

Seham, Seham, Meltz & Petersen, LLP

Attorneys At Law

199 Main Street, 7th Floor

White Plains, NY 10601

Tel: 914-997-1346 Fax: (914) 997-7125

www.ssmplaw.com, email: ssmplaw@ssmplaw.com

October 21, 2016

BY E-MAIL

Hon. Ben Wiles
Hon. Dakin Lecakes
Administrative Law Judges
NYS Department of Public Service
Three Empire State Plaza
Albany, NY 12223-1350

Re: 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.

NYECC's Reply Statement to Statement [in Opposition] of the UIU on the Joint Proposal

Dear Judges Wiles and Lecakes:

Pursuant to your Ruling on Schedule, Issued September 28, 2016, in the above referenced proceedings, please consider this letter as the New York Energy Consumers Council, Inc.'s ("NYECC") Reply Statement to the Statement [in Opposition] of the Utility Intervention Unit ("UIU") on the Joint Proposal ("JP") ("UIU's Opposition Statement") due by October 21, 2016.¹

The NYECC and its predecessor organizations² 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 1 World Trade Center and Rockefeller Center.

¹ On October 17, 2016, the UIU filed some corrections to errors in its Statement [in Opposition] of the Utility Intervention Unit on the Joint Proposal, dated October 13, 2016.

² The Owners' Committee on Electric Rates (OCER) and The New York Energy Buyers Forum (NYEBF)

NYECC is a signatory to the JP in these proceedings, which covers three-year rate plans for Consolidated Edison Company of New York, Inc.'s ("Con Edison" or the "Company") electric and gas services from January 1, 2017 through December 31, 2019.

NYECC's REPLY STATEMENT TO STATEMENT IN OPPOSITION OF UIU

Initially, it is worth noting that notwithstanding UIU's grouping itself among fifteen parties who did not sign the JP, except for Energy Spectrum, who opposes the JP on a different issue than UIU, the other non-signing parties are not opposing the JP.³ Accordingly, UIU conflates and grossly exaggerates actual opposition to the JP.

UIU's Opposition Statement cites to the New York Executive Law Section 94-a and refers to its "statutory mandate to advocate on behalf of *all* energy consumers in New York State," "large customers as well as small," and that it "often places extra focus on issues important to smaller customers, but only insofar as such focus is consistent with fair treatment of all customers."⁴ (Emphasis supplied). The cited statutory authority does not say any of this except that it does say that the utility intervention unit shall, *inter alia*, have the power and the duty to represent the interests of consumers of the state . . ." To the contrary, in these two Con Edison rate cases, the UIU has and continues to engage in service class warfare in contravention of its statutory mandate by favoring certain service classes over others and by seeking a drastic results oriented alteration to the Embedded Cost of Service ("ECOS") Studies performed by the Company in order to benefit the residential and small commercial service classes at the expense of large commercial service classes out of some misguided and unfair attempt to reduce the electric and gas rates for UIU's favored residential and small commercial service classes.

Incredibly and unashamedly, UIU makes the following astounding statements: "Of 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. In contrast, nine parties to this proceeding expressly represent the interests of larger customers and/or are themselves larger customers: MTA, NYECC, CPA, the City of New York, the County of Westchester, Community Housing Improvement Program (CHIP), the Real Estate Board of New York, and the United States General Services Administration.

First, we note the conspicuous and glaring absence, in UIU's statements, of Staff from the listed parties that focus on the interests of residential customers in these Rate Cases. No doubt this exclusion is due to Staff's support for the JP provisions opposed by UIU. Exclusion of Staff from UIU's argument of underrepresentation of residential and small commercial consumers in these proceedings similarly undermines UIU's absence from the 2005 Memorandum of Understanding as "not reflect[ing] the participation of small customer representatives."⁵ It is unclear why UIU believes that such underrepresentation

³ Statement of the Utility Intervention Unit on the Joint Proposal, date October 13, 2016, at 3, fn. 3.

⁴ *Id.* at 5.

⁵ *Id.* at 25 and 32.

occurred in the instant rate cases when UIU was an active participant in these Rate Cases. Second, it is simply untrue that the other parties, especially the City of New York and the County of Westchester and others did not focus on the interests of residential customers. Finally, UIU completely ignores the simple fact that the contributions of other parties (besides PULP and UIU) result in reductions to the revenue requirement proposed by Con Edison which benefit all ratepayers, including residential customers (some of whom are represented by the larger service classes).

UIU's Opposition Statement erroneously concludes that the allocations of revenues under the JP is based not only on a pair of flawed embedded cost of service studies but on "deeply" flawed studies.⁶ UIU's Opposition Statement also erroneously sees not only a "tendency" of the ECOS to over-allocate cost responsibility onto small customers, but that the JP somehow and inexplicably "extends" this tendency.⁷ Among other things, UIU is unable or unwilling to see any factual or legal basis identified by the Company for adding a portion of primary distribution plant to its minimum system.⁸ UIU even resorts to Orwellian doublespeak in claiming that "the JP would shift approximately \$49.1 million of costs onto smaller customers . . ." ⁹ when the converse is actually in fact true, i.e. that UIU is seeking to foist these smaller customer costs onto the other service classes. Finally, UIU erroneously cannot see satisfaction of "any" of the prongs of the applicable test in the Commission's Settlement Procedures and Guidelines.

UIU crafts its main argument as "The Joint Proposal Is Not In The Public Interest."¹⁰ It is worth noting that notwithstanding this UIU statement, it does not appear that UIU is opposing the entire JP.

UIU radically objects to the "exclusive" use of allocating revenues among service classes according to the ECOS studies and to "lockstep" adherence to those studies, including the 10% tolerance band, as contrary to Commission precedent.¹¹ This mindset seeks nothing less than to undermine the very foundation and objectivity upon which ECOS studies are usually viewed and prepared and incorrectly seeks to introduce extraneous, subjective criteria that seek particular results after-the-fact and which are anathema to such studies.

UIU purports broadly and incorrectly that "the JP disregards evidence concerning rate impacts and unaffordability for low-to middle income residential customers, and ignores policy considerations applicable to the costs of the Company's Advanced Metering Infrastructure (AMI) program." This assertion not only blatantly ignores the express, lengthy and significant low income provisions (\$54.7M of discounts for electric and \$10.9M of discounts for gas in each of the three Rate Years) contained in the JP¹² but

⁶ Id.

⁷ Id. at 6.

⁸ Id.

⁹ Id.

¹⁰ Id. at 7.

¹¹ Id.

¹² 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, 16-G-0061 – Proceeding on

also ignores the Commission's Order approving, *inter alia*, the Company's AMI Business Plan, subject to a cap on capital expenditures of \$1.285 billion as discussed in the Order.¹³ Rate impacts and unaffordability are not necessarily limited to the low-to middle income residential customers. In the instant rate plans, the revenue allocations in the JP mitigate the rate impacts over the three-year period of the plans by reflecting one-third of the revenue surplus/deficiency indications in each Rate Year based on the ECOS studies.¹⁴

UIU complains against the strict application of the +/- 10% tolerance band in the ECOS study and the JP arguing that in 2013 NYPA "advocated" for a wider tolerance band,¹⁵ which would have reduced the NYPA deficiency to zero.¹⁶ Significantly, in the Joint Proposal for these three 2013 rate cases, in the steam rate case, no revenue realignment was performed for any Rate Year since the Company's 2011 ECOS study indicated that the rate of return for all service classes were within the +/- 10% tolerance band around the total system average rate of return.¹⁷

UIU claims that the Commission "often" implements revenue allocations tending to benefit "larger-customer parties," providing citations to past rate cases concerning the recurring NYPA deficiencies,¹⁸ and erroneously implying that the other larger customer parties also derived benefit from the reduced NYPA allocations in these rate cases, which is simply not true. The detriment to the other large customer service classes in the form of higher rates in these past rate cases was the same as the other non-NYPA service classes if not greater. Accordingly, UIU's argument of any benefits to larger customer service classes other than the NYPA service class is fatally flawed.

UIU points to the non-JP, litigated 2008 rate case (08-E-0539), as an example of Commission approval of +/- 15% tolerance band. However, the 2008 electric rate case is distinguishable from the instant case because unlike the instant case, there was no JP. In

Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Gas Service. Joint Proposal, September 19, 2016, at 98-106.

¹³ 15-E-0050 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. 13-E-0030 – 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 Advanced Metering Infrastructure Business Plan Subject to Conditions, March 17, 2016.

¹⁴ 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. 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. Joint Proposal, September 19, 2016, at 55, 67.

¹⁵ Statement of the Utility Intervention Unit on the Joint Proposal, date October 13, 2016, at 9, fn. 17.

¹⁶ 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, Appendix A, p. 9.

¹⁷ 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, Appendix C, Joint Proposal, p. 89.

¹⁸ Statement of the Utility Intervention Unit on the Joint Proposal, date October 13, 2016, at 9-11.

addition, the 2008 case is further distinguishable from the instant case in that Staff supported the different tolerance band for reasons unique to that case.¹⁹ Conversely, in this case, Staff supports (as do the other signatories, including NYECC) the usual +/- 10% tolerance band around the total system average rate of return.

UIU similarly proposes a radical departure in allocating AMI costs based on customer savings notwithstanding prior approval by the Commission of AMI costs and benefits,²⁰ in an attempted end run around the Commission's decision because in the words of UIU, while "[m]eters are necessary, Advanced meters . . . are discretionary . . ."²¹

Finally, the compromise reached in the JP regarding the Interruptible Rates to which UIU complains apparently because the Company's proposed increases were not accepted, specifically for SC12 Rate 2/SC9 Rate C,²² results in increases in rate years 2 and 3 of the rate plans, has a rational basis and falls within the range of likely litigated outcome, which on the low end of the spectrum would result in no increase at all based on NYECC.²³ Further, an Interruptible Gas Collaborative will be examining interruptible gas rates and services as set forth in the JP.²⁴

NYECC agrees with Staff in its Statement in Support of the JP (p.33) supporting the reasonable approach in the JP addressing the existing surpluses and deficiencies in the 2013 ECOS and the mitigation measures taken for customers in the deficient service classes, and also agrees with Con Edison in its Statement in Support of the JP (p. 31) that UIU's ECOS studies alter precedents and methods to achieve an end-result favoring residential customers.

Accordingly, the NYECC respectfully requests that your Honors recommend to the Commission that the Joint Proposal in its entirety is in the public interest and that it be adopted as filed.

¹⁹ 08-E-0539, 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 Setting Electric Rates, Issued and Effective April 24, 2009, pp. 204-206.

²⁰ 15-E-0050 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, 13-E-0030 – 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 Advanced Metering Infrastructure Business Plan Subject to Conditions, March 17, 2016.

²¹ Statement of the Utility Intervention Unit on the Joint Proposal, date October 13, 2016, at 13.

²² Id. at 46, fn 153.

²³ 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, NYECC's Direct Testimony of David F. Bomke, May 27, 2016, at 9-13.

²⁴ 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, 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, Joint Proposal, September 19, 2016, at 110-112.

Respectfully submitted,

/s/ George Diamantopoulos
George Diamantopoulos
Counsel for
New York Energy Consumers Council

cc: John Favreau, Esq. (By E-mail Only)
Marc Richter, Esq. (By E-mail Only)
Kathleen H. Burgess, Commission Secretary (By E-mail)
Other Active Parties (By E-mail only)