

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**Petition of Consolidated Edison Company)
of New York, Inc. for Approval of the)
Smart Solutions for Natural Gas)
Customers Program)**

Case 17-G-0606

COMMENTS OF THE ENVIRONMENTAL DEFENSE FUND

Pursuant to the New York State Public Service Commission’s (“Commission”) December 26, 2017 Notice Regarding Submission of Comments, the Environmental Defense Fund (“EDF”) respectfully submits these comments regarding Consolidated Edison Company of New York, Inc.’s (“Con Ed”) “Petition for Approval of the Smart Solutions for Natural Gas Customers Program” (“Petition”). In support thereof, EDF states as follows:

I. INTERESTS OF EDF

EDF is a membership organization whose mission is to preserve the natural systems on which all life depends. Guided by science and economics, EDF seeks practical solutions to resolve environmental problems. EDF uses the power of markets to speed the transition to clean energy resources, and consistent with its organizational purpose is engaged in activities to facilitate cost-effective and efficient energy market designs that encourage investment to modernize the energy grid so that it can support the ongoing deployment of renewable energy resources and energy efficiency. EDF works collaboratively with market participants sharing these goals and is a member of the North American Energy Standards Board. Before this Commission, EDF has highlighted the importance of harmonizing the Commission’s natural gas policies with the state’s ambitious climate goals, urging against pipeline buildout that

undermines drivers for more efficient solutions and imposes long-term economic and environmental costs on ratepayers.¹

II. COMMENTS

A. The Commission's Natural Gas Policies and the State's Climate Goals Need to be Harmonized

Con Ed's petition presents an opportunity for the Commission to harmonize its decades-olds policies on natural gas with the state's ambitious climate goals. New York's natural gas utilities make their gas supply planning decisions based on Commission policies from the late 1990s.² An open proceeding from 2012—which seeks to analyze the Commission's policies on the expansion of natural gas—highlights the cost and environmental benefits of natural gas.³ A 1989 Policy Statement still governs the incentives provided to utilities for

¹ See, e.g., EDF Letter to Secretary Burgess, Heightened Scrutiny of Precedent Agreements Supported by Affiliates, Case 93-G-0932 (November 29, 2016); *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Niagara Mohawk Power Corporation for Electric and Gas Service*, Case 17-E-0238 and 17-G-0239, Testimony and Attachments of Simi Rose George on behalf of the Environmental Defense Fund (August 25, 2017).

² See, e.g., *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Niagara Mohawk Power Corporation for Electric and Gas Service*, Case 17-E-0238 and 17-G-0239, Direct Testimony of Elizabeth D. Arangio at 11 (April 28, 2017) (explaining National Grid's gas supply planning decisions are based on two Commission policy statements, citing *In the Matter of the Commission's Request for Gas Distribution Companies to Reduce Gas Cost Volatility and Provide for Alternate Gas Purchasing Mechanisms*, Statement of Policy Regarding Gas Purchasing Practices, Case 97-G-0600 (April 28, 1998); *In the Matter of Issues Associated with the Future of the Natural Gas Industry and the Role of Local Gas Distribution Companies*, Policy Statement Concerning the Future of the Natural Gas Industry in New York and Order Terminating Capacity Assignment, Case 97-G-1380 (November 3, 1998)).

³ *Proceeding on Motion of the Commission to Examine Policies Regarding the Expansion of Natural Gas Service*, Order Instituting Proceeding and Establishing Further Procedures, Case 12-G-0297 (November 30, 2012).

expansion into new natural gas franchise territories.⁴ Embedded within these policies and precedents are preferences for utility decisions weighted in favor of natural gas utilization and infrastructure investment.

These decades-old policies on natural gas planning and infrastructure expansion were issued several years before the state adopted its aggressive climate goals such as the Clean Energy Standard and Governor Cuomo's May 2017 Methane Reduction Plan. Moreover, they were adopted at a time when natural gas was viewed as a cost-effective and cleaner alternative to fossil fuels such as oil and kerosene. Since then, however, New York's climate goals have evolved in such a way that is increasingly out of sync with the Commission's policy framework relating to gas expansion. Policy incentives for gas service expansion and related infrastructure must be revisited for New York to achieve its ambitious goals.⁵ The Commission acknowledged this point in the Reforming the Energy Vision ("REV") proceeding, stating that "the shift toward greater reliance on natural gas, which has been a first-stage carbon reduction measure, has led to fuel diversity concerns and poses a challenge to meeting long-term carbon goals."⁶

Although the Commission has not adopted REV programs explicitly targeted to natural gas utilities, the Commission has expressed support for economically viable projects to the extent

⁴ *In the Matter of the Formulation of a Policy Regarding the Rate Treatment Afforded to Expansion of Gas Service into New Franchise Areas*, Statement of Policy, Case 89-G-078 (December 11, 1989).

⁵ *See Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Niagara Mohawk Power Corporation for Electric and Gas Service*, Case 17-E-0238 and 17-G-0239, Testimony and Attachments of Simi Rose George on behalf of the Environmental Defense Fund (August 25, 2017).

⁶ *Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision*, Order Adopting Regulatory Policy Framework and Implementation Plan, Case 14-M-0101 at 24 (February 26, 2015).

that they advance REV goals and benefit the gas system.⁷ The Commission has described the REV goals as follows:

Customers, by exercising choices within an improved electricity pricing structure and vibrant market, will create new value opportunities and at the same time drive system efficiencies and help to create a more cost-effective and secure integrated grid. The more efficient system will be designed and operated to make optimal use of cleaner and more efficient generation technologies.⁸

Con Ed's Petition has the potential to satisfy these same goals. In its conceptual proposal, Con Ed lists various ways, beyond new pipeline infrastructure, it could meet its natural gas demand. If Con Ed ultimately relies on these non-pipeline alternative solutions, its Petition will serve the public interest by satisfying the Commission's core REV objectives on the gas side.

B. The Commission Should Direct Con Ed to Further Support its Unprecedented Request for Customers to Share Pipeline Development Costs

In its Petition, Con Ed seeks Commission approval to include two new provisions in its precedent agreement: (1) a provision to allow Con Edison to cancel its participation in the project if the Company's need for capacity is reduced or eliminated; and (2) a provision to require Con Ed to share in the accrued development costs in the event the project is terminated after a specified date as a result of failing to secure needed construction permits.⁹ Con Ed admits that this is an unprecedented request.¹⁰ While Con Ed understandably needs the flexibility to

⁷ *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of KeySpan Gas East Corporation d/b/a National Grid for Gas Service*, Order Adopting Terms of Joint Proposal and Establishing Gas Rate Plans at 134 (December 16, 2016).

⁸ *Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision*, Order Adopting Regulatory Policy Framework and Implementation Plan, Case 14-M-0101 at 11 (February 26, 2015).

⁹ Con Ed Smart Solutions Petition at 30.

¹⁰ *See id.* ("the Company anticipates that the precedent agreement for the pipeline project under consideration will include two provisions not heretofore included in pipeline precedent agreements to which the Company was a party....").

cancel the project if its need for such capacity is reduced or eliminated, it has not demonstrated why customers should be burdened with accrued development costs in the event the project is terminated. Pipeline developers routinely receive a 14% return on equity (“ROE”) for new pipeline build.¹¹ The Federal Energy Regulatory Commission has determined that these higher returns are warranted because pipeline developers face a higher level of risk than do local distribution companies.¹² Con Ed’s proposed provision would shift some of that risk to customers, without addressing whether a commensurate reduction in ROE would be appropriate. Given that pipeline developers are already generously compensated for the risk they assume when proposing to build a pipeline, the Commission should direct Con Ed to provide further support regarding the need for customers to share the accrued development costs for the proposed project.

Con Ed alternatively requests that, if it cannot ultimately execute a precedent agreement without a provision to share development costs if the project is terminated, that it be allowed to treat those costs “the same as other gas supply costs for purposes of cost recovery.”¹³ Again, Con Ed does not cite any precedent for this request but simply asks the Commission to confirm that it should be authorized to recover these costs via the *existing* terms of the Monthly Rate Adjustment. Schedule 9 of the Company’s tariff specifically delineates the components that Con Ed may recover as part of the Monthly Rate Adjustment:

- (1) Non-Firm Revenue Credit;
- (2) Other Monthly Rate Adjustment Components;

¹¹ See, e.g., *Sierrita Gas Pipeline, LLC*, 147 FERC ¶ 61,192, at P 39 n.28 (2014); *Ruby Pipeline L.L.C.*, 136 FERC ¶ 61,054, at P 11 (2011).

¹² *Atlantic Coast Pipeline, LLC*, 161 FERC ¶ 61,042, at P 102 (2017) (citing *Trailblazer Pipeline Co.*, 106 FERC ¶ 63,005, at P 94 (2004)).

¹³ Con Ed Smart Solutions Petition at 31.

- (i) Gas Facility Costs Credit Provision;
- (ii) Transition Surcharge for Capacity Costs;
- (iii) Research & Development Surcharge;
- (iv) Load Following Charge;
- (v) Transition Adjustment for Competitive Services;
- (vi) Low Income Reconciliation Adjustment;
- (vii) Uncollectibles Charge Related to Monthly Rate Adjustment;
- (viii) Gas in Storage Working Capital Charge;
- (ix) Oil to Gas Conversion Program Surcharge;
- (x) Curtailment Cost Recovery Charge;
- (xi) Pipeline Facilities Adjustment;
- (xii) Other Non-Recurring Adjustments;
- (xiii) New York Facilities Adjustment;
- (xiv) Gas Supplier Refunds;
- (xv) Safety and Reliability Surcharge Mechanism (“SRSM”);
- (xvi) Climate Change Vulnerability Study; and
- (xvii) Earnings Adjustment Mechanism Related to AMI Customer Awareness (“AMI EAM”).¹⁴

Given that development costs are not currently listed as a component of the Monthly Rate Adjustment, Con Ed is apparently asking for Commission approval to violate its own tariff. In a footnote, Con Ed concedes that tariff revisions may be necessary to effectuate its request,¹⁵ but notes that such tariff revisions will be filed after the Commission rules on its petition. There are significant procedural and substantive infirmities with such an approach. First, Con Ed is requesting to make tariff revisions on a piecemeal basis, outside of a formal rate case. Second, Con Ed has not demonstrated the reasonableness of including development costs in the Monthly Rate Adjustment. Given these issues, the Commission should require Con Ed to provide further support for its novel request.

¹⁴ [https://www.coned.com/external/cerates/documents/gas_tariff/pdf/0003\(07\)-General_Information.pdf](https://www.coned.com/external/cerates/documents/gas_tariff/pdf/0003(07)-General_Information.pdf)

¹⁵ Con Ed Smart Solutions Petition at 35, n.17.

C. The Petition Fails to Provide Sufficient Information for the Commission to Address Cost Recovery of the Pipeline

Regulators need sufficient information upon which to make reasoned decisions.¹⁶ Con Ed requests that the Commission confirm it is authorized to recover costs that may arise from the cancellation or termination of a precedent agreement.¹⁷ Con Ed acknowledges that this is an unprecedented request.¹⁸ One would expect such an unprecedented request be accompanied by detailed support. Con Ed has not, however, provided the Commission and interested parties with enough information to assess its conceptual proposal. Critical pieces of information are noticeably absent from the Petition:

- (1) The identity of the pipeline developer (as detailed below, the identity could have significant implications for the project);**
- (2) The total capacity of the project;**
- (3) The total cost of the project.**

Con Ed states that it expects to conclude a precedent agreement by the end of 2017 or early 2018.¹⁹ Thus, these are pieces of information that should be known at this time, and the public interest will be served by the Commission directing Con Ed to file its precedent for Commission and interested party review. The Commission should not, as Con Ed requests, approve a conceptual proposal without first knowing these crucial proposal details.

¹⁶ See Bay State Gas, 2012 WL 5448763 at 62, Mass. DPU Order No. 12-25 at 106 (Nov. 1, 2012) (“full disclosure of information by regulated companies is essential for the Department to properly fulfill its function of regulating in the public interest.”).

¹⁷ Con Ed Smart Solutions Petition at 35.

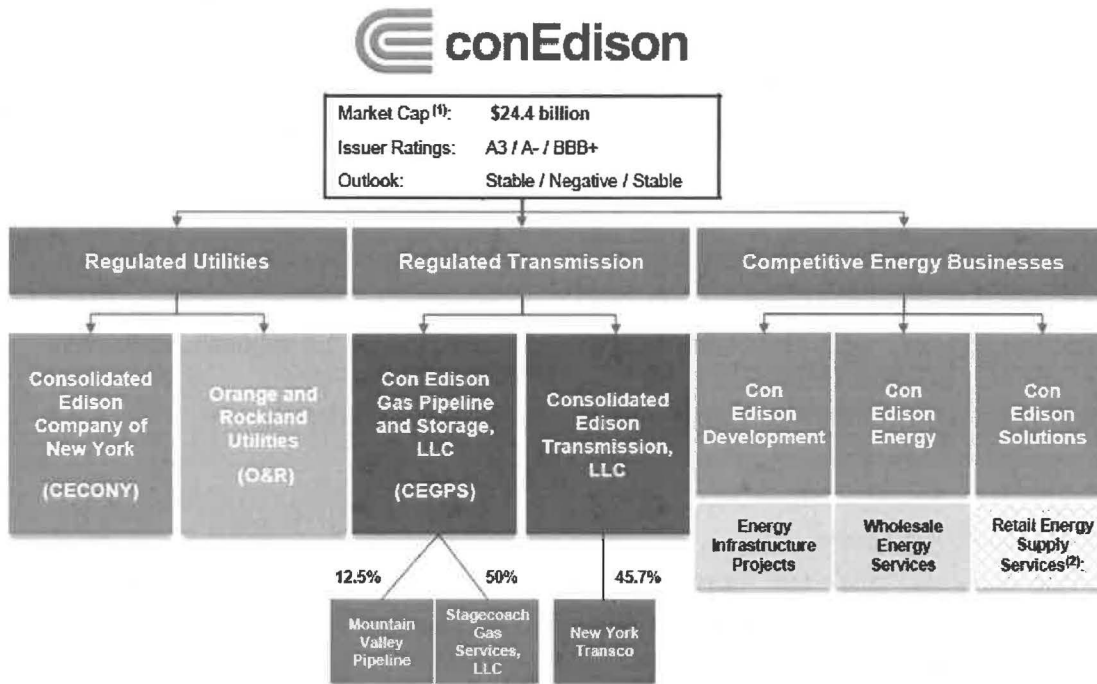
¹⁸ See *id.* at 30 (“the Company anticipates that the precedent agreement for the pipeline project under consideration will include two provisions not heretofore included in pipeline precedent agreements to which the Company was a party....”).

¹⁹ *Id.* at 31.

D. A Utility's Duty of Candor Compels Con Ed to Reveal any Affiliate Investment in the Pipeline Project

As noted above, Con Ed has not yet identified the identity of the pipeline developer for its project. In the event the pipeline developer is Con Ed's midstream affiliate, this raises significant concerns warranting heightened Commission review of the proposal.

As domestic natural gas production has skyrocketed, utilities are increasingly chasing shareholder returns by creating midstream entities to invest in new interstate pipeline capacity. In fact, the main takeaway from the recent American Gas Association conference was that “[p]ipeline and midstream investments look increasingly popular for their low risk and steady earnings profile.”²⁰ Con Ed's parent took advantage of this investment opportunity in 2016 by forming a new midstream affiliate, Con Edison Gas Pipeline and Storage, LLC:



Source: Con Ed August 2016 Company Update

²⁰ Credit Suisse, Electric Utilities – AGA Conference Takeaways at 1 (May 24, 2017).

Con Edison Gas Pipeline and Storage, LLC, now referred to as Con Edison Gas Midstream, LLC, is a partial owner of the Mountain Valley Pipeline (“MVP”), while Con Ed, the retail utility, has signed its customers up for twenty years of service on that pipeline. The MVP transaction presents a situation where the company is serving two different masters—the (supposed) interests of its ratepayers and the interests of its shareholders. Regarding its ratepayers, Con Ed has committed, effective November 1, 2018, to receive from and pay MVP for 250,000 Dt/d of firm transportation service capacity for a term of 20 years. The terms of this arrangement mean that Con Ed customers are obligated to pay for firm transportation service every hour of every day for the next twenty years regardless of whether the service is actually used.²¹ These costs are ultimately passed through to ratepayers as part of an annual gas cost reconciliation process before this Commission.²² EDF has detailed at great length its concerns with Con Ed’s decision to invest in MVP, namely that it shifts risks onto customers for new pipeline infrastructure that is not cost-effective to address system needs.²³

²¹ See Con Edison 2015 Annual Report at 22-23, *available at* <http://investor.conedison.com/phoenix.zhtml?c=61493&p=irol-reportsannual> (explaining that CECONY and Orange and Rockland “have contracts with interstate pipeline companies for the purchase of firm transportation from upstream points where gas has been purchased to the Utilities’ distribution systems, and for upstream storage services. Charges under these transportation and storage contracts are approved by the FERC. The Utilities are required to pay certain fixed charges under the supply, transportation and storage contracts whether or not the contracted capacity is actually used.”).

²² See, e.g., Consolidated Edison Company of New York, Inc., 2016 Annual Gas Cost Reconciliation, NYPSC Case No. 16-G-0431 (October 14, 2016).

²³ EDF Letter to Secretary Burgess, Heightened Scrutiny of Precedent Agreements Supported by Affiliates, Case 93-G-0932 (June 19, 2017) (explaining that Consolidated Edison’s affiliate investment in the Mountain Valley Pipeline project will cost customers over \$1.2 billion in costs over the course of the contract and noting that the project cannot increase deliverability into Consolidated Edison’s service territory).

If Con Ed's midstream entity is the pipeline developer of Con Ed's newly proposed project, the same concerns raised regarding Con Ed's MVP investment are present here. Con Edison Gas Midstream LLC's investment in the project will allow it to maximize shareholder return²⁴ at the same time that the captive customers of Con Edison will shoulder the majority of the risk by paying for the investment via firm transportation costs.²⁵ This shifting of risk creates perverse incentives for Con Ed to act in the best interests of its shareholders, not its customers. The affiliate relationship could ultimately taint every aspect of the Smart Solutions Program, as it calls into question the legitimacy of Con Ed's peak demand forecasts and whether it is pursuing, with appropriate vigor, the alternative programs that could ultimately displace the need for the new pipeline project.

More problematic, however, would be Con Ed's decision to again withhold this information from its regulator. EDF has previously detailed its concern that Con Ed did not publicly disclose its affiliate's ownership interest in the MVP project at the time it filed the contract with the Commission.²⁶ This lack of disclosure impinges upon the due process rights of interested parties, such as those representing retail customers. These interests are particularly

²⁴ As noted above, pipeline developers often request, and FERC routinely approves, 14% ROEs for new pipeline build. MVP Certificate Application to FERC, Docket No. CP16-10 at 37 (requesting a 14% return on equity and calculating recourse rates using a pre-tax return of 15.77%).

²⁵ See Con Edison 2015 Annual Report at 22-23, *available at* <http://investor.conedison.com/phoenix.zhtml?c=61493&p=irol-reportsannual> (explaining that Con Edison and Orange and Rockland "have contracts with interstate pipeline companies for the purchase of firm transportation from upstream points where gas has been purchased to the Utilities' distribution systems, and for upstream storage services. Charges under these transportation and storage contracts are approved by the FERC. The Utilities are required to pay certain fixed charges under the supply, transportation and storage contracts whether or not the contracted capacity is actually used.").

²⁶ See, e.g., EDF Letter to Secretary Burgess, Heightened Scrutiny of Precedent Agreements Supported by Affiliates, Case 93-G-0932 (November 29, 2016).

important as ratepayers are the ones bearing costs in excess of benefits while utility shareholders simultaneously earn additional returns in excess of risk. This lack of candor has implications for Con Ed's willingness to comply with its regulatory compact which "depends on the full disclosure of information to provide fundamental fairness for both the utility and ratepayers."²⁷ Accordingly, the Commission should require Con Ed to disclose whether its affiliate midstream entity will be developing its proposed project.

III. CONCLUSION

Wherefore, the Environmental Defense Fund respectfully requests that the Commission consider the foregoing comments in taking any action in this docket.

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Respectfully submitted,



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²⁷ *Wisconsin Power and Light*, 2010 WL 5069409 at 6 (Dec. 8, 2010); *see also Spring Valley Water Co.*, 20 NYPSC 1831, 1990 WL 597017 at 11-12 (Oct. 3, 1990) (New York Public Service Commission ordering nearly \$2 million in ratepayer relief arising from the company's "failure to provide relevant and material information about the subject land's value" at relevant times); *State of New Hampshire Public Utilities Commission*, Order No. 25,920, Docket No. DE 11-250 and DE 14-238 at page 28 (July 1, 2016) ("We strongly caution Eversource that public utilities have a duty to present all relevant information, good or bad, to the Commission for its consideration on all matters. We expect the public utilities we regulate to keep us informed.")