable quality service for customers for the lowest prices a fully competitive commodity market can offer. The earnings sharing trigger is a modest effort to help move in the direction of that overall goal and is, therefore, reasonable. Nothing expressed in or implied by this provision is intended to penalize the Union or its members.

Similarly, broad customer choice would be an important attribute of a competitive commodity market. We agree with PULP's overall contention that such choice should be made in a fully informed manner and remain committed to that principle for all the outreach, education, and promotional programs associated with the transition to retail gas commodity competition.

Turning to other issues raised in the comments in opposition to the Joint Proposal, we restate here our longstanding policy that the amount and type of labor any regulated utility needs is decided in the first instance by the utility subject to its obligations to provide safe and adequate service at a reasonable price. We generally would review the company's overall approach on our own initiative or complaint where specific information suggests the utility is not meeting its overall obligations. We also will not take any actions that would interfere with collective bargaining.

While the Union argues that we should require the company to hire new Union personnel, assign a greater proportion of its work to Union personnel, and institute new specific (though completely unexplained) titles, it has not offered good reasons for why such actions should be taken. Additionally, the Union has not commented on the impacts such relief would have on collective bargaining. As the company suggests in some of its comments, failure on the Union's part is surprising given guidance we gave it in our order concerning the 2000-2001 rate year.

Some of the Union's comments are more complex because they involve issues that may pertain to collective bargaining but which all concern the safety of workers and the general public. We take seriously any complaints about gas safety and remain committed to ensuring such complaints are investigated and that any proper corrective actions are taken. Subject to that general guidance, we note that the Union has again failed to articulate any specific safety problem warranting corrective action here and, in any event, we acknowledge DPS Staff's comment that it has been and is investigating some of the Union's specific concerns. The approach DPS Staff is taking is the proper one for now and we conclude overall that the terms of the Joint Proposal need not be modified on the basis of the Union's comments about gas safety.

The remaining issues involve the returned check fee and questions about the mechanics of various inventive mechanisms. DPS Staff and Consolidated Edison have both offered good explanations why a returned check fee is not prohibited by PSL §42(2). PULP's contention to the contrary is rejected for those reasons.

The Customer Satisfaction survey penalty provision and the safety performance penalties questioned by the Union are reasonable and adopted. Information provided for the record on the former suggests a similar provision has been in effect for several years under which the same survey questions have been asked each year. The Union had ample opportunity to present specific concerns about the questions used in such surveys. The company's statement that response times for response time penalty provisions will be measured from the time of a call to the company to the time where a person or persons capable of identifying <u>and</u> remediating a hazard is also fully responsive to the Union's concern that such measurements might some times be based in part only on the time a supervisor arrives at the scene. The Union has not met its burden of going forward on either of these issues.

Finally, with respect to the company's request that we articulate our policy on strandable cost recovery, we refer it to a recent order on the topic.[23] Any further consideration of the issue may be addressed in Case 00-M-0504.

In sum, therefore, we have reviewed all the information and arguments presented and conclude that the terms of the Joint Proposal should be and are adopted subject to the discussion above.

PROCEDURAL REMINDERS

While the terms of the Joint Proposal are reasonable and adopted as discussed above, and while we are grateful to all parties for their efforts in this case, the manner in which the case was presented for our review was not optimal. Accordingly, we take this opportunity to remind parties of some of their most important obligations when presenting joint proposals for our consideration.

In general terms, the proponents of any such document have an obligation to set forth all the terms of the proposal, to explain the reasons for the various terms, and to provide factual information in the first instance that is sufficient to meet the applicable evidentiary standard. The overall goals of these steps are for the proponents to meet their burden of proof and to make transparent what is proposed. This permits us to focus on the merits of the various provisions and of any joint proposal overall.

Opponents of joint proposals do not have the burden of proof. However, when they offer criticisms of a joint proposal, it is incumbent upon them to set forth their concerns in

[23] Case 00-M-0504 - Generic Competition Case - Unbundling Track, Order Directing Filing of Embedded Cost Studies (issued November 9, 2001), p. 5, first full paragraph.

reasonable detail and to identify the specific bases for these concerns.

Finally, it bears mentioning that all parties that participate in confidential negotiations have a continuing obligation to refrain from referring to what happened in such discussions, except where confidentiality is waived by the parties or required by a court.[24]

The Commission orders:

1. The terms of the Joint Proposal, filed on February 15, 2002, and attached, are adopted subject to the discussion above and are hereby incorporated in and made a part of this order.

2. Consolidated Edison Company of New York, Inc. is directed to file on not less than one day's notice to be effective on a temporary basis no later than May 1, 2002, such tariff amendments as are necessary to effectuate the revenue reduction and rate design changes adopted by this order.

3. Consolidated Edison Company of New York, Inc. shall serve copies of its filing upon all signatories and commentators. Any comments on the filing must be received at the Commission's offices within ten days of service of the company's proposed amendments. The amendments shall not become effective on a permanent basis until approved by the Commission. The requirement of the Public Service Law §66(12) that newspaper publication be completed prior to the effective date of the proposed amendments is waived, provided that Consolidated Edison shall file with the Commission, no later than July 1, 2002, proof that a notice to the public of the changes proposed by the amendments and their effective date has been published once a

[24] We also remind all parties that we do not merely "approve" or "disapprove" joint proposals or settlement agreements among two or more parties. Such an approach would be contrary to our statutory responsibilities. In cases where such documents are presented for our review, it is our final decision alone that sets forth the final resolution of all the issues presented.

week for four successive weeks in a newspaper having general circulation in the area affected by the amendments.

4. These proceedings are continued.

By the Commission,

(SIGNED) JANET HAND DEIXLER
Secretary

APPENDIX I

STATE OF NEW YORK
PUBLIC SERVICE COMISSION

CASE 00-G-1456 - Petition of Consolidated Edison Company of New York, Inc. for Approval of a Response to the Commission's Policy Statement Issued November 3, 1998, Filed in Case 97-G-1380.

CASE 97-G-1380 - In the Matter of Issues Associated with the Future of the Natural Gas Industry and the Role of Local Gas Distribution Companies.

JOINT PROPOSAL

THIS JOINT PROPOSAL ("Proposal")[1] is made the 15th day of February 2002, by and between Consolidated Edison Company of New York, Inc. ("Con Edison" or the "Company"), Staff of the New York State Department of Public Service ("Staff"), the New York State Consumer Protection Board, the Small Customer Marketer Coalition, SmartEnergy, Inc., and Consolidated Edison Solutions, Inc., whose signature pages are attached to this Proposal (collectively referred to herein as the "Signatory Parties").

Parties were notified of pending settlement negotiations, prior to the commencement of negotiations, by electronic mail dated December 5, 2000.[2]

Settlement conferences were held, with appropriate advance notice to all parties, on December 13, 2000, January 24, 2001, May 2, 2001, June 12, 2001, August 28, 2001, December 3, 2001, and February 12, 2002.

The Signatory Parties state that the negotiations were conducted in accordance with the

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[1] This Joint Proposal was developed pursuant to and in accordance with the Commission's Settlement Procedures, as set forth in 16 NYCRR § 3.9. Accordingly, notwithstanding the designation of this document as a Joint Proposal, the agreements reflected herein are premised upon, and the Signatory Parties agree to be bound by, the confidentiality provisions set forth in 16 NYCRR § 3.9(d).

[2] A copy of the notice of settlement was filed with the Secretary.

Commission's settlement guidelines.

The Signatory Parties request that the Commission adopt the Proposal in its entirety as set forth herein.

A. Overall Framework

On February 19, 1997, the Commission approved a four-year rate plan for Con Edison's gas rates through the rate year ending September 30, 2000 ("Rate Year 2000"), in Case 96-G-0548 ("1996 Settlement"). The 1996 Settlement provided, inter alia, for the ratemaking provisions prescribed by the 1996 Settlement to continue after Rate Year 2000, unless Con Edison filed a new general rate case, or until changed by Commission order (1996 Settlement, at 11).

On July 19, 2000, the Company filed its response to the Commission's November 3, 1998 Gas Policy Statement ("Response to Policy Statement") in Cases 97-G-1380 and 93-G-0932. Included in the Response to Policy Statement was a proposal to continue to operate under the 1996 Settlement, including associated rate provisions and incentives prescribed by the 1996 Settlement, through September 30, 2004.

During the course of discussions on the Response to Policy Statement, the parties focused on a one-year settlement for the period ending September 30, 2001 ("Rate Year 2001"), for the purpose, inter alia, of taking steps to offset the anticipated increase in gas customers' bills due to the then current and projected increases in gas commodity prices. As a result of those discussions, the Commission approved a one-year interim resolution of Con Edison's gas rates for Rate Year 2001 ("2001 Agreement"), in Case 00-G-1456, whereby the signatory parties agreed to work towards a long term rate plan and long term restructuring plan.

This Proposal sets forth the terms of a three-year rate and restructuring plan for the period ending September 30, 2004. In light of the attack on the Nation on September 11, 2001, efforts to finalize a gas rate settlement could not be completed before September 30, 2001, the expiration date of the 2001 Agreement. Accordingly, this Proposal captures the effect of certain rate and/or revenue terms and adjustments for the period commencing October 1, 2001, notwithstanding that the Proposal was executed after October 1, 2001.

For the purposes of this Proposal, "Rate Year 2002" will mean the rate year ending September 30, 2002; "Rate Year 2003" will mean the rate year ending September 30, 2003; and "Rate Year 2004" will mean the rate year ending September 30, 2004. This Proposal covers the following aspects of Con Edison's rates for gas services for Rate Year 2002 through Rate Year 2004 ("Settlement Period"):

B. Rate and Revenue Levels

C. Reconciliations

D. Computation and Disposition of Earnings

E. Post-Settlement Period

F. Disposition of Non-Firm Revenues

G. Performance Incentives and Penalties

H. Competition Provisions

I. Other Provisions

B. Rate and Revenue Levels

1. Rate Plan. This rate plan covers Con Edison's gas rates and charges for retail gas sales and gas transportation services.[3] Commencing on the first day of the calendar month immediately following Commission approval of this Proposal, the Company will reduce rates

[3] Unless specifically stated otherwise in this Proposal, the term "customers" means the Company's firm customers, excluding CNG, Bypass and Power Generation customers under Service Classification No. 9, and does not include the Company's interruptible or off-peak firm customers.

under Service Classification ("SC") Nos. 1, 2, and 3 and to the corresponding firm transportation rates under SC 9 of the Company's Schedule for Gas Service, by $25 million on an annual basis. In addition, the Company will defer on its books of account the portion of the annual rate reduction for Rate Year 2002 applicable to the period October 1, 2001 through the last day of the calendar month in which the Commission approves this Proposal.[4] This deferred amount is currently estimated to be $17.3 million, assuming the Proposal is made effective as of April 1, 2002 ("Deferred Rate Reduction").

The Deferred Rate Reduction plus customer credits previously deferred as of September 30, 2001 (the total, including the Deferred Rate Reduction, is estimated to be $36.4 million, as shown in the table below)

Customers' Portion of Shared Earnings for Rate Year 2001	7,984,000
Deferred Power Generation Transportation Revenues	4,805,267[5]
Residential Late Payment Charges Deferred	6,351,704
Estimated Deferred Rate Reduction Through March 31, 2002	17,246,692
Total Deferral	$36,387,663

will be set aside on the Company's books of account and applied to recover expenses for gas system security, interference[6] and system restoration measures and costs directly related to the September 11, 2001 attack, including emergency response and system restoration costs, net of all reimbursement received by the Company from its insurers or the federal or state government

[4] The deferred amounts will be based on sales revenues during the applicable period and will accrue interest beginning in the month of October 2001 at the Other Customer Contributed Capital Rate.

[5] Revenues derived from gas transportation service provided to the Company's divested plants and Company-owned power generation plants through September 30, 2001 that were not refunded to customers, as may be subject to billing adjustments.

[6] The disposition of funds for interference costs stemming from the September 11 attack is for interference work at or near the World Trade Center site other than for the two City of New York budgeted projects at the following locations: (1) Route 9A (seg 2) Battery-Harrison and (2) Route 9A (seg 2) Battery-Clarkson.

(“WTC Costs”), pursuant to and consistent with Commission action on the Company’s December 21, 2001 Petition for Authorization to Defer the Costs Related to Emergency Response and the Restoration of Service, or in any related proceeding.[7]

The disposition of any deferred amounts remaining after recovery as described above will be addressed in a Company filing to the Commission to be made prior to year-end 2002.

During Rate Year 2004, the Company may petition the Commission to recover by surcharge to customers’ rates WTC Costs that the Commission authorized the Company to defer or otherwise recover that are in excess of the above-described deferred amounts set aside for this purpose.

2. Rate Design. Commencing on the first day of the calendar month immediately following Commission approval of this Proposal, gas supply costs will be removed from the Company’s bundled firm sales rate for SCs 1, 2, 3 and 13, and recovered through a separate rate component for gas supply costs. Among other necessary actions, (i) the gas adjustment will be the sum of two monthly rate components set forth in B.3 below;[8] (ii) the SC 1, 2, 3 and 13 delivery rates will be set equal to the corresponding firm transportation rates, and (iii) the rate blocks in SC 1, 2 and 3 for usage over 3 therms per month, and the rate blocks in the corresponding SC 9 transportation rates, will be decreased to recognize the $25 million reduction in annual delivery revenues.[9] For transportation customers, the monthly minimum charge (for usage less than or

[7] The Company will provide quarterly reports to Staff on pending requests for reimbursements, the amounts of such requests and the nature of the costs for which reimbursement is being sought, the federal or state agencies or insurance companies to whom such requests have been made, and the payees’ disposition of such requests (i.e., the amount received from any state or federal agency or insurance company and the reimbursement request to which it applies).

[8] The implementation of the Gas Cost Factor and Monthly Rate Adjustment (discussed below) does not resolve the Company’s existing administrative impediments to the calculation of gross receipts taxes on other than a composite basis, as reflected in the Company’s letter to the Commission dated July 27, 2001in Case 00-M-1556.

[9] These changes are also designed to provide for recovery of a $2.4 million revenue shortfall created by the

equal to three therms) will remain unchanged through the end of Rate Year 2002. The monthly minimum charge for sales customers (after removing gas costs) will be the same as the minimum charge for transportation customers through the end of Rate Year 2002. Commencing with Rate Year 2003, the monthly minimum charge for sales and transportation customers will be increased from $10.89 to $10.99. Commencing with Rate Year 2004, the monthly minimum charge for sales and transportation customers will be increased from $10.99 to $11.08.[10] The remaining rate blocks in SC 1, 2 and 3, and the corresponding rate blocks in SC 9, will be reduced to offset the increase in the minimum charge.

Appendix 1 shows the total estimated annual effect on service class revenues and customers' bills based on firm sales and transportation volumes for the 12 months ended December 31, 2000. Appendix 2 shows sample bill tables at current and proposed rates for various consumption levels.

3. Gas Cost Factor and Monthly Rate Adjustment. The gas adjustment as shown on customer bills will be the sum of the following two rate mechanisms:[11]

i. A monthly Gas Cost Factor ("GCF") to recover the cost of gas and gas supply-related costs (e.g., hedging costs) currently recovered as the base cost of gas included in base

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unbundling of tariff rates. The rates applicable to area development, business incentive and economic development zone sales and transportation customers (Riders E, F and G) will be revised to reflect the changes to the SC 2 base delivery rates and corresponding transportation rates.

[10] The SC 13 minimum charge will be increased to reflect the increase in the SC 1, 2 and 3 minimum charges.

[11] All rules and regulations contained in 16 NYCRR relating to the average cost of gas, the GAC, the Factor of Adjustment Ratio, and the reconciliation of gas costs will apply. Con Edison will provide to the electronic active parties list in Case 00-G-1456 a copy of the Company's annual reconciliation filing at the time the Company makes such filing with the Commission. For other than the annual reconciliation filing, the Company will provide to the electronic active parties list in Case 00-G-01456 information relating to such filing, or the filing itself, a minimum of three days (and up to 15 days to the extent practicable) in advance of the proposed effective date; provided, however, that nothing herein shall be construed to limit in any manner the Company's right to recover its gas costs, and to place into effect a reconciliation of any gas cost underrecoveries or overrecoveries, consistent with the Commission's rules and regulations, subject to the right of any Signatory Party to propose to the Commission that the manner of reconciliation proposed by the Company be implemented in a different manner (e.g., a one-time credit in lieu of a per therm credit) or that such costs or credits be allocated in a different manner among the Company's sales customers. The Company reserves all of its rights to object to such a proposal.

tariff rates and the existing gas adjustment.[12] The GCF will be equal to the average cost of gas, reflecting the Factor of Adjustment Ratio for gas line losses (set forth in B.4 below), as adjusted by the annual reconciliation of gas costs. Separate average costs of gas will be developed for: (a) SC 1;[13] (b) SC 2 heating[14] and SC 3;[15] and (c) SC 2 non-heating,[16] SC 2 and 3 gas air-conditioning rates and SC 13.[17] Each average cost will be reflective of the different service class allocations of upstream capacity costs previously recovered through base tariff rates and the GAC, as identified in Appendix 3.[18] Variable costs, including hedging costs, will continue to be collected from sales customers on the currently-effective average unit cost of gas basis.

ii. A single Monthly Rate Adjustment ("MRA") to surcharge or credit non-gas supply related items will apply to SCs 1, 2, 3 and 13. Currently, these items include non-firm revenue credits, the Transition Surcharge, the Research and Development Surcharge, and Gas Facility Costs Credit.[19]

4. Factor of Adjustment Ratio. The monthly GCF will reflect a Factor of Adjustment Ratio for line losses equal to 1.0235.[20] For purposes of the annual reconciliation of the GCF in B.3(i) above, the GCF reconciliation will reflect actual gas lost and unaccounted for, adjusted for each of Rate Years 2002, 2003 and 2004, as follows:[21]

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[12] During the Settlement period, the GCF will not be adjusted for pipeline refunds since pipeline refunds are being retained to fund Net CRCCs as explained in paragraph H.1 below.

[13] Residential & Religious Non-heating Firm Sales Service

[14] General Firm Sales Service – Heating

[15] Residential & Religious – Heating Firm Sales Service

[16] General Firm Sales Service Non-Heating

[17] Seasonal Off-Peak Firm Sales Service

[18] The class allocators set forth on Appendix 3 will be updated periodically (but no more frequently than annually) to reflect significant changes in the load factor characteristics of each class.

[19] Firm transportation rates will continue to be subject to a Monthly Rate Adjustment, which will include the CRCC established in paragraph H.1 below.

[20] 1.0235 is equivalent to a fraction having a numerator of 1 and a denominator of 1 minus .023.

[21] The unadjusted Factor of Adjustment Ratio (i.e., 2.3%) will be the amount of gas to be retained by the Company from SC 9 transportation quantities as an allowance for losses.

i. If actual line losses are less than 2.3%, the Company will retain the benefit of the difference between 2.3% and actual line losses at or above 1.3%, and reflect for the benefit of firm customers the difference between 1.3% and any lower actual line losses.

ii. If actual line losses are greater than 2.3%, the Company will bear the cost of the difference between 2.3% and actual line losses at or below 3.3%, and customers will bear the difference between 3.3% and any higher actual line losses.

5. New Service Fees. The Company will implement separately-stated fees for various services currently provided at no specific charge to the customers requesting these services. These fees mirror comparable fees currently charged the Company's electric customers and are designed to recover the costs of providing these services and provide a price signal to the customers imposing such costs.

a. Dishonored Payment Charge: A charge of $12.00 per instrument on gas-only accounts would apply to an applicant or Customer making payment by a negotiable instrument that is subsequently dishonored. This charge is already collected from customers taking electric service and is used by other companies, including utilities, credit card companies, and banks to discourage customers from submitting such payments.

b. Charge for Meter Changes: Upon request of a customer, the Company will provide a meter or auxiliary metering equipment not normally furnished by the Company and not required for billing the customer's service, including meter upgrades and furnishing of equipment that permits remote reading of the meter, for a charge equal to the cost of the equipment and installation, including, where applicable, the costs of labor, material, corporate overhead and related taxes.

c. Charge for Investigating Tampered Company Apparatus: A charge of $160 per occurrence will be imposed to cover the costs of inspecting the gas apparatus, locking and sealing any tampered apparatus, issuing bills for the unmetered service, and handling associated administrative activities, where the Company finds a tampered Company gas apparatus. For dual service accounts (that is, a Customer taking both gas and electric service), the charge will be $115 for investigating the tampered Company gas apparatus if tampering is also found on the electric apparatus, plus the applicable tampering charge in the Company's electric tariff.

Nothing herein precludes the Company from proposing to institute additional service fees.

C. Reconciliations

1. Property Taxes. If the level of actual expenditures for property taxes varies from $65.453 million in Rate Year 2002, $69.891 million in Rate Year 2003, or $74.287 million in Rate Year 2004, then 86 percent of each annual variance will be separately deferred and recovered from or credited to firm customers after September 30, 2004 and 14 percent will be absorbed or retained by the Company.

2. Interference Expenses. Interference expenses (including labor) for each of the three Rate Years will be subject to reconciliation. Interference expenses will be reconciled to $23.358 million in Rate Year 2002, $23.848 million in Rate Year 2003, and $24.349 million in Rate Year 2004. Variations within a 10 percent dead band for each Rate Year will be absorbed or retained by the Company. Variations in excess of the dead band of 10 percent will be deferred and recovered from or credited to customers after September 30, 2004. Interference costs related to the September 11, 2001 attack will be excluded from this reconciliation.

3. Incremental Capital Expenditures. An incremental $85.448 million in excess of annual base capital expenditures of $97.583 million[22] for the programs specified below is allowed for the three-year period January 1, 2002 through December 31, 2004. Incremental expenditures will be subject to reconciliation as provided below. The $85.448 million is based upon anticipated capital expenditures for the projects set forth in Appendix 4 for (i) safety additions (inclusive of associated services), (ii) facilities required to interconnect with proposed interstate pipeline

[22] Base capital expenditures are capital expenditures (excluding common capital expenditures) as set forth in the Company's Five Year Construction Program for 2000–2004 ("Five-Year Program").

expansions and related downstream facilities, (iii) pipeline heaters, and (iv) interference-related gas capital expenditures. If the Company does not expend at least $85.448 million on the foregoing four items during the three-year period ending December 31, 2004,[23] the cost of capital on the under-expended amount, and O&M costs associated with any underexpenditures for pipeline replacement programs (i.e., items 1.a, b and c on Appendix 4) up to a maximum of $3.6 million, will be deferred for future disposition; provided, however, the Company may petition the Commission to apply the under-expended funds to finance other gas capital expenditures for reliability improvement or generating station support. Earnings on any cumulative under-expended dollars as of December 31, 2004, at the pre-tax rate of return of 10.80 percent, applicable to one-half of the settlement period (i.e., 18 months), will be deferred or credited to firm customers after December 31, 2004.

4. Compliance With Pipeline Integrity Requirements. If there is new federal or state legislation or regulation comparable to U.S. Senate Bill S.2438 (the "Pipeline Safety Improvement Act," passed by the U.S. Senate in September 2000), which would require the Company to establish a baseline integrity for its affected gas facilities using in-line inspection, hydro or pressure testing, or direct assessment, the Company will be entitled to recover any costs, including costs for hazardous waste disposal, incremental to the "base amounts" for this item (i.e., costs in excess of $2 million of annual base capital expenditures, excluding common capital expenditures, and $1 million of annual O&M expenses) from the CRCC Funding Sources (defined in paragraph H.1 below). If the CRCC Funding Sources are inadequate to provide full recovery of such costs, the Company may defer such costs for future recovery. Con Edison will file with the Commission

[23] To meet the expenditure threshold of $85.448 million, the Company may spend more than the amount(s) listed on Appendix 4 in a specific category and less in others, and may substitute like projects for the specific projects listed on Appendix 4 (e.g., the Company may incur capital costs for a pipeline interconnection other than Iroquois).

documentation of actual costs incurred on an annual basis, in connection with the application of CRCC Funding Sources or the deferral of costs for future recovery.

D. Computation and Disposition of Earnings

Following each of Rate Years 2002, 2003 and 2004, Con Edison will compute its gas rate of return on common equity capital for the preceding Rate Year. The calculation of return on common equity capital will be computed from the Company's books of account for each Rate Year, excluding the effects of (i) Company incentives and penalties including, but not limited to, the performance incentives and penalties from paragraph G below, (ii) the Factor of Adjustment Ratio incentive/penalty from paragraph B.4 above, (iii) the Company's retention of Non-Firm Revenues from paragraph F below, (iv) Orange and Rockland merger synergy savings allocated to the shareholder, and (v) any other ratemaking incentive allocated to the shareholder after the date of this Proposal. The computation will be made available to the Staff not later than December 1 following the end of the Rate Year.

1. Rate Year 2002. If the level of earned common equity return on gas operations in Rate Year 2002 exceeds 11.5 percent, the amount in excess of 11.5 percent shall be deemed "shared earnings" for the purposes of this Proposal, and be allocated as follows:

100 percent of the revenue equivalent of any shared earnings between 11.5 and 12.0% plus one-half of the revenue equivalent of any shared earnings above 12.0% will be deferred to a subsequent period for the benefit of customers or the Company as described below and the remaining one-half of the revenue equivalent of any shared earnings above 12.0% will be retained by the Company.

2. Rate Year 2003. If the level of earned common equity return on gas operations in Rate Year 2003, minus the amount, if any, by which Con Edison failed to achieve shared earnings in Rate Year 2002, exceeds 11.5 percent, the amount in excess of 11.5 percent shall be deemed

"shared earnings" for the purposes of this Proposal, and be allocated as follows:

100 percent of the revenue equivalent of any shared earnings between 11.5 and 12.0% plus one-half of the revenue equivalent of any shared earnings above 12.0% will be deferred to a subsequent period for the benefit of customers or the Company as described below and the remaining one-half of the revenue equivalent of any shared earnings above 12.0% will be retained by the Company. If the level of earned common equity return on gas operations in Rate Year 2003 is below 11.5 percent, the Company will offset (credit revenues) with shared earnings amounts deferred from Rate Year 2002, if available, to achieve an 11.5 percent return on common equity.

3. Rate Year 2004. Following the end of Rate Year 2004, the Company will, on a revenue equivalent basis, recalculate the earned return for Rate Years 2002 and 2003 and calculate the earned return for Rate Year 2004. The shared earnings that were previously calculated for Rate Years 2002 and 2003 will be ignored and superseded by this calculation. The earned return above or below 11.5% for each rate year will be summed and/or netted, as applicable. If there are net earnings above 11.5% for the three-year period, they will be distributed as follows: the first 50 basis points (the return on equity from 11.5% to 12.0%) will be allocated to customers, and the balance, if any, will be shared 50/50 between customers and the Company.[24] The customers' portion will be deferred for the benefit of customers and the Company will retain its portion. See Appendix 5 for an illustration of this calculation. If there are no net earnings above 11.5% for the three-year period, the Company will reverse any remaining allocations made to customers for Rate Years 2002 and/or 2003.

4. Post-Rate Year 2004 Period. The computation and disposition of earnings will continue after Rate Year 2004 until changed by Commission order, as follows: If the level of

[24] If the earned return is above 11.5% for two or more rate years, customers will first be allocated 100% of the earnings between 11.5% and 12.0% for such years, to the extent of cumulative earnings above 11.5%.

earned common equity return on gas operations exceeds 11.5 percent, the amount in excess of 11.5 percent shall be deemed "shared earnings" for the purposes of this Proposal, and be allocated as follows: 100 percent of the revenue equivalent of any shared earnings between 11.5 and 12.0% plus one-half of the revenue equivalent of any shared earnings above 12.0% will be deferred to a subsequent period for the benefit of customers and the remaining one-half of the revenue equivalent of any shared earnings above 12.0% will be retained by the Company.

E. <u>Post-Rate Year 2004 Period</u>

The provisions prescribed by this Proposal will continue after Rate Year 2004 until changed by Commission order, except for G.3, G.4, G.5(a), and the Competitive Retail Choice Credit ("CRCC") established in H.1. If the CRCC has not been eliminated on or before April 1, 2004 due to the implementation of unbundled rates, as provided in paragraph H.1 below, the Company will submit to the Commission, on or before April 1, 2004, a proposal to extend the CRCC beyond September 30, 2004 in the event this Proposal continues after Rate Year 2004, subject to the following: (i) such proposal will address, among other elements, the proposed level of the CRCC for the post-Rate Year 2004 period and the available credits or revenues otherwise due customers available to fund this CRCC, and (ii) the Company will not be required to implement a CRCC for the post-Rate Year 2004 period that exceeds the available funding sources. Nothing herein precludes Con Edison from filing a new general rate case prior to October 1, 2004, for rates to be effective on or after October 1, 2004.

F. <u>Disposition of Non-Firm Revenue</u>

1. For each Rate Year, the following revenues ("Non-Firm Revenues") shall be deferred and allocated as described in paragraph F.2 below.

i. Net base revenues[25] derived from

[25] Net base revenues mean total revenues less the following, as applicable: taxes, actual cost of gas (reflecting, for

a. Customers receiving interruptible service under SC 12 Rate 1 and SC 9 (Rates B and D); and

b. Power generation customers[26] receiving interruptible or off-peak firm service, including off-peak firm service under SC 9 Rate D(2) or special contract; the New York Power Authority (in excess of $3.1 million per Rate Year, which the shareholder retains); Company-owned power generation/steam plants; and existing, new and divested power generation facilities owned by third parties pursuant to, for example, SC 9 Rate D(1); and

ii. Net revenues derived from the use of interstate pipeline capacity for capacity releases;[27] for or by Customers taking service under off-peak firm SC 12 Rate 2, SC 19 and bundled sales; and other off-system transactions; and

iii. Gas balancing revenues derived from gas balancing services provided to SC 9 and 12 interruptible and off-peak firm customers, CNG, bypass and power generation customers and SC 20 marketers serving SC 9 transportation customers.

2. Non-Firm Revenues for each Rate Year shall be allocated to customers in the following proportions (i) 100% of the first $35 million, (ii) 80% of Non-Firm Revenues in excess of $35 million up to $70 million, and (iii) 90% of the Non-Firm Revenues in excess of $70 million, provided, however, the customers' share of Non-Firm Revenues will be reduced to provide for recovery of

(i) "Net CRCC" funding in accordance with paragraph H.1 below;

(ii) incremental lost revenues and additional costs resulting from further unbundling in paragraph H.2 below;

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example, hedging costs), balancing and associated charges (e.g., cash-out charges and credits); and any revenues included in total revenues related to reimbursements for facility costs associated with providing service, including, but not limited to, metering and communication equipment, service pipes and lines, service connections, main extensions, measuring and regulating equipment and system reinforcements and other facilities as necessary to render service.

[26] For the purposes of this paragraph F, power generation customers do not include cogeneration or other customers taking off-peak firm service under SC 12 Rate B or SC 9 Rate C.

[27] Net capacity release revenues means the credits afforded the Company after making any necessary adjustments (e.g., the adjustment to the Weighted Average Cost Of Capacity applicable to capacity releases to firm customers and/or ESCOs serving firm customers under the Company's capacity release program that became effective November 1, 2001).

(iii) expenses and capital expenditures related to pipeline integrity requirements in paragraph C.4 above;

(iv) $1.260 million per year of outreach and education program costs as discussed in paragraph H.5 below;

(v) $283,558 of outreach and education costs incurred during Rate Year 2001 and deferred for future recovery pursuant to paragraph H of the 2001 Agreement;

(vi) $100,000 of costs incurred during Rate Year 2001 for implementing Virtual Storage Option Service and Imbalance Trading Service and deferred for future recovery pursuant to paragraph H of the 2001 Agreement;

(vii) up to $1 million per year for retail choice promotional programs initiated pursuant to paragraph H.6 below;

(viii) $92,682 per month relating to recovery of the cost of interruptible plant; and

(ix) up to $300,000 for system enhancements if the Company implements daily Imbalance Trading Service ("ITS").[28]

provided, further, that

(a) the customers' share of Non-Firm Revenues will not be reduced to an amount less than 100 percent of the revenues from capacity releases made to Direct Customers or ESCOs for the purpose of serving firm customers under the Company's retail choice program; and

(b) the Company will defer for future recovery the costs set forth in F.2(i) through (ix) above for which the customers' share of Non-Firm Revenues is not adequate to provide recovery to the Company.

Before reducing Non-Firm Revenues in accordance with the foregoing adjustments, the Company will provide to Staff, to the extent applicable, documentation of the underlying costs incurred by the Company.

Within 60 days after this Proposal is approved, the Company, in consultation with Staff, will prepare an accounting opinion detailing the required accounting to implement this paragraph.

[28] The Company implemented Imbalance Trading Service pursuant to the 2001 Agreement. The 2001 Agreement provided for the Company to consult with Staff and the Signatory Parties on whether to continue and/or expand ITS service after Rate Year 2001 and whether to collect an ITS administrative fee. The Company will continue to provide monthly ITS service during Rate Years 2002, 2003 and 2004 and will not collect an administrative fee. The Company will endeavor to expand ITS to permit trading of imbalances on a daily basis.

If this Proposal continues after Rate Year 2004 as discussed in paragraph E above, Non-Firm Revenues for each Rate Year following Rate Year 2004 shall be allocated to customers in the following proportions: (i) 100% of the first $35 million, (ii) 80% of Non-Firm Revenues in excess of $35 million up to $70 million, and (iii) 90% of Non-Firm Revenues in excess of $70 million, without any reconciliation with allocations made for a prior Rate Year(s).

3. For the period commencing October 1, 2001 and ending February 28, 2002 (assuming Commission approval of this Proposal in March 2002), the customers' share of monthly Non-Firm Revenues other than from capacity releases, bundled sales and other off-system transactions, and balancing revenues, net of the reductions in paragraph F.2 above, shall be added to the balance remaining in the Interruptible Sales Account as of September 30, 2001. Appropriate adjustments will be made to the new account balance to recognize Non-Firm Revenues retained by the Company during the period commencing October 1, 2001 and ending February 28, 2002, consistent with the disposition of Non-Firm Revenues set forth in paragraph F.2 above. Each month a monthly credit per therm to customers' bills will be determined by dividing the rolling account balance of Non-Firm Revenues at the end of each month by historical annual firm sales and firm transportation volumes.[29] The customers' share of net revenues from capacity release, bundled sales and other off-system transactions and the customers' share of balancing revenues, net of reductions made pursuant to paragraph F.2 above, will be credited to firm sales customers via a reduction to fixed gas costs reflected in the average cost of gas used in computing the monthly GCF.

[29] For example, if the Commission approves the Proposal in March 2002, the first credit would become effective April 1, 2002 and be based on the account balance as of February 28, 2002 which would be determined by adding applicable Non-Firm Revenues generated during February 2002 to the January 31, 2002 account balance and subtracting Non-Firm Revenues refunded to firm customers during February 2002. The non-firm revenue credit will be reflected as a separate credit to the applicable monthly rate adjustment beginning April 1, 2002.

G. **Performance Incentives and Penalties**

1. Customer Satisfaction. A customer satisfaction "incentive" applicable to Rate Years 2002, 2003 and 2004 will be calculated annually as follows:

> Levels of customers' satisfaction will be determined by a survey, to be performed by an outside vendor semi-annually, designed to measure customers' satisfaction with the handling of calls to the Emergency Response Center relating to gas service. Should the average of the two system-wide satisfaction survey indices applicable to the Rate Year fall below 88.1%, Con Edison will provide to customers a credit. The gross amount of the credit will be calculated proportionately from zero at a satisfaction level of 88.1% or above, up to a maximum of 15 basis points in equivalent return on common equity capital at a satisfaction level of 87.5% or below. System wide emergencies will not be included in surveys conducted under this provision.

Con Edison will submit reports on its performance of the customer satisfaction surveys twice a year following performance of each survey.

2. Migration Incentive. The Earnings Threshold for each Rate Year will be increased by up to 10 basis points in common equity return if up to 15,000 customers commence firm transportation service during such Rate Year, pursuant to the following formula: (1) 10 basis points *times* (2) the total number of residential heating customers and commercial and industrial customers taking service under SC Nos. 3 and 2, respectively, that commence taking firm transportation service during each Rate Year (i.e., new accounts and customers converting from firm sales service), *divided by* (3) the migration target of 15,000 customers. There are no penalties associated with this migration incentive.

3. Mercury Regulator Program. All Company-owned Mercury Regulators in the Company's data base as of September 30, 2001 will be removed from the system by December 31, 2003. If the number of Company-owned Mercury Regulators remaining in the Company's data base[30] falls into the range specified below as of December 31, 2003, the following one-time

[30] The calculation of the number of Company-owned Mercury Regulators remaining in the Company's data base will be exclusive of documented cases of multiple access attempts (e.g., at least two attempts on either weekends or

penalty will be applied to the benefit of firm customers, as directed by the Commission:

1 to 499 Regulators	No penalties
500 to 1500 Regulators	1 Basis Point
1501 to 1999 Regulators	3 Basis Points
Over 2000 Regulators	10 Basis Points

4. Pipe Replacement Program. The Company plans to replace approximately 442,800 feet of distribution piping, consisting of 4-inch, 6-inch and 8-inch medium pressure cast iron piping and small diameter bare or unprotected steel piping, including bare steel piping and four-inch cast iron piping in the vicinity of schools. If by December 31, 2004, the Company has replaced less than 442,800 feet of such facilities in aggregate, the following one-time penalty will be applied to the benefit of firm customers, as directed by the Commission:

420,000 and 442,800 feet	No penalty
400,000 and 419,999 feet	25 Basis Points
350,000 and 399,999 feet	50 Basis Points
300,000 and 349,999 feet	75 Basis Points
Less than 300,000	100 Basis Points

5. Safety Performance Penalties.

The Company will be assessed the following penalties associated with gas leaks:[31]

(a) System Total Leak Backlogs: Con Edison will calculate the average of the three year-end total leak backlogs for the years ending December 31, 2002, 2003, and 2004. If the average year-end backlog for the three years exceeds 1,800 leaks, the following one-time penalty will be applied to the benefit of firm customers, as directed by the Commission:

1800 or less	No penalty
1801 to 1900	1 Basis Point
1901 to 2000	2 Basis Points
Above 2000	3 Basis Points

during off-hours).

[31] Gas leak calls resulting from mass area odor complaints, major weather-related occurrences and other circumstances outside of the Company's control are excluded from the calculation.

(b) System Total Workable Leak Backlogs: For each of the calendar years 2002, 2003 and 2004, Con Edison will achieve a year-end system workable leak backlog not to exceed 140 workable leaks or the following penalty will be applied to the benefit of firm customers, as directed by the Commission:

140 or less	No penalty
141 to 150	1 Basis Point
151 to 160	2 Basis Points
More than 160	3 Basis Points

(c) 45-Minute Response Time: For each of the calendar years 2002, 2003 and 2004, Con Edison will respond to gas leak calls within 45 minutes for at least 95% of the calls or the following penalty will be applied to the benefit of firm customers, as directed by the Commission:

95% to 94.5%	No penalty
94.5% to 93%	1 Basis Point
92.9% to 92%	2 Basis Points
Less than 92%	3 Basis Points

(d) 30-Minute Response Time: For calendar year 2004, Con Edison will respond to gas leak calls within 30 minutes for at least 70% of the calls or a one Basis Point penalty will be applied to the benefit of firm customers, as directed by the Commission. For each of calendar years 2002 and 2003, Con Edison will report to Staff whether the Company responded to gas leak calls within 30 minutes for at least 60% of the calls; there is no penalty associated with the Company's 30-minute response time for calendar years 2002 and 2003.

H. <u>Competition Provisions</u>

1. <u>Competitive Retail Choice Credit</u>. Commencing on the first day of the calendar month immediately following Commission approval of the Proposal, and continuing through the earlier of September 30, 2004 or the implementation of unbundled rates as a result of Case 00-M-0504 (or in

any related or like proceeding), the Company will apply a 24.0 cents per dth competitive retail choice credit ("CRCC") to the bills of the Company's firm transportation customers under Service Classification SC-9, except for CNG, Bypass and Power Generation customers, who, like interruptible and off-peak firm customers, are not eligible for this credit.

During the first 12 months the Proposal is in effect, there will be added to the 24.0 cents per dth CRCC an additional credit intended to provide transportation customers an amount approximately equal to the CRCCs that customers would have received during the period from October 1, 2001 to the effective date of the Proposal. This incremental amount will be unaffected by the implementation of unbundled rates and the associated elimination of the 24.0 cents per dth CRCC since it relates to a past period.

The credits are based upon the following factors: (1) various parties believe that certain costs included in base rates should be allocated only to firm sales customers because they believe that the Company does not incur such costs when it provides firm transportation service, or that the Company, at some time in the future, may be able to reduce or avoid such costs (e.g., the uncollectible expense associated with the cost of gas, working capital costs associated with storage gas used for firm sales customers, and certain gas supply procurement function costs); (2) various parties believe that certain credits currently applied only to the bills of firm sales customers, or to both firm sales and firm transportation customers, should be applied only to the bills of firm transportation customers or in greater proportion to firm transportation customers; and (3) various parties believe that some level of reduction in firm transportation customers' bills will increase migration from firm sales to firm transportation service.

The Signatory Parties agree that the Company shall be kept whole for the aggregate amount of CRCCs applied to customers' bills pursuant to this Proposal, less any net, verifiable avoided costs associated with providing firm transportation services. For purposes of this Proposal only, the Signatory Parties agree that the Company will use 1.2 cents per dth in lieu of determining net, verifiable incremental avoided costs of any and all kinds associated with providing firm transportation services ("Avoided Cost Surrogate"). Effectively, the Company will provide a CRCC equal to 24.0 cents per dth and be reimbursed for 22.8 cents per dth.

Accordingly, the Company shall calculate the total CRCCs credited monthly on firm transportation customer bills less 1.2 cents per dth times the applicable monthly transportation volume for each Rate Year ("Net CRCCs"), and reduce the following credits or revenues otherwise due customers ("CRCC Funding Sources") by the Net CRCCs: (1) interstate pipeline refunds received by the Company during the period October 1, 2001 and ending September 30, 2004, including any pipeline refunds received during the 12 month period ending September 30, 2001 that were not used to provide for Net CRCCs for the period December 1, 2000 through September 30, 2001; (2) charges collected from customers for their failure to comply with the terms and conditions of the Company's interruptible and off-peak firm service classifications during the period October 1, 2001 and ending September 30, 2004, including any prior period charges that were not used to provide for Net CRCCs for the period December 1, 2000 through September 30, 2001; (3) the customers' share of Non-Firm Revenues described in paragraph F above; (4) late payment charges collected from customers on and after October 1, 2001; and (5) revenues from the new service fees instituted pursuant to paragraph B.5 above. Funds from the first source will be fully exhausted before using funds from the next source, and so on. Except for the disposition of the customers' share of Non-Firm Revenues, which is described in paragraph F above, CRCC Funding Sources that are not used to fund Net CRCCs in any Rate Year will be used to fund Net CRCCs in the subsequent Rate Year(s). If the credits outlined above are not sufficient to fully fund the total Net CRCCs, an amount equal to the balance of the Net CRCCs credited to customers will be deferred for future collection from customers in a manner to be determined by the Commission.

The Signatory Parties believe that there are cost and other bases for using these credits in the manner proposed in this Proposal and that firm transportation customers receive service that is different from firm sales customers in various respects.

2. Further Rate Unbundling. If the Commission orders the implementation of unbundled rates or other rate design changes as a result of Case 00-M-0504 or any related or like proceeding, such implementation (i) shall replace prospectively the CRCC described in paragraph H.1 above,[32] and (ii) shall provide the Company with a reasonable opportunity to recover prudently-incurred costs that are not avoided and could not reasonably have been mitigated consistent with the Company's service obligations. The timing and method of such recovery shall be as determined by the Commission in Case 00-M-0504 or any related or like proceeding. The calculation of Con Edison-specific costs in accordance with the foregoing standard will be subject to approval or acceptance by the Commission.

3. Market Power Monitoring Mechanism. The Signatory Parties agree to implement the market power monitoring mechanism described below in order to address potential market power concerns. The implementation of such mechanism does not presume the existence of market power abuse. Rather, the implementation of such mechanism is intended solely to promote continued development of a competitive market and customer choice, by providing a means for the parties to address potential market power concerns.

In order to allow a competitive market to develop, until 35 percent of the Company's total

[32] Unless a procedure is otherwise directed by the Commission, within 10 days of the issuance of an order by the Commission in the Unbundling phase of Case 00-M-0504 directing the implementation of unbundled rates ("Unbundling Order"), the Signatory Parties will convene a meeting to collaboratively discuss and develop a process for the implementation of unbundled rates for Con Edison gas service that is consistent with the Unbundling Order and attempts to minimize any negative impact on the competitive retail market.

firm gas customers (excluding Service Classification No. 1 residential non-heating customers and corresponding SC 9 transportation customers) are taking service from marketers, the market power monitoring mechanism described herein would not apply. After this 35 percent migration threshold is achieved, if an individual ESCO's share exceeds 25 percent of the Company's total firm sales and firm transportation gas customers (excluding Service Classification No. 1 residential non-heating customers), any interested party may request a meeting of the parties to this proceeding to determine if a market power concern exists. Any marketers authorized by the Department of Public Service may attend such meeting. The Company will schedule and provide notice of such a meeting within 30 days after receipt of such request. The mere fact that a marketer's share exceeds 25 percent of the Company's total firm sales and firm transportation gas customers (excluding the residential non-heating customers) does not presume the existence of market power abuse or the violation of any Federal or state antitrust statute or regulation. The parties may discuss whether remedies to address any market power concerns are appropriate. During these discussions, and until the Commission orders otherwise, all marketers may continue to market to new customers. If the parties are unable to reach consensus as to whether market power is being abused and, if so, what remedies should be implemented, any party may submit the matter to the Commission for resolution. If the parties do reach consensus, the parties will submit such consensus agreement to the Commission for review and approval. In order to constitute a consensus, the ESCO whose market share exceeded the threshold must be a party to the consensus.

This provision shall apply equally to all marketers, including utility affiliates. This provision shall not constitute either an explicit or implicit waiver of any party's rights pursuant to any Federal or state antitrust statute or regulation. This provision will remain in effect for the term of this Proposal and thereafter until revised or terminated by order of the Commission.

This provision does not preclude either the Commission or Staff from discharging its normal investigative role pursuant to the provisions of the Public Service Law and the regulations promulgated hereunder.

4. Marketer Satisfaction Survey.[33] A survey of gas marketers, to gauge satisfaction and understanding of utility services provided to gas marketers, will be conducted by an independent third party(ies) and completed by April 30 of Rate Years 2002, 2003 and 2004.

By March 31, 2002, January 31, 2003 and January 31, 2004, the Company, in consultation with Commission Staff, will finalize each survey instrument.

[33] The 2001 Agreement states, "The results of the survey will provide baseline results that may be used as a basis for an incentive-only mechanism(s) in connection with the development of a long term rate and restructuring plan." The Signatory Parties agree that the survey is not intended and will not be used by them to establish, or argue in favor of establishing, a penalty mechanism(s) relating to customer awareness.

By May 31 of each year, the Company will provide (i) to Staff, pursuant to the Commission's trade secret regulations, a confidential report of the raw data obtained during the survey process, including the names of the participating gas marketers but without attribution of the raw data to individual marketers, and (ii) to the Signatory Parties, a high-level summary of the feedback received from marketers during the survey process.

By June 30 of each year, the Company will provide to the Signatory Parties a high-level summary of the Company's plans to address concerns identified by the marketers during the survey process.

5. Customer Education: Awareness and Understanding. Con Edison will design its customer outreach and education program to increase the awareness and understanding of residential and small commercial and large customers of competitive choice and the Company's "Power Your Way" program and to encourage customers to buy their commodity from another supplier.

The estimated annual cost of the Company's outreach and education efforts is $1.260 million, as set forth in more detail below. Individual elements of the budget may be adjusted by the Company. The Company will notify Staff of any adjustment that is expected to exceed 20%. The Company shall be reimbursed for these costs from the customers' share of Non-Firm

Revenues.

Item	Annual Cost
Market Research[34]	$150,000
Employee Education	$60,000
Speakers Bureau	$45,000
Promotional Items	$40,000
Power Your Way Brochures	$140,000
Targeted Mailings	$100,000
PSC - Power Your Way Brochure	$100,000
Power Your Way Website Enhancements / Promotion / Links	$50,000
New Customer Contact Program	$175,000
Advertising	$400,000
TOTAL COST	**$1,260,000**

The Company will provide to Staff by September 30 of each of the three Rate Years a report that includes (i) a summary of the Company's awareness and education efforts during that Rate Year (or comparable annual period), which report may jointly address efforts relating to both gas and electric customers, (ii) an accounting of expenditures for that Rate Year (or comparable annual period), and (iii) a plan and budget for the next Rate Year. The Company will seek input from Staff and marketers in developing each year's plan.

A survey of residential heating and small commercial customers, to gauge awareness and understanding of retail choice, will be conducted by an independent third party(ies) and completed by April 30 of Rate Years 2002, 2003 and 2004. By March 31, 2002, January 31, 2003 and January 31, 2004, the Company, in consultation with Commission Staff, will finalize each survey instrument. By May 31 of each year, the Company will provide (i) to Staff, pursuant to the

[34] Includes costs for marketer satisfaction and customer awareness surveys.

Commission's trade secret regulations, a confidential report of the raw data obtained during the survey process, excluding the names of the participating customers, and (ii) to the Signatory Parties, a high-level summary of the feedback received from customers during the survey process. By June 30 of each year, the Company will provide to the Signatory Parties a high-level summary of the Company's plans to address concerns identified by customers during the survey process.

6. Retail Choice Programs. The Company is authorized to use up to $1.0 million per year of the customers' share of Non-Firm Revenues to promote the Company's gas retail choice program through programs developed in consultation with Staff and gas marketers. The promotional programs will be directed to specific market segments and/or to reduce transaction costs experienced by gas marketers. For example, the Signatory Parties will use reasonable efforts to develop a proposal that promotes participation by cooking customers in the Company's gas retail choice program.[35]

The Company will convene a meeting of Staff and gas marketers within sixty (60) days following issuance of an order approving this Proposal, at which meeting the Company will present its plans for the application of the $1 million for Rate Year 2002 to promotional programs. The Company will provide Staff and the gas marketers with reasonable notice of the meeting and a draft of the Company's plans. The Company, Staff and the gas marketers will make good faith efforts to develop a consensus-based program. The Signatory Parties will repeat these efforts during the first quarters of Rate Years 2003 and 2004. The Company and Staff, with input from gas marketers, may agree to modify the level of annual expenditures so long as the three-year total does not exceed $3 million.

The Company will convene a meeting of Staff and electric and gas marketers, within sixty

[35] The $1 million fund would also be used to reimburse the Company to the extent that the actual costs of any promotional program (e.g., a cooking customer program) exceed the projected cost savings.

(60) days following issuance of an order approving this Proposal, for the purpose of discussing the Company's presentation of gas supply costs on customers' bills. If the Company, Staff and participating electric and gas marketers are not able to resolve this matter collaboratively within sixty (60) days following the initial meeting convened to discuss this matter, any of the participants in these discussions may submit the matter to the Commission for resolution, subject to the Company's right to recover the costs it incurs to implement a change in bill presentation of gas supply costs resulting from either collaboration or Commission order, on a current basis and in a competitively-neutral manner, subject to Staff's review of the underlying expenditures.

7. Capacity Balancing Service. Capacity Balancing Service, to which no customer has ever subscribed, shall no longer be available as of the effective date of this Proposal. The Company will continue to offer load following, daily delivery and daily cash-out services to its firm transportation customers.

I. Other Provisions

1. The Signatory Parties request that the Commission adopt the Proposal in its entirety as set forth herein. The parties hereto believe that the Proposal will further the objective of giving fair consideration to the interests of customers and shareholders alike in assuring the provision of safe and adequate service at just and reasonable rates.

2. It is understood that each provision of this Proposal is in consideration and support of all the other provisions, and expressly conditioned upon acceptance by the Commission. If the Commission fails to adopt this Proposal according to its terms, then the Signatory Parties to the Proposal shall be free to pursue their respective positions in this proceeding without prejudice.

3. The terms and provisions of this Proposal apply solely to, and are binding only in,

the context of the purposes and results of this Proposal. None of the terms or provisions of this Proposal and none of the positions taken herein by any party may be referred to, cited, or relied upon by any other party in any fashion as precedent or otherwise in any other proceeding before this Commission or any other regulatory agency or before any court of law for any purpose, except in furtherance of ensuring the effectuation of the purposes and results of this Proposal.

4. Changes to the Company's base gas rates to be effective prior to October 1, 2004 will not be permitted except as provided in paragraphs I.5 and I.10 below and paragraphs B.2 and H.2 above.

5. If a circumstance occurs which in the judgment of the Commission so threatens Con Edison's economic viability or ability to maintain safe and adequate service as to warrant an exception to this undertaking, Con Edison will be permitted to file for an increase in base gas rates at any time under such circumstances. The Signatory Parties recognize that the Commission reserves the authority to act on the level of Con Edison's base gas rates in the event of unforeseen circumstances that, in the Commission's opinion, have such a substantial impact on the range of earnings levels or equity costs envisioned by this Proposal as to render Con Edison's gas rates unreasonable or insufficient for the provision of safe and adequate service.

6. Except as provided in paragraphs C.4 above and paragraph I.8 below, if any law, rule, regulation, order, or other requirement or interpretation (or any repeal or amendment of an existing rule, regulation, order or other requirement) of the state, local or federal government or courts, including a requirement that Con Edison refund its tax exempt debt, results (i) in a change in Con Edison's annual gas costs or expenses not anticipated in the expense forecasts and assumptions on which the rates in the joint proposal period are based and (ii) in the Company's incurring incremental costs in an annual amount of $2 million or more, Con Edison will defer on

its books of account the total effect of any such annual cost changes in excess of $2 million per incident, with any such deferrals to be reflected in a manner to be determined by the Commission.[36]

7. If incremental site investigation and remediation ("SIR") costs exceed $5 million company-wide in any given rate year during the term of this Proposal, Con Edison may defer for recovery the gas portion of the costs that exceed $5 million company-wide, with any such deferrals to be recovered in a manner to be determined by the Commission. SIR costs are the costs Con Edison incurs to investigate, remediate or pay damages (including natural resource damages but excluding personal injury damages) with respect to industrial and hazardous waste or contamination spills, discharges and emissions for which Con Edison is responsible.[37]

8. If the federal government, State of New York, the City of New York and/or other local governments make changes in their tax laws (other than local property taxes, which will be reconciled in accordance with paragraph C.1 above) and if the Commission does not permit the disposition, through a surcharge or credit, of any such tax law changes, including any new, additional, repealed or reduced federal, state, City of New York or local government taxes, fees or levies, Con Edison shall defer the full change in expense[38] and reflect such deferral as credits or debits to customers in the next base rate change, subject to any final Commission determination in a generic proceeding prescribing utility implementation of a specific tax law enactment, including

[36] For purposes of this paragraph, the $2 million threshold will be applied on a case-by-case basis and not to the aggregate impact of changes to two or more laws, rules, etc.; provided, however, that the $2 million threshold will be applied to the incremental aggregate impact of all changes affecting a particular subject area and not to the individual provisions of the new law, rule, etc.

[37] SIR costs are net of insurance reimbursement (if any), provided, however, that nothing herein shall require the Company to initiate or pursue litigation for purposes of obtaining insurance reimbursement.

[38] For taxes other than income taxes, the full change in expense will be measured from the base level of taxes shown on Appendix 6.

Commission determination of any Company-specific compliance filing made in connection therewith.[39]

9. The Company may petition the Commission to defer extraordinary expenses, including extraordinary operating and maintenance expenses or capital costs, not covered by subparagraphs B.1 and I.4 through 7 above. Such deferrals are subject to such materiality and other standards as may then apply. The Signatory Parties agree that further consequences of war and war-like conditions, such as terrorist attacks, are not contemplated in the projections on which this Proposal is premised, will be viewed as an extraordinary circumstance, and will not be subject to a materiality standard for purposes of deferrals. Furthermore, for extraordinary expenses relating to war and war-like conditions, the Company's petition may include a request to recover such costs through a surcharge in lieu of deferral.

10. Nothing herein shall preclude Con Edison from petitioning the Commission for approval of new services or of rate design or revenue allocation changes on an overall revenue-neutral basis, including, but not limited to, the implementation of new service classifications (e.g., for gas transportation service associated with distributed generation; a new business incentive rate for gas customers that negotiate a comprehensive pac kage of economic incentives with municipal or state economic development authorities[40]).

IN WITNESS WHEREOF, the Signatory Parties hereto have affixed their signatures below as evidence of their agreement to be bound by the provisions of this Proposal on the day and year first written above.

[39] The Company reserves all of its administrative and judicial rights in connection with such generic proceeding(s).
[40] The Company agrees to meet with the City of New York and Staff within 75 days of the effective date of the Proposal to consider the development of a business incentive rate.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 00-G-1456 – Petition of Consolidated Edison Company of New York, Inc. for Approval of a Response to the Commission's Policy Statement Issued November 3, 1998, filed in C 97-G-1380

CASE 97-G-1380 - In the Matter of Issues Associated with the Future of the Natural Gas Industry and the Role of Local Gas Distribution Companies

NOTICE OF DETERMINATION
OF SIGNIFICANCE

Notice is hereby given that an Environmental Impact Statement will not be prepared in connection with action by the Public Service Commission on the Petition by Consolidated Edison Company of New York, Inc. for approval of the terms of a Gas Restructuring Joint Proposal submitted in the captioned cases.

This is based on our determination, pursuant to Part 617 of the implementing regulations pertaining to Article 8 of the State Environmental Quality Review Act of the Environmental Conservation Law, that such action will not have a significant adverse effect on the environment. The actions contemplated are unlisted actions.

Implementation of the terms of the Joint Proposal would involve changes in practices and economic arrangements affecting natural gas and would provide for some physical construction activities that would not have a significant impact on the environment or are otherwise precluded from environmental review.

The address of the Public Service Commission, the lead agency for purposes of environment quality review of this project, is Three Empire State Plaza, Albany, New York 12223-1350. For further information contact Peter Catalano at (518) 474-6522

JANET HAND DEIXLER
Secretary