

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service.

Case 16-E-0060

Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Gas Service.

Case 16-G-0061

Proceeding on the Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service.

Case 15-E-0050

Tariff filing by Consolidated Edison Company of New York, Inc. to revise General Rule 20 Standby Service contained in its electric tariff schedules, P.S.C. Nos. 10 and 12.

Case 16-E-0196

**POST-HEARING BRIEF OF THE  
UTILITY INTERVENTION UNIT  
ON THE  
JOINT PROPOSAL**

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NEW YORK STATE DEPARTMENT OF STATE  
DIVISION OF CONSUMER PROTECTION  
ONE COMMERCE PLAZA  
ALBANY, NEW YORK 12231-0001

The Utility Intervention Unit of the New York Department of State (UIU) submits this post-hearing brief concerning a Joint Proposal (JP) that would establish three-year rate plans for Consolidated Edison, Inc.'s (the Company) electric and gas delivery service. UIU appreciates the opportunity to augment its earlier filings with additional information developed at the evidentiary hearing held on November 2 and 3, 2016.<sup>1</sup>

I. PROPONENTS OF THE JOINT PROPOSAL'S REVENUE ALLOCATIONS HAVE NOT MET THEIR BURDEN OF PROOF.

The Commission's Procedural Guidelines for Settlement provide that "[t]he burden of proving that a proposed settlement is in the public interest rests on the parties proposing the settlement."<sup>2</sup> Allocation of revenues is a critical component of a proposed settlement, and as such "will be closely scrutinized to ensure that the settlement as a whole is in the public interest."<sup>3</sup> Here, the JP's proposed revenue allocations are based exclusively on the Company's electric and gas embedded cost of service (ECOS) studies. (JP pp. 55, 67.) As the sole sponsor of those studies,<sup>4</sup> and as the only party with

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<sup>1</sup> Per the Administrative Law Judges' instruction, this brief does not restate the arguments included in UIU witnesses' Testimony on the Joint Proposal (filed October 13, 2016) or in UIU's Initial or Reply Comments on the Joint Proposal (respectively filed October 13 and October 21, 2016), which are incorporated by reference herein. This brief instead addresses novel issues and associated arguments that arose at evidentiary hearing.

<sup>2</sup> Cases 90-M-0225 and 92-M-0138, Procedural Guidelines for Settlement (1992) ("Settlement Guidelines") at 6.

<sup>3</sup> Cases 90-M-0225 and 92-M-0138, Opinion, Order and Resolution Adopting Settlement Procedures and Guidelines (issued March 24, 1992) ("Order Adopting Settlement Guidelines") at 23.

<sup>4</sup> Department of Public Service Staff ("Staff") also submitted sworn testimony in support of the Company's ECOS studies; however, Staff's testimony included scant discussion of UIU's technical critiques of those studies, and made no relevant arguments beyond those that the Company had already raised in prefiled testimony (Exh. 44 and 77).

firsthand knowledge of its distribution system, the Company is appropriately responsible for proving the soundness of those studies in every particular.<sup>5</sup>

JP Proponents have not met this burden because they have failed to rebut UIU's fundamental arguments regarding revenue allocation and ECOS, have failed to justify significant changes in the Company's ECOS methodology and assumptions, and have failed to reconcile critical inconsistencies in their own case. The evidentiary hearing illuminated and amplified these shortcomings, demonstrating that the JP's ECOS/revenue allocation proposals include a number of unsupported - and thus arbitrary - assumptions. Those assumptions cannot form the basis of a rational rate plan.

## II. THE EVIDENTIARY HEARING REINFORCED UIU'S CRITIQUES OF THE COMPANY'S FLAWED ELECTRIC ECOS STUDY.

### a. Minimum system methodology generally

The evidence developed at the hearing confirms UIU's contention that the Company's electric ECOS study employs a "minimum system" significantly larger than even the Company's DAC Panel's own interpretation of that term. UIU agrees with the DAC Panel's

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<sup>5</sup> See 16 NYCRR §§ 61.3 ("The utility whose rates, rules and regulations are being considered shall establish by competent testimony . . . (1) the detailed cost of rendering the service to which such rates, rules and regulations are applicable; (2) the cost per unit of service rendered as defined in the preceding paragraph . . ."), 61.4 ("If the utility involved believes that there will be changes in revenues, expenses or income which should be considered in determining reasonable rates for the future, it shall present competent testimony to support such estimates. Speculative or conjectural data are not acceptable and all estimates must be explained in detail and the bases definitely established") (emphasis added); see also Nat'l Fuel Gas Distribution Corp. v. Pub. Serv. Comm'n of State, 16 N.Y.3d 360, 369, 947 N.E.2d 115, 120 (2011) (the utility bears "the burden of proving that the requested regulatory action is ``just and reasonable.'")

definition of "minimum system" - which the Panel did not amend at hearing (see Nov. 2 Tr. 280-81) - that "[t]he minimum system represents the cost of the smallest secondary system theoretically needed to physically connect all of the existing service points if the system was not required to supply any load."<sup>6</sup> Yet this definition is not consistent with the electric ECOS study the Company performed. Indeed, as described below, the DAC Panel's discussion of ECOS at hearing underscored ways in which UIU's proposed ECOS model implements the minimum system methodology more accurately than the Company's with respect to (1) secondary conductors, (2) distribution transformers, and (3) primary distribution plant.

The hearing further revealed the extent to which the Company ignored the foundational flaws of the minimum system methodology. As discussed in its Comments on the JP ("Comments"), UIU objects to the Company's implementation of this methodology chiefly because it misclassifies, as "customer-related," the latent load-carrying capacity of the "minimum system."<sup>7</sup> The Company failed to correct this misclassification or account for its cost-shifting impacts. The Company admitted at hearing that it has not measured how much load its "minimum system" could carry (including whether, for example, the "minimum system" could satisfy the entire load of a small customer). Nov. 2 Tr. 281. The DAC Panel was further unable to identify how much load constitutes "minimal load," despite using that term in its Rebuttal Testimony and in cross-examination. (Nov. 2 Tr. 232, 280-81, 306.) The Company has thus failed to heed NARUC's admonition that "the

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<sup>6</sup> Exhibit 170 p. 81 (Company Response to UIU-19-263).

<sup>7</sup> See, e.g., UIU Initial Statement on the JP pp. 26-27.

analyst must be aware that the minimum size distribution equipment has a certain load-carrying capability,"<sup>8</sup> and has not explained or justified the consequent misallocation of costs to smaller consumers.

Finally, JP proponents have failed in their efforts to downplay this objection to the Company's ECOS methodology as a mere difference of opinion. Parties cross-examining UIU's witnesses attempted to show that aspects of the Company's ECOS approach can find superficial support in the National Association of Regulatory Commissioner's 1992 Electric Utility Cost Allocation Manual ("Electric NARUC Manual"). (Nov. 3 Tr. 161-62.) However, this does not yield the conclusion that the Company's ECOS methodology is superior to, or even on par with, UIU's recommended approach - particularly in the context of the Company's high-density urban service area. Nor did this cross-examination undermine UIU's detailed technical critiques concerning the Company's flawed implementation of the minimum system methodology.

b. Secondary conductor size

The Company's contradictory and misleading statements regarding minimum conductor size are independent grounds for rejecting the Company's electric ECOS study. The Company has provided three mutually contradictory statements on what constitutes the smallest conductor used in its secondary overhead distribution system: in prefiled testimony, the DAC Panel identified 1 AWG conductor as the "absolute smallest minimum size;"<sup>9</sup> in response to UIU-10-205, the DAC Panel asserted that 6 AWG conductor is "the smallest cable found in the

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<sup>8</sup> Id. p. 27 (quoting the Electric NARUC Manual p. 95) (emphasis added)).

<sup>9</sup> Exh. 77 p. 25. The Company's DAC Panel repeated this characterization in its sworn Rebuttal Testimony on the Joint Proposal. Nov. 2 Tr. 238.

overhead;”<sup>10</sup> and at evidentiary hearing, the DAC Panel stated that 10 AWG conductor is smaller than either 1 AWG or 6 AWG. (Nov. 2 Tr. 283-84).<sup>11</sup> The Company’s DAC Panel – which was ostensibly responsible for designing the ECOS study’s “minimum system” – apparently does not know what such a system would actually contain, and thus could not (and did not) meet its burden of proving the soundness of its ECOS study.

The Company’s contradictory statements also undermine the ability of intervenors (such as UIU) to meaningfully participate in these proceedings. By necessity, UIU relied on the Company’s representations, including a minimum conductor size of 1 AWG, to develop recommended modifications to the ECOS study.<sup>12</sup> For the Company to contradict itself at hearing (and thereby cast doubt on UIU’s electric ECOS study) unfairly punishes UIU for its good-faith reliance on the Company’s earlier statements. The Company must not be allowed to hide behind its own prejudicial inconsistencies; rather, those inconsistencies illuminate gaps in the factual record that militate against adopting the JP’s electric ECOS study and corresponding revenue allocations.<sup>13</sup>

### c. Transformers

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<sup>10</sup> Exh. 170 p. 46.

<sup>11</sup> The Company’s records indicate that each of these sizes of conductor – 1 AWG, 6 AWG, and 10 AWG – are currently present in the Company’s overhead secondary distribution system. See Exh. 170 p. 3 (listing footage of overhead (“OH”) secondary conductor by cable size).

<sup>12</sup> Note that using 6 AWG conductor as the minimum size (per the Company’s characterization in Exh. 170 p. 46) instead of 1 AWG would have a de minimis impact on UIU’s ECOS study results, as those conductor sizes have nearly the same embedded unit cost (7.9 cents and 8.0 cents per foot, respectively). Id. p. 45.

<sup>13</sup> Order Adopting Settlement Guidelines p. 31 (“the less developed the record, the greater the burden on the settlement’s proponents to show that the result compares favorably to the likely result of full litigation.”)

The Company has similarly failed to justify its ECOS study's treatment of transformers. The Company classified transformers as 100% demand-related prior to 2009; approximately 94% demand-related/6% customer-related from 2009 through 2013; and now in this case, 60% demand-related/40% customer-related. (Exh. 170 pp. 33-35.)<sup>14</sup> This nearly-sixfold increase in customer-related transformer costs has an enormous impact on the ECOS study results, as transformers constitute approximately 37% of the secondary distribution system rate base. (Exh. 45 p. 240.)<sup>15</sup>

No party has offered a substantive justification for this reclassification.<sup>16</sup> For example, at hearing, the DAC Panel could not identify a single change in the Company's engineering or planning standards that would support a major reclassification of transformer costs. (Nov. 2 Tr. 294-95.) The DAC Panel's attempts at explanation merely restated that the Company has proposed such a reclassification - but not why it did so. (Nov. 2 Tr. 295-97.) This lack of explanation is particularly striking given that the Company has historically advocated for the same 100%-demand classification of transformers that

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<sup>14</sup> UIU-2-65 includes reference to the Company's 2015 electric rates case, in which the Company first prepared the ECOS study that serves as the JP's basis of revenue allocations. However, that ECOS study was not used in the 2015 case for rate-setting purposes. Case 13-E-0030, Joint Proposal p. 19 (filed April 20, 2015). This case represents the first instance in which the Company's new ECOS study has been substantively evaluated.

<sup>15</sup> Company DAC Panel Initial Exhibit DAC-2, Table 2, p. 33 (showing the Company's transformer cost of \$2,239,475,473; compared to total secondary (or "low tension") distribution plant costs of \$6,068,386,356).

<sup>16</sup> Indeed, in testimony on the JP, the DAC Panel did not even seem to notice that it had made such a significant change in transformer classification. See DAC Panel Rebuttal Testimony, Nov. 2 Tr. 209 (asserting that the Company's ECOS methodologies in these cases were identical to those of prior cases but for "one exception in the electric study"), Nov. 2 Tr. 277-78 (identifying such "one exception" as the customer-related component of primary distribution plant, but failing to mention the change in transformer classification.)

UIU has proposed in this case.<sup>17</sup> Based upon the evidence developed at hearing, UIU's recommendation is the only proposed classification of transformers that finds technical or precedential support in the factual record.<sup>18</sup>

d. Customer-related component of primary distribution plant

The hearing also illuminated the arbitrariness of the Company's decision to introduce a customer-related component of primary distribution plant. As noted above, the Company declined at hearing to retract or amend its earlier characterization of the "minimum system" as the "smallest secondary system...." (emphasis added). This statement supports (and, indeed, necessitates) excluding primary plant from the "minimum system." Instead, the Company contradicted itself by suggesting that to base a "minimum system" entirely on secondary distribution plant would be "simply ridiculous" (Nov. 2 Tr. 303) - despite having implemented precisely such an approach in every prior rate case.<sup>19</sup> The evidence concerning primary distribution plant developed at hearing thus reaffirmed, rather than undermined, UIU's recommendation concerning its classification and allocation.

III. THE EVIDENTIARY HEARING REAFFIRMED UIU'S RECOMMENDATIONS CONCERNING GAS ECOS.

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<sup>17</sup> E.g., Case 07-E-0523, Recommended Decision (January 8, 2008) p. 145. See Nov. 2 Tr. 301-02.

<sup>18</sup> In response to questions from ALJ Lecakes, Staff also briefly discussed the classification of transformer costs. This discussion further belied the lack of a basis for the Company's proposed approach - according to Staff, no other New York utility has identified a "minimum" transformer size in the way the Company has done in this case. Nov. 3 Tr. 21.

<sup>19</sup> The DAC Panel may have alternatively intended to characterize excluding transformers from the "minimum system" as "simply ridiculous." This characterization would be similarly inapt; as discussed supra, the Company excluded transformers from its "minimum system" until 2009, and has not provided any rationale for sextupling the customer-related component of transformer costs in this case.

The evidentiary hearing further bolstered UIU's recommendation on gas ECOS, as described in the UIU Gas Rate Panel's Testimony and UIU's Comments, that gas distribution mains be classified as 100% demand-related. The substantive discussion of gas ECOS at hearing centered on the load-carrying capacity of the "minimum system." With respect to that issue, the Staff Panel did not dispute Staff's recently-filed testimony in the pending Corning gas rates case (Case 16-G-0369) that "main that is two inches or smaller diameter still has a certain load carrying capability, thus the entire cost should not be classified as customer costs." (Nov. 3 Tr. 6, 9-10; see Exh. 313 p. 22.) Staff's other discussions of gas ECOS consisted of examples in which UIU's recommendation has been proposed or adopted in New York. (Nov. 3 Tr. 5-6.) No party presented any contrary evidence at hearing, so UIU's testimony concerning gas ECOS remains unrebutted.<sup>20</sup>

#### IV. UIU'S AMI RECOMMENDATIONS ARE SOUND IN THEORY AND APPLICATION.

Cross-examination concerning Advanced Metering Infrastructure (AMI) yielded extensive additional support for UIU's positions that (1) recovery of AMI's costs should account for AMI's benefits, and (2) energy represents the best currently-available proxy for AMI benefits.

First, as UIU introduced at hearing, Staff recently proposed recovering distributed energy resources (DER) costs in proportion to

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<sup>20</sup> By failing to substantively address them in testimony or at hearing, the JP's proponents have effectively conceded several of UIU's points regarding flaws in the Company's gas ECOS study. UIU's unchallenged critiques include Exh. 155 (Prefiled Direct Testimony of UIU Gas Rate Panel) p. 14 lines 22-28; p. 15 lines 3-6; p. 16 lines 14-17; p. 17 lines 4-16; p. 18 lines 1-6; p. 27 lines 6-8; p. 28 lines 6-7 and 17-21; p. 29 lines 1-3 and 22-26; p. 31 lines 3-9; p. 32 lines 15-19; p. 33 lines 3-16; p. 34 lines 10-12; p. 35 lines 16-20; p. 36 lines 18-23; p. 37 lines 25-30; p. 38 lines 3-9.

DER benefits - the same principle that UIU recommends apply to AMI costs. (Exh. 314 p. 24.)<sup>21</sup> The Staff Panel was not involved with the DER proceeding, and so understandably could not speak directly to Staff's cost-allocation recommendation at hearing; however, no witness presented evidence (on redirect or otherwise) suggesting that this recommendation would not also be appropriate in the AMI context.<sup>22</sup>

Second, JP proponents' questions on selected AMI features did not disguise the fact that AMI's quantifiable benefits will flow disproportionately to larger customers. The Staff Panel confirmed that the bulk of AMI's benefits are related to supply (Nov. 3 Tr. 11-12), which accrue to customers in direct proportion to their energy consumption. With respect to AMI's remaining benefits, cross-examination of the UIU Electric Panel supported UIU's broader conclusion that larger customers receive a larger share of AMI benefits. (See Nov. 3 Tr. 185-86 (observing that the harm to a customer of a power outage changes significantly based on the customer's characteristics)).

V. PROPONENTS OF THE JP FAILED IN THEIR ATTEMPTS TO IMPEACH UIU'S WITNESSES.

Perhaps because they lacked substantive critique of UIU's technical recommendations, parties that cross-examined UIU's witnesses spent a great deal of effort attempting to undermine the witnesses' credibility. (Nov. 3 Tr. 91-125; 321-324.) These efforts failed. UIU's

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<sup>21</sup> Staff issued this proposal less than one week prior to the evidentiary hearing, so UIU had no opportunity to incorporate or discuss the proposal in pre-hearing filings. This does not, however, affect the relevance of Staff's proposal to these rate cases, as it echoes UIU's proposal initially presented in prefiled testimony. Exh. 148 pp. 28-30.

<sup>22</sup> Indeed, ALJ Lecakes overruled an objection from the City of New York on this point, finding that the Staff recommendation does have "tangential relevance to setting rates for utilit[ies]." Nov. 3 Tr. 18.

witnesses' qualifications and competence were evident on the stand. UIU's third-party consultant witnesses also demonstrated their professionalism beyond dispute, precluding any implication that they may have compromised their professional judgment to fit UIU's consumer protection objectives. (See, e.g., Nov. 3 Tr. 97-98; 218-19; 322-23.) Furthermore, JP proponents' cross-examination elicited no evidence that UIU's focus on the interests of residential and small commercial customers is in any way inappropriate - indeed, the necessity of such focus is underscored by the number of parties eager to cast doubt upon it. To the extent that any JP proponent seeks to impeach UIU's witnesses in its brief, the Commission should recognize such an effort for what it is: an attempt to distract from the JP's very real misallocation of revenues.

#### CONCLUSION

The JP's proponents have failed to prove that the JP's allocation of revenues is in the public interest. As described herein, the facts developed at evidentiary hearing support UIU's recommendations concerning ECOS and revenue allocation, and further demonstrate the JP's arbitrary treatment of same. UIU therefore respectfully urges the Commission to modify the JP's revenue allocations in accordance with UIU's recommendations presented in its testimony and Comments.

Respectfully Submitted,

*/s/ Michael Zimmerman*

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