



Marc Richter
Vice President

November 16, 2016

By Electronic Mail
Hon. Kathleen Burgess
Secretary to the Commission
New York State Public Service Commission
Three Empire State Plaza
Albany, NY 12223

Re: Cases 16-E-0060, *et al*
Con Edison Electric and Gas Rate Cases
Post-Hearing Brief

Dear Secretary Burgess:

In accordance with the November 3, 2016 Judge's Bench Ruling in the captioned proceedings, attached for filing please find the Post-Hearing Brief of Consolidated Edison Company of New York, Inc.

Very truly yours,

Cc: Hon. Ben Wiles (via electronic mail)
Hon. Dakin Lecakes (via electronic mail)
All Active Parties in Cases 16-E-0060, *et al* (via electronic mail)

**BEFORE THE NEW YORK STATE
PUBLIC SERVICE COMMISSION**

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 Electric 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 Gas Service.

**Before:
Hon. Dakin Lecakes
Hon. Ben Wiles**

CASE 15-E-0050 – 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-0196 – 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.

**POST-HEARING BRIEF ON BEHALF OF
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**

**Date: November 16, 2016
New York, New York**

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**POST-HEARING BRIEF ON BEHALF OF
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**

On September 19, 2016, Consolidated Edison Company of New York, Inc. (“Con Edison” or the “Company”), Staff of the Department of Public Service (“Staff”) and 20 other parties entered into a Joint Proposal (“Proposal”) resolving all issues in the above-captioned proceedings. The Proposal was filed with the New York State Public Service Commission (“Commission”) on September 20, 2016. Parties filed statements and reply statements (with testimony if the party so opted) in support or opposition to the Proposal on October 13 and 21,

respectively. Administrative Law Judges Dakin Lecakes and Ben Wiles presided over a two-day hearing on November 2-3, 2016.¹

At the hearing's conclusion, the presiding administrative law judges ruled that parties could submit a post-hearing brief (of no more than 10 pages) on new evidence or issues arising from the hearing.² Cross-examination during the hearing focused on three issues: (1) the electric and gas embedded cost of service ("ECOS") studies; (2) Reliability Credit for standby customers; and (3) New York Independent Contractor Alliance ("NYICA") opposition to reconciliation of certain interference expenses. This brief addresses the cross-examination related to the ECOS studies and NYICA issue.

A. Embedded Cost of Service Studies

The Company, Staff and other parties supporting the Proposal provided rebuttal testimony and/or initial and reply statements responding to UIU's cost of service issues. UIU conducted cross-examination of the Company's Joint Proposal Demand Analysis and Cost of Service Panel ("JP-DAC Panel") and Staff's Electric and Gas Rates Panel. This cross-examination confirmed that the Proposal's electric and gas ECOS studies are reasonable and are the proper basis for the Proposal's revenue allocation and rate design. UIU's position, that the electric and gas ECOS studies are flawed, should be rejected.

1. UIU's Minimum System Issues

As part of developing the electric and gas ECOS studies, the Company calculates a "minimum system" to classify distribution plant into two categories – customer and demand. The Company determines which cost components are due simply to the presence of customers

¹ Since the transcript starts at page 1 for each day, references to the transcript will have the date, *e.g.*, Nov 2 or Nov 3, and the page number, *e.g.*, Nov 2 Tr. p. x. Exhibits are referenced as Exh. x.

² By email dated November 9, 2016, the due date for this brief was extended until November 16, 2016.

connected to the Company's electric and gas systems to receive a minimal level of service ("customer-related") and which cost components are needed to meet customer loads above this minimum level of service ("demand-related"). UIU argues that the Company's minimum system is flawed because the studies classify too many costs as customer-related. As explained below, the minimum system used in the Proposal is appropriate.

a. Secondary Conductors in Minimum System³

UIU's Electric Rate Panel claims that the Company's cost per foot for overhead wire was more expensive than using a single minimum size wire to develop the minimum system. The JP-DAC Panel explained that the secondary minimum system was developed using a range of sizes based on a Memorandum of Understanding ("MOU") agreed to and signed by the parties as a result of a collaborative initiated in Case 04-E-0572 (Exh. 173) (Nov 2 Tr. 238). In the Company's 2007 rate case, the Commission adopted the MOU's use of the range of sizes in the minimum system when it approved the use of the MOU resulting from the collaborative process, stating as follows:

The parties also ask us to modify the cost of service study results by picking and choosing among the expert opinions provided by the consultants and engineers hired to challenge the deficiency indicated by Con Edison's study. We are reluctant to do so for reasons similar to those provided by the judges and because there has not been an adequate showing here demonstrating that Con Edison has materially altered its cost of service study methodology and parameters from those used in prior cases, which the Commission found to be acceptable. Nor has any party shown that the Company failed to properly implement suggestions for which there was a full consensus during the most recent cost-of-service study collaborative process in which the parties aired their views about the mechanics of the cost of service study.⁴

³ No issues were raised during the hearing related to the primary component of minimum system.

⁴ Case 07-E-0523, Con Edison Electric Rates, *Order Establishing Rates for Electric Service* (issued March 25, 2008) p. 134.

Similar to the 2007 proceeding, UIU has not demonstrated that the use of the MOU was incorrect or that the wire sizes used were incorrect. For example, during cross-examination, the UIU Electric Rate Panel claimed that the Company's discovery responses and testimony were confusing as to what wire sizes were used in the minimum system. (Nov 3 Tr. 145-146). However, the Company's response to City 6-203 (Exh. 170, p. 3) specifically listed and highlighted the wire sizes contained in the minimum system, which UIU used as a basis for its cross-examination of the JP-DAC Panel.

As to UIU's alleged confusion as to the smallest size wire in that range, that confusion is irrelevant and should not be a basis for rejecting the Company's ECOS study. In accordance with the MOU, the Company used a range of sizes in developing the minimum system (JP-DAC Panel Rebuttal, pp. 28-34). UIU has not demonstrated any reason to deviate from the MOU methodology which has been employed by the Company since Case 07-E-0523.

b. Transformers in Minimum System

UIU argues that transformers should not be included in the minimum system analysis used to classify costs as customer-related. (Nov 3 Tr. 56-57). Additionally, UIU recommends that if transformers are classified as customer-related, the minimum system should be determined using smaller transformers than the current method, which includes transformers rated up to 25 kVa. During cross-examination, UIU questioned the JP-DAC Panel as to the change in level of the demand-related component of transformers on the distribution system from 94 percent in Case 09-E-0428 to 60 percent in this case. (Nov 2 Tr. 294-297). The JP-DAC Panel testified that there has been no change in the methodology used to determine the portion of transformer costs to be classified as customer-related versus demand-related. Rather, the increase in the costs

classified as demand-related are based on the transformer data recorded on the Company's books. (Nov 2 Tr. 296).

In addition, UIU questioned the JP-DAC Panel as to whether the Company included some direct current ("DC") equipment,⁵ such as regenerators and rectifiers, in the minimum system. (Nov 2 Tr. 285-290). The Company conceded that some DC equipment was incorrectly included in the minimum system calculation since the Company no longer provides DC service. (Nov 2 Tr. 285-286). Under cross-examination, the JP-DAC Panel explained that the impact on the ECOS study of including this equipment in the minimum system calculation was *de minimis*, which was unchallenged by UIU. (Nov 2 Tr. 286-287, 289, 290).

As has been demonstrated throughout this proceeding, the Company's electric and gas ECOS studies properly allocate costs. Accordingly, the Company's revenue allocation and rate design adopted in the Proposal should be approved without modifications.

B. Local 175 Issues

NYICA's cross-examination during the hearings confirmed that the Company's 2014 Standard Terms do not warrant any modification to the Proposal. Specifically, NYICA failed to establish any potential harm to ratepayers; any Company action (including the 2014 Standard Terms) that is contrary to Commission rules or policies; any adverse results for bids received after the 2014 Standard Terms were established that are attributable to the 2014 Standard Terms; or any basis for the Commission to intercede in this inter-union dispute or take action that may interfere with an ongoing federal court proceeding.

As Judge Lecakes explained several times during the course of the hearing, bidding practices themselves are not an issue as to whether the Proposal is in the public interest, and

⁵ The DC system was removed from service in 2008 when the remaining DC customers were converted from DC service to AC service.

bidding of contracts is only an issue if such practices may cause imprudent increases such that customers are harmed (*see, for example*, Nov 2 Tr. 41-42, 61, 72-73, 78-79, 99, 128-129).

NYICA failed to establish that there are any Company practices that would cause imprudent increases or that customers would be harmed even if such increases were to occur. For example, during the course of NYICA's cross-examination, it was confirmed that after the 2014 Standard Terms came into effect, the number of bids for paving work increased (Exh. 311) and prices did not increase when the contract was awarded to an affiliate of the low bidder who formed another company that did not use Local 175 workers in order to comply with the 2014 Standard Terms (Nov 2 Tr. 67, 109-112, 121), thereby demonstrating that the 2014 Standard Terms did not have the effect on prices that NYICA speculated would occur.⁶

As to customer protections, in addition to explanations in both the Company's and Staff's Reply Statements, the Company confirmed during the hearing that it would not object to the Commission adopting the Staff recommendation that the Company make a showing in its next electric and gas rate filings that its O&M and capital costs have not increased as a result of the 2014 Standard Terms, subject to the Company's right to demonstrate that any such cost increase was not imprudent (Nov 2 Tr. 37-38). Judge Lecakes thereafter also confirmed his understanding that customer interests are protected by Staff's exercise of its audit function (Nov 2 Tr. 117-118).

After more than two hours of questioning that failed to connect NYICA's work practice issue to the terms of the Proposal, Judge Lecakes terminated NYICA's cross-examination

⁶ As to the 2015 contract reflecting "lower prices," Company witness Boyle clarified that the bid awarded in 2015 was lower in overall value than the 2012 contract, but that the contract is not a lump-sum contract (Nov 2 Tr. 111). As set forth in the Company's Reply Statement, the bids for paving services today as compared to bids in prior years may be higher or lower for any number of reasons, including inflation, work scope changes and other market conditions having nothing to do with the 2014 Standard Terms (Reply Statement, p.23).

because "...there hasn't been anything that has furthered the concerns of NYICA in this morning's hearing" (Nov 2 Tr. 127, 129).

Accordingly, for the reasons explained in the Company and Staff Reply Statements, the Commission should approve the Proposal without the modification proposed by NYICA and reject NYICA's alternative proposal that Con Edison be required to revert to its pre-2014 Standard Terms.

CONCLUSION

For the reasons explained in the initial and reply statements and testimony, the Proposal should be accepted without modification.

Dated: New York, New York
November 16, 2016

Respectfully submitted,



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