

**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 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**

**REPLY OF THE CITY OF NEW YORK
TO THE
STATEMENTS IN OPPOSITION TO THE JOINT PROPOSAL**

Dated: October 21, 2016

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PRELIMINARY STATEMENT

In accordance with the September 28, 2016 Ruling on Schedule, the City of New York (“City”) hereby submits this Statement in Reply to the Statement on the Joint Proposal and testimony submitted by the Utility Intervention Unit (“UIU”) of the New York State Department of State’s Division of Consumer Protection in opposition to certain provisions of the Joint Proposal filed in the above-referenced cases (collectively, “UIU Opposition”). The City also offers a brief comment on the objection submitted jointly by Energy Spectrum, RiverBay Corporation, and Great Eastern Energy (collectively, “RiverBay”).

The UIU makes the following claims regarding the Joint Proposal, all of which lack merit or are inapposite: (i) the electric and gas embedded cost of service (“ECOS”) studies upon which the rate design and revenue allocations are based are incorrect and not in the public interest; (ii) the revenue allocations are unjust and inequitably shift costs to smaller customers; (iii) the Joint Proposal does not satisfy the applicable Settlement Guidelines; and (iv) the costs associated with Consolidated Edison Company of New York, Inc.’s (“Con Edison”) advanced metering infrastructure (“AMI”) program should be allocated mostly to the City and other large customers. (UIU Opposition at 5-6, 11-19¹)

The City disagrees with the entirety of the UIU Opposition, but it is focusing this Reply on a few discrete issues – the UIU’s claims that incorrectly characterize the City’s participation and positions in these proceedings, misstatements regarding the record in these proceedings, the UIU’s proposed rate designs and revenue allocations, and the UIU’s proposed allocation of AMI costs. The City’s silence on other issues should not be interpreted as meaning the City agrees with the positions stated by the UIU. For the reasons set forth below, the UIU’s positions should be

¹ Unless otherwise noted, specific page references are to UIU’s Statement on the Joint Proposal.

rejected in their entirety, and the Public Service Commission (“Commission”) should adopt the Joint Proposal subject to the modifications discussed in the City’s October 13, 2016 Statement In Support of the Joint Proposal.

ARGUMENT

POINT I

THE CITY REPRESENTS THE INTERESTS OF ALL CUSTOMERS IN NEW YORK CITY

The UIU erroneously states that “[o]f the parties to the instant proceedings, PULP and UIU are the *only* parties that focus on the interests of residential customers, despite the fact that those customers represent the vast majority of Con Edison’s ratepayers.” (UIU Opposition at 24, emphasis added) The UIU further erroneously states that the City is a party to this proceeding to “expressly represent the interests of larger customers and/or are themselves larger customers.” (UIU Opposition at 24-25.) The UIU’s myopic view is not supported by the facts and should be disregarded.

For decades, the City has actively participated in rate, generic, and other proceedings before the Commission on behalf of itself as a utility customer and on behalf of its millions of constituents – residential, commercial, governmental, and institutional. In fact, the City respectfully submits that apart from Department of Public Service Staff (“Staff”), the City has been the foremost advocate for the interests of residential and all other consumers in New York City-related proceedings, particularly rate cases. The City has submitted testimony and comments on matters including system reliability, resiliency, data access by utility customers, prudence of utility spending, cost containment, adjustments to revenue requirements, the need to address climate change, and, significantly, aiding low income customers. In the present rate cases, the City has advanced proposals that would provide benefits and rate relief to all New York City customers.

Such proposals include, but are not limited to, improving energy efficiency programs, providing customers free and superior access to their usage data, improving and maintaining focus on the Company's oil-to-gas conversions efforts and continuation of the conversion incentive program to provide financial incentives to customers, and increasing the benefits provided to low income customers. Indeed, the City respectfully submits that its efforts over the past decade have done more to secure benefits for low income customers than those of any other intervenor party to Con Edison rate cases, including the UIU and Public Utility Law Project combined. Moreover, the City's Human Resources Administration is an integral part of maximizing the ability of eligible individuals and families to receive the benefits of participation in Con Edison's low income programs.

With respect to rate design and revenue allocation, the City has sought to ensure that all customers are fairly treated. In contrast, although the UIU claims to represent all consumers (UIU Opposition at 5), its proposals exhibit no regard for many consumers. That is, the UIU seeks substantial rate increases on some customer classes while inequitably minimizing the impacts on other classes, and it entirely fails to consider or even acknowledge the potential impacts of its proposals on the affected classes.

In general, the Joint Proposal would increase electric rates by about 10 percent and gas rates by about 20 percent over the next three years. The UIU proposes an inequitable allocation that reflects Rate Year 1 electric delivery revenue increases for certain customer classes that are between 21 percent (for New York Power Authority customers) to as much as 600 percent (for large customers under Service Classification ("SC") 9) higher than the allocations in the Joint Proposal. For five customer classes, the UIU's allocations are more than 100 percent higher than the allocations proposed in the Joint Proposal. At the same time, the UIU would decrease the

allocation to small commercial customers by 93 percent, as compared to the amount in the Joint Proposal. For gas, the UIU proposes to reduce the Rate Year 1 allocation to SC 1 customers by more than 63 percent and increase the allocation to general service (SC 2) customers by more than 375 percent, as compared to the allocations in the Joint Proposal. In contrast, the Joint Proposal fairly and equitably spreads the rate impacts across all customer classes.

In contrast to the UIU's positions, the City's positions have reflected its broad-based interest and role in protecting all of its constituents. A review of the record of these proceedings indisputably demonstrates that the City's intervention has not been limited to the interests of larger customers as stated by the UIU.² In sum, the statements proffered by the UIU characterizing the City's positions and interests in these proceedings lack merit and are not factually supported. For these reasons, the City respectfully requests that the Commission disregard such positions advanced by the UIU.

POINT II

THE RECORD BEFORE THE COMMISSION COMPRISES MORE THAN SWORN TESTIMONY AND THERE IS SUFFICIENT FACTUAL SUPPORT IN THE RECORD TO DEMONSTRATE THAT THE RATE DESIGN AND REVENUE ALLOCATION ASPECTS OF THE JOINT PROPOSAL ARE IN THE PUBLIC INTEREST

The UIU argues that “. . . testimony submitted as an exhibit serves only as evidence of the position the sponsoring party took when the testimony was pre-filed. It does not stand for any factual proposition, as no witness swears to its accuracy and no party has the opportunity to test its merits through cross-examination.” (UIU Opposition at 48) The UIU further states that

² As discussed below, the UIU is incorrect as a matter of law regarding the materials that comprise the record in these proceedings. The record before the Commission includes the City's pre-filed direct and rebuttal testimony, its Statement In Support of the Joint Proposal, and this Reply.

“[p]ending the admission of sworn testimony into the record and testing of such at hearing, the record in this case cannot support a ruling on the JP.” (*Id.*) Importantly, the UIU offers no legal precedent for either assertion because none exists.

One of the criteria that the Commission has established to “guide [the Commission] in [its] assessment” of determining whether a Joint Proposal is in the public interest is the completeness of the record.³ The Commission’s Settlement Guidelines do not mention the assertion made by the UIU, but they do note that “the Administrative Law Judge should require proponents of a proposed settlement to place into the record the details of the agreement, and a statement or testimony in support, which should contain its underlying rationale and how the settlement of issues compares both to its litigating position and what it regards as the likely outcome of litigation.”⁴ The Settlement Guidelines do not require or limit the record only to sworn testimony. It has been long-standing practice for proponents to submit unsworn statements in support of a settlement which the Commission then relies upon in determining whether the settlement is in the public interest.

Here, the record includes, but is not limited to, the parties’ pre-filed testimony, the Joint Proposal, and statements in response to the Joint Proposal. Pre-filed testimony included as an exhibit to a party’s statement in response to the Joint Proposal is evidence of what would have been the position of the party that submitted the testimony had these cases proceeded to a fully litigated process. Regardless of the purpose for which it is offered into the record, once it is in the

³ Case 90-M-0255, Proceeding on Settlement Procedures and Guidelines, Opinion No. 92-2 (issued March 24, 1992), p. 30.

⁴ *Id.*, Appendix B at 6.

record, it becomes record evidence and may be relied upon by the Commission in deciding whether the Joint Proposal is in the public interest.⁵

Further, New York law does not support UIU's position. In a panoply of cases, the Courts have held that the record upon which the Commission may make rate and other determinations is not limited to sworn testimony provided at a hearing and which has been tested by cross-examination. *See, e.g., In the Matter of Brooklyn Union Gas Co. v. Pub. Serv. Commn.*, 101 A.D.2d 453 (3d Dep't 1984); *In the Matter of ADT Co., Inc. v. Pub. Serv. Commn.*, 128 A.D.2d 1 (3d Dep't 1987); *In the Matter of Owners Committee on Elec. Rates, Inc. v. Pub. Serv. Commn.*, 194 A.D.2d 77 (3d Dep't 1993).

For all of the foregoing reasons, the UIU's assertion is not factually or legally correct, and it should be disregarded.

POINT III

THE UIU OPPOSITION DEMONSTRATES THAT THE RATE DESIGNS AND REVENUE ALLOCATIONS IN THE JOINT PROPOSAL ARE IN THE PUBLIC INTEREST

There are multiple acceptable approaches to performing an ECOS study and determining the appropriate rate designs and revenue allocations used in rate-setting. Indeed, these matters are widely acknowledged to be more of an art than a science. In other words, there are no "correct" and "incorrect" approaches. The UIU concedes that "reasonable minds can and do differ with respect to determining a customer's embedded cost of service Many of these assumptions represent judgment calls, not cut-and-dried fact" (UIU Opposition at 9) Notwithstanding

⁵ Under the Settlement Guidelines, part of the public interest determination is a showing that the JP should "produce results that were within the range of reasonable results that would likely have arisen from a Commission decision in a litigated proceeding." *Id.* at 8. The inclusion of the parties' pre-filed testimony in the record help to satisfy this requirement.

these acknowledgements, the UIU Opposition can be generally summarized as a flawed and meritless argument that the UIU's approach is correct and all other approaches are incorrect.

In the testimony included in the UIU Opposition, UIU's own witnesses readily acknowledge that the approaches used in the Joint Proposal have support in the NARUC Manuals and are used by numerous regulatory commissions across the country. Clearly, the UIU witnesses do not agree with the approaches used and prefer methodologies that substantially shift costs away from certain customer classes. However, their disagreement with widely used methodologies and techniques does not demonstrate, nor conclusively prove, that the Joint Proposal is not in the public interest. Rather, the City respectfully submits that the UIU's testimony actually supports the Joint Proposal proponents' position that the Joint Proposal is in the public interest.

In determining whether to adopt the Joint Proposal, the Commission has wide latitude and it is not restricted to any particular methodology or practice. *See, e.g., In the Matter of Abrams v. Pub. Serv. Commn.*, 67 N.Y.2d 205, 211-212 (1986). In this matter, the UIU Opposition does no more than offer one party's alternative approach that would result in unduly burdensome, and unjust and unreasonable, rate increases for many Con Edison customers. By the UIU's own words, neither its approach nor that used in the Joint Proposal is "correct" or "incorrect," and a judgment call is needed. In making this judgment call, the Commission should give far more weight to the approach recommended in the Joint Proposal, which has support of many traditionally adverse parties and represents a reasonable allocation of Con Edison's revenue requirements among all customers.⁶

⁶ The UIU attempts to suggest that the Joint Proposal does not have widespread support because some parties to the rate cases were not signatories. Some of the entities listed (UIU Opposition at 3) were not involved in any way in any aspect of these proceedings, and others are focused solely on discrete issues unrelated to rate design and revenue allocation (as demonstrated by

Because the UIU Opposition actually supports the finding that the Joint Proposal is in the public interest, there is no reason to engage in a long explanation in this pleading regarding the flaws, errors, and unfounded leaps in the methodology, techniques, and assumptions used by the UIU's witnesses. Rather, the City refers to the rebuttal testimony of its witnesses Stephens and Gorman, which was incorporated into the City's Statement in Support of the Joint Proposal and made a part of the record in these proceedings, as well as the rebuttal and supplemental testimony of Con Edison's and Staff's rate design and revenue allocation witnesses for explanations of the flaws, errors, and other deficiencies in the UIU's analysis.

POINT IV

THE UIU IMPROPERLY CONFLATES THE REGULATORY PRINCIPLES OF COST CAUSATION AND BENEFICIARIES PAY

With respect to recovery of the costs of Con Edison's AMI program, the UIU has erroneously attempted to merge two separate and distinct regulatory principles. There are a number of ways to allocate utility costs among customers. For many years, and perhaps since its inception, the Commission has adhered to the core principle of cost causation in setting rates. That is, costs are allocated among customers and customer classes in a roughly equivalent manner in which the need for the expenditures arises. In other settings, such as the cost allocation used by the New York Independent System Operator, Inc. for recovering costs of transmission projects, the different principle of beneficiaries pay is used. Under that principle, the costs of a project are borne in roughly the same proportion as the benefits that accrue from the project.

the pleadings they submitted). Like the rest of the UIU Opposition, this assertion is factually unsupported and is inapposite.

In these proceedings, the UIU has asserted (without any factual basis) that because large customers will receive more benefits from AMI, they are causing the project to be undertaken and therefore should bear most of the costs. This circular argument lacks merit and should be rejected.

AMI is intended and designed to serve residential and small commercial customers. The provision of real-time or near real-time information to these customers should give them a greater ability to understand how they are using energy and the opportunity, ability, and incentive to use energy more efficiently. AMI is not intended to serve large customers as they already have interval meters and are able to obtain the information that will be provided via AMI.

Moreover, the record establishing the business case for AMI, which was developed in Con Edison's last rate case, as well as the Commission's decision approving Con Edison's AMI Business Plan, amply demonstrate that AMI is intended to serve and benefit residential and small commercial customers, not large customers.⁷ The UIU did not seek rehearing of that Order or otherwise challenge its contents and findings. In these proceedings, the UIU has not disputed that Order's determinations. Accordingly, there is no basis to disregard or modify the Commission's prior determinations on this issue, and the UIU's contentions should be rejected.

Taking the UIU's position to its logical extension, because only low income customers benefit from low income discounts, the UIU's theory should dictate that low income customers fund most or all of the low income programs. Such a position is nonsensical, but it demonstrates the inherent flaw in the UIU's theory. The Commission should continue to adhere to the principal

⁷ See Cases 15-E-0050, *et al.*, Consolidated Edison Company of New York, Inc. – Electric Rates, Order Approving Advanced Metering Infrastructure Business Plan Subject to Conditions (issued March 17, 2016); Con Edison's "Advanced Metering Infrastructure Business Plan, dated October 15, 2015; and the comments, statements, and other submissions related to the Business Plan available through the Commission's Document and Matter Management System.

of cost-causation in setting rates and allocating costs, and it should not deviate from its prior determinations. The treatment of AMI costs in the Joint Proposal is in full compliance with this principle and the Commission's March 17, 2016 Order on Con Edison's AMI program, and it therefore should be adopted.

POINT V

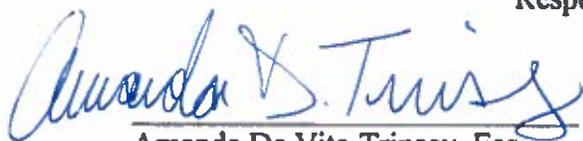
**ANY RELIEF SOUGHT BY RIVERBAY SHOULD BE
APPLIED GENERALLY**

RiverBay raises concerns about the measurement period for the proposed reliability credit. As a signatory to the Joint Proposal, the City supports the provisions of the Joint Proposal except as expressly noted on its signature page and in its Statement in Support. For this reason, the City is not advocating for any changes to the measurement period for the reliability credit and offers no comment on RiverBay's concerns. However, in the event that the Commission finds merit in RiverBay's position and decides to adjust the measurement period, the City respectfully requests that such adjustment apply equally to all eligible customers. The rules for the reliability credit should be standardized, and there should not be separate rules for individual customers.

CONCLUSION

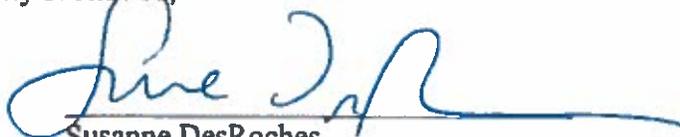
For all of the foregoing reasons, the City respectfully requests that the Commission reject the UIU's positions in their entirety and adopt the rate designs, revenue allocations, and treatment of AMI costs set forth in the Joint Proposal. The Commission also should disregard the UIU's unfounded and erroneous assertions that it is the only party representing the interests of residential and small commercial customers, and that the record in these proceeding is limited to sworn testimony. Lastly, to the extent that the Commission adjusts the reliability credit measurement period, the City respectfully requests that such adjustment apply equally to all eligible customers.

Respectfully submitted,



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