

**STATE OF NEW YORK
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

POST-HEARING BRIEF OF TIME WARNER CABLE INC.

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Time Warner Cable Inc. offers this Post-Hearing Brief to address the single issue of whether the “make-whole” provision that applies to Con Ed’s 2017 rate increases will also apply to the rate decrease to certain electric SC2 customers in Section G(3)(a) of the Joint Proposal (JP).

As noted at JP p. 4 n. 8, Con Ed agreed to two extensions of the statutory suspension period “subject to a ‘make-whole’ provision that would keep the Company and its customers in the same position they would have been absent the extension.” While the Orders granting the extensions do not make reference to that condition, statements by Judge Wiles at the November 2, 2016 evidentiary hearing suggest that the ALJs accepted it.¹

¹ See Nov. 2, 2016 Transcript (Tr.) at p. 153 line 12 to p. 154 line 4:

ALJ WILES: ..In the event that the Commission does not act in time for the new rates to take effect ...on the 1st of January, 2017, I think the understanding of the process so far has been that the first rate year would have 11 months rather than 12 months, is that correct?

MR. MUCILLO:we would assume that the rates, the revenue to be collected over the 12 months, will be collected over the 11 months.

ALJ WILES: That was the purpose I think of the order last week or the week before.

See also Nov.2, 2016 Tr. at p. 159 lines 7-11:

ALJ WILES: To answer a couple of questions first, I’m not concerned about what I call the real make-whole provisions, the collection through rates of 12 months of revenue and [sic] 11 months....

The reference in that footnote to keeping the “Company *and its customers* in the same position” (italics added) suggested that the Company’s intent was that the make-whole provision would be applied symmetrically to rate increases benefitting the Company as well as decreases benefitting customers. However, testimony by Company witness Atzl at the November 2, hearing initially suggested otherwise:

MR. ADELBERG: So I believe you said if the rates go into effect after January 1st, they would be adjusted to make sure that over whatever the remaining amount of time in the first year there is should recover the same amount of money as if the rates had gone into effect on January 1st; is that correct?

MR. MUCCILO: That's correct.

MR. ADELBERG: And would you apply the same approach to discounts that are afforded under the joint proposal; so in other words, as you know, there's a discount of \$4.41 on the customer charge for certain unmetered accounts in order for the party that sought that discount to get the benefit of a full year's worth of discount. Would you agree that that discount would have to be adjusted as well?

MR. MUCCILO: Subject to –

MR. ATZL: No, we wouldn't adjust the discount.

Nov. 2, 2016 Tr. at p. 196 line 18 to p. 197 line 15; *see also id.* at p. 198 lines 18-20 (MR.

ATZL:....”We’ve agreed on what customer charges are. And in the make-whole process, we’re not going to be altering customer charges...”).

Following a brief recess, however, Mr. Atzl indicated that the Company had reconsidered its position on that issue:

ALJ LECAKES: Mr. Richter, is there any redirect for this panel?

MR. RICHTER: Yes, there is, your Honor, two brief questions. First, there was a question directed to Mr. Atzl earlier regarding the treatment of a certain discount should there be delay in the company's rates becoming effective

January 1st.

Mr Atzl, do you have anything to add to your prior response?

MR. ATZL: Yes. After further reconsideration we've decided that we will come up with some mechanism to make the SC2 unmetered class whole, not just on a class basis but on a (inaudible) basis.²

ALJ LECAKES: Is there a separate tariff filing that needs to get made to show how the make-whole works?

MR. ATZL: It's not a tariff filing per say. It would be in the complaint [sic] filing in this case.³ And then the mechanics of it might land in various parts of the tariff in different mechanisms.

ALJ LECAKES: And the SC2 class provision that you just discussed would be included in that compliance filing then?

MR. ATZL: Yes.

Nov. 2, 2016 Tr. at p. 199 line 18 to p. 200 line 22.

CONCLUSION

Con Ed's position following reconsideration, as stated by Mr. Atzl, accords with the position of Time Warner Cable, and has not been contested by any other party. It applies the make-whole position in a manner that is fair and symmetrical. Accordingly, Time Warner Cable requests that the final order approving the JP make clear that the make-whole provision applies to the rate discount in JP Section G(3)(a) as well as to rate increases for the Company.

² Time Warner Cable believes that the substance of the words characterized by the reporter as "inaudible" was "rate element". Time Warner has called this the attention of Con Ed's counsel and awaits their agreement to make the transcript correction.

³ Time Warner Cable believes that the reporter incorrectly transcribed the word "compliance" as "complaint." Time Warner has called this apparent error to the attention of Con Ed's counsel and awaits their agreement to make the transcript correction.

Respectfully submitted,

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/s/ Arthur W. Adelberg

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