

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission)
as to the Rates, Charges, Rules and) Case 16-E-0060
Regulations of Consolidated Edison Company)
of New York, Inc. for Electric Service)

Proceeding on Motion of the Commission)
as to the Rates, Charges, Rules and) Case 16-G-0061
Regulations of Consolidated Edison Company)
of New York, Inc. for Gas Service)

Proceeding on Motion of the Commission)
as to the Rates, Charges, Rules and) Case 15-E-0050
Regulations of Consolidated Edison Company)
of New York, Inc. for Electric Service)

Tariff filing by Consolidated Edison Company)
of New York, Inc. to revise General Rule 20) Case 16-E-0196
Standby Service contained in its electric)
tariff schedules, P.S.C. Nos. 10 and 12)

**POST-HEARING BRIEF OF
NEW YORK ENERGY CONSUMERS COUNCIL, INC.**

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INTRODUCTION

Pursuant to the directive of the presiding Administrative Law Judges Dakin Lecakes and Ben Wiles (the "ALJs") at the completion of the evidentiary hearings in the above referenced cases on November 3, 2016, the New York Energy Consumers Council, Inc. ("NYECC") hereby offers its Post-Hearing Brief in these cases to the ALJs.

The NYECC and its predecessor organizations¹ have represented the energy interests of commercial property owners and managers in New York City before State agencies for nearly 70 years. NYECC also continues to represent hospitals, colleges, governmental agencies, cultural and financial institutions, industrials, housing cooperatives, and real estate organizations. NYECC's membership includes landmark member properties such as 7 World Trade Center and Rockefeller Center.

NYECC has done its best to abide by the ALJs directive on November 3, 2016 to limit briefs to 10 pages of content. Because of the page limitation, NYECC has sought not to repeat and include arguments it has made and/or made by other parties, and/or facts addressed elsewhere in the record whenever possible, but instead to focus and emphasize additional facts gleaned from the evidentiary hearing record and certain hearing exhibits in further support of NYECC's arguments that the entire Joint Proposal is in the public interest and that it be adopted as filed.

**THE JOINT PROPOSAL'S REVENUE ALLOCATION AND RATE DESIGN
CHANGES ARE CONSISTENT WITH COST OF SERVICE PRINCIPLES
AND ALL CHARGES IN THE JOINT PROPOSAL ARE JUST, REASONABLE
AND HELPS ENSURE THAT THE PROVISION OF ELECTRIC AND GAS SERVICES
WILL BE SAFE AND ADEQUATE FOR THE THREE-YEAR RATE PLAN**

The Joint Proposal in case numbers 13-E-0030 and 13-G-0031 filed on December 31, 2013 was executed by twelve parties, including UIU.² The Commission found these rate plans included, among other things, revenue allocation and rate design changes consistent

¹The Owners' Committee on Electric Rates (OCER) and The New York Energy Buyers Forum (NYEBF).

² 13-E-0030, et al. - 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, Order Approving Electric, Gas and Steam Rate Plans in Accord with Joint Proposal, Issued and Effective February 21, 2014, p. 7.

with cost of service principles.³ 13-G-0031 is the Con Edison gas rate case immediately preceding the instant Con Edison gas rate case. While 13-E-0030 is technically not the Con Edison electric rate case immediately preceding the instant Con Edison electric rate case (15-E-0050 is), virtually all of, if not all of, the contents of the Joint Proposal in 13-E-0030 were adopted in 15-E-0050, which extended the two-year rate plan in 13-E-0030 for an additional year in 15-E-0050.⁴

The Commission is specifically called upon to regulate electric, gas and steam rates to ensure that all charges are just, reasonable and designed to ensure that the provision of such services will be safe and adequate.⁵ The Joint Proposal accomplishes these ends in these instant cases.

The Commission is free to entertain, ignore or assign whatever weight it deems appropriate to factors in setting utility rates, and Commission determinations of rates are not to be set aside unless they are without any rational basis or reasonable support in the record.⁶ The Joint Proposal satisfies these requirements in these cases.

Similarly, the unopposed Joint Proposal in 15-E-0050 and 13-E-0030 filed on June 2, 2015 was executed by fifteen parties, including UIU.⁷

³ Id. at 3.

⁴ 15-E-0030, et al. - 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, Order Adopting Terms of Joint Proposal to Extend Electric Rate Plan, Issued and Effective June 19, 2015.

⁵ 13-E-0030, et al. - 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, Order Approving Electric, Gas and Steam Rate Plans in Accord with Joint Proposal, Issued and Effective February 21, 2014, at 9, fn. 4, citing to Public Service Law §§ 65(1); 79(1).

⁶ Id. at 9, fn. 5, citing to Abrams v. Public Service Com., 67 N.Y.2d 205, 501 N.Y.S.2d 777, 492 N.E.2d 1193 (1986).

⁷ 15-E-0030, et al. - 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, Order Adopting Terms of Joint Proposal to Extend Electric Rate Plan, Issued and Effective June 19, 2015, p. 3.

A filed rate approved by the governing regulatory agency "is per se reasonable and unassailable in judicial proceedings brought by ratepayers." Black Radio Network, Inc. v. Nynex Corp., 44 F. Supp. 2d 565, 574 (SDNY 1999), citing to Wegoland Ltd. V. NYNEX Corp., 27 F.3d 17 (2d Cir. 1994).

Accordingly, Commission rates previously approved by the Commission are considered *per se* reasonable and signatories to Joint Proposals adopted by the Commission, including UIU, have agreed to the *per se* reasonableness of those rates.

Both of UIU's rate panels agree that cost of service studies are not simply arithmetic exercises and that they require the exercise of judgment by the analysts performing them. (Nov. 3, Tr. P. 113, L 9-13 and P. 325, L 22 - P. 326, L 3). Indeed, UIU believes that "reasonable minds can and do differ with respect to determining a customer's embedded cost of service."⁸ Accordingly, UIU's disagreements as to the approaches taken in the Joint Proposal on certain issues not to its liking are insufficient grounds upon which to render otherwise reasonable approaches resolving such issues as unreasonable.

UIU's electric and gas rate panels further agree that it is desirable that customer groups pay for the cost incurred in serving them (Nov. 3, Tr. P. 148, L 4-14), and that utility costs are allocated to the customer classes on the basis of an allocation process that reasonably attributes costs on the basis of cost causation (Nov. 3, Tr. P. 324, L 6 - 25).

In determining rate design, as in other ratemaking decisions, the Commission's expertise requires judicial deference to the weight the agency assigns to any given factor in the evidence before it. Multiple Intervenors v. Public Service Commission, 154 AD2d 76, 80 (3rd Dept. 1990).

In the instant Con Edison electric and gas rate cases, as in prior Con Edison rate cases, the Commission's Department of Public Service Staff ("Staff") utilizes its expertise in assisting the Commission to determine Con Edison's rate design. In the instant Con Edison electric and gas rate cases, in addition to the Joint Proposal's other reasonable provisions,

⁸16-0060 et al. - 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, Statement [in Opposition] of the Utility Intervention Unit on the Joint Proposal, October 13, 2016, p. 9.

Staff reasonably supports the Company's methodology and ECOS study results and supports prior Joint Proposal agreements as to the use of Con Edison's ECOS studies here and the mitigation of large bill increases to customers in the deficient classes.⁹

Conversely, UIU lacked the expertise in house for its two rate panels in these rate cases to further its objectives and therefore it sought additional help from the consultants retained. (Nov. 3, Tr. P. 95, L 13-21). The one UIU employee on both UIU rate case panels, Ms. Panko, never worked on the embedded cost of service studies when she was a Con Edison employee and did not know how long it takes Con Edison to perform an embedded cost of service study. (Nov. 3, Tr. P. 110, L 9-21).

Both Daymark and Ben Johnson and/or Ben Johnson Associates Inc. were retained by UIU in response to requests for quotation for the Con Edison electric and gas rate cases. (Nov. 3, Tr. P. 103, L 6-13, P. 321, L 13 - P. 322, L 13); (Exhibits 315 and 316).

UIU's foremost objective in the instant rate cases is set forth in its Request for Quotations ("RFQs") issued by UIU's Director, Erin Hogan. (Exhibits 315 and 316). The consultant's demonstrated approach in its Work Plan had significant weight attached to the selection of the consultant responding to the UIU's RFQ (e.g. Exhibit 315, p. 7), and significantly the contract eventually entered into by UIU with its consultants was to incorporate the RFQ (e.g. Exhibit 315, p. 7). Further, the reservation of rights provision to the RFQs issued by UIU state that any bidder may be disqualified for failing to conform to the requirements of the RFQ (e.g. exhibit 315, p. 13). Daymark was retained by UIU to further its foremost objective in this case to ensure the protection of New York residential and small commercial consumers' interests. (Nov. 3, Tr. P. 103, L 14 - P. 104, L 17); (Exhibit 315, P 1).

Accordingly, this collective evidence strongly indicates that UIU approached the retention and use of its rate case consultants in the instant rate cases in a predetermined manner, namely, to arrive at a predetermined outcome in the analysis of Con Edison's embedded cost of service studies consistent with

⁹16-0060 et al. - 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, New York States Department of Public Service Staff Statement in Support of the Joint Proposal, October 13, 2016, pp. 33-35, 44-45.

its foremost objective of exclusively ensuring the protection of New York residential and small commercial consumers' interests irrespective of cost causation or the effect of UIU's proposed changes upon the other Con Edison service classes.

THE JOINT PROPOSAL'S PROVISIONS REGARDING INTERRUPTIBLE RATES ARE CONSISTENT WITH TREATMENT IN THE LAST GAS RATE CASE SETTLEMENT AND ARE JUST, REASONABLE AND HELPS ENSURE THAT THE PROVISION OF GAS SERVICES WILL BE SAFE AND ADEQUATE FOR THE THREE-YEAR RATE PLAN

UIU decries the so-called "significant discount" the JP would give to non-firm gas customers in the SC12 Rate II and SC9 Rate (C) (Off-Peak Firm) compared to the Company's initial filing.¹⁰

Initially, it is worth noting that UIU's argument is a *non sequitur*. The Company's initial filing, in and of itself, is no indication of any reasonableness, but the process of compromise and arriving at a fair value for the service provided by and agreed to by the utility and by Staff and by multiple other parties as part of a Joint Proposal is an indication of consensus and reasonableness. Second, it is worth reiterating that UIU is a signatory to the Commission adopted Joint Proposal in the former Con Edison Gas Rate Case in which these same non-firm customer rates were increased to 8 cents per term, a relatively comparable, but slightly smaller increase (0.50 cents per therm over the three-year rate plan)¹¹ than in the instant rate case (0.75 cents per therm over the three year rate plan). It is of course ironic that UIU who was part of the comparable consensus of reasonableness in the former Con Edison Gas Rate Case has elected under relatively comparable circumstances here to oppose the Joint Proposal on this virtually identical issue. Third, UIU agrees that Con Edison does not treat its firm rate customers and its non-firm rate customers the same and that Con Edison does not use its non-firm customers in its cost of

¹⁰ 16-0060 et al. - 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, Statement [in Opposition] of the Utility Intervention Unit on the Joint Proposal, October 13, 2016, p. 46, fn. 153.

¹¹ 13-E-0030, et al. - 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, Order Approving Electric, Gas and Steam Rate Plans in Accord with Joint Proposal, Issued and Effective February 21, 2014, Exhibit C (Joint Proposal) p. 87.

service studies. (Nov. 3, Tr. P. 330, L 6 - 15). UIU further acknowledges that Con Edison does not design its system around the needs of non-firm customers, and that switching all non-firm customers to firm service would disrupt the system or cause major problems. (Nov. 3, Tr. P. 342, L 8 - P. 343, L. 18). Moreover, UIU has not conducted any study and does not know at what price interruptible rates would drive non-firm customers off of interruptible rates and into firm rates (Nov. 3, Tr. P. 343, L 23 - P. 344, L 12). Finally, UIU acknowledges that in Con Edison's tariff, firm customers are treated differently from non-firm customers in terms of rights and obligations. (Nov. 3, Tr. P. 361, L 5 - 17). Accordingly, the non-firm rates agreed to in the Joint Proposal are reasonable and in the public interest notwithstanding UIU's divergence from the same reasoned approach taken on this issue in the last Con Edison gas rate case Joint Proposal in 13-G-0031.

CONCLUSION

The evidentiary record cited to herein and in the plethora of other marked exhibits of filings made by NYECC and the other parties in support of the Joint Proposal in these Con Edison electric and gas cases definitively establishes that the Commission's guidelines for settlements have been satisfied.

Accordingly, for the foregoing reasons and the reasons set forth elsewhere in the evidentiary record, NYECC respectfully requests that the Administrative Law Judges in these Con Edison electric and gas rate cases recommend to the Commission that the Joint Proposal in its entirety is in the public interest and that it be adopted as filed.

Dated: White Plains, New York

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Respectfully submitted,

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