

**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

**CITY OF NEW YORK
POST-HEARING BRIEF**

Dated: November 16, 2016

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PRELIMINARY STATEMENT

The City of New York (“City”) respectfully submits that the record developed during the evidentiary hearing in these proceedings supports adoption of the parties’ Joint Proposal without any changes to the provisions related to rate design, revenue and cost allocation, and advanced metering infrastructure (“AMI”). The record demonstrates that there are multiple acceptable methods for classifying and allocating costs among service classes and that the method used in the Joint Proposal is widely recognized as an acceptable method.

For the reasons set forth in the City’s prior pleadings and those submitted by the other signatory parties to the Joint Proposal, the City respectfully urges the New York State Public Service Commission (“Commission”) to reject the objections advanced by the Department of State Utility Intervention Unit (“UIU”) and adopt the rate design, revenue and cost allocation, and AMI provisions of the Joint Proposal without change.¹

The City takes no position on the issues raised by the New York Independent Contractors Alliance. As to the changes sought by RiverBay Corporation and its consultants (collectively, “RiverBay”), the City generally supports the provisions of the Joint Proposal related to the Reliability Credit. However, the City takes no position on the arguments advanced by RiverBay. In the event the Commission decides to uphold RiverBay’s objections and determines that the measurement period for the Reliability Credit should end on a date other than September 30, the City respectfully requests that such change apply equally to all customers.

¹ The City discussed several concerns with other provisions of the Joint Proposal in its Statement in Support. Those issues were not addressed in the evidentiary hearing, thereby placing them outside the scope of this brief. To be clear, the City’s position on those issues has not changed, and it continues to advocate for the modifications stated in its Statement in Support.

ARGUMENT

POINT I

THE UIU’S ASSERTIONS REGARDING COST ALLOCATION AND RATE DESIGN DO NOT WARRANT ANY CHANGES TO THE JOINT PROPOSAL

The UIU has taken the position in these proceedings that its cost allocation and rate design proposals are “correct”, and that the methodology agreed to by the Signatory Parties, which was used to develop the revenue allocation and the rate design in the Joint Proposal, is “incorrect.”² However, as noted by one of the UIU’s own reliance documents, “[g]iven the judgment involved, no single approach can be said to be ‘correct’, rate making is partly science and partly art.”³ UIU’s consultants agreed with this statement.⁴ Thus, their testimony and their arguments should not be considered to contain “corrections” to the methodology supported by the Signatory Parties; rather, the UIU’s position is simply a different perspective or alternate approach on performing the cost allocation and associated rate design.⁵

Because no cost allocation methodology can be considered right or wrong, the issue in dispute is whether the UIU has presented any valid basis to modify the approach relied upon by the settling parties as contained in the Joint Proposal. The City respectfully submits that the UIU has not done so, and there is no record basis to disturb these aspects of the Joint Proposal.

² See, e.g., Evidentiary Hearing Transcript (“Tr.”) at p. 157. (UIU Direct Testimony at pp. 20, 22)

³ Exhibit (“Ex.”) 172 at p. 36.

⁴ Tr. at p. 159.

⁵ As stated in another report oddly relied upon by the UIU (odd because the report supports the approach taken by the settling parties but does not support the UIU’s position), “[a]ny approach to classifying costs has virtues and vices.” Ex. 174 at p. 31.

What is clear from the record is that there was an inherent bias in the UIU's approach to allocating costs and setting rates in these rate cases, starting with the manner in which it solicited expert assistance on the topics of cost allocation and rate design.⁶ This bias carried through to the manner in which the UIU proposes to allocate costs and delivery revenues. As shown in Exhibits 165 and 171, UIU's approach would substantially increase the deficiencies ascribed to the New York Power Authority Class as well as multi-family customers (Service Classification ["SC"] 9). Increasing the deficiencies and other adjustments made by the UIU translate to increasing those customers' share of the revenue requirement increase. As shown on page 5 of Exhibit 171, the UIU's approach would reduce the impacts on residential and small commercial customers (the outcome dictated by the terms of the UIU solicitation) while increasing the impact for almost all other classes.

The purpose of cost allocation is to implement the bedrock principle of cost causation – allocating the costs of utility service to the persons or entities that cause the costs to be incurred.⁷ Put another way, cost allocation should fairly allocate the costs of providing utility service among all customers and customer classes. Instead, the UIU is seeking to shift as many costs as possible away from some customers and on to other customers.⁸ The Commission has never adopted such

⁶ See, e.g., Tr. at pp. 100-104, 119-125; Exs. 315 and 316.

⁷ Tr. at pp. 146-148; Ex. 172 at p. 8; Ex. 174 at p. 6.

⁸ The UIU wrongly asserted that the City is “expressly” and exclusively representing the interests of large customers. Ex. 163 at p. 24. The record amply demonstrates that the UIU's representation of residential customers in these proceedings has been very limited, while the City has represented the interests of all New York City consumers. See Tr. at pp. 170-181; Exs. 221-241. The UIU appears to misapprehend that the just and reasonable rates requirement of Public Service Law §65(1) applies to all customers. Accordingly, as it has done for decades, in these proceedings the City has appropriately advocated for cost and revenue allocations that are fair and equitable for all customers, and it has not exhibited any improper bias towards any customer class.

a results-oriented approach to cost allocation, and there is no legitimate basis for the Commission to do so in this matter. As the UIU's own experts readily acknowledged, an appropriate rate design is one that exhibits fairness, rate stability, revenue stability, and non-discrimination, and is based on the principle that the rates charged to customers correspond to the costs incurred to serve them.⁹

Moreover, the Commission has never issued an order exclusively adopting one allocation methodology over the other. In the UIU's testimony, its witnesses provide a lengthy discussion on "[p]rior Commission [d]ecisions [r]egarding [t]his [i]ssue [of classification and allocation of distribution gas mains]." ¹⁰ However, none of the cases relied upon included a decision by the Commission that directed the Company to use one classification and allocation methodology over the other.¹¹ In fact, UIU's witness conceded this fact by stating that there isn't a "decision that was written in such a sweeping manner that it would be inappropriate for parties to continue to litigate or debate the most appropriate method of allocating these types of costs or handling these costs . . ." ¹² The UIU's witness further conceded that their discussion of prior Commission

⁹ Tr. at pp. 149-151; Ex. 172 at pp. 8, 36; Ex. 174 at p. 6.

¹⁰ UIU Gas Rates Panel Direct at p. 47.

¹¹ See Cases 16-G-1165, et al., Rates, Charges, Rules and Regulations of The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York for Gas Service, Order Adopting Gas Rate Plans for Keyspan Energy Delivery New York and Keyspan Energy Delivery Long Island (issued December 21, 2007); Cases 14-E-0493 et al., Rates, Charges, Rules and Regulations of Orange and Rockland Utilities, Inc. for Electric and Gas Service, Order Adopting Terms of the Joint Proposal and Establishing Electric Rate Plan (issued October 16, 2015); Cases 08-E-0887, et al., Rates, Charges, Rules and Regulations of Central Hudson Gas & Electric Corporation for Electric and Gas Service, Order Adopting Recommended Decision with Modifications (issued June 22, 2009); Cases 15-E-0283, et al., Rates, Charges, Rules and Regulations of New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation for Electric and Gas Service, Order Approving Electric and Gas Rate Plans in Accord with Joint Proposal (issued June 15, 2016); Cases 09-E-0715, et al., Rates, Charges, Rules and Regulations of New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation for Electric and Gas Service, Order Establishing Rate Plan (issued September 21, 2010).

¹² Tr. at pp. 356-357.

Decisions on this issues did not involve actual Commission orders, but instead “more of a discussion” of the pre-filed testimony that was filed by parties in past rate cases.¹³

Given the foregoing, there can be no legitimate dispute that the cost allocation methodology used to develop the electric and gas rate designs and revenue allocations in the Joint Proposal – the minimum size method – is well-established and broadly recognized in the energy industry as a valid and reasonable approach.¹⁴

POINT II

THE UIU’S PROPOSAL REGARDING AMI COST RECOVERY LACKS MERIT

The UIU’s proposal improperly deflects costs away from certain customers. Relying on a biased interpretation of cost causation that has no support in the National Association of Regulatory Utility Commissioners (“NARUC”) Cost Allocation Manuals or any of the other reference materials cited by the UIU’s witnesses, the UIU asks the Commission to base the cost causation for AMI on certain alleged benefits that may result from the deployment of AMI.¹⁵ This argument wholly lacks merit and should be rejected.

As discussed above, it is well-settled, and conceded by the UIU’s own witnesses, that the principle of cost causation is based on how costs are incurred, not on whether and what benefits may be realized in the future. Moreover, the record and the Commission’s AMI Order¹⁶ fully

¹³ Tr. at p. 353.

¹⁴ Ex. 140 (NARUC Electric Utility Cost Allocation Manual) at p. 90; Ex. 140 (NARUC Gas Distribution Rate Design Manual) at pp. 22-23; Ex. 170 (Christens Associates’ “Survey of Approaches to Distribution Cost Allocation by Voltage”) at pp. 55-56; Ex. 174 at pp. 30-31.

¹⁵ Tr. at p. 198 (UIU Direct at p. 37).

¹⁶ 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) (“AMI Order”).

support the treatment of AMI costs contained in the Joint Proposal, and neither provides any factual or legal basis for the UIU's position.

The AMI Order makes clear that AMI is intended to provide opportunities and benefits to all customers, with special emphasis on residential customers who have heretofore not had the ability to proactively manage their energy use.¹⁷ The AMI Order also contains a tabulation of the many quantifiable benefits resulting from AMI, including \$353 million in savings from avoided meter readings, \$238 million in avoided field services work, \$16 million in billing improvements, and \$491 million associated with improvements in meter accuracy.¹⁸

Although the UIU claims that supply savings to large customers are the primary driver for AMI, the tabulation in the AMI Order does not include this item. Indeed, there is no discussion of this item (supply savings to large customers) at all in the AMI Order, and the UIU never advanced, or even mentioned, this novel contention in its comments on the AMI Business Plan.¹⁹ Further, the UIU never disputed any of the cost savings and other benefits that are expected to result from the deployment of AMI, as detailed in Appendix A of the AMI Order, nor did it dispute that most of these savings and benefits relate to the provision of utility service to residential and small commercial customers.

¹⁷ See, e.g., *id.* at pp. 1-3.

¹⁸ *Id.* at Appendix A.

¹⁹ See Cases 15-E-0050, *et al.*, *supra*, Comments of the Utility Intervention Unit on the Advanced Metering Infrastructure Business Plan (dated December 18, 2015), which comments are publicly available on the Commission's DMM System. Although the UIU raises a general concern about allocation of AMI costs among customer classes (p. 2), it acknowledges the opportunity for all customers to benefit from AMI and advocates for a robust outreach and education program to allow customers to "realize its potential" (p. 4). Its subsequent comment makes clear that it is referring to residential and small commercial customers (p. 5).

The UIU's witnesses attempted to assert that the "amount of benefits a customer receives from AMI will likely be highly correlated to the customer's size and level of sophistication."²⁰ During cross examination, however, the witnesses were unable to support this assertion and acknowledged that none of the savings/benefits listed in the AMI Order, and about which they were questioned, were correlated to either customer size or sophistication.²¹ Moreover, although the witnesses specifically cited to usage data that they claimed would be of more value to large customers,²² the AMI Order does not support their contention, contains no quantification of such alleged primary benefit from AMI, and does not focus on benefits to large customers as justification for AMI.

Finally, in advancing this unsupported contention, the UIU appears to ignore two critical facts: (1) most, if not all, large customers already have interval meters with dedicated telemetry to Consolidated Edison Company of New York, Inc. and do not need AMI; and (2) the vast majority of AMI costs are related to the installation of AMI meters, and the overwhelming majority of those meters will be installed at the premises of residential and small commercial customers. As explained by the Regulatory Assistance Project (the UIU's reference source) and acknowledged by the UIU's own witnesses, charges imposed on customers should relate to the costs incurred to serve them, and customers should be responsible for the costs they cause.²³

For all of the foregoing reasons, and consistent with the AMI Order, the Commission should reject the UIU's position and allocate AMI costs over the term of the electric and gas rate

²⁰ Tr. at pp. 201-204; (Direct at p. 38).

²¹ Tr. at pp. 201-204.

²² Tr. at p. 205.

²³ Tr. at pp. 159-160; Ex. 172 at pp. 8, 36; Ex. 174 at p. 6.

plans in the manner set forth in the Joint Proposal – an approach that is based on the well-established principle of cost causation.

POINT III

THERE IS NO REASON TO REVISE THE RATES PROPOSED FOR CERTAIN INTERRUPTIBLE GAS CUSTOMERS

The UIU opposes the interruptible gas rates for SC 12 Rate 2/SC 9 Rate C customers specified in Section H.2.b.ii of the Joint Proposal as being too low, suggesting that firm and non-firm customers are “analogous” from a rates perspective.²⁴ However, the UIU’s witnesses conceded that non-firm gas customers have different characteristics than firm customers. They agreed that (i) non-firm customers do not have the same rights to the gas system or gas supply as firm customers, (ii) non-firm customers can have their access to the gas system and gas supply curtailed when temperatures drop below a certain point or during peak periods when demand is high, (iii) non-firm customers must maintain an entirely different fuel supply and operating system in the event of an interruption; and (iv) non-firm customers must pay penalties for failing to curtail their gas usage.²⁵ In other words, the record demonstrates that firm and non-firm customers are not comparable, and there is no factual support for the UIU’s contention.

The UIU’s witnesses also conceded that they have not prepared any analysis or empirical study to support the proposition included in their testimony that “there is room to increase these rates without risking the loss of contribution from these customers due to bypass (obtaining gas from a different source) or switching to an alternative fuel.”²⁶ This bald conclusory statement does

²⁴ Direct Testimony of the UIU Gas Rate Panel on the JP at 85.

²⁵ Tr. at pp. 357-361.

²⁶ Tr. at p. 343-344.

does not demonstrate that the proposed interruptible gas rates in Section H.2.b.ii are unjust or unreasonable or that this provision of the Joint Proposal is not in the public interest.

Indeed, the UIU has not offered any factual basis to dispute the propriety or rationality of those proposed rates. To the contrary, the record demonstrates that there are significant and consequential differences between firm and non-firm customers, thereby justifying the different rates for each type of gas customer. Accordingly, the record provides no basis to reject or modify the proposed rates and the Commission should adopt them as stated in the Joint Proposal.

CONCLUSION

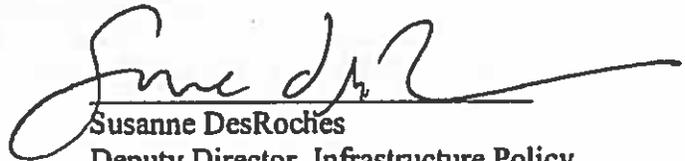
For all the reasons set forth herein, the terms and conditions of the Joint Proposal that were the subject of the evidentiary hearing are just and reasonable. The record in these proceedings provides a rational basis and substantial evidence for the Commission to find that these provisions of the Joint Proposal are in the public interest, produce just and reasonable rates, and provide for safe and adequate service. The Commission should adopt these provisions as proposed, with no modifications.

Respectfully submitted,



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