STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE
--X

CASE No. 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 No. 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

CASE No. 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 No. 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
--X

Evidentiary Hearing
90 Church Street, 4th Floor
New York, New York 10007

November 2, 2016
10:30 a.m.

PRESIDING:

DAKIN D. LECAKES, ESQ.
Administrative Law Judge

BEN WILES, ESQ.
Administrative Law Judge

COMMISSIONER GREGG C. SAYRE

A P P E A R A N C E S:
(In alphabetic order)

ARTHUR W. ADELBERG, ESQ.

DAVID APPELBAUM, ESQ.

WILLARD R. BURNS, ESQ.

JEFFREY D. BUSS, ESQ.

AMANDA DE VITO TRINSEY, ESQ.

GEORGE DIAMANTOPOULOS, ESQ.

JOHN J. DOWLING, P.E.

JOHN L. FAVREAU, ESQ.

DEBORAH GOLDBERG, ESQ.

RICHARD J. KODA, ESQ.

MARY KRAYESKE, ESQ.

KEVIN M. LANG, ESQ.

SAM M. LANIADO, ESQ.

GARY D. LEVENSON, ESQ.

SCOTT A. LEVINSON, ESQ.

LEONARD LUCAS, ESQ.

RICHARD B. MILLER, ESQ.

LINDSAY OVERTON ORIETAS

CHINYERE A. OSUALA, ESQ.

ALAN M. POLLACK, ESQ.

LETICIA REMAURO

(Continues on the next page.)

A P P E A R A N C E S (continued):
(In alphabetic order)

MARC RICHTER, ESQ.

ELIZABETH B. STEIN, ESQ.

TOM SULLIVAN, ESQ. (phonetic)

RADINA VALOVA, ESQ.

MICHAEL W. ZIMMERMAN, ESQ.

Proceedings

ALJ LECAKES: Good morning, everyone. I call cases 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; and 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. There are two other cases that the joint proposal relates to and those are of order as well. We are here pursuant to a secretary's notice that was issued on October 12th, 2016 noticing that this hearing would be starting at 10:30 a.m. and will be continuing day to day as necessary.

My name is Dakin Lecakes. I am an Administrative Law Judge with the Public Service Commission. With me is Judge Ben Wiles. Why don't we start by taking appearances? And we'll start with the company.

MR. RICHTER: Good morning, your

Proceedings

Honors. My name is Marc Richter, R-I-C-H-T-E-R, for Consolidated Edison Company of New York, Inc. I would also like to enter the appearances of Richard Miller, Mary Krayeske and Scott Levinson.

ALJ LECAKES: Thank you.

Staff.

MR. FAVREAU: Good morning, your Honor. John L. Favreau. And with me is Lindsey Overton Orietas.

ALJ LECAKES: Thank you.

And then why don't we just proceed going around the room this way, starting back there, the attorneys or anyone who's representing a party that's going to be speaking.

MR. POLLACK: Good morning, your Honor. My name is Alan Pollack from the Law Firm of Robinson Brog. We represent NYICA in this matter.

MR. KODA: Good morning, your Honors, Richard J. Koda of Koda Consulting, Inc., on behalf of the U.W.U.A, Local 1-2.

MR. ADELBERG: Arthur Adelberg,

Proceedings

Time Warner Cable.

MR. ZIMMERMAN: Good morning. Michael Zimmerman, for the New York Department of State.

MR. DOWLING: John Dowling, for Consumer Power Advocates.

MR. LANIADO: Sam Laniado, Read and Laniado, on behalf of the Metropolitan Transportation Authority.

ALJ LECAKES: Moving to the back.

MR. DIAMANTOPOULOS: George Diamantopolous, from the law firm of Seham, Seham, Meltz and Petersen, representing New York Energy Consumers Council.

MR. LANG: Good morning, your Honors. Kevin Lang from the law firm of Couch White, for the City of New York. And with me is Amanda Trinsey.

MR. APPELBAUM: David Appelbaum, for the New York Power Authority. With me is Gary Levenson and Tom Sullivan (phonetic).

MR. CAREY: Tim Carey, Westchester County.

Proceedings

MR. BURNS: Willard Burns for Pace Energy and Climate Center, and Debra Goldberg, with Radina Valova, Chinyere Osuala and Deborah Goldberg.

MS. STEIN: Elizabeth Stein, Environmental Defense Fund.

ALJ LECAKES: Thank you, Ms. Stein.

MR. LUCAS: Leonard Lucas, General Services Administration.

ALJ LECAKES: And just for the record's sake, I was contacted by Ms. Lisabeth, L-I-S-A-B-E-T-H, Jorgensen, J-O-R-G-E-N-S-E-N, representing the Public Utility Law Project. Ms. Jorgensen sent an e-mail to myself and Judge Wiles yesterday indicating that Hope did wish to make an appearance but would not be able to attend in person and I have excused her from having to show up here today. But I would like the record to reflect that PULP is participating.

MR. BUSS: Good morning, your Honors. Jeffrey Buss, Smith, Buss and

Proceedings

Jacobs, for Riverbay Corporation.

ALJ LECAKES: Thank you, Mr. Buss.

Is there anyone else on that side that would like to make an appearance?

According to the preliminary work that we did trying to organize this, my understanding is that there are two witnesses, Mr. Lukas and Mr. Kilkenny, for which there is no cross-examination. Is there anyone here that had any cross-examination for those parties, for those witnesses?

(No response.)

ALJ LECAKES: That being the case, is there an affidavit for Mr. Lukas' testimony to get into the record?

MR. BUSS: Your Honor, I believe he was testifying on behalf of Riverbay. He's coming here at noon. I think he has the affidavit with him.

ALJ LECAKES: Thank you very much. We'll deal with that then when he arrives.

Proceedings

Is there an affidavit from Mr. Kilkenny? Please bring that forward.

MR. POLLACK: (Handing).

ALJ LECAKES: Thank you.

Prior to the proceeding, I requested that the parties send to me a list of exhibits that were prefiled in this case on the Department of Public Services' document matter management system website, DMM system. And after I received all those lists, I compiled them into a single list of premarked exhibits. That list as I have it right now ends at Exhibit 309.

So for the record, we will mark the affidavit of James Kilkenny, K-I-L-K-E-N-N-Y, consisting of two pages, as Exhibit 310 in this matter.

(Whereupon, the affidavit of James Kilkenny was marked as Exhibit 310 for identification, as of this date.)

ALJ LECAKES: Mr. Pollack, did you give me CDs? Yes, you did.

MR. POLLACK: Yes, your Honor, I gave you three.

Proceedings

ALJ LECAKES: Yes, I have them now. Thank you.

Mr. Pollack, in the -- do you have the exhibit list that I've distributed in front of you?

MR. POLLACK: Yes.

ALJ LECAKES: Can you just remind me where the exhibits for Mr. Kilkenny are located on the list right now?

MR. POLLACK: Exhibits 188 through 191.

ALJ LECAKES: So pursuant to paragraph 2 of the affidavit of Mr. Kilkenny, he adopts his testimony that was prefiled in this matter along with his Exhibits 1, 2, 3 and 4. Exhibit 1 has been premarked as Exhibit 188 for the record. Exhibit 2, the testimony, has been premarked as Exhibit 189. Exhibit 3 has been premarked as Exhibit 190. And Exhibit 4 has been premarked as Exhibit 191 for the purposes of this proceeding.

At this point in the hearing transcript, I have on a CD the testimony or

Proceedings

the files titled, Testimony NYICA, Kilkenny PSC, and the disc has the name James Kilkenny, New York ICA testimony on it. That file should be put into the hearing transcript as if orally given today.

(Whereupon, the following is the Testimony NYICA, Kilkenny PSC will be inserted.)

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 Nos. 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 Nos. 16-G-0061

TESTIMONY IN OPPOSITION OF THE JOINT PROPOSAL

JAMES KILKENNY

NEW YORK INDEPENDENT CONTRACTORS ALLIANCE

1902 Whitestone Expy Suite 303A, Whitestone, NY 11357-3099

EMAIL: DEPBX@AOL.COM PHONE: (347) 200-2850

PARTIES:
AHRENS, DAVID, DIRECTOR
ENERGY SPECTRUM, INC.
Acevedo, Enver, Associate Counsel
CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.
Adelberg, Arthur, Barclay Damon LLP
Aissi, Jalila, Staff Counsel
New York State Department of Public
Service
Appelbaum, David, Attorney
New York Power Authority
Bauer, Michael, Director of Regulatory
Affairs Great Eastern Energy
Baxter, Ryan, Assistant Vice President
The Real Estate Board of New York
Bedwell, Roland, Business Manager
United Plant & Production Workers
Belsito, Anthony, Office of General Counsel
New York State Department of Public
Service

Berkley, Richard, Executive Director
Public Utility Law Project of New York, Inc.
Brown, Ruben M,President
The E Cubed Company, LLC
Burns, Willard, Attorney
Burns Law Firm, LLC
Buss, Jeffrey, Smith, Buss & Jacobs, LLP
CRISTOFARO, WILLIAM, President
ENERGY CONCEPTS ENGINEERING PC
Carey, Timothy, Director of Energy Conservation & Sustainability
County of Westchester
Chacko, Anna, Senior Associate General Counsel Consolidated Edison Company of New York, Inc.
Chen, Min Yi, Steam CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
Cinadr, Matt, Senior Associate
The E Cubed Company, LLCCohen, Andrew, Attorney at Law
Andrew Isaac Cohen, Esq.
Coleman, Johnathan
Collar, Gregg, Utility Program Analyst, Utility Intervention Unit
New York State, Department of State
Colonna, Robert, Project Manager
Consolidated Edison Company of New York, Inc.
Conway, Adam, Partner
Couch White, LLP
Diamantopoulos, George, Attorney
Seham, Seham, Meltz& Petersen, LLP
Dowling, John, Director, Regulatory Issues
Consumer Power Advocates
Farmer, Miles, Clean Energy Advocate
Natural Resources Defense Council
Favreau, John, General Counsel's Office
New York State Department of Public Service
Fiore, Anthony, Director, Energy Regulatory Affairs
New York City Office of Sustainability
Fogel, Usher, Counsel Office of Usher Fogel
Franco, Anthony, Administrator
United Plant & Production Workers
Fung, Justin, Associate Couch White, LLP
Funk, Peter, Partner
Funk &Zeifer LLP
Genzer, Jeffrey, Attorney
Duncan, Weinberg, Genzer& Pembroke, P.C.
Gray, Jason, Attorney
Duncan,Weinberg,Genzer& Pembroke, P.C.
Halfnight, Christopher, Policy Manager
Urban Green Council
Higgins, Kevin,
New York State Department of Public Service
Jorgensen, Lisabeth, Staff Attorney
Public Utility Law Project of NY, Inc.
Kilkenny, James, Treasurer
New York Independent Contractors Alliance
Kirschbaum, Kerri Ann, Senior Staff Attorney CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
Koda, Richard, Principal
Koda Consulting, Inc.
Krayeske, Mary, Associate Counsel, Regulatory Services
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
Lang, Kevin, Partner
Couch White, LLP
Laniado, Sam, Partner
Read and Laniado, LLP
Levenson, Gary, Principal Attorney II
New York Power Authority
Liberty, Ron, Consultant
Nexant
Lilian, Jon, Vice President
Digital Energy Corp
Loughney, Robert, Partner
Couch White LLP
Lucas, Leonard, Senior Assistant General Counsel
United States General Services Administration
Luthin, Catherine, President
Luthin Associates, Inc.
Neill, Sean, Principal

Cycle-7
Nicholas, Will, Government Relations Manager Tesla
Norcross, Frank, VP-Hudson Yards Energy Related Companies
O'Hare, Kathleen, Excelsior Fellow Department of State, Utility Intervention Unit
Ostrovskaya, Nora, Senior Manager, Strategic
Metropolitan Transportation Authority
Osuala, Chinyere, Associate Attorney EarthjusticeOverton, Lindsey, Assistant Counsel
New York State Department of Public Service
Panfil, Michael, Senior Attorney
Environmental Defense Fund
Panko, Danielle, Utility Analyst
Department of State, Consumer Protection - Utility Intervention Unit
Petroccione, Emilio, ThePetroccione Law Firm, LLC
Randt, Liliya, Office of Electricity and Environment
New York State Department of Public Service
Remauro, Leticia, President & CEO
The Von Agency, Inc.
Richter, Marc, Vice President - Regulatory Services
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
Rigberg , Saul, Special Counsel
Public Utility Law Project
Rodina, Irina, Staff Counsel
Acadia Center
Rudebusch, Thomas, Attorney
Duncan, Weinberg, Genzer& Pembroke, P.C.
Schaffer, Kimberly, Paralegal
Couch White, LLP
Sorrentino, Mary Ann, New York State Department of Public Service
Stein, Elizabeth, Environmental Defense Fund (EDF)
Stockholm, Jeffrey
Strauss, Valerie, Association for Energy Affordability
Sullivan, Tom, Senior P & PC Analyst
New York Power Authority
TRAVIS, EGLE, New York Power Authority
Tauber, Jill, Attorney
Earthjustice
Trinsey, Amanda, Associate
Couch White, LLP
Tripp, James, Senior Counsel
Environmental Defense Fund
Valova, Radina, Staff Attorney
Pace Energy and Climate Center
Vancol, Steve, Pricing & Energy Market Analyst
New York Power Authority
Venkataraman, Sreekanth, The E Cubed Company, LLC
Venkataraman, Sreekanth, Policy Director
Northeast Clean Heat and Power Initiative
Wheeler, Daniel, New York State Department of Public Service
Wislo, Steven, Manager, SIA
Metropolitan Transportation Authority
Zimmerman, Michael, Senior Attorney
NYS Department of State, Utility Intervention Unit, Division of Consumer Protection

I. STATEMENT OF QUALIFICATIONS

Q. PLEASE STATE YOUR NAME, ORGANIZATION AFFILIATION AND BUSINESS ADDRESS.

A. My name is James Kilkenny. I am a director of the board and Secretary/Treasurer for the New York Independent Contractors Alliance ("NYICA"), an organization of small construction business owners in New York State, some of whom have been performing construction work for Consolidated Edison for 30 years.

My business address is1902 Whitestone Expy Suite 303A, Whitestone, NY 11357-3099

Q. FOR WHOM DO YOU WORK?

A. I am retired.

Q. WHAT TYPE OF WORK DID YOU PERFORM BEFORE RETIREMENT?

I served as Borough Commissioner of Bronx County for the NEW YORK CITY DEPARTMENT OF TRANSPORTATION for 9 years in which capacity I oversaw all aspects of roadway repair and improvements which included pothole repair,street milling, street paving, and installation of speed humps, directional signs and street signals. I was also responsible for the highway repair unit. I was also involved in bid openings for outside contractors who bid on NYC DOT work.

Q. BY WHOM WERE YOU EMPLOYED PRIOR TO BECOMING BOROUGH COMMISSIONER FOR NEW YORK CITY DEPARTMENT OF TRANSPORTATION?

A. Prior to my work for New York City Department of Transportation, I was employed by Bettigole Consulting, P.C. which was contracted by New York State Department of Transportation to oversee construction on state roadways within the five boroughs. My position as office engineer was to reconcile payments between contractors and the state to ensure that the job was done properly. Prior to becoming office engineer I acted as an inspector in the field.

Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?

A. I have a Bachelor of Science in Business Administration and Marketing from Manhattan College and a Bachelor of Theology from Saint Paul's University.

Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE NEW YORK STATE PUBLIC SERVICE COMMISSION?

A. No.

II. SCOPE AND PURPOSE OF THIS TESTIMONY

Q. DO YOU WISH TO SPONSOR ANY EXHIBITS?

A. Yes. I am submitting Exhibit 1: Consolidated Edison’s Standard Terms and Agreement prior to 2014; Exhibit 2:Consolidated Edison’s Standard Terms and Agreement to date; Exhibit 3: a copy of an email from Consolidated Edison’s Contract Manager Steven Sebastopolis to John Denagall,owner of Nico requiring Mr. Denagall to sign a labor agreement with a Building Construction Trades Council member union by November 2015 to comply with StandardTerms and Agreements and Exhibit 4: Public Service Commission’s Press Release dated April 2016 -PSC Announces $171 Million Settlement to Benefit Con Edison Customers— Utility Investigated by Commission After Employees Accepted Bribes and Kickbacks.

Q. WHAT ASPECT OF THE JOINT PROPOSAL WILL YOUR TESTIMONY ADDRESS?

A. NYICA wishes to address Section E-2 of the Joint Proposal as it relates to the ratepayer reimbursing Consolidated Edison (“ConEd” or the “Company”) for Municipal Infrastructure Support expenses (“Interference Costs”).

At present, the Company does not pass its Interference Costs along to the ratepayers, and thus has a significant incentive to monitor and control costs. We understand that the Company now asks the PSC to permit the Company to recover some of its future Interference Costs from the ratepayers if it spends above the target numbers as set forth in Appendices 8&9.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. NYICA submits that before the PSC can consider allowing the ratepayer to reimburse the Company for Interference Costs, the PSC must be certain of two facts:

1) That the PSC has been fully, accurately and reliably informed by ConEd as to its estimated future Interference Costs, so that the PSC can make an informed decision on the implications of passing these costs along to ratepayers.

2) That if the PSC eliminates some or most of ConEd's financial incentive to control and minimize its Interference Costs by transferring some or most of these expenses to the ratepayer, ConEd will nonetheless seek to minimize its future Interference Costs, such that the PSC will not find itself having inadvertently approved a rate increase that is significantly higher than originally expected.

As currently drafted, NYICA opposes PSC approval of the Company's request because:

1) The Company has not presented an accurate and complete budget forecast for Interference Costs, and

2) The Company has a demonstrated track record of making decisions that increase its construction costs for non-business purposes, which presents a risk of future uncontrolled and unwarranted costs to the ratepayer.

Q. HOW MUCH MONEY IS AT STAKE CONCERNING THIS ISSUE?

A. ConEd is asking the PSC to pass along approximately 80 percent of Interference Costs over and above the budget forecast, up to approximately $22.8 million. Specifically, the ratepayer is therefore at risk to pay for an approximate additional $22.8 million in expenses.

Q. FOR THE PSC'S CONVENIENCE, CAN YOU BRIEFLY IDENTIFY THE EXACT SECTIONS OF THE JOINT PROPOSAL AND MR. BOYLE'S TESTIMONY TO WHICH YOU ARE REFERRING?

A. Yes. Section E-2 of the Joint Proposal reads, "*If actual non-Company labor Municipal Infrastructure Support expenses (e.g., contractors costs) vary from the level provided in electric and/or gas rates for any Rate Year, which levels are set forth in Appendices 8 and 9, one hundred (100) percent of the variation below the target will be deferred on the*

Company's books of account and credited to customers, and eighty (80) percent of the variation above the target within a band of thirty (30) percent (e.g., for electric a maximum deferral of $22.8 million for RY1) will be deferred on the Company's books of account and recovered from customers. Expenditures above the target plus thirty (30) percent are not recoverable from customers except as follows: if actual electric and/or gas non-Company labor Municipal Infrastructure Support expenses (e.g., contractors costs) vary from the respective level provided in rates above the target plus thirty (30) percent, and such increased expenses are due to (a) projects of the City of New York or any other governmental entity or entities for the purposes of increasing the resiliency to storms of any form of public facility, machinery, equipment, structure, infrastructure, highway, road, street, or grounds, (b) the New York City DEP Combined Sewer Overflow projects,[45] and/or (c) all other public works or municipal infrastructure projects with a projected total cost in excess of $100 million, eighty (80) percent of the variation above the target plus thirty (30) percent that is attributable to the above-described projects will be deferred on the Company's books of account for future recovery from electric and/or gas customers as applicable.

In addition, if there is a change in law, rules or customary practice relating to interference (e.g., responsibility for costs associated with New York City transit projects), the Company will have the right to defer such incremental costs pursuant to section P.2."

As part of the process for establishing a target number for MIS, which is memorialized in the Joint Proposal in Appendices 8 & 9, Mr. Robert Boyle, Vice President for Construction for Consolidated Edison offered direct testimony and rebuttal testimony to the Municipal Infrastructure Support Panel.

In the document titled, "MUNICIPAL INFRASTRUCTURE SUPPORT PANEL ELECTRIC & GAS, in the section, FORECASTING METHODOLOGY, on pages 26/27 Mr. Boyle is asked, "Why did you use a three-year average for annual programs rather than a five-year average?

Mr. Boyle replies, "The three year average is the traditional approach for recurring work of the same or similar nature, which has long been accepted in Con Edison rate filings for developing forecasts for various types of costs where there is no additional information that warrants the use of a different historical period."

In additional testimony from the document titled, "MUNICIPAL INFRASTRUCTURE SUPPORT PANEL UPDATE/REBUTTAL TESTIMONY", on pages 10/11, Mr. Boyle is asked, “Should there be a concern that the Company will not seek to minimize its interference costs if there is full reconciliation of these expenses?”

Mr. Boyle responded, “There should be no concern. The Company has demonstrated a long-standing and consistent approach to mitigating these costs, to the extent practicable, utilizing multiple controls both internal and external of the Company, and continued coordination between the City and the Company during the design phase, which is a critical component of the continued success in controlling rising costs. This approach has also been evident during periods when a bilateral reconciliation mechanism for interference expenses was in place. Moreover, these cost mitigation efforts are also now engrained in the Company’s efforts to implement the cost management cultural imperative resulting from the Management Audit.”

Q. TO ADDRESS YOUR FIRST POINT, IS THE THREE-YEAR HISTORY OF INTERFERENCE COSTS PRESENTED BY CON ED TO THE PSC A RELIABLE ESTIMATE OF CON ED’S FUTURE INTERFERENCE COSTS?

A. No.

Q. WHY NOT?

A. The three-year-history is based on the years 2013 through 2015. Due to a recent change in ConEd’s Standard Terms and Conditions, the companies who have consistently and repeatedly bid on and been awarded contracts for ConEd construction work during those years, will in future be barred from being awarded the work unless they sign an additional labor agreement with a member union of the Building Construction Trades Council (BCTC) of Greater New York. As a result, the favorable cost of contracts that existed during the three sample years will no longer exist in future years. The PSC therefore cannot rely on the accuracy of any future ConEd forecast that is based solely on historical costs.

Q. YOU SAY THAT CON ED'S ESTIMATE OF FUTURE CONSTRUCTION COSTS IS NOT RELIABLE. WILL USING ONLY CONTRACTORS WHO HAVE SIGNED LABOR AGREEMENTS WITH BCTC MEMBER UNIONS INCREASE CON ED'S FUTURE CONSTRUCTION COSTS?

A. Although we do not know for sure what future costs will be, we do know that our NYICA member companies already have signed labor agreements with a legally formed union who Con Ed approved of as evidenced by the fact that the company invited our contractors back to bid over and again. These labor agreements must stay in place until they expire, meaning that our contractors will have to pay health, pension and annuity benefits to that union for the duration of that contract whether they use their labor or not. If Con Ed forces our contractors to sign a second labor agreement with a BCTC member union, our contractors will have to pay health, pension and annuity benefits to two unions at once which will drive up the cost of doing work for Con Ed and no doubt be reflected in their bids.

Though we do not know what other companies bid for work because Con Ed does not make that information available, it is reasonable to assume that the NYICA-member companies have historically won ConEd contracts because they offer ConEd either lower prices, higher quality or greater reliability of work, if not all three, than the BCTC-member companies.

If those prior winning bidders are now excluded from being awarded bids utilizing labor from the non-BCTC union they are currently signed with, it is likewise reasonable for the PSC to assume that the remaining pool of eligible BCTC-member companies consistently submitted bids that offered ConEd either *higher* prices, *lower* quality or *less* reliability of work than the previous winning bidders.

If that were not the case, then ConEd would already have been awarding bids to the BCTC companies, regardless of existing competition from NYICA companies. To the contrary, it would seem that the only way for BCTC member companies to win the bids is to eliminate competition from NYICA companies by having Con Ed declare NYICA companies ineligible to be awarded contracts while signed with a non-BCTC member union.

It is therefore reasonable for the PSC to be concerned that if ConEd eliminates competition from NYICA-member companies who historically have consistently submitted winning bids for ConEd construction work, and entertains bids only from companies who have signed labor agreements with only BCTC-member unions who previously were unable to win the bids on their merits, ConEd's future construction costs will increase.

And if the PSC approves the Joint Proposal with Section E-2 language as it stands now, those increased costs will be passed on to the ratepayers.

Q. CAN YOU BRIEFLY EXPLAIN THE EXACT CHANGE THAT HAS BEEN MADE, AND WHY YOU BELIEVE IT WILL BAR NYICA COMPANIES FROM BEING AWARDED FUTURE CON ED WORK?

A. In the past, ConEd's Standard Terms and Conditions required contractors to have signed labor agreements with union members of a building trades organization in order to be eligible to be awarded a contract. ConEd recently changed its contract language to require contractors to have signed labor agreements with unions who have membership in only one specific building trades organization, the BCTC.

For the past 12 years, the employees of NYICA member companies have elected to be represented by United Plant and Production Workers ("UPPW") Local 175, which is a legally formed labor union that is a member of the Empire State Building Trades Council. Under the prior Standard Terms and Conditions, these companies were eligible to be awarded contracts. Under the new Standard Terms and Conditions, they are not eligible to be awarded contracts unless they sign a second labor agreement with a BCTC member union whose work is unfamiliar to our contractors and unfamiliar to Con Ed since Local 175 has been performing the work for the past 12 years.

Q. WHY CAN'T LOCAL 175 BECOME A MEMBER OF THE BCTC SO THEIR CONTRACTORS CAN BE DEEMED ELIGIBLE TO BE AWARDED A CON ED CONTRACT UNDER THE NEW TERMS AND CONDITIONS?

A. To protect its existing member companies from lawful competition, the BCTC disfavors membership by multiple unions doing the same work. Because BCTC already has a member union that claims to do the same construction work as Local 175, it has refused to permit UPPW Local 175 to become a member of the BCTC.

Together, ConEd's decision to award contracts only to BCTC-member companies, and the BCTC's decision to protect its existing members' market share by denying membership to NYICA-member companies, have the combined effect of insulating BCTC-member companies from competition from NYICA-member companies for ConEd contracts, at the expense of ConEd ratepayers, who will be responsible for paying increased costs for construction related to MIS.

Q. WHEN WILL THIS CHANGE TAKE EFFECT?

A. ConEd changed its contract language in 2014. As existing multi-year construction contracts expire, we expect that the first contracts under the new language will be bid, awarded and executed by 2017.

2017 is also the first rate year in which rate payers will be responsible to incur additional costs if Con Ed spends above the target it set for MIS work.

Q. TO TURN TO YOUR SECOND POINT, SHOULD THE PSC FEEL CONFIDENT THAT CON ED WILL BE A RESPONSIBLE STEWARD OF INTERFERENCE COSTS IF THE PSC ALLOWS CON ED TO PASS SIGNIFICANT COST OVERRUNS TO THE RATEPAYER?

A. No.

Q. WHY NOT?

A. NYICA has repeatedly asked ConEd, both through formal and informal channels, to explain the reason for changing its Standard Terms and Conditions to exclude from being awarded future contracts using labor from non-BCTC member unions, the very companies on which ConEd has relied for decades for cost-effective, quality and reliable work. We have never received an answer. Because ConEd has neverarticulated a valid business purpose for the change, and the change seems likely toincrease ConEd's future construction costs, we can only conclude that ConEd's motivation is political, not financial.

The PSC should reasonably be concerned that ConEd has demonstrated a willingness to pay increased construction costs that have no legitimate business purpose, confident in the knowledge that it will be able to pass on some or most of its future increased MIS costs to the ratepayer.

Q. WOULD IT BE REASONABLE FOR THE PSC TO ASSUME THAT CON ED RESTRICTED COMPETITION TO BCTC-MEMBER COMPANIES BECAUSE THE NYICA COMPANIES ARE NO LONGER SUBMITTING THE MOST DESIREABLE BIDS?

A. No. If that were the case, ConEd would simply award the contract to a different company with a better bid. Instead they are instructing our contractors to sign second labor agreements with a BCTC member union in order to be awarded the contract as evidenced by Exhibit 3 - the Sebastopolis email. Again, paying health, pension and annuity benefits to two unions at once creates a financial hardship for our member companies.

Q. WOULD IT BE REASONABLE FOR THE PSC TO ASSUME THAT CON ED RESTRICTED COMPETITION TO BCTC MEMBER COMPANIES TO REDUCE THE POSSIBILITY OF LABOR UNREST BY USING COMPANIES WHO ARE AFFILIATED WITH THE SAME BUILDING TRADES ORGANIZATION?

A. No. Over the past12 years, no NYICA company has ever experienced a labor dispute or work stoppage affecting a ConEd contract.There was no labor unrest to eliminate.

Q. DO YOU KNOW OF ANY OTHER FACTS SUGGESTING THAT THE PSC CANNOT RELY UPON CON ED TO MINIMIZE ITS FUTURE INTERFENCE COSTS?

A. Yes. Exhibit 4 – shows that the PSC recently announced that Con Edison agreed to pay $ 171 million in fines because of collusion between a Con Ed approved contractor and the company's own inspectors. Crimes were committed and the rate payers were being defrauded by a ConEd approved contractor. Now, Con Ed wants to enter into an exclusive agreement to only use BCTC companies some of whose employees were involved in the wrongdoing.

Q. IN LIGHT OF THESE ISSUES, WHAT ACTION DO YOU BELIEVE THE PSC SHOULD TAKE TO PROTECT THE RATE PAYERS?

In order for this Joint Proposal and its signatories to truly protect the rate payer from the likelihood of having to pay an additional $22.8 million dollars if Consolidated Edison exceeds its target for MIS, we recommend that the PSC should either:

1) Deny ConEd's request to pass along MIS costs to the rate payer if it exceeds its target number due to its own actions, or

2) As a condition of approving the Joint Proposal as written, require ConEd to revert to its pre-2014Standard Terms and Conditions, under which companies were eligible to bid on ConEd contracts as long as they belonged to any building trades council, not just the BCTC. Imposing this condition would benefit the ratepayers by:

a) increasing the PSC's confidence in ConEd's budget for future Interference Work, by eliminating a major change that undermines the reliability of that estimate;
b) maximizing competition for ConEd construction contracts,thus ensuring ConEd's Interference work is performed by companies offering ConEd and its ratepayers the lowest cost, highest quality, and greatest reliability of service;
c) eliminating a forced and inefficient turnover in ConEd's construction workforce, as large numbers of veteran companies and workers are excluded from being awarded work starting in 2017, forcing ConEd to hire new companies and workers without prior ConEd experience;
d) reducing opportunities for increased Interference costs through collusion and corruption between ConEd and contractors who have signed labor agreements with BCTC member unions and whose employees have been found guilty of such collusion before; and
e) sending a strong and clear message to ConEd that if it wants to pass along its expenses to ratepayers, the PSC will require ConEd to make contract decisions that are based on business considerations that provide the highest value for New York ratepayers, not on political considerations.

Q. WHY DO YOU BELIEVE THE PSC SHOULD TAKE SUCH ACTIONS?

A. The PSC is the gatekeeper between ConEd and New York ratepayers, and should impose whatever conditions are necessary to ensure the ratepayers' interests are protected. Before agreeing to ConEd's requested rate increase, the PSC must insist that ConEd provide transparency in its bidding process, utilize bidding Terms and Conditions that ensure maximum competition rather than favoring one group of bidders for non-business purposes, and assure the PSC (and the public) that it is no longer colluding with private companies at the ratepayer's expense.

Q. DOES THIS COMPLETE YOUR PREFILED TESTIMONY?

A. Yes.

Proceedings

ALJ LECAKES: Thank you, Mr. Pollack. Is there anything else for Mr. Kilkenny?

MR. POLLACK: No. Thank you.

ALJ LECAKES: If we're dealing with Mr. Lukas' affidavit later, then I think we can proceed to the company to call its first set of witnesses, its panel.

Let's go off the record until the panel's seated.

(Whereupon, an off-the-record discussion was held.)

ALJ LECAKES: Mr. Richter, proceed.

MR. RICHTER: I ask the members of the Con Edison Policy Panel supporting the joint proposal to please each state your names for the record in this case.

MR. DEEM: Jack Deem, D-E-E-M.

MR. MUCCILO: Bob Muccilo, M-U-C-C-I-L-O.

MS. BODEN: Kathy Boden, B-O-D-E-N.

MR. MURPHY: Michael Murphy,

Proceedings

M-U-R-P-H-Y.

MR. KETSCHE: Matthew Ketsche, K-E-T-S-C-H-E.

MR. MCHUGH: Patrick McHugh, M-C-H-U-G-H.

MR. ATZL: William Atzl, A-T-Z-L.

MR. BOYLE: Robert Boyle, B-O-Y-L-E.

MR. RICHTER: Does the panel have any corrections to make to either their statement in support or reply statement in this proceeding?

MR. ATZL: Yes. We have two corrections, one to our initial statement and two to our reply statement.

On the initial statement, on page 39, fourth line from the bottom we would like to strike the words "NARUC gas distribution rate designs manual that supports".

MR. LANG: Mr. Atzl, could you just repeat that, please?

MR. ATZL: Yes. We're on page 39 of the company's statement, fourth line

Proceedings

from the bottom. We're striking the words "NARUC gas distribution rate designs manual that supports".

And I have two corrections regarding the company's reply statement. First is on page 2 in the paragraph under heading A. Second to last line, we would like to strike the words, "and standby rates". That was page 2.

ALJ WILES: And what line?

MR. ATZL: It's in the first paragraph under heading A, second line from the bottom. And we're striking the words "and standby rates".

The next correction is on page 3. There's a partial paragraph at the top of the page. We're striking the last sentence which begins with, "In fact".

That's all we have.

MR. RICHTER: Your Honors, I would just note that the corrections that Mr. Atzl spoke to deal with cost allocation issues in this proceeding for which Con Edison is going to be presenting a separate

Proceedings

panel that includes Mr. Atzl. So I would suggest to the extent there's any questions about those paragraphs or those corrections they be deferred until the next Con Edison panel takes the stand.

ALJ LECAKES: We can do that, absolutely. And we'll just mention the corrections when that second panel takes the stand after this panel.

MR. RICHTER: Your Honors, the Con Edison panel is available for cross-examination.

ALJ LECAKES: Before we turn them over for cross-examination, I just want to go back to the exhibit list real quickly to get that officially offered into evidence. So pursuant to my instructions prior to this hearing, the company submitted several documents, for exhibits. They have been premarked as Exhibits 5 through Exhibits 93; is that correct, Mr. Richter?

MR. RICHTER: I am informed by Ms. Krayeske that that is correct, your Honor.

Proceedings

ALJ LECAKES: And from my examination of the exhibit list, the first set of exhibits up through 90 all deal with the company's prefiled litigated case in this matter; is that correct?

MS. KRAYESKE: That is correct. Well, 91 was --

ALJ LECAKES: Right. What is 91? It's the AMI customer engagement plan.

MS. KRAYESKE: So as a result of the Commission's AMI order in this proceeding, we were required to file a customer engagement plan, which we filed on July 29th, 2016. And that's in the record in this case as part of the AMI. So it was filed in July, so you could say it's part of the litigated case.

ALJ LECAKES: It's a compliance filing in the AMI proceeding?

MS. KRAYESKE: Right. That's correct.

ALJ LECAKES: And then so the corrections that were just made --

MS. KRAYESKE: Were to Exhibits

Proceedings

92 and 93.

ALJ LECAKES: Right. The first correction was to Exhibit 92 and then the second and third correction were to Exhibit 93.

MS. KRAYESKE: That is correct.

ALJ LECAKES: Thank you.

And is it the intent of the company to have the panel adopt Exhibits 92 and 93, the factual representations made in those documents, as their sworn testimony in this matter, Mr. Richter?

MR. RICHTER: That is correct, your Honor.

ALJ LECAKES: Because those documents are already exhibits, there's no need to put anything further into the hearing transcript as oral testimony; however, because the panel has adopted the factual statements in those documents, the panel is able to answer questions related to both the companies, the Con Edison statement in support of joint proposal and the reply statement in support of joint

Proceedings

proposal.

The order of witnesses that I have indicates that there was at least two parties that have cross-examination for this panel. The Independent Contractors Alliance and the Union, U.W.U.A Local 1-2, and potentially Riverbay. Was there any discussion among those parties as to which order they want to proceed?

MR. POLLACK: I was under the impression, your Honor, that it was your preference that NYICA goes first. So we are prepared to start.

ALJ LECAKES: Okay, Mr. Pollack, please proceed.

MR. RICHTER: If that's the stage we're at where Mr. Pollack is ready to begin his cross-examination, I have a preliminary maybe motion or recommendation or request to make to the bench.

ALJ LECAKES: Has this matter been discussed with Mr. Pollack beforehand?

MR. RICHTER: It has not, your Honor. But, you know, we did indicate in

Proceedings

prior communications leading up to the hearing that we would likely have objections to certain areas of inquiry with respect to I'll call them the union issues. And we believe that the cross-examination of the company's panel on the NYICA issues can and should be facilitated and objections to cross-examination limited by your Honors first establishing appropriate parameters for cross-examination.

I point to, Judge Lecakes, your October 20th e-mail when you said, Concerning guidance on the scope of cross-examination, parties should keep in mind that the issue of the November 2nd hearings is whether the joint proposal is in the public interest. Mr. Kilkenny's testimony addresses the single provision of the joint proposal, the interference reconciliation mechanism. Other than that mechanism, Mr. Kilkenny's testimony does not raise any issues that we believe go to whether the joint proposal is in the public interest and, therefore, should be the

Proceedings

subject of cross-examination at this hearing. The company fully addresses the interference reconciliation issue raised by Mr. Kilkenny in its reply statement and our panel is available to answer questions regarding the reconciliation of interference expenses. The balance of Mr. Kilkenny's testimony is essentially a complaint regarding a single company work practice and an associated request that the Commission direct Con Edison to revert to its pre-2014 standard terms and conditions.

The company submits that this work practice issue is outside the scope of this proceeding and, furthermore, need not and should not be considered for various reasons including the following three: First, the work practice issue does not raise any issue as to the reasonableness of the rates supported by the joint proposal. Mr. Kilkenny's testimony suggests that the proposed rates may be understated if one were to accept Mr. Kilkenny's speculations that the company's actual interference

Proceedings

expenses will be higher than its forecasted expenses due to the 2014 standard terms. I would note that the company is not seeking an increase in rates in response to Mr. Kilkenny's speculations.

Second, the company's panel is available to explain how the joint proposal reasonably addresses cost recovery in the event that actual interference expenses are higher than forecasted expenses. Accordingly, a decision on the work practice issue is irrelevant in terms of the reasonableness of the JP because no modification of the JP is warranted if the company continues to operate under its current standard terms and no modification to the JP is warranted or even requested if the company were to revert to its pre-2014 standard terms.

Furthermore, a Commission decision on the JP that's silent on the work practice issue will be within the range of results that could be expected in a litigated proceeding in this case. Since

Proceedings

this work practice issue was not raised in the company's file case or direct staff or intervenor testimony or rebuttal testimony in these proceedings.

Second, as explained in the company's reply statement, the Commission has historically recognized its limited authority over labor relations issues and should follow its long statement of practice of declining in interfering labor relations matters in this case. Without getting into detail, as explained in our statement, it bears emphasis that the source of this controversy is an inter-union labor dispute. The 2014 standard terms reflect the company's business judgment to mitigate or avoid adverse impacts of this dispute consistent with Commission regulations. We note in our reply that the Commission regulations explicitly recognize the utility may exclude bidders and may award a construction contract to a contractor other than the lowest bidder and permit the

Proceedings

utility to establish criteria used for including and excluding bidders. Accordingly, the company's action in this case are in furtherance of Commission rules.

I think it's very important to note staff's view on this matter. We read staff's reply statement. We believe it's in accord with the company's position that no modifications to the JP are required. Staff does recommend that the Commission require the company to 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 these 2014 standard terms. I am authorized to state on behalf of the company that the company would not object if the Commission were to establish this requirement in its order adopting the JP with just one qualification, that assuming arguendo that one could demonstrate an increase in costs as a result of the 2014 standard terms the company would also have the opportunity to

Proceedings

demonstrate that such increase in cost was not improved.

Finally, by declining to address NYICA's work practice issues in these proceedings it bears emphasis that the Commission is by no means denying NYICA a forum in which to pursue its complaint regarding the company's standard terms. On the contrary, and as we explained in the company's reply statement, and again without going into the detail that's there, Local 175 has already pursued this issue before the NLRB panel laws. In December 2014, Local 175 initiated an action before this Commission on the same issue and then unilaterally and voluntarily withdrew that petition after Con Edison filed its opposition.

NYICA and Local 175 are currently pursuing their complaint in federal court as antitrust claims. I note that Con Edison has moved to dismiss this lawsuit and the court has stayed discovery while considering the Con Ed motion to dismiss.

Proceedings

So the Commission should not permit NYICA to end run this court's stay by seeking further information from the company on this matter in these rate proceedings through cross-examination of its witnesses.

So I thank you for the opportunity to make that statement. And for all of the foregoing reasons and without waiving the company's rights to object to any question or questions asked during cross-examination, Con Edison requests that your Honors provide a ruling now that excludes consideration of the company's 2014 standard terms during the course of cross-examination.

ALJ LECAKES: Mr. Pollack, do you want five minutes or a break?

MR. POLLACK: I don't know whether five minutes would be that helpful. I find it unfortunate that Mr. Richter has waited to make this statement today when in fact we have spoken on the phone on several occasions. Trial by ambush is not something that should be tolerated in this

Proceedings

proceeding or any other proceeding. He had ample opportunity to articulate his concerns to me before so that we could deal with them. To now make this objection and to seek the limiting ruling before we've asked question one is really inappropriate and will ultimately, we believe, prove to be not in the best interest of the rate payers, which is what this hearing is all about; what is in the best interest of the rate payers, whether the JP or any parts of the JP or any part of what Con Ed does is in the best interest of the rate payers.

For Mr. Richter to suggest that Con Ed's new terms and conditions that govern how bidding takes place, how their procurement policy for construction services are obtained, is, frankly, absurd in the extreme. Obviously they do. And it has a direct impact on the --

MR. RICHTER: Your Honors, I object to counsel testifying.

MR. POLLACK: -- interest of the rate payers.

Proceedings

For Mr. Richter to suggest that I am testifying when he comes with a prepared statement of Con Ed's position is a little bit ironic.

We are fully prepared to go forward. Our questions are going to be tailored and focused on various practices that Con Ed follows, all of which are connected with Section E(ii) of the JP and all of which adversely affect the rate payers. And we request the opportunity to proceed.

MR. RICHTER: Your Honors --

ALJ LECAKES: Mr. Richter, just a second.

Mr. Pollack --

MR. POLLACK: Yes.

ALJ LECAKES: -- let's assume that the Commission follows the line of reasoning of Mr. Kilkenny and comes to a point where it thinks there might be an issue with the new terms and conditions. In what way would the ICA be recommending that the joint proposal itself deal with

Proceedings

that issue or that the joint proposal be modified to deal with that issue?

MR. POLLACK: It could be modified to permit or to either repeal Con Ed's terms and conditions as it relates to bidding on construction work. This is within the discretion of the panel to recommend to the Commission what to do.

ALJ LECAKES: But the joint proposal provision doesn't dictate or describe how the bidding process is performed for this work; isn't that correct?

MR. POLLACK: I believe that is correct. But one can't divorce themselves of what occurs in the real world. The costs that are incurred for construction is as a result of the terms and conditions that Con Ed has now promulgated. That is relevant to what Con Ed is seeking with respect to passing on to the rate payers' cost overruns that are articulated in Section E(ii) of the JP.

ALJ LECAKES: And ICA's position,

Proceedings

as I understand it, is that because the cost overruns have some potential for recovery in and above the imbedded rate allowance reconciliation that those cost overruns might be incurred that might otherwise not be if the terms and conditions were different.

MR. POLLACK: That is correct, your Honor.

ALJ LECAKES: Is there any other party that wishes to be heard before I get back to Mr. Richter?

(No response.)

ALJ LECAKES: Mr. Richter.

MR. RICHTER: Two things, your Honor. First, I take exception to my motion being characterized as an ambush. I apologize in advance if I misunderstood discussions with your Honor or the like. When NYICA's statement was first filed, I inquired whether or not I should be making any motions at that point in time. We talked. I sent out an e-mail. And my understanding was that I was to wait until

Proceedings

this hearing to present such arguments. And the argument that I presented today I don't believe had anything in it that wasn't already before Mr. Pollack and NYICA in terms of the material that the company had already filed.

And quite frankly, while I didn't lay out to him my strategy and motion in a phone call the other day, he was well aware that there were going to be objections to cross-examination at this hearing.

ALJ LECAKES: I'm not concerned about the procedural aspect of this motion.

MR. RICHTER: The only other thing I would like to say in response in terms of the issue under the joint proposal about recovery under the reconciliation mechanism even if the costs are higher based on all of the speculations by NYICA, the company wrote, and I believe staff confirmed, that that reconciliation mechanism provides an opportunity to staff to review those costs; and if they think they were imprudently incurred, the company

Proceedings

will not automatically incur those costs through the reconciliation mechanism. The JP already provides for the circumstance NYICA is concerned about.

ALJ LECAKES: I appreciate the company's position on that. I'm pretty well aware of both positions on this issue. The concern that I have is the relevance and the Commission's getting into areas of labor disputes that it generally avoids. However, that being said, again, I appreciate that issue and those concerns. The problem is there is some string of relevance that is directly tied to some other portions of Mr. Kilkenny's testimony, that I think it's premature to rule on that motion that you made, and I'd like Mr. Pollack to be able to start his cross-examination. We'll deal with objections to individual questions as they come up.

MR. RICHTER: Thank you, your Honor.

ALJ LECAKES: Mr. Pollack.

Proceedings

MR. POLLACK: Thank you. Your Honor, we would like to call Mr. Robert Boyle.

ALJ LECAKES: The panel's available for cross-examination. I understand that Mr. Boyle would likely be the person to respond to the questions. So if he could get to a microphone, that would probably be the best process.

MR. POLLACK: Thank you.

Good morning, Mr. Boyle.

MR. BOYLE: Good morning.

MR. POLLACK: Before getting into how Section E(ii) of the JP affects Con Ed's rate payers, I'd like to start asking you some preliminary questions.

MR. RICHTER: Your Honor, I apologize for interrupting. But again, to be prepared for the hearing, Mr. Boyle will not necessarily be the member of the panel that may answer all questions. We have other experts on the panel; Mr. Muccilo, familiar with reconciliation mechanisms, et cetera.

Proceedings

ALJ LECAKES: Mr. Richter, I understand. Mr. Pollack has not practiced generally before us and is not as familiar with the way panels work.

Mr. Pollack, although you can address certain members, the witnesses are being produced by the company as a panel and it may very well be that there are other members of the panel that are a little bit more appropriate, in the company's judgment, to answer the question, the more appropriate person. And to the extent that that happens, the company is allowed to have those people as a panel answer the question as a panel. If it seems that another witness on the panel is answering a question to avoid any specific witness from answering the question, if there's any evidence of evasion, we could get into that. But you may proceed.

MR. POLLACK: Mr. Boyle, you are a proud graduate of Manhattan College?

MR. BOYLE: Yes.

MR. POLLACK: With a degree in

Proceedings

finance?

MR. BOYLE: No.

MR. POLLACK: You did not graduate in 1986 from Manhattan with a degree in finance?

MR. BOYLE: I have a degree in civil engineering and an MBA in finance.

MR. POLLACK: And you're familiar with -- are you familiar with Con Ed's procurement policies?

MR. BOYLE: Some of them. I'm not in the procurement department but --

MR. POLLACK: But you're the vice president of construction for Con Ed?

MR. BOYLE: Construction, yes.

MR. POLLACK: When the City or another municipality forms work in the vicinity of Con Ed's facilities, Con Ed bears all costs associated with supporting, protecting or relocating its facilities; is that correct?

MR. BOYLE: For some municipality agencies.

MR. POLLACK: For the City of New

Proceedings

York?

MR. BOYLE: Some of them.

MR. POLLACK: And the typical municipal activities that affect Con Ed's facilities are the installation of water, sewage and drainage facilities?

MR. BOYLE: Among many others.

MR. POLLACK: The construction and repaving of roadways?

MR. BOYLE: Yes.

MR. POLLACK: Curbs and sidewalks?

MR. BOYLE: Yes.

MR. POLLACK: Now, isn't it true that on any given day there are hundreds of municipal projects that are being planned, engineered or constructed within the company's service areas?

MR. BOYLE: Yes.

MR. POLLACK: And during the design and construction phases of municipal projects, Con Ed coordinates with the municipalities to try to mitigate their interference costs; isn't that true?

Proceedings

MR. BOYLE: We try to if the agencies allow us to.

MR. POLLACK: But it's not always possible to avoid all interference conditions through design and construction phase accommodations; isn't that true?

MR. BOYLE: Restate the question, please.

MR. POLLACK: It is not always possible to avoid or mitigate interference conditions through the design changes and construction phase accommodations; isn't that true?

MR. BOYLE: Correct.

MR. POLLACK: Now, isn't it also true that the courts have held that Con Ed's right to lay and maintain its facilities pursuant to a franchise granted by the municipality is subject to the municipality's right to require Con Ed to remove or relocate its facilities at the company's expense --

MR. RICHTER: Your Honor, I object to the question. He's asking the

Proceedings

witness to state a legal opinion.

ALJ LECAKES: The question's not finished yet. Although, the problem that I have with the question is that it's been getting long and I lost the train. Could you start over and try to make it a little more concise?

MR. POLLACK: Let me shorten it.

Is Con Ed required by law to remove or relocate its facilities at the company's own expense when the municipality's contemplated construction work requires it to be done?

MR. BOYLE: No. It's only required if we are delaying the city work from progressing.

MR. POLLACK: And if the company fails to do this contemplated work, are they subject to a claim for damages?

MR. RICHTER: Again, I object, your Honor. This is not a lawyer on the stand to give a legal opinion.

ALJ LECAKES: I appreciate that it's not a lawyer and I'm not taking them

Proceedings

as legal opinions. I'm taking them as the understanding of the construction arm of the company. At this point, I don't think we've gotten into impermissible territory yet.

MR. RICHTER: Well, your Honor, he can ask Mr. Boyle, and I think it's appropriate, as to what work the company does in response to a request by the City or a city project. To start asking Mr. Boyle whether or not the company would be subject to damages if it says no, I think that's irrelevant and an inappropriate line.

MR. POLLACK: I'll rephrase the question.

Mr. Boyle, what work does Con Ed do in response to the city construction that it contemplates doing?

MR. BOYLE: Con Edison does a lot of work in regards to what the city does. I'm not sure how much information you want. You want to know what the role of the interference department is?

Proceedings

MR. POLLACK: Yes. Generally describe it, please.

MR. BOYLE: The public improvement group in Con Edison coordinates with New York City municipal agencies and Westchester County municipal agencies to understand the types of work that they plan on undertaking in regards to infrastructure improvements. They can provide us advanced notice of these projects and give us the opportunity to understand what work they're performing and how it's going to impact our facilities that may be in the ground or in the air. And then we will try to coordinate with them to minimize the amount of interferences that we may encounter.

MR. POLLACK: Isn't it true that every year Con Ed creates an MIS budget?

MR. BOYLE: We create an interference budget, yes.

MR. POLLACK: And isn't it true Con Ed's historical construction costs are not always a reliable indication of future construction costs because Con Ed always

Proceedings

spends more on construction than they budget; isn't that true?

MR. BOYLE: You asked a couple questions there. Can you ask one at a time?

MR. POLLACK: Is it true, Mr. Boyle, that the historical costs that Con Ed incurs are not always a reliable indication of what their future construction costs will be?

MR. BOYLE: That is correct.

MR. POLLACK: And isn't it also true that every time Con Ed attempts to budget what its construction costs will actually be the budget is always less than what the construction costs turn out to be?

MR. BOYLE: No.

MR. POLLACK: Not true?

MR. BOYLE: Not in every case.

MR. POLLACK: Frequently?

MR. BOYLE: I don't have that data in front of me but if the question is are we always over budget, no.

MR. POLLACK: Con Ed's budget

Proceedings

target is based on a three-year model that reflects interference costs that it has incurred for this three-year period; is that true?

MR. BOYLE: No.

MR. POLLACK: What is the budget target based on?

MR. BOYLE: The target is based on three categories of work that is undertaken.

MR. POLLACK: I didn't ask you the categories. I asked you the period of time. Is their budget based on a three-year lookback period?

MR. BOYLE: Not on all three of those categories.

MR. POLLACK: Which categories is the three-year lookback period?

MR. BOYLE: One of those three categories.

MR. POLLACK: Which is?

MR. BOYLE: The annual projects.

MR. POLLACK: So the annual projects, the three-year lookback period

Proceedings

applies, correct?

MR. BOYLE: Three-year historical, yes.

MR. POLLACK: Now, the costs that were incurred by Con Ed during the most recent three-year period was the result of robust competition among companies that were bidding for the Con Ed MSI [sic] work; isn't that true?

MR. BOYLE: People don't bid on MIS infrastructure work. The city contractors are the ones who perform the work that New York agencies and municipal agencies conduct the bids for this work.

MR. POLLACK: And the bids are based on a competitive bidding process; isn't that true?

MR. BOYLE: I do not run the municipal agency's bids so I don't know.

MR. POLLACK: Would you agree that by eliminating or reducing competition on Con Ed it will not mitigate costs but it will increase the costs that Con Ed incurs?

MR. RICHTER: Objection, your

Proceedings

Honor, on at least two grounds. Number one, Mr. Boyle has repeatedly said he is not part of the bidding process. And number two, we believe questions about how the bidding process operates for the reasons I gave earlier are really not relevant and outside the scope of a determination as to whether or not the joint proposal is reasonable or not.

ALJ LECAKES: I agree that this question as phrased was not proper. Could you phrase it differently?

MR. POLLACK: On contracts that require the Con Ed facility, on construction contracts that require Con Ed to move its facilities, are those contracts competitively bid?

MR. BOYLE: If the work is being performed by Con Edison contractors, then Con Edison competitively bids them. If the work is being performed by the municipal contractor, then it is not competitively bid.

MR. POLLACK: How much work is

Proceedings

being done ahead of time by Con Ed?

MR. BOYLE: I don't have that number.

MR. POLLACK: Can you give us an approximate?

MR. RICHTER: Can you clarify the question, what you mean by ahead of time?

MR. POLLACK: Ahead of -- I'll withdraw the question.

Would you agree that competition among vendors providing goods and services is in the best interest of consumers and in the case of, and in this case, Con Ed's rate payers for paying for these goods and services?

MR. BOYLE: Is --

MR. POLLACK: Is competition a good thing for the consumers of goods and services?

MR. BOYLE: Yes.

MR. POLLACK: And its competition is a good thing for the rate payers of Con Ed because presumably they will get services at competitive prices, correct?

Proceedings

MR. BOYLE: Hopefully.

MR. POLLACK: Hopefully.

Now, would you also agree that competition reduces costs and increases the quality of goods and services that are provided by the vendors?

MR. BOYLE: Repeat the question.

MR. RICHTER: Your Honor, I'm going to object again on the grounds that Mr. Boyle has already indicated he's the expert up here as the person in charge of doing this work. He's not in charge of the competitive bid process. And we don't think questions that generally relate to competitive bidding as a general matter or a specific matter are relevant to a determination of the reasonableness of the JP.

MR. POLLACK: If there is somebody on Con Ed's panel who has more knowledge about Con Ed's competitive bidding practices, especially as reflected in their terms and conditions, I would be happy to cross-examine that person and we

Proceedings

can excuse Mr. Boyle.

ALJ LECAKES: The problem that I see is a little bit more fundamental and it goes to there was testimony that was offered in a litigated proceeding that's now an exhibit in here where the company proposed a certain amount be imbedded into rates for this type of work. Through the negotiating process, there was a look, as I understand from the statements in support of the joint proposal, a look at historical spending for this area, an allowance that was created should the Commission go forward with the joint proposal that recognizing this is how much the work should cost.

On top of that, there is a reconciliation provision; although, the way the joint proposal is written and the way the statements describe it, it's not entirely clear to me exactly how the reconciliation provision works on these costs but there is a reconciliation provision that allows in some circumstances

Proceedings

for the company to recover above and beyond the allowance.

Now, separate and apart from that comes the issues that you're pursuing, which go to the bidding of contracts. Now, that only becomes an issue so far as I see it when the bidding process produces results that are in excess of the allowance that was given that fall into those limited exceptions for the recovery of the reconciliation of the extra expenses. And then even beyond that are only problematic because of a very limited issue that the ICA is pursuing where they're directly attributable to not just the fact that the terms and conditions have changed, but the terms and conditions have changed in such a way that it was imprudent for the company to modify those terms and conditions. And I think that to get to that really narrow example right now, the questioning is going to a much broader area on the bidding, which I don't know that there's been a tie yet into the problem area. And I think

Proceedings

that's the problem that the company's having, is it just seems that its bidding processes are being cross-examined when there's no foundation for relevance about why that particular problem or why the general questions about the bidding that are being pursued right now address that one specific problem that the ICA is bringing up.

MR. POLLACK: Well, I was simply trying to establish a foundation to simply preliminarily get into the bidding practices generally and then work our way through the specific bidding practices that the change in the terms and conditions has resulted in.

ALJ LECAKES: Mr. Pollack, I understand that. But I think it would be beneficial to the record and to actually your position to actually work in the opposite direction and get to the most specific drill-down questions first, and to the extent that those questions need to have some more context the broader issues.

Proceedings

Or if there's a reluctance to get to that specific issue or whatever, we can go back to the broader questions and go through it.

MR. POLLACK: I can certainly do that. I can certainly fast-forward and get to the portion of our cross-examination that deals with the terms and conditions that Con Ed has for procurement of construction. I can get to that right now.

ALJ LECAKES: We can do that. Just be aware that I anticipate that the company's probably going to start objecting regularly at this point.

MR. RICHTER: And again, maybe just for economy -- and it's no surprise, I think, to anyone who's read our statement -- that creating a foundation to get to more specific questions, this matter is before the courts, by a lawsuit by this party to this rate case. The court has stayed discovery, I'm advised by counsel, in that court proceeding. And to me, it would be just a terrible result if as a result of this hearing on this joint

Proceedings

proposal they were able to do what the court has told them they can't do at this point in time, was to try and gain some further inside information, including information they may not be entitled to anyway for confidentiality and competitive purposes as a result of cross-examination of an interference reconciliation mechanism in this case.

ALJ LECAKES: Okay. That's a little bit more understanding than I had previously about the concerns that the company had about this line of questioning.

So, Mr. Pollack --

MR. POLLACK: I'm not even involved in that case, your Honor.

ALJ LECAKES: Right. No, I understand that. As I understand what Mr. Richter is expressing, the concern that there is a federal case on this matter and that through the procedural process there there's been a stay of discovery, and that not only are we getting into areas where the Commission has been reluctant to go

Proceedings

previously, but in this case it may actually be facilitating an end run around an actual federal court stay. And that is a serious concern that I have.

Mr. Levinson, are you involved in the federal court proceeding?

MR. LEVINSON: I am. And Mr. Richter stated it accurately. The attorneys for NYICA and Local 175 made a motion for discovery and the judge denied it and stayed discovery. The motion was fully submitted by all sides in May and we're waiting for a decision from the court. And as Mr. Richter said, and I've just elaborated a little bit, that to me, this feels like it's an end run around the court's stay, which we can give you the docket cite for the record in a minute.

And it's also a bit of a fishing expedition. The testimony for Mr. Kilkenny was that all of these costs that your Honor referenced, that they even said in Mr. Kilkenny's testimony that they don't know that there's going to be these costs

Proceedings

but they're concerned that bidders who bid on Con Ed jobs are going to have to pay some sort of compensation to 175 and another union. And so based on just this speculation, my concern is that we're having a fishing expedition looking for something for the federal case. The NLRB -- Local 175 took the standard terms and conditions to the NLRB that their claim was denied, they appealed it. The NLRB was denied. So it's a fishing expedition and that's what's happening. He's going through this broad thing, wanting to kind of go through every little detail or procurement process. And we know the end run of what he wants to say is, you know, isn't allowing additional unions to bid, isn't that better? And we've addressed it in our papers. The NLRB addressed it. And again, that's exactly the subject matter of their federal lawsuit, that it's an antitrust violation to limit the bidding. And we said no. We cited all the cases. And we said, hey, the NLRB already ruled

Proceedings

it.

And the thing is that Mr. Kilkenny -- the basis of why we're here right now, it's pure speculation. And in fact, in our opposition papers, your Honor, and we can point you to it, we show that after the 2014 standard terms came into effect, there was the bid in 2015; and lo and behold, prices did not go up, competition did not go down. And so I think it's fair to allow some questioning to the key points of the joint proposal and the public interest. But yes, we're concerned that this is a fishing expedition and that this is going to end up in a filing in federal court. And I think that you're also right, and we put in our papers, that comity of respect for the other courts, and also just judicial economy, that this is not the forum to get into all of these things. And then, again -- I don't want to the keep piling on -- but it's not like that New York ICA didn't previously make this motion. They

Proceedings

did two years ago and withdrew it. So it just feels like, you know, that it's forum shopping.

ALJ LECAKES: Okay.

MR. POLLACK: To the extent that Con Ed's terms and conditions adversely affect the rate payers, we believe we have a right to inquire into that for purposes of this hearing. We know that Con Ed changed its terms and conditions to require that all contractors, not just NYICA contractors, but all contractors, are required to use labor from unions that are affiliated with the BCTC. If the labor does not come from a union that is affiliated with the BCTC, it cannot be used on a job.

ALJ LECAKES: Right. And --

MR. POLLACK: And therefore, the contractor will not be awarded the job.

ALJ LECAKES: Right. And that's all in the papers and I understand that point.

So, I mean, this is an issue that

Proceedings

really has been developed in prefiling to a large extent. And there are several concerns that I had with the ICA submission; one of which is the claim in a couple of places that the company has never explained the reasons behind the terms and conditions when in fact in the previous petition that was filed by the ICA, the Commission's case itself that was voluntarily withdrawn, there's a response from the company on our DMM website that explains. Now, ICA may disagree with the reasons that were given there and may think that the company was not being forthright in its reasons, but there were reasons that were given.

MR. POLLACK: When the Commission served interrogatories on Con Ed asking the question, How does the change in the terms and conditions further the company's procurement policies, the answer was, Well, there's the potential for labor unrest on a Con Ed jobsite. And unless we have all labor coming from a union that is

Proceedings

affiliated with the BCTC, we have no way of resolving those labor disputes to prevent delay and interruption in the projects. That is false and misleading.

ALJ LECAKES: Mr. Pollack, are you referring to a discovery response that was in this case?

MR. POLLACK: 733 and 734, your Honor.

MR. RICHTER: Which, your Honor, I think is not in the --

ALJ LECAKES: We'll get to that in a second.

Mr. Favreau, you're familiar with these IRs and IR responses that Mr. Pollack's talking about?

MR. FAVREAU: I'm generally familiar, yes.

ALJ LECAKES: Did you plan on putting those into the record?

MR. POLLACK: Yes. Very definitely, your Honor.

ALJ LECAKES: Why don't we do that first?

Proceedings

MR. POLLACK: We can do that too.

ALJ LECAKES: Because that might actually --

MR. POLLACK: That's fine.

ALJ LECAKES: -- help to direct the cross-examination on those IR responses.

MR. POLLACK: Yes, your Honor. I have a few foundation questions before getting into that but I have no objection to it.

ALJ LECAKES: If you have copies of those responses, why don't you provide them to Mr. Boyle and the panel right now --

MR. POLLACK: I do.

ALJ LECAKES: -- as well as opposing counsel and Mr. Richter and Mr. Levinson.

MR. LEVINSON: Your Honor, may I just add that what Mr. Pollack just said, it's relitigating the very issues that the NLRB decided and this court, this tribunal, should follow its policy of not getting

Proceedings

involved in resolving the labor issues -- or should I hold it?

ALJ LECAKES: You're making the argument that's already been stated in the reply statement and that's, you know, been provided to Judge Wiles and myself as to what our recommendation should be and to the Commission on any order that it produces. And I appreciate that. At the same time, I'd like to give the ICA an opportunity to produce exhibits in this case and to try to further the record.

Mr. Richter.

MR. RICHTER: I was just going to mention there's no disagreement that there's a disagreement about whether or not the terms should've been changed or whether or not there was good reason to change, et cetera. But I come back to they've indicated that because of this, rate payers could be harmed. We think the issue and the only issue that we should be considering here is whether or not the joint proposal properly provides for this

Proceedings

potential set of circumstances.

ALJ LECAKES: I do agree with the company's position on that, Mr. Pollack. I'm waiting to see if the cross-examination gets into that area, which is why I'd like to see the exhibits, so if you approach myself and Judge Wiles and the witnesses.

MR. POLLACK: This is 733 and 734. I can give this to -- I have copies of 733 and 734 --

MR. RICHTER: Your Honor, if I could just also mention, I believe that parts of these responses I think were also submitted on a confidential basis so I'm not sure exactly what it is that Mr. Pollack is sharing with you right now.

ALJ LECAKES: Yeah, Mr. Pollack, can you bring those to the counsel so that he can review them?

MR. POLLACK: Sure (handing).

ALJ LECAKES: And before you start handing them out to the rest -- it's okay to staff -- provide a copy to the witnesses and then I'm going to wait to

Proceedings

hear from the company if there's any confidential information that needs to be considered in these responses.

MR. RICHTER: Your Honor, if the only thing that's being presented for the record in this case right now are these responses and not the attachments, there's not a confidentiality issue. It was certain of the attachments, certain of the subparts of the responses that were submitted on a confidential basis.

ALJ LECAKES: And all I have here are what you have right now, so there's no confidential question.

Mr. Pollack, proceed with your question about foundation to the witness, please.

MR. DIAMANTOPOULOS: Your Honor, can all of the other parties have copies?

MR. POLLACK: I made eight copies. I've given you two. And I've given --

MR. RICHTER: I have extra copies (handing).

Proceedings

MR. POLLACK: Isn't is true, Mr. Boyle, that Con Ed has a competitive bidding policy that requires its purchasing departments to obtain competitive bids in the procurement of materials and supplies for Con Ed?

MR. BOYLE: Yes.

MR. POLLACK: And the purpose of Con Ed's competitive bidding policy is to ensure that Con Ed obtains --

MR. RICHTER: This is asked and answered, your Honor.

MR. POLLACK: -- products and services at competitive fair market prices, correct?

MR. RICHTER: Asked and answered.

ALJ LECAKES: Overruled.

MR. BOYLE: Yes.

MR. POLLACK: And Con Ed's procurement policy is intended to ensure fair and open competition; is that true?

MR. BOYLE: I don't know what fair and open competition means.

MR. POLLACK: You don't know what

Proceedings

fair and open is? You don't know what fair is? Is that what you're telling this panel?

MR. LEVINSON: Objection, your Honor. He's harassing the witness.

MR. POLLACK: I'm asking him what fair means. He doesn't know what --

MR. LEVINSON: I didn't know what you meant and I'm an attorney.

ALJ LECAKES: I appreciate that, Mr. Levinson.

The question is basically which part of the previous question are you quibbling with?

MR. BOYLE: Fair.

ALJ LECAKES: Right, okay.

MR. POLLACK: So he doesn't know that whether Con Ed --

ALJ LECAKES: Mr. Boyle, as you understand fairness, all right, the purpose of the competitive bidding process as employed by Con Edison is to try and gain a fair price or a fair bid on work that is done by contractors working for the

Proceedings

company; is that correct?

MR. BOYLE: That is correct.

MR. RICHTER: Your Honor, I would just mention also and reiterate that Mr. Boyle has already indicated he is not in charge of the competitive bidding process. That process is separate from his responsibilities.

And again, an additional concern we have, separate from the court case, the relevance in this proceeding, is we have basically a union here and a contractor affiliation here that's seeking information about Con Edison's competitive bid process which we may consider proprietary and confidential. And even if the questions are appropriate, Mr. Boyle and Mr. Pollack may be among the people who may need to leave the room in order for a Con Edison expert to answer those questions because we would consider this to be trade secret information that should not be shared with parties like NYICA and Local 175.

ALJ LECAKES: Right. I

Proceedings

understand that. We haven't gotten there yet. We also haven't gotten to the documents.

Mr. Pollack, by foundation questions, I'm looking for the establishment that these responses were prepared by the company or under the company's direction such that they can be placed into evidence. We haven't even marked them yet, so...

MR. POLLACK: I'll get there.

ALJ LECAKES: Quickly, please.

MR. POLLACK: Judge, if Mr. Boyle -- and I don't want to waste the panel's time -- if Mr. Boyle is not the proper person on Con Ed's panel who is familiar with the bidding practices of Con Ed, I'll be happy to substitute that individual for Mr. Boyle.

ALJ LECAKES: What I can say right now is that where I agree with the company is that the bidding practices themselves are not an issue as to whether the joint proposal is in the public

Proceedings

interest. The issue, and the ICA has touched on this issue in its papers, which is why there's been an allowance for the ICA to pursue this issue, where the question is centered right now is are those bidding practices liable to cause unnecessarily increases in the amounts that are spent by the company to perform this construction work such that rate payers will be harmed?

MR. POLLACK: Exactly, your Honor. That's exactly our point.

ALJ LECAKES: Right. But the questions still haven't gotten to, to that issue yet. Or let me put it another way. The questioning hasn't gone to whether the Commission can be assured or concerned one way or the other as to whether the terms and conditions are liable to create an increase. And not only -- again, I don't think that it's enough here to just show that an increase may occur in cost. It's that the increase is being driven by an imprudent change in those terms and

Proceedings

conditions.

MR. POLLACK: I could not agree with you more, your Honor. We're going to get into all of that. And the answers are found in their responses to the exhibits that have been marked as 188 and 189. And I am being told by Mr. Richter that Mr. Boyle is not necessarily the person who's best qualified to talk about the competitive bidding practices of Con Ed. And if that's the case, then rather than waste time cross-examining Mr. Boyle, who is the person on the panel who will be able to answer questions about 188 and 189, Exhibits 188 and 189?

ALJ LECAKES: Right. I'm looking at the exhibit list right now, the terms and conditions prior to the change and after the change.

MR. POLLACK: Yes. And I have copies of the terms and conditions.

ALJ LECAKES: I understand that. It's that --

MR. POLLACK: And I can summarize

Proceedings

for your Honor what the fundamental change is. There's one change between the old and the new.

ALJ LECAKES: Right. And it's the requirement that whoever the winning bidder is is required to hire labor that is at least a member of one union or comes from one union.

MR. POLLACK: Yes, comes from the union that is affiliated with the BCTC. And then one of the questions was, And what's the rationale for that? And the answer was, Because there's a potential for labor disputes on Con Ed jobsites disrupting the work. And then the question was --

ALJ LECAKES: Mr. Pollack, you just testified. You just offered testimony. Where is that in the record? Is it in the testimony document or is it in these --

MR. POLLACK: In those exhibits.

ALJ LECAKES: Let's get to the exhibits. I'll do you a favor.

Proceedings

MR. POLLACK: Okay, okay. Let's get to the --

ALJ LECAKES: Mr. Richter, rather than going to the witnesses, is the company willing to stipulate that in the regular course of business the company prepared the responses to what look to me like DPS question 733 and DPS question 734?

MR. RICHTER: That's correct, your Honor.

ALJ LECAKES: So now we've established that these have actually been properly submitted by staff and responded to by the company.

MR. POLLACK: Correct.

ALJ LECAKES: So --

MR. POLLACK: Is Mr. Boyle familiar with those?

ALJ LECAKES: Before we go on, let's mark question 733 as Exhibit 311 for our evidentiary record and question 734 in its response as Exhibit 312. Exhibit 311 is a 3-page document entitled Response to DPS Interrogatory Set DPS 58, Question No.

Proceedings

733. Exhibit 312 is a 4-page document with a title on the front page, Response to DPS Interrogatories Set DPS 59, Question No. 734.

(Whereupon, a document entitled Interrogatories DPS Set 58, Question No. 733, was marked as Exhibit 311 for identification, as of this date.)

(Whereupon, document entitled Interrogatories DPS Set 59, Question No. 734, was marked as Exhibit 312 for identification, as of this date.)

ALJ LECAKES: Now, Mr. Pollack, these documents have been offered in as exhibits. And I fully anticipate that they will be put into the evidentiary hearing record as exhibits. Now, these are documents with written responses on them. As far as I'm concerned, the written responses speak for themselves. So the information here is in the evidentiary record. Now, if there's anything in these, any responses that Con Edison has made that you wish to pursue further that what the

Proceedings

words on the documents say, you're free to ask questions about that.

MR. POLLACK: Yes.

ALJ LECAKES: But you don't need to just verify that the document says X, Y and Z on page 2 or something like that.

MR. POLLACK: Should we offer at this point the terms and conditions themselves?

ALJ LECAKES: The terms and conditions are in the record as Exhibits 188 and 189. The pre-change is 188 and the post-change is 189.

MR. POLLACK: Okay. I want to direct his attention to the Exhibit 188 and 189 before we get to 311 and 312.

ALJ LECAKES: Absolutely.

MR. POLLACK: Does Mr. Boyle have that in front of him? If not, I have some copies.

ALJ WILES: Have what?

MR. POLLACK: Exhibit 189.

ALJ LECAKES: Exhibit 188 is the terms and conditions prior to the change.

Proceedings

I think it was dated 2012. Exhibit 189 is the terms and conditions after the change, and I believe it was dated in 2014.

MR. BOYLE: I have 189 in front of me.

ALJ LECAKES: Okay. We have the post-change terms and conditions.

MR. POLLACK: Okay. Good.

Do you have 188?

Does he have 189?

ALJ LECAKES: He has 189. He does not have a copy of Exhibit 188. Do you anticipate that he'll need a copy of that to respond to your questions?

MR. POLLACK: What I think will be helpful is if he has a copy of, a hard copy, of 189.

ALJ LECAKES: You may approach the witness. He does have 189.

MR. POLLACK: Okay (handing).

I've given you a copy, Mr. Boyle, of Exhibit 189. And for clarity, I've numbered Exhibit 189 1 through 5, breaking it down into Section 14. I've broken it

Proceedings

down into five different categories. So I'm going to refer you to particular sections of Article 14 in both Exhibit 188 and 189, all right?

MR. BOYLE: I don't have 188 in front of me.

MR. POLLACK: Okay.

ALJ LECAKES: Why don't we ask the questions based on 189 and if we find out 188 is needed --

MR. POLLACK: Okay.

Looking at Exhibit 189, I've broken it down into five subcategories. If you look at the hard copy that I've given you, you'll see the different numbered provisions in the paragraph.

MR. BOYLE: You didn't provide it.

MR. POLLACK: I asked you if you needed it. You said you didn't.

ALJ LECAKES: 189 was just a copy of the standard terms and conditions. If the ICA has modified it, then we need to have copies.

Proceedings

MR. POLLACK: I've only modified it just for clarity purposes.

ALJ LECAKES: Right. I understand the modifications. But if you're going to refer to the breakdown --

MR. POLLACK: Yes (handing).

ALJ LECAKES: Do you have a copy for counsel too?

MR. LEVINSON: With the modifications.

MR. POLLACK: Yeah. Well, there's not a modification. I've just numbered it. You'll see what I'm talking about.

ALJ LECAKES: By modification, we mean modification of the written document in the sense that you've highlighted certain portions with numbers for easier reference.

Proceed, Mr. Pollack.

MR. POLLACK: Mr. Boyle, isn't it true that the old standard terms and conditions of Con Ed, which has been marked as Exhibit 188, a contractor would not

Proceedings

require to employ union labor from any particular building trade local?

MR. RICHTER: Your Honors, I'm looking not to waste the time here of the proceeding, but what we discussed several minutes ago, getting directly to the questions that impact the joint proposal, there is no question here that the standard terms and conditions changed, that the company and NYICA disagree that they should've been changed; why they should've been changed and why they were changed is totally irrelevant to this proceeding. We acknowledge and stipulate on the record here they changed, they're different. They disagree with it. Mr. Kilkenny's own testimony then says he doesn't know for sure whether future costs will increase or not. He acknowledges the change and even acknowledges he doesn't know what the results are going to be. The questions here that Mr. Pollack is pursuing in the company's mind, again, is looking for insight, whether it's from Mr. Boyle or

Proceedings

maybe from some other Con Edison witness that really, again, is going down a path where we think really impinges on the court proceeding where this matter is directly an issue and discovery has been stayed.

ALJ LECAKES: Right. I've heard the company a few times on this. The problem is we haven't even progressed past through the first step in the path yet. I do agree with the company that the record right now is replete with information that indicates that a change happened. It's not disputed at all or that the initial terms and conditions contained no requirement that the trade organization -- the BCTC?

MR. POLLACK: Yes.

ALJ LECAKES: -- that the winning bidder employed labor from a union associated with the BCTC and then that the change was made so that the next set does.

MR. POLLACK: Yes.

ALJ LECAKES: So there's no dispute as to the fact that the change occurred or what the change consisted of.

Proceedings

MR. POLLACK: And now when we get to the --

ALJ LECAKES: So let's get to it.

MR. LEVINSON: Can I just say one thing to clarify? We're using the word change a little loosely -- and that's okay because it's an informal hearing -- that the company has filed papers with the Public Service Commission and others explaining the nature of the clarification. I don't want to be to picky but I just wanted to state that for the record.

ALJ LECAKES: I do appreciate that because this is a formal hearing and we should be precise about it, about the fact that the company did not just unilaterally make a change in secret, that there was a change that was made, it was published, it was put out to the other unions, the Public Service Commission has been informed of it through a different proceeding. And there was no insinuation that the change itself was intended to be hidden. I do appreciate that.

Proceedings

MR. LEVINSON: I appreciate that. And in our papers to the Commission, we explained that it was a clarification of existing rules.

ALJ LECAKES: Right. And that is all public record. Whether ICA agrees with that explanation or not, I did read the documents in that other proceeding, that 2014 complaint proceeding that the ICA filed. And I did recognize that there was an explanation given there from the company as to why the change was made.

MR. POLLACK: The explanation that the company has given is that unless all labor comes from --

ALJ WILES: We've done this. We've read it. I think you're taking the opportunity to say what is said in those interrogatory responses.

MR. POLLACK: Yes.

ALJ WILES: So you don't have to do that. We're all readers here. So let's go on here.

MR. POLLACK: Mr. Boyle, does Con

Proceedings

Ed use contractors for performing MIS work other than company contractors?

MR. BOYLE: The majority of municipal infrastructure work is performed by municipal contractors.

ALJ WILES: Mr. Pollack, can I just make a --

MR. POLLACK: Yes.

ALJ WILES: In the Exhibit 189, on page 13, where Section 14 begins, the first word under A is contractor, right?

MR. BOYLE: Under 14A the first word is contractor.

ALJ WILES: Is that a Con Ed contractor or a municipal contractor?

MR. BOYLE: Con Edison contractor.

ALJ WILES: And so that word does not refer to the municipal contractors?

MR. BOYLE: No.

MR. POLLACK: I'm sorry, your Honor.

ALJ WILES: I'm done. Continue.

MR. POLLACK: The contractors

Proceedings

that are hired are hired by Con Ed, correct; not just the City of New York to do the MIS work; is that correct?

MR. BOYLE: The City of New York hires the contractor to perform the municipal work. There's a variety of municipal type of interferences.

MR. POLLACK: And does Con Ed hire contractors?

MR. BOYLE: We do not hire the municipal contractor. We are required to do interference work with the contractor of record that the City hires. So we have to negotiate with the municipal contractor to perform work.

MR. POLLACK: Do the contractors that Con Ed hires, do you hire them to do MIS work?

MR. BOYLE: Con Edison hires contractors to perform a variety of work for the company and some of it could include municipal work.

MR. POLLACK: Let me direct your attention to Exhibit 188.

Proceedings

ALJ LECAKES: This is the pre-changed terms and conditions?

MR. POLLACK: Yes.

ALJ LECAKES: I don't think the witness had a copy of that. But ask the question. We'll see if he needs a copy to respond to the question.

MR. POLLACK: Is the change between the old and the new terms and conditions that contractors who are awarded jobs are now under the new terms and conditions required to use labor that are from unions that are affiliated with the BCTC? Is that the only change between the old terms and conditions and the new terms and conditions?

MR. RICHTER: If the witness knows.

MR. BOYLE: I don't know.

MR. POLLACK: I'm sorry?

MR. BOYLE: I do not know if that's the only change.

MR. POLLACK: Do you know who from the panel may know the answer to that

Proceedings

question?

MR. RICHTER: Well, your Honor, now --

ALJ LECAKES: I agree. The witness is testifying that he doesn't have knowledge of any other changes, as I understand the answer, not just that he doesn't know if that was the only change. But I think that it was phrased in the sense that he's not aware of any other changes that were made. He's only aware of this change.

Is that correct?

MR. BOYLE: That's correct. I don't know if there were other changes. This is the only one that was brought to my attention.

ALJ LECAKES: Mr. Pollack, is there another change that you're aware of that you think --

MR. POLLACK: No, but I'm not the one who's testifying. I'm not aware of any other changes. That's the only change.

ALJ LECAKES: Is anyone on the

Proceedings

panel aware of whether there might be any other changes to the terms and conditions?

MR. RICHTER: Your Honor, I would say that there's nobody else on the panel right now nor did we have any expectation that we would need to answer a question as to whether or not between these two documents there was any other wording of any other changes.

ALJ LECAKES: Right, because there's one important fact missing right now, which is is the company aware of any changes that might be relevant to this proceeding or to the issue about the contractor that may have been made in this change of terms and conditions other than this requirement about the labor union BCTC?

MR. RICHTER: When you say we're aware of, I mean, this is a comprehensive document.

ALJ LECAKES: Right.

MR. RICHTER: I don't know if another word changed or not. What I'm

Proceedings

saying is what we were responding here to was a complaint that there was one specific change they objected to. They didn't object to any other changes. So the idea that we should have anybody on the panel or ready to say right now whether or not this comprehensive document, there was any other changes, I don't know that there were.

ALJ LECAKES: Right. So that to me is giving me the assurance that the company produced the witnesses that speak to any relevant changes as it's been made aware of in this case.

MR. RICHTER: Spoke to the changes about which NYICA complained.

ALJ LECAKES: Correct. I understand, yes.

So we can proceed assuming that there's no other changes relevant in the terms and conditions, that that was the only change.

MR. POLLACK: Good.

If a contractor, Mr. Boyle, is the low bidder on a contract being led by

Proceedings

Con Ed but is a signatory to a Collective Bargaining Agreement with a union that is not affiliated with the BCTC, can that contractor be awarded --

MR. RICHTER: Objection, your Honor. We've said repeatedly pursuant to company practices Mr. Boyle is divorced from the bidding procedures. And second of all, I don't think it's relevant. And if it is, the type of insight that this union is looking for with respect to evaluation of bids, the company's bid processes, strategies, evaluations, we this think is competitively sensitive information to which they're not entitled.

ALJ LECAKES: The reasons that Mr. Richter is concerned holds a lot of weight as far as I'm concerned because the ICA contacted me a couple of times and requested that Mr. Boyle be put on the stand. And then I directed Mr. Pollack to contact Mr. Richter, and although I understand that Mr. Richter didn't choose to answer the question when the phone call

Proceedings

was made, Mr. Boyle was produced. And I think that some of the confusion or problems that we're having could've been avoided rather than a specific name being offered, the ICA could've requested that somebody be produced who worked in the bidding area than I think there was an assumption made that Mr. Boyle would be able to answer these questions because of documents that were submitted.

I just -- I still have the concern that we haven't gotten to the salient relevant issue about whether there is a potential for this change to result in cost causation or cost overruns from the allowance that's been imbedded in rates that rate payers may ultimately be responsible for through the reconciliation mechanism. And I'd like to get to those questions.

MR. POLLACK: Can I make a proffer as to where we're going?

ALJ LECAKES: Yes. Please do.

MR. POLLACK: Mr. Boyle had a lot

Proceedings

to do with creating construction budgets. The terms and conditions govern the bidding of construction projects. The new terms and conditions require all contractors, in order to be awarded a construction job for Con Ed, to use labor that is affiliated with the BCTC.

ALJ LECAKES: Right.

MR. POLLACK: For the last twelve years Con Ed has awarded virtually all of their contracts in asphalt paving to NYICA contractors. NYICA contractors will no longer be eligible to be awarded these jobs because NYICA contractors are not affiliated with the BCTC unions.

ALJ LECAKES: Or the labor that they employ is not affiliated with the unions.

MR. POLLACK: That is correct. Therefore, because all of these contractors will no longer be eligible to be awarded the jobs, the jobs that they have been performing for Con Ed for 12 years, the jobs that they have been invited back by

Proceedings

Con Ed to do time and time again because they perform their work in a quality manner, we believe that that is going to adversely affect the prices that Con Ed will have to pay which will in part be passed on to the rate payers. Now, the justification that Con Ed has given for why it changed the terms and conditions was because they claim that there is the "potential for there to be onsite labor disputes between unions who are not part of the BCTC." We say not true. We say your terms and conditions have a labor dispute provision, which requires all disputes to be resolved by the parties either before the NLRB or in federal court. And we recognize that Con Ed takes the position that they don't want to be involved in labor disputes but we submit that they've put themselves squarely in the middle by saying that you have to use labor only from the BCTC if you want to be awarded a job that's going to cause the prices of the jobs to go up which is not in the best

Proceedings

interest of the rate payers. There has not been -- and they admit this -- a single incident of labor dispute on a Con Ed jobsite between these unions that have caused delay or disruption in the work. It's pretextual.

ALJ LECAKES: Mr. Pollack, most of what you said is in the record. Most of what you said is in the statements of the ICA and in the testimony of Mr. Kilkenny. And the company has come back and responded and said the only part of that that's relevant is to the extent that that issue might cause cost overruns; however, the evidence demonstrated is that we had more bidders after this change was made and our costs actually went down. Now, at cross-examination, I would think that it would focus on those two points and try to undermine the fact that more contractors were made or that that's a misleading statement or that the costs went down or that that's a misleading statement; you know, either challenging the veracity of

Proceedings

those statements or the fact that, you know, those statements themselves are misleading. And to me, I think this is why the company wants to keep objecting, because those are the relevant issues and the cross-examination hasn't even come close to those points yet and I think that could have been done in 15 minutes.

MR. POLLACK: Your Honor, with respect to what you said about Con Ed's position is that the change in the terms and conditions have not affected the amount of contractors who would be bidding on their jobs.

ALJ LECAKES: No. What they did is submit factual statements to the effect that after -- there was a round of bidding that was done after the change and they actually in their true experience, not speculative, in their true experience, had more bidders after the change was made than they had had previous to the change in the couple years; and that contract, the bids that came in, were actually lower bids than

Proceedings

they had received prior to the contract. And so what they're saying is that the concern that's expressed by the ICA is not demonstrated by the actual real world experience and evidence that they have following that change. So therefore, they're trying to say there's no serious concerns that the Commission should have that there'll be less bidders or that cost will increase. And we're not even going to get into the whole issue about the auditing and the prudence check afterwards because I understand that position from the company as well. But just this issue alone is the salient relevant issue as to whether this provision in the joint proposal is in the public interest or not or whether there is some question about whether the costs -- whether rate payers are going to be bearing additional costs that they otherwise would not have been forced to spend.

So I would like to see cross-examination that undermines those points of the company or demonstrates that

Proceedings

those points made by the company are misleading such that the Commission cannot rely on those statements.

MR. POLLACK: With respect to two points, competition for these construction jobs will be adversely affected because all of the contractors who had been awarded Con Ed jobs, construction jobs, will no longer be able to submit competitive bids.

MR. RICHTER: Your Honor --

ALJ LECAKES: Again, this is in the record and it's starting to get into impermissible testimony areas. I understand that as a theoretical point that's the ICA's position but the company has come forward with evidence saying that that theory is all well and good but all real world experience is X, Y and Z showing the opposite.

MR. POLLACK: Their real world experience concerns --

ALJ LECAKES: I don't want to hear it from you. I want to hear it from the witnesses through cross-examination

Proceedings

whether they agree that this real world experience that they had was either not enough of a pool for the Commission to say, yeah, that is -- was there something different about the one situation that the company put in its evidence or their factual recitation about this bidding process that, well, of course the company got more bids because this was for something different than what we're concerned about. I'm not sure.

MR. RICHTER: Your Honor, I must interject at this point, though, because not only has counsel testified I'll accept that it happens during these proceedings -- but I don't think he's properly characterized either the testimony of his own witness or the record in this proceeding. Mr. Kilkenny's own testimony says, "Although we do not know for sure what future costs will be," this is speculation. What Mr. Pollack said a minute ago is that costs will go up, competition will go down. He also said

Proceedings

that contractors who bid in the past will not be bidding in the future because of this provision. The record in this proceeding, I think, is clear that the contractors can continue to bid. There's a new requirement about what type of labor they could use. So it's one thing for counsel to testify. I can't accept a mischaracterization of the testimony that's in the record.

ALJ LECAKES: I appreciate the company pointing that out. But I still am trying to get to the issue of whether there is something that I should be and Judge Wiles should be concerned about with the representation that the company made that there was a factual scenario which disproved, whether it agrees with Mr. Kilkenny's statements or not in his testimony, Mr. Pollack's statement about the theory behind what should have happened after this change was made. And again, the factual statements supplied by the company tend to demonstrate on an evidentiary basis

Proceedings

that the theory is not -- that the theory purported by ICA is not being demonstrated by the facts. And to provide a relevant basis of cross-examination here in this proceeding for the purposes of the joint proposal and to avoid getting anywhere near what may be going on in federal court and relitigating an NLRB dispute -- and I did read all those documents as well, at least the ones that are publicly available on the website. To avoid getting anywhere near those questions, which I agree the Commission is very reluctant and hesitant to get into, I just want to find out through the cross-examination whether there is some reason to be concerned about the liability of the factual scenario offered by the company that it received more bids and that those bids resulted in lower costs, notwithstanding the number of bidders, than had been received prior to the change.

MR. POLLACK: Judge, may we have a short break? We've been going for two

Proceedings

hours. Just so that I could reorganize --

ALJ LECAKES: I think rather than a short break, we might want to do a lunch break here and come back say at 1:00. And I think that will give the ICA time to think about what we've said as to the direction we'd like to see cross-examination going. And I think maybe we can really focus this at that point.

So we'll take a break now until 1:00 and we'll reconvene then. Thank you.

(Whereupon, a lunch break was taken.)

ALJ LECAKES: Mr. Pollack, you may proceed with your cross-examination.

MR. POLLACK: Mr. Boyle, focusing your attention on the 2015 Manhattan contract. Con Ed did not award the 2015 Manhattan contract to any of the companies that submitted bids; isn't that true?

MR. BOYLE: The Manhattan contract was awarded to an affiliate company of a contractor that submitted a bid.

Proceedings

MR. POLLACK: So it was not awarded to the contractor who submitted a bid, it was to an affiliate contractor, correct?

MR. BOYLE: Correct.

MR. POLLACK: Who was that affiliate contractor?

ALJ WILES: I think I'm going to ask you just to move on from that. I think that question is going to drag us into a discussion of the actual procedures as used in a particular instance. And I don't think that's going to be an element of relevance.

MR. POLLACK: The point is they awarded it to a contractor who never bid on the job.

ALJ WILES: As I said, I think we need to move on.

MR. POLLACK: And they gave --

You claim, Mr. Boyle, that the bid that was submitted by this contractor who did not get awarded the job was the lowest bid of all the bids that you

Proceedings

received; is that true?

MR. BOYLE: I don't review the bids.

MR. POLLACK: It was lower than the bid for the 2012 contract; isn't that true?

MR. BOYLE: Again, I do not review the bids that are submitted. I'm in the construction department.

MR. POLLACK: Well, let's look at Con Ed's interrogatory answer on Exhibit 312. Look to page 4, if you would. The bid that was received in 2012 was for $33,880,000. The bid for 2015 was $32,750,000, correct?

MR. BOYLE: That is correct.

MR. POLLACK: So you would agree with me then that the bid for 2015 was lower than the bid for 2012?

MR. BOYLE: Lower in total value.

MR. POLLACK: Right.

MR. BOYLE: That's not a lump-sum contract.

MR. POLLACK: Right. And the

Proceedings

contractor who was awarded the job was not the contractor who submitted the bid, correct? It was an affiliate of the company, right?

MR. BOYLE: It was the same owner.

MR. POLLACK: Who told Nico (phonetic) -- what was the name of the contractor who submitted the lowest bid?

ALJ WILES: I don't think we need to go in that direction.

MR. POLLACK: Who told this contractor that they were not going to be awarded the job for this project?

MR. RICHTER: Objection, your Honor. I don't understand how the inner workings of the bid process are relevant to the information that you said we can elicit on the record.

MR. POLLACK: Your Honor, the lowest bidder was told that they were not going to be awarded this job. I think I have a right to ask why.

ALJ LECAKES: But that wasn't the

Proceedings

question. The question was who.

MR. POLLACK: Well, who asked them and then why is the next question.

MR. RICHTER: And again, the why or why not has nothing to do with whether the joint proposal is reasonable in this case.

MR. POLLACK: But if the reason for why is because they were not using the right labor and using the right labor is going to increase the costs, that is something that could adversely affect the rate payers.

ALJ LECAKES: Is this one of the communications that's in the e-mail attachment?

MR. POLLACK: Yes.

ALJ LECAKES: So that's already in the record.

MR. POLLACK: Yes, but I'm trying to --

ALJ LECAKES: Yeah, but the record's already informed. Again, we pre-filed documents here to pre-inform the

Proceedings

record, to use too many pres. So there is evidence in the record then of the fact of why a certain contract was not allowed to go to a certain bidder or additional conditions that were placed on the awarding of that contract to the lowest-cost bidders.

So to the extent that the question is relevant, the evidence does exist in the record right now and has actually been put forward to the Commission in argument form through the statements.

MR. POLLACK: May I ask then did the affiliate company, to the best of your knowledge, have a history of performing work for Con Ed?

MR. BOYLE: I do not know.

MR. POLLACK: But nevertheless, they were awarded a $32 million contract? They never bid on it and to the best of your knowledge, you have no information as to whether they ever performed this job or a similar job for Con Ed in the past, correct?

Proceedings

MR. RICHTER: Your Honor, I will say again, if they think we did something wrong, and they do, in terms of how we conduct our bidding processes, they're in court pursuing this issue. All right? The court is determining this issue. The court has stayed discovery pending a motion to dismiss. The joint proposal here, I know you're looking in your task as to protect customers. So we put in testimony saying worst-case scenario, this turns out the way they think it's going to turn out, is the joint proposal reasonable enough? We put in testimony that says it is. And we think that should be the subject of cross-examination. The rest of this below the surface of what's going on is really properly in a different forum.

Mr. Pollack said he wasn't familiar with or involved in that other proceeding. Well, he should have knowledge or more intimate knowledge and better understand the interrelationship of it because I really think they do critically

Proceedings

need to be kept separate.

ALJ LECAKES: I agree that they need to be kept separate and the problem is trying to find the line where material that might be relative to both proceedings becomes so unhelpful in this proceeding that it's across the line.

MR. RICHTER: But again, if you permit me not to belabor it, their own testimony indicates that, if anything, the rates being presented by the Commission to the Commission are too low rather than too high. And we put in testimony that said that if it turns out the actual costs turn out to be higher, what happens? All of this other has nothing to do with whether or not the joint proposal is reasonable or not and what the Commission needs to make that judgement.

ALJ LECAKES: It is a weird situation because their claim is that the allowance that was given to the company was too low. But the only reason -- right. Admittedly, though, the only reason that

Proceedings

becomes an issue is because of reconciliation mechanism and whether costs that exceed the allowance are properly awarded.

However, Mr. Pollack, I do note that there's the auditing function of the Department of Public Service staff to look at those. And they have been obviously made well aware of the concerns that NYICA expresses by the very Exhibits 311 and 312. I mean, that indicates to me that Department of Public Service staff was interested enough in this issue that they started asking the company about it. So when they performed their audits, the record has evidence in it right now that staff will be performing audits of these costs that flow through the reconciliation mechanism and will be, when they audit these costs, looking specifically at those costs in the context of the change that was made to the terms and conditions. So there's pretty strong evidence right now that, you know, the cost issue has been

Proceedings

addressed by the parties that signed on to the joint proposal.

MR. POLLACK: But your Honor, the PSC staff was not aware of this until we brought it to their attention. And they, quite properly, followed up with serving interrogatories that ask specific questions. They got answers that in our judgment are false and misleading.

ALJ LECAKES: So let's find out -- let's point out to the Commission and to the staff auditors why -- what's false and misleading in the responses using the responses and undermining the responses as they are on Exhibits 311 and 312.

MR. POLLACK: Okay. Con Ed --

ALJ LECAKES: No, not through me.

MR. POLLACK: Well, I thought you were asking a question. Okay.

Did the contractor who submitted the bid but was not awarded the job, do you know whether he submitted his bid based on the use of Local 175 labor?

MR. RICHTER: Objection. Again,

Proceedings

I think the proper cross-examination based upon the instruction I thought I just heard from the judge, is there an answer that we gave that's incorrect?

ALJ LECAKES: Right. That's my biggest concern.

And the other concern I would add with your question and the objection that I will sustain on my own is the fact that you're asking for what somebody else, a third party, an outside person, was thinking when they submitted the bid. And I can't imagine that a person at Con Edison would be able to know what was being thought by the person who submitted the bid.

MR. POLLACK: Respectfully, your Honor, I disagree. Con Ed knows that all of the contracts that were awarded from 2009 through 2015, up until this particular instance with the affiliated company, had been awarded to contractors who used labor that was not affiliated with the BCTC.

ALJ LECAKES: Wait just a second.

Proceedings

Does anyone on the panel know that whether when a bid is put out a copy of the terms and conditions accompany the request for bids?

MR. BOYLE: Yes.

ALJ LECAKES: So if the terms and conditions are updated, is it correct to assume that that updated version would be sent out with a new request for bids?

MR. BOYLE: Yes.

ALJ LECAKES: I believe that that's enough. Whether the contractor has done business for years prior with Con Edison under one set of terms and conditions, I believe that establishes that a minimum constructive notice to the bidding parties that a change has been made and if a contractor who wishes to submit a bid on a construction project in response to a question doesn't read the terms and conditions because they make an assumption that those terms and conditions are what they've always been, they do so at their peril. And I don't see how that creates an

Proceedings

issue for the joint proposal in this case.

MR. POLLACK: But they did. They were awarded the job but they weren't able to keep the job unless they signed papers saying that they would use BCTC-affiliated labor unions.

ALJ LECAKES: Because the terms and conditions that were submitted with the request for bid or attached to the request for bid had that requirement in that. So when Con Edison opened the bids and went through the review process and then selected the contractor, the bidding contractor that they wished to offer the contract to, they simply -- I'm not going to use adjectives to characterize -- they provided more information to that winning bidder that they needed to be in compliance with the terms and conditions that they were updated and attached the request for bid including that they needed to assure Con Edison that they were in compliance with a section that required them to hire labor that was going to be coming from a

Proceedings

union associated with BCTC.

I understand. Again, you can see I understand this issue. I have been fully invested into this in trying to figure it out. I have some concerns of my own which I need to ask Mr. Levinson on with regard to Exhibit 4. But I don't -- I have not heard any questions that say, for example, Exhibit 311, Response 4 on page 3 of 3 states that, "Asphalt paving contracts are competitively bid and typically provide pricing for a three-year period," with a follow-up questioning saying something along the lines of, Isn't it correct that that three-year period is just a guide or isn't something that's being held to for the prices or that the prices can change dramatically during that three-year period. Something that undermines the effect of the response that's provided here. Or for example, Con Edison states in its reply statement or its statement of support for the joint proposal that after the change was made it received, you know, five or six

Proceedings

bids, whatever it was -- and I'm not trying to be factually correct here, I'm just trying to illustrate a point -- that its post-change bidding resulted in five bids when all before that it had been four or three for the last three years. Well, isn't it correct that at the time it received four or three it was seeking request for bidding for paving being done in Brooklyn or Queens, whereas when it received five bids it was seeking paving being done in Manhattan; and isn't it correct that there's more contractors available to do Manhattan work; something like that that undermines the affect of the evidence that the companies put in. And again, we're almost picking up where we left off where we're getting nothing that undermines the veracity of the factual statements here. And I'm getting very close to saying that I don't see that we need to continue cross-examination here because there isn't anything new that's being added to the record. So therefore,

Proceedings

in my judgment, the record contains everything we need to make an informed recommendation to the Commission as to this joint proposal.

MR. POLLACK: The pricing for future contracts, Con Ed claims is based on a three-year look-back period.

ALJ LECAKES: That's not the testimony. The testimony is that in one area the pricing is based on a three-year historic look-back. I think what's partly being confused here is that when rates are set in a utility regime, they need an evidentiary support for them. And what happens is rates are perspectively set, allowances are perspectively set. And that's actually because there is a prohibition against retroactively setting rates. And so the way that those rates are often done is we look for evidence of what are reasonable proxies for the costs. And in many areas including this one, it's been determined that historical spending, sometimes with an inflation adder or

Proceedings

sometimes without an inflation adder, are very reasonable proxies for an allowance for the next year, or in the case of a joint proposal two or three years, or whatever. And so there's a confusion, I think, that's coming up between the one area that Mr. Boyle said earlier, Con Edison prices are based on a three-year historical average but not in the other two areas versus the allowance in the joint proposal in this case that was set, which NYICA claims is a low allowance if the Commission were to award that was based on evidence of what the three-year historical allowance or spending was, actual spending was, by the company in those areas as verified and adjusted and audited by the Department of Public Service staff and any other intervening party that wanted to look at that. So I think the record's getting confused between those two three-year historical look-backs.

MR. POLLACK: I don't know what to say, your Honor. I mean, our position

Proceedings

is that Con Ed, by changing their terms and conditions, Con Ed has created a situation where the relevance of the historical data is nonexistent because all of the contractors who were awarded the jobs that comprise the historical data will no longer be eligible to be awarded jobs in the future. It's not about how many bids Con Ed gets.

ALJ LECAKES: But that's already in the record.

MR. POLLACK: Right.

ALJ LECAKES: Yes, it is. So we're good there.

So now it comes up to Judge Wiles and I to weigh NYICA's position on that point and see if there's some validity to it based on the file document, and then to make a recommendation to the Commission as to whether some change needs to be made including staff's recommendation that a new condition be placed on that with what the company represented as its consent to that with a caveat which will be in the

Proceedings

transcript of this hearing. But other than that, there really hasn't been anything that has been produced that -- again, I understand that NYICA has submitted evidence that undermines the potential veracity or that undermines whether the historical three-year average on which the allowance going forward has been based is a good number or not.

MR. POLLACK: Right.

ALJ LECAKES: But there hasn't been anything that has furthered the concerns of NYICA in this morning's hearing. So we have enough already before us to determine whether a modification of the joint proposal needs to be made. What I will not do and Judge Wiles will not do is start contemplating, based especially on what our understanding of the NLRB proceedings and the federal court case that's going on right now, is somehow try to use the joint proposal and the order that the Commission would produce to require Con Edison to make a change to its

Proceedings

terms and conditions or to roll back the clock, if you will, to the pre-2014 time because I don't think that's an appropriate issue for this particular rate proceeding. I do think that NYICA has preserved its ability to refile a petition because I didn't see any document in the record from that 2014 case where it withdrew its petition that would prejudice NYICA from refiling. I also don't know how that would come out with regard to the federal case and the other things going on. But I haven't heard the company ever say that the Commission is preempted from pursuing this issue in another forum, just that it's not relevant to the joint proposal issues that are before the Commission right here in this case. And I do agree with them. I hear them saying very loudly and clearly that notwithstanding, not having a preemptive effect, the Commission should be very careful in where they tread with this. But we don't need to decide that here because it's not an issue that touches the

Proceedings

joint proposal. So I really -- unless there is anything else that needs to come out, I don't think we will continue with the cross-examination here.

MR. POLLACK: Then we will rest, your Honor.

ALJ LECAKES: Mr. Koda.

MR. KODA: Yes, your Honor. Just clarification questions.

ALJ LECAKES: Absolutely. To me or to the witness?

MR. KODA: I'm sorry, to the panel.

ALJ LECAKES: Okay. Great.

MR. KODA: With regard to anyone from the panel that's willing to respond, it's appropriate.

The changes that we've been discussing during this hearing, going from a union that isn't affiliated with the BCTC and one that is, does the current internal staff of Con Edison belong to the BCTC?

MR. BOYLE: The question is Local 1-2?

Proceedings

MR. KODA: Yes, the BCTC.

MR. BOYLE: I don't know.

MR. KODA: So to the best of your knowledge, they're not part of the building trades?

MR. BOYLE: I don't believe they are.

MR. KODA: Do the employees of Con Edison, do any construction work such as if a gas ops employee goes out to a site and there's a gas leak or something and they have to dig up some pavement and repave for a temporary patch, is that considered construction work?

MR. BOYLE: In the terms of the standard terms and conditions?

MR. KODA: Yes.

MR. BOYLE: No.

MR. KODA: It's being done by --

MS. BODEN: We don't pave.

MR. KODA: There's no temporary pavement put on a project?

MS. BODEN: Yes. We do not do final restoration.

Proceedings

MR. KODA: Not final restoration. I'm talking about temporary.

MS. BODEN: We barricade the holes and we put temporary -- we plate them. We do not do final restoration.

MR. KODA: Thank you.

So to the degree that there are individuals within Local 1-2 that may be -- that do engineering work or with regards to structural engineering may be inspectors for that, they would not be covered by this particular agreement?

MR. BOYLE: No. Let me try to clarify. The standard terms and conditions are only for jobs where we go out and seek a bid. So work that's performed by Local 1-2 is not covered by the standard terms and conditions of construction contracts.

MR. KODA: And for instance, if someone goes out to do a manhole flushing, that would be kind of a maintenance as opposed to construction; is that right?

MR. BOYLE: That would be a

Proceedings

service contract.

MR. KODA: Thank you.

That's all I have, your Honor.

ALJ LECAKES: Does any other party have cross-examination for this panel?

MR. ZIMMERMAN: Your Honor, I'd like to. I have not indicated in the --

ALJ LECAKES: That's fine, Mr. Zimmerman. Do you have questions?

MR. ZIMMERMAN: A very brief ten minutes or so.

MS. KRAYESKE: Your Honor, I'd like to object. Parties were asked to let people know by October 26th as to whether or not they had cross-examination for the panel. Mr. Zimmerman said he had cross-examination for the demand analysis panel. In addition, on October 28th, you sent an e-mail to Mr. Buss explaining that you accepted that perhaps the company would put up a panel in their statement in support to swear in the statement in support. And, you know, Mr. Zimmerman

Proceedings

never responded saying, Hey, listen, I'd like to expand my cross-examination for another panel. So all of a sudden today he's coming up and saying he only has ten minutes of cross. I don't think it's fair or reasonable at this point that he's allowed to cross when we were specifically asked to all provide our cross-examination, who we were crossing.

ALJ LECAKES: Ms. Krayeske, I appreciate the company's concerns.

Mr. Zimmerman, to the extent that the panel is not prepared to respond to your questions, I am going to give them much leeway here. I will let you ask your questions. However, again, at this point, if the panel is unable to or if it seems that the questions are prejudicial to them because we didn't let them know in advance, I'll hear the company's objection to that. So you can proceed.

MR. ZIMMERMAN: Thank you.

Panel, I'd just like to ask, for each rate year under the joint proposal,

Proceedings

how much of the JP's revenue requirement is attributable to the cost of advanced metering infrastructure?

MR. MUCCILO: We don't have that readily available.

MR. ZIMMERMAN: I'd also like to ask, since the panel offered in the sworn testimony, about page 6 of the panel's reply statement. I'd like to go to the second of two charts on page 6 just before letter B. Does the panel see that? Can the panel please identify what that chart shows?

MR. RICHTER: Your Honor, if I can just -- give me one second. I think if anybody on this panel is going to answer this question, I think it would be Mr. Atzl.

Am I correct?

MR. ATZL: Yes.

MR. RICHTER: And since Mr. Atzl is going to be leading a panel with other associates on the cost allocation and rate design issue, I'm just wondering if it's

Proceedings

appropriate for this question to be deferred to that panel as opposed to Mr. Atzl being able to answer it with his associates in that general area of cost allocation and rate design.

ALJ LECAKES: Right. And I'm looking at page 6 right now, the reply statement, and I see that it deals with residential percent change and I assume --

I mean, would it be appropriate to ask the next panel?

MR. ZIMMERMAN: I'm happy to wait for the next panel. I only bring it up here because this panel introduced it as their testimony.

ALJ LECAKES: Right. But the next panel is going to adopt its own testimony and actually rely on the reply statement because I believe that the reply statement took from the testimony for this section.

MR. ZIMMERMAN: As long as the panel's willing to discuss this section, then I have no problem waiting.

Proceedings

ALJ LECAKES: Is that it?

MR. ZIMMERMAN: Yes.

MR. BUSS: Hi. I'm Jeff Buss from Riverbay.

ALJ LECAKES: Would you like to ask questions?

MR. BUSS: I would. I'm not sure where to stand. I'll stand back here and speak loudly, if that's okay.

ALJ LECAKES: I'm sure someone will be happy to surrender a microphone to you.

MR. BUSS: Unless they can't pick me up on the --

ALJ LECAKES: No, you're fine.

MR. BUSS: I should've objected this morning when you said who was going to go first.

MR. MILLER: Your Honor, I will just note that in response to your specific response to Mr. Buss, we said that the company may also put on a panel in support of the reply statement and Mr. Buss never responded and stated that I will also have

Proceedings

cross-examination for this panel.

ALJ LECAKES: Right. There was some confusion, though, in a sense, admittedly so. Again, we're dealing with persons and attorneys that are not regularly before the Commission. And so, therefore, some of the process, particularly with regard to what establishes testimony is concerned, and I had that allowance that there was some misunderstanding that the statements in support and reply statements are often relied on, at least the factual statement that are in. And I think that it was fair for Mr. Buss to take that as permission. And it was actually my intent to say that if Mr. Buss and Riverbay had questions for this panel on the issues that they were able to ask those questions now, only because my understanding was that they didn't put this panel forward because they thought there was no testimony on which to cross-examine this panel as to the standby rates issue.

Proceedings

MR. MILLER: Understood, your Honor. And I would understand, then, that the same general leeway that you granted the panel on the previous questions you would also grant on these questions too.

ALJ LECAKES: Yes. Although, I think that the standby rates -- well, we'll see how the cross-examination proceeds.

MR. MILLER: Yes.

ALJ LECAKES: Thank you, Mr. Miller.

MR. BUSS: Thank you, your Honor. May I proceed?

ALJ LECAKES: Go ahead, Mr. Buss.

MR. BUSS: Did the company file any specific studies in this proceeding quantifying the cost, the benefit or the impact of extending the measurement period of the reliability credit from September 15th to September 30th?

MR. ATZL: A customer such as Riverbay with its --

MR. BUSS: Judge, I object. It's yes or no. Can he answer my question

Proceedings

before he gives an explanation?

ALJ LECAKES: It's not a yes or no. I don't know that if the witness wasn't answering the question yet because the witness only got two or three words out. I don't know if he was trying to equivocate beyond that or if he was trying to answer the question.

So proceed.

MR. ATZL: In the case of the standby reliability credit and analysis of customer impact due to the period during which it's measured, Riverbay has all the load data necessary on its facility to make that determination and apparently the consulting ability to do it as well.

MR. BUSS: Right. I do understand that. But now I do agree that you haven't answered the question as posed. So did the company provide or perform any analysis, any studies like that?

MR. ATZL: Well, the company can't determine the impact of extending the period because the company doesn't know

Proceedings

what the reaction of the customers would be during that extended period. What we do know though is that Riverbay and other customers have access to their interval load data and can produce on their own what they think that impact will be, and they haven't done that.

ALJ LECAKES: Right.

MR. ATZL: So I think they have the ability to present it on their own if they think that there's a significant impact on them.

ALJ LECAKES: But for your purposes, Mr. Buss, I understand that as a no.

MR. BUSS: Thank you very much.

Did the company consider whether the requirements of Multiple Dwelling Law 79 would adversely impact the ability of any central heating and cooling customer to comply with the extended measurement period?

MR. ATZL: From my understanding of that law and in the representations made

Proceedings

by Riverbay, Riverbay has certain maintenance that it claims it needs to do with its DG unit. The extension of the period is really not an extension of the standby performance credits, which was measuring generation output, but it is a period during which the customer can take any action to reduce demand and not just run their generator. So we don't believe that there is any impact. There's other opportunities for the customer to reduce demand besides running the DG unit, including the fact that -- I'll cut it off there.

MR. BUSS: Can we consider that a no also?

ALJ LECAKES: I understand the question and I understand the response that was given and the context.

When the company and staff were consulting on the changes, whether it was through settlement negotiations prior to or not, was the company aware that this municipal law existed that might affect

Proceedings

certain customers that have this type of unit that needs to undergo an annual maintenance?

MR. ATZL: I was not personally aware of it until Riverbay raised the issues.

ALJ LECAKES: Go ahead.

MR. BUSS: Did the track 2 order require the company to conduct any studies relating to standby costs?

MR. MILLER: Your Honor, I object. The order speaks for itself. That's legal argument that if the counsel wanted to make he previously could've made. And now he's asking the witness to interpret a Commission order.

ALJ LECAKES: I do agree that there's an element of interpretation of a Commission order.

Are you aware of any requirement in a track 2 order to --

MR. BUSS: Your Honor, let me rephrase the question then.

ALJ LECAKES: Go ahead.

Proceedings

MR. BUSS: On October 13th, 2016 when the company filed the statement in support of the joint proposal and stated on page 38 that "the company was required under the track 2 order to make a filing in that proceeding regarding the basis for its current standby rates. And accordingly, the company reasonably believed that no further changes to standby rates were necessary or appropriate in this case. And the company believes that pilot rates will be developed in furtherance of the Commission's rev-related objectives developing more accurate price signals."

MR. ATZL: I'm sorry. I fell behind going to the page.

ALJ LECAKES: I didn't hear a question there. I heard a recitation of --

MR. BUSS: I was reading -- the problem was I wanted to set a foundation. They submitted this document to here. And my understanding is under your procedures you're considering this as if it was sworn testimony. So they stated in this document

Proceedings

that the rev 2 order requires them to make a filing regarding the basis for its current standby rates. Did you make that statement; yes or no?

MR. ATZL: Once again, I fell behind in terms of even pointing out to me exactly where you were reading from. So can we just get back to that?

MR BUSS: Can I approach the witness?

MR. ATZL: I have the document. Just tell me what page we're on.

MR. BUSS: Page 38 --

MR. ATZL: Thank you.

MR. BUSS: -- the first full paragraph, first sentence.

MR. ATZL: I was in the wrong document, which is why I couldn't follow you. So I apologize.

MR. BUSS: I'm more confused probably than anybody in this room.

ALJ WILES: So the language you're working from is page 38, first full paragraph?

Proceedings

MR. BUSS: Yes, and the first two sentences.

ALJ WILES: Yeah, I remember. Thank you.

MR. BUSS: Would it help if I read them aloud again?

MR. ATZL: No, it wouldn't. I could read them.

MR. MILLER: Your Honor, I will just note that while there are factual statements there are also legal conclusions made in the statement of support, and what is fair game for cross-examination are factual statements made in the statement in support and not legal conclusions stated that may have come from the lawyers.

ALJ LECAKES: Right. Although, this sentence is phrased that the track 2 order did require a study to be made, so...

MR. ATZL: So I have reviewed the paragraph. Now what's the question?

MR. BUSS: Did the company make that statement?

MR. ATZL: It's in our statement.

Proceedings

Of course we did.

MR. BUSS: And was it the company's reasonable belief that no changes to standby rates are necessary or appropriate in this case?

MR. ATZL: What we're saying here is that going into the case, we did not believe that there were any changes necessary to standby rates. And what we're referring to here in terms of the changes that were made in the 2015 rate plan extension was the standby performance credit, totally different program from the reliability credit, one in which we measure generator output, not peak demand. So what we were saying here is that going into the case we didn't feel any standby rate changes were necessary; however, in the settlement process, we agreed to many.

MR. BUSS: And one of those changes was an extension of the measurement period for the last two weeks in September, correct?

MR. ATZL: No. It's not an

Proceedings

extension of a measurement period. It's a replacement of an existing program, the standby performance credit, with a new program, a reliability credit; two completely different programs.

MR. BUSS: And under the new reliability credit, are there any requirements or measurements taken between the period of time of September 15th and September 30th?

MR. ATZL: The measurements are taken for the period June 1st through September 30th.

MR. BUSS: So the answer is yes, between September 15th and September 30th there are additional requirements and in measurements taken, correct?

MR. ATZL: No. I wouldn't refer to them as additional requirements. It's not an extension of the same program. It's a completely different program.

MR. BUSS: And the study that could be conducted for track 2, is it possible to complete them during the next

Proceedings

year?

MR. ATZL: What studies are you referring to?

MR. BUSS: The ones that you just referenced on page 38.

MR. ATZL: I don't know when those would be completed.

MR. BUSS: Is there any reason to your knowledge why the company cannot extend the period of measurement? Currently for the first rate year the measurement period for the reliability credit ends when?

MR. ATZL: In the first rate year it will end on September 15th.

MR. BUSS: And is there any reason the company can't extend that into the second rate year?

MR. ATZL: Yes, because the period for reliability credit is through September 30th. What we did as an accommodation to customers who have participated in the previous program, the standby performance credit, was we allowed

Proceedings

the first year to be a shorter summer period.

MR. BUSS: And what was the basis for allowing the first year shorter measurement period?

MR. ATZL: It was a negotiated outcome in the settlement process.

MR. BUSS: With who?

MR. MILLER: Your Honor, I object.

ALJ LECAKES: I agree.

MR. MILLER: And this question was already asked and answered. Mr. Atzl already said that this was an accommodation to customers to provide them with time, as is stated in our reply statement.

ALJ LECAKES: I understand.

MR. BUSS: No further questions.

ALJ LECAKES: Is there any other party that have questions for this witness or for this panel?

(No response.)

ALJ LECAKES: Before I turn it over to my colleague, Judge Wiles, I just

Proceedings

have some questions for Mr. Levinson that I indicated before.

Mr. Levinson, I'm correct that you are one of the attorneys for the company that represented them in Commission Cases 09M0114 and 09M0243; is that correct?

MR. LEVINSON: That was the construction cases?

ALJ LECAKES: It was the prudence case and its companion.

MR. LEVINSON: Correct.

ALJ LECAKES: And Exhibit 4 is a Commission press release that was -- I'm sorry. I'm going to give you the correct exhibit name. It was Exhibit 4 to the ICA testimony, so it's Exhibit 191 for our purposes here today for the hearing record. Exhibit 191 is just a press release related to Cases 09M0114 and 09M0243. If I recall correctly, in those cases the company as part of its compliance and part of the negotiated settlement with staff made a filing in which it represented changes that were made to its internal control

Proceedings

procedures as a result of the audits that were done both internally and by staff's third-party auditor. Do you recall those filings or those --

MR. LEVINSON: You'll have to excuse me for not being totally prepared on that question.

ALJ LECAKES: I completely understand.

MR. LEVINSON: But I do recall what you're referring to and what I do not remember 100 percent is whether or not that was filed confidentially and partly with -- I know there was confidential settlement discussions. Whether or not it was ever entered onto the docket I don't recall.

ALJ LECAKES: I can't recall offhand either. This occurred to me as I was on the train this morning to here.

Okay. I think that's good enough because my reading of the staff statement in support of the joint proposal in that case and the draft order does mention that staff recommendation that the Commission

Proceedings

adopted joint proposal was based on the showing that the company made of changes that it made to its internal control procedures as a result of the audits that were made after those arrests occurred that started those cases. Is that your recollection as well?

MR. LEVINSON: That is my recollection.

ALJ LECAKES: Judge Wiles, do you have any questions for this panel?

ALJ WILES: Yes, I do.

I welcome the panel. I should tell you that these questions I think will appear to be scattershot. They'll move from one topic to another. I have no idea which panel member would be the one who should answer. I leave that, of course, up to the company to decide, or if they should be properly posed to a different person you can tell me that too. But what I have done is walked through the joint proposal and highlighted for myself several or many areas where I think I need to clarify

Proceedings

something. And that's the purpose of my question.

Do people generally have access to the joint proposal?

MR. MUCCILO: We do.

ALJ WILES: If you look on page 6 at the second paragraph in part A, it refers to -- it defines the rate years. And the first rate year is defined to be the 12-month period starting January 1, 2017 and ending December 31, 2017. In the event that the Commission does not act in time for the new rates to take effect or to be available 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. MUCCILO: Your Honor, I would just answer that question with a question by saying that we would assume that the rates, the revenue required to be collected over the 12 months, will be collected over the 11 months.

Proceedings

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

MR. MUCCILO: Right.

ALJ WILES: What I really want you to do is, and you may not be able to do it here, but there are other places where obligations are imposed either on the company or other people. And the obligations read as though they were to begin January 1st. And I don't know whether that was the intent of the people who did this, who signed onto this agreement, to impose an obligation on somebody that would begin before the joint proposal itself was approved.

MR. RICHTER: Your Honor, I may have misheard. Did you mention about something that was issued last week?

ALJ WILES: I thought there was an order issued last week on the make-whole.

ALJ LECAKES: The Commission does need to take action at some point to extend

Proceedings

the suspension period further. I'm not sure if it happened or not.

MR. RICHTER: Understood. I just haven't seen anything issued on that.

So in answer to your question, I'll -- well, I can't speak to all the parties' intent or in terms of starting before the Commission --

ALJ WILES: I think I can ask a better question, which is has the company reviewed the joint proposal and identified the places in the joint proposal where the extension of the suspension period would have to be run into alignment with what the joint proposal requires? Basically the places where somebody's required to do something starting January 1st.

MR. RICHTER: I'm not aware of any specific discussions on that point. I know that we've had it in mind based upon the make-whole letters and Mr. Muccilo's response that there was a possibility that the Commission may act later in terms of -- and also working with Mr. Atzl -- how we

Proceedings

establish rates, how we recover the first year, et cetera. I know there are certain dates for certain activities in this joint proposal where people have already committed and started doing things. So separate from rate and cost recovery and meetings that have already started, if there are some other programs contemplated, you know, this program starts on January 1st, there wasn't specific discussions about what happens if the Commission order doesn't come out let's say until the end of January. I'm not aware of those specific discussions. All I can say is from my personal past experience with respect to joint proposals or rate plans where maybe the Commission acted later than was anticipated, I don't ever recollect that being a problem in terms of the parties adjusting what they needed to do or just going forward as of January.

ALJ WILES: Right. I don't think there'll be a problem either but I think the Commission would want to be more

Proceedings

explicit when they address it and be able to make some statement that where there was a reference to actions that should begin or be taken on January 1st that that date is postponed until February 1st. But I wouldn't want to make that statement without an indication from the company that it has no unintended consequences.

MR. RICHTER: I'm not sure whether it would have unintended consequences or not for us or other parties in the room. I'm not sure.

MR. LANG: Your Honor, I would just note I think we need to be a little bit more specific on what dates you're referring to. As Mr. Richter indicated, there are collaborative meetings that have already begun, some of which are going to begin I believe around the beginning of the year. The parties, as long as they're committed to doing it, which they have been, can move forward even in the absence of the Commission order. And I would be a little concerned because there's some

Proceedings

specific time frames that we all looked at for future events, that if all those dates get pushed off by a month or two that could actually cause other problems; in other words, not being able to get filings done as contemplated during the course of 2017.

So if the issue relates to collection of rates, that's one thing. But if the question about dates relates to collaboratives, for example, I don't think a delay in the Commission order requires any delay in the commencement or continuation of those meetings. I defer to other parties if anyone has a different view, but I don't think so.

MR. RICHTER: But then in another respect, if there's a particular program that's proposed and collectively supported by the parties that contemplates starting on January 1st. Maybe for some reason the Commission doesn't think that program's appropriate or somehow modifies it, you know, again, I'm just saying I'm not aware of any internal meetings or discussion that

Proceedings

say, Okay, what happens if this thing is delayed a month; let's go through the entire joint proposal and see for each thing we otherwise would've started on January 1st do we start, do we delay?

ALJ WILES: To answer a couple 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 11 months. That's not a problem for me. I understand how that works and I think there's going to be an item on that.

I'm also not concerned about collaboratives. There are a couple of those that were supposed to have started months ago under the agreement. And I'll ask a couple questions this morning to find out how true that was.

I'm more concerned about programatic things, which were supposed to start on January 1st. And I think there's a few where there are revenue, monies are being collected or paid beginning

Proceedings

January 1st. And I think I have to ask the company to take a look at the joint proposal and come up with a list of things which are provided for in the joint proposal where the provision of it would otherwise begin on January 1st. I don't know any other way to do it. And then everyone can look at the list and decide. As I said, I don't want to create an unintended consequence but I don't want to also put the Commission in a position where they have to rely on the good will of other people.

MR. RICHTER: Fair question. We'll prepare that list.

ALJ WILES: Thank you.

This question, I wrote the question down when I was reading page 10. And the question I wrote, EAMs, which are discussed later on in the document, earnings adjustment mechanisms, do they get -- are they part of the RDM or are they considered when the RDM occurs or when the RDM is measured or are they outside the

Proceedings

RDM? There's really no reference to a specific language here.

MR. MUCCILO: Subject to Bill double-checking, all the EAMs are outside the RDM.

ALJ WILES: So the revenue, which is being decoupled as the revenue, not counting whatever revenue was acquired through the RDM?

MR. MUCCILO: Correct.

ALJ WILES: You agree? You said subject to his agreement (pointing).

MR. ATZL: Yes.

ALJ WILES: I'm now on page 26, the earnings calculation method. In paragraph 2B, there's an equity ratio here recited of 50 percent. Is that 50 percent number defined elsewhere in the joint proposal?

I'm sorry. I think I'm trying to make you go too fast. Take your time.

MR. MUCCILO: Other than in the earnings sharing calculation of paragraph B, I do not believe the 50 percent appears

Proceedings

elsewhere in the JP.

ALJ WILES: And are rates set based on an assumption of some percent -- is there an assumed --

MR. MUCCILO: Rates are set based on a common equity ratio of 48 percent. For measuring excess earnings only, it's either the actual equity ratio up to 50 percent in terms of only measuring excess earnings. That's why I think it's the only place in the JP that it appears.

ALJ WILES: I see. Okay. And was there an underlying reason why it was 50 percent here and 48 percent everywhere else?

MR. MUCCILO: That's been a standard in the company staff's and JP's standard measurements in terms of measuring excess earnings. That's been a provision that's been in our rate plans for as long as I can remember.

ALJ WILES: And if the company operates at an equity ratio equal to 48 percent, how is the earnings sharing

Proceedings

calculation done?

MR. MUCCILO: We would measure it at the actual equity ratio, so we would measure it at 48 percent.

ALJ WILES: And on page 30, now, this describes the non-wires alternative. And there's an incentive referenced in the second full paragraph on page 30. And it says, "The terms and conditions will be established by the Commission for incentives or the same as the incentives under the TDM program." What are the incentives that are being referred to there?

MR. RICHTER: Let me take that question subject to anyone on the panel or other Con Ed colleagues out there telling me that I may be incorrect. But I think what the joint proposal indicates is that there are potential incentives contemplated in connection with non-wires alternatives pursued by the company during the term of that rate plan, that the joint proposal does not establish what those incentives

Proceedings

are or will be but references the TDM's case in which we understand I think the Commission is still deliberating as to what incentives there should be and how measured, et cetera, in connection with the TDM program. And what we agreed to accept was if ever established in that case for incentives for the TDM-type investments would apply under the joint proposal as well.

ALJ WILES: Right. I think that's the footnote there. I apologize. I didn't understand it.

And the next page, page 31. In the first full paragraph, there's a description of benefit cost analysis that's being performed. And the question is whether the benefit cost analysis that's referenced in that paragraph, is that benefit cost analysis project by project or is it the benefits and costs of all the projects taken together as a portfolio?

MR. KETSCHKE: For this it was project by project for the non-wires

Proceedings

alternative that would be evaluated.

ALJ WILES: Page 36, the municipal infrastructure. We're back at it. Sorry. In this description of the municipal infrastructure support, there are levels of expenditures that trigger different sorts of reconciliation and there are particular projects identified towards the bottom of the page that look like New York City projects in general or New York City DEP projects, those two categories. And for those two categories, they recover -- the reconciliation will, if there's too much money spent, if it's spent over budget, the reconciliation will be at 80 percent no matter how much it goes over the budgets.

At a lower level, when it's not one of those projects, there's an 80-percent recovery or reconciliation, an 80-percent reconciliation up to I think it's $100 million. The question here is who decides or how will it be decided that a particular overexpenditure comes at the

Proceedings

end of the line or the beginning of the line? Because where it is in the line it has a very different reconciliation opportunity. I don't think I've quite described it enough yet. If you had the chance to read this really closely because you came down on a train from Albany, you would see that these municipal projects, or if the budgets for municipal infrastructure support is exceeded so there's an overage --

MR. BOYLE: In a rate year?

ALJ WILES: Apparently in a rate year.

-- then the company can get 80 percent of that overage. I believe it's up to the target plus 30 million. If that's the extent of the overage, you get 80 percent. If it's above, the overage is above the target plus 30 million, you don't recover on reconciliation unless the overage is associated with one of these two types of projects, the New York City in-general projects or, B, the New York

Proceedings

City water projects.

MR. BOYLE: Or on the next page there's a C also.

ALJ WILES: Yes, or in that C.

MR. BOYLE: You would need to go over the 30-percent target and one of these types of projects would have to be the cause of going over.

ALJ WILES: If there is an overage from one of these A, B, C projects, it gets reconciled at 80 percent no matter what. There are some other projects which are not an ABC project, which if there's an overage doesn't get reconciled. And where you classify the project really makes a difference about how the reconciliation works.

MR. BOYLE: How it gets classified as whether it's one of those projects?

ALJ WILES: Right. How does that work? Do you make a filing? How does that work?

MR. BOYLE: The City would have

Proceedings

to give us -- they typically will say, This is a storm resiliency-type project. And that will determine the first one. The second one is they had a program for the combined sewer overflow. And the third one is just a dollar value.

ALJ WILES: For all three projects in any of those three categories, if they fell within the target-plus-30-million-dollar band where you get an 80 percent, it's wasted because they were going to get the 80 percent anyway. So you want those projects to come at the end.

MR. BOYLE: I don't follow.

ALJ WILES: I'll describe this better when I go off -- we'll take a break.

MR. MUCCILO: Your Honor, I would just add to that response that the company would make -- based on information from the City, the company would make a determination of which bucket it would fall in in terms of this reconciliation. And of course it would be subject to staff review

Proceedings

and staff audit in terms of if we defer to the cost under that mechanism.

ALJ WILES: Well, that may be the best answer.

MR. MUCCILO: All of our troughs and reconciliation are subject to staff audit and staff review before amounts are collected in the next rate plan.

ALJ WILES: On page 47, the research and development expense for gas, my question is whether the program for methane detectors is elsewhere in the joint proposal. Is that an R and D project that would also fall into this category or is the methane detector -- it might be a pilot but it's the methane detector program -- not part of research and development?

MS. BODEN: As far as I know, it's only R and D.

MR. RICHTER: If nobody else on the panel has a specific response, maybe I'll give you one subject to check. I believe that other methane detector program described elsewhere in the joint proposal

Proceedings

is being funded by, I think, amounts that were a result of a reconciliation and on the books that either could've been credited to customers to reduce rates but was instead could be used to fund this other methane reduction program.

ALJ WILES: On page 52 in paragraph 3, about six lines down, there's a reference. The phrase is "Except for an amount equal to 14 percent of the net refund or credit." And page 35, which I think is the property tax reconciliation, the number is 10 percent rather than 14 percent. So I'm wondering why was there a distinction here?

MR. MUCCILO: Your Honor, two different concepts. The earlier 90/10 speaks to the reconciliation to target. And so if property taxes reconcile to target, 90 percent is reconcilable -- any overage in the target or any underage in the target, 90 percent is differed for either refund or collection by the company, 10 percent is not deferred. So that speaks

Proceedings

to the reconciliation target. The 14 percent speaks to the property tax refunds that the company may achieve during the rate plan where we are proactive and receive a refund for previously paid property taxes where we're here as describing an incentive, if you would, up to 14 percent of that refund. Two different concepts.

ALJ WILES: I think I got that. But why would they be different?

MR. MUCCILO: Again, that's been a provision --

ALJ WILES: In both cases this percent is basically what goes back to the benefit of rate payers, right?

MR. MUCCILO: The 90 percent is deferred, 10 percent is on the property tax reconciliation, on the 14 percent the company retains, right.

ALJ WILES: But as far as you know, there's no underlying rationale for the difference between the two? What about the last rate plan, did it have similar --

Proceedings

MR. MUCCILO: The 14 percent has been a long-standing provision in terms of property tax refunds and to incent the company to pursue reductions in taxes. And I would suggest it's independent of the 90/10. And we submitted testimony in our filing that it should be 100-percent reconciliation, not 90/10. And so I think they're two separate -- I would describe them as two separate concepts.

ALJ WILES: The paragraph we were looking at, the last sentence says, "Additionally, the company is not relieved of the requirements of 16 NYCRR, Section 89.3, with respect to any refunds it receives." The question is does that paragraph or does that sentence mean that the Commission would retain a sort of residual authority to modify the 14 percent if it chose to do so in the future in the case pursuant to that PSL section?

MR. LANG: That's a question that calls for a legal conclusion as to the Commission's authority as opposed to a

Proceedings

factual question.

ALJ WILES: Well, I can ask the legal question of what's the intent of the joint proposal to restrict the Commission's authority.

MR. LANG: Well, just speaking from --

ALJ WILES: What was the party's intent?

MR. LANG: There's a filing and notice requirement under that regulation that have been preserved, again, like other aspects of this for at least 15 to 20 years. But if they receive a refund they still have to notify the Commission of that refund.

ALJ WILES: I'm not sure. We're having a difference here.

MR. RICHTER: Again, I would agree with Mr. Lang that the 89.3 reference is that the company has filing requirements with respect to its receipt of tax refunds, which this joint proposal doesn't interfere with. We make an annual showing under the

Proceedings

joint proposal I think of our efforts. As far as the 14 percent goes and the Commission's ability to change that, I guess the view I would give is that's one of many terms in this joint proposal which establishes the 86/14 as the sharing for the period of this rate plan. And I think it's consistent with long-standing Commission view in terms of an appropriate sharing percentage as between customers and the company for those efforts.

I don't see the words here right now. I have it in the back of my mind whether it's in the regs or somewhere. I guess on one hand, the Commission, if it thought there was some reason to modify a rate plan and they thought that was an appropriate action to take I guess they would take it. I guess in our view we would like all of the provisions of the rate plan, including the 86/14, to say we know what we get for the next three years.

I mentioned before that in the back of my mind I'm not sure that -- in

Proceedings

that regard also it's either the Commission regs or maybe Commission policy which may not even preclude the company in extraordinary circumstances from coming in and asking for a higher sharing percentage.

MR. DEEM: Just to clarify, because it's 86/14 and 90/10, the 10 is more compared to the 86, not the 14. On the refund, customers get 86 percent of the refund. They get the line share of the refund.

ALJ WILES: The 86 percent?

MR. DEEM: Right.

ALJ WILES: And if it was -- we're beating a dead horse -- if the 14 were 10, then the customer would get 90 percent.

MR. DEEM: Right. But on the other reconciliation, the customer's contributing the 90 percent of the overage.

MR. RICHTER: If I could just supplement my response because I refreshed my recollection. So again, in terms of refunds, the rate plan establishes the

Proceedings

86/14. The provision I was trying to call up, and I just remembered it, is on page 36 of the joint proposal where it says, "The company it not precluded from applying for a greater share of lower-than-forecasted property taxes" -- I guess that's more than the 90/10 -- "if its extraordinary efforts result in fundamental taxation changes and produce substantial net benefits to the customers." So that's what I was recollecting before, was an opportunity for the company to come in as a result of extraordinary efforts -- again, the rate plan is really geared towards giving the company an even greater incentive it already has to reduce costs to achieve savings in the area of property taxes for the current and long-term benefit of customers.

ALJ LECAKES: This particular provision on page 52, am I correct that in part the reason it's agreed to an advance is to give some certainty both to staff and to the company so that there doesn't need

Proceedings

to be a negotiation that follows every time there's a property tax filing under 16 NYCR or 89.3?

MR. RICHTER: I can't speak for everyone. That's my understanding.

MR. LANG: Your Honor, I have a little different understanding of it.

ALJ LECAKES: What's that, Mr. Lang?

MR. LANG: There was an issue that arose a number of years ago when the settlement came up that the company took the position that they no longer needed to comply with Section 89.3 because it was already dealt with in the joint proposal. This sentence was added, I want to say 10 or 12 years ago to make it clear that they were not relieved of that filing obligation.

ALJ LECAKES: No, I appreciate that.

MR. RICHTER: I agree with Mr. Lang in terms of (inaudible) 89.3. I thought Judge Lecakes' question went to

Proceedings

establishing the 86/14.

MR. LANG: In the proceedings that have occurred under 89.3, the biggest issue really is in what is the disposition if it's a large refund. And Mr. Richter is absolutely correct, there have been a few instances -- I think it was more in the realm of income taxes than property taxes -- where the company has sought a greater share because of what it classified as extraordinary efforts. And in terms of the property tax proceedings that I can recall, the Commission has in every instance deferred to the provisions of the joint proposal to say that sharing has been decided and we see no reason to disturb that.

ALJ LECAKES: Right. I appreciate that difference. And the property tax, though, is the one that the company has a little bit more control over, or I don't think control is the right word I'm looking for there, but has more venues in which it can go and seek some sort of

Proceedings

relief in the municipalities as opposed to the income tax. So isn't that correct?

MR. LANG: There are multiple property tax venues. I can tell you the income tax issue that I'm thinking of involves I believe it was as hundreds of millions of dollars. It was a very significant sum.

ALJ LECAKES: But this is just a way of trying to establish an understood agreement among the parties to just not have to go through the negotiation process every time that a property tax refund is issued or at least filed for; isn't that right?

MR. RICHTER: That's my understanding.

ALJ WILES: On page 65, paragraph numbered 8 begins with the phrase, "In addition to the tariff changes required," I assumed when I read it the first time that this was a reference to the electric tariff changes required and there was just an omission. I'm asking the question is there

Proceedings

more to that omission than --

MR. ATZL: I think we're in the electric section.

MR. RICHTER: It has -- yes, the same provision is on page 72 for the gas section.

ALJ WILES: And that will be for gas?

MR. RICHTER: Yes.

ALJ WILES: And on page 74 in the paragraph 1 under J, in the middle of the paragraph it talks about benefit cost analysis. And my question is was it the intent here that the benefit cost analysis was with respect to what's called new programs, and that's defined in the third line, or something else? Is it new programs only that have to pass the benefit cost analysis or do some existing or the existing programs?

MR. KETSCHKE: My understanding, this speaks to new programs under the system peak reduction energy efficiency and vehicle programs that were introduced as

Proceedings

part of this rate case. It does not speak to the previous programs for energy efficiency and demand reduction that were covered under the ETIP. Those were also the benefit cost tests.

ALJ WILES: So the energy efficiency, what you just referred to, are on the next page, page 76, paragraph B?

MR. KETSCHKE: Yes.

ALJ WILES: So just to repeat so I can check this off, so the references to new programs in that paragraph, the one on page 74, it's not a reference to any of the quote/unquote existing programs?

MR. KETSCHKE: The reference is only to the programs related to the new programs introduced under this rate filing.

ALJ WILES: Page 77, at the top of the page there are three subparagraphs numbered i, ii, and iii. For any one of those paragraphs, is there someone who can walk through the arithmetic to get to 178, for example, from the 20 gigawatt hours, 15 and 5? If you add the three up, 20 plus 15

Proceedings

plus 5, you obviously don't get 178, so I wanted to just make explicit how that calculation's done.

MR. KETSCHKE: I'm going to ask for help from the audience. I believe that was incremental above the existing ETIP and that's the number that goes in.

ALJ WILES: So the existing ETIP is the number that's missing in the paragraph?

MR. KETSCHKE: It was. The gap there is ETIP is 158 gigawatts and then it's the incremental 20 above ETIP gets you to the 178.

ALJ WILES: So in the third year ETIP would be producing -- wait a minute. In the third year the arithmetic is a little uncertain.

MR. KETSCHKE: And in rate year three, ETIP incrementally grew on delivery so it would move to 180 so that the 211 is the incremental over the 180 to get to the 391.

ALJ WILES: Next page is page 78.

Proceedings

And my question here really is this calls for a November 1st filing in the next paragraph after the numbered paragraph 3. And I don't know what the -- what's unfolding in this case? Because I don't think we got any filings.

MR. RICHTER: I believe we made a filing yesterday.

ALJ WILES: Oh, you did?

MR. RICHTER: Was it this filing?

MR. KETSCHKE: That should be this filing, yes.

MR. LANG: Your Honor, we would just note that the parties have agreed because of some tight timing in this hearing that those parties such as the City that plan on filing comments on this will actually have until Friday to do so as opposed to yesterday.

ALJ WILES: Oh, so there's a little bit of a delay. All these filings are supposed to come in at the end of the week?

MR. LANG: The November 1st

Proceedings

filing was made late afternoon. And the intent initially when this was negotiated is that any comments were all going to be due on November 1st. The parties have agreed to allow us an extra three days to submit our comments on what was filed yesterday.

ALJ WILES: Great.

ALJ LECAKES: What about the November 8th date then? The paragraph states that the Commission regarding the rate year, parties may file their comments by November 1st and reply comments, recommendations, by November 8th. So now we know that the regular comments have been extended to the 5th, does the 8th date still apply for replies or has there been --

MS. DE VITO TRINSEY: Your Honor, it's my understanding that the reply date has also been extended to the 11th.

ALJ WILES: And is all of this on the assumption that there was not an agreement in the collaborative?

Proceedings

MS. DE VITO TRINSEY: That's correct.

ALJ WILES: The next page, page 79. No, I already asked that.

Page 83. There's a numbered paragraph 2 about distributed generation there. And this is another one that calls for a collaborative, I think. No, 2A, the last two lines on the page talk about convening a collaborative. Was that done?

MR. MILLER: Yes, your Honor. The first collaborative meeting has been held.

ALJ WILES: Is there a subsequent schedule for what's been happening?

MR. MILLER: Yes. There is a follow-up meeting scheduled for that collaborative.

ALJ WILES: The next page, page 84. In the two lines before the B paragraph it talks about the last phrase and the sentence is, "DPS staff will set the targets." The question is did the party have an understanding that's not

Proceedings

reflected here as to what criteria DPS staff would use to set the targets?

MR. RICHTER: Steve.

MR. MILLER: Well, it's really Andre.

ALJ WILES: Come on, Andre.

MR. KETSCHKE: The short answer is no, we didn't have a specific set of criteria that was discussed at the time.

ALJ WILES: I'm going to ask the staff the same question.

Page 89, the numbered paragraph number 7. And the question I have is are these residential customers that are losing service or commercial customers or some other category or both?

MS. BODEN: It's either, residential or commercial.

ALJ WILES: And how do these customers lose service?

MS. BODEN: Excuse me?

ALJ WILES: The way it's written, it could be they lost service because they couldn't pay or this could be storm

Proceedings

related, the lost service because of a storm.

MS. BODEN: It's typically actually due to either a gas leak and they're turned off and they have to come back on. It's that restoration of service.

ALJ WILES: Oh, I see.

Page 92. And this is in paragraph 5, the numbered paragraph 5, which describes a notice that the company's going to provide. And the question I have is is there any companion process for someone who disagrees with the company, who receives one of these letters and has a disagreement as to the resetting.

MR. MURPHY: All customers have the right to contact us with their issues and also have rights to make a complaint to the Commission regarding billing, billing issues related to the volume, correct.

ALJ WILES: And is this in response to some comment that you received or some --

MR. MURPHY: This was in response

Proceedings

to one of the parties that represented
customers that felt this was a concern.
ALJ WILES: And can you tell me
who that party was?
MR. MURPHY: The party was CHIP,
Community Housing Improvement Program.
ALJ WILES: The next page, 93,
the paragraph 6. Paragraph 6, I believe,
is in response to the testimony from the
PULP witness, Public Utility Law Project
witness.
MR. MURPHY: Correct.
ALJ WILES: And this is a new
notice requirement basically?
MR. MURPHY: Correct.
ALJ WILES: Is there anything
more or in addition to this that the
company would be doing to respond to the
situation described in the PULP notice or
is this it?
MR. MURPHY: This is it.
ALJ WILES: So you're going to
continue to use the courtroom as a meeting
space?

Proceedings

MR. MURPHY: Yes.

MR. RICHTER: If I may, your Honor, just to clarify in terms of your question. In terms of what's going forward and the concerns raised by PULP, we worked diligently with PULP. And at a prospective basis it's my understanding that PULP feels also that there's nothing else that the company needs to do on a going-forward basis. You know, I hesitate to speak for them but I believe they also pursuant to this joint proposal filed such a document recently with the Commission indicating their concerns on a going-forward basis are now satisfied. So they're the ones that raised the concern and I think they're satisfied -- right, Mr. Murphy --

MR. MURPHY: Right.

MR. RICHTER: -- in terms of what the company rather be doing on a going-forward basis. I think they left open retrospectively what, if anything, should be done. But going forward, I think PULP is satisfied as well.

Proceedings

MR. MURPHY: Right.

ALJ WILES: I've seen the material that they provided and I just had my own questions really.

MR. LANG: On this issue, I do think it's important to note as well that the City shared some of the concerns that PULP had and I think it's important for the record to reflect that the procedures that Con Ed has in place were also reviewed by the New York State Attorney General's Office and the Attorney General's Office had signed off on them. I think that's an important factor that should be reflected.

ALJ WILES: Anything else on this topic?

(No response.)

ALJ WILES: Page 94, at the top of the page, paragraph 8, it says, "Regarding arrearages associated with landlord/tenant accounts." And what is a landlord/tenant account?

MR. MURPHY: So this was also a concern brought up by CHIP, that some of

Proceedings

their constituents who were landlords had services in their name as a result of a tenant moving out and them becoming responsible for the service. And those services in some cases, there were issues with notification that those accounts were then put in their name because they were the landlord and there were issues with paying them from an accounts payable perspective which led to terminations of that service, et cetera. So we agreed that we can improve the notification process by getting together and working group.

ALJ WILES: And there are electric accounts or gas accounts or both?

MR. MURPHY: They're primarily gas accounts, the examples that they provided. But I think the objective of the collaborative was to discuss the relationship between -- the issues that landlords face in managing services that get put in their name as tenants move out of the building.

ALJ WILES: I think we've come to

Proceedings

a clear but I think there's a reference here to Left on for Landlord, LOFLL.

MR. MURPHY: So separately we have some agreed-to changes related to what we call soft close or enactive gas services. And one of those programs will directly help this conversation, which is the Leave on for Landlord Program, which will allow landlords to take responsibility to inform us that on a going-forward basis they would like to take responsibility for all accounts that are not in a customer's name. And the goal there is to keep someone responsible for the service, to keep the services on for minimum use as they show the apartments or need access to them.

ALJ WILES: And the Left on for Landlord, LOFLL, Program is new; is that right?

MR. MURPHY: This is a new program that we modelled after discussions with staff.

ALJ WILES: Paragraph 12 of page

Proceedings

95, I think that each of these or that the incentive is supplied once a year. I'm inferring that. The question is is that true?

MR. MURPHY: That's correct. For each rate year there's an opportunity for incentive.

ALJ WILES: And so at the end of the rate year you reset. So if you got the incentive in year one, and that means you're a certain percentage or certain number below the target, rate year 2 do you reset at zero and count or do you get to carry forward that --

MR. MURPHY: You reset next year, you start over at zero.

ALJ WILES: On page 97, for example, at the top of the page in the carry-over paragraph it talks about the company in the second and third lines. "The company and staff will determine appropriate regional target levels." And if the company and staff disagree, what was the intent of the parties for resolving a

Proceedings

disagreement, disagree as to the target?

MR. MURPHY: If the company and the staff disagree?

ALJ WILES: As to what the target should be, yes.

MR. MURPHY: I believe we made a provision for what would happen in the event of disagreement, as it's stated the assumption is that we'll work together to set targets that we will be held to.

ALJ WILES: Other places in the joint proposal though where there is the opportunity for participants in a discussion to disagree, there's a resolution for it. Is there a reason you left it out? The conventional way to resolve this is to then say the Commission will decide between the two. Is there an objection to doing that here?

MR. MURPHY: I don't believe there's any reason. I mean, we had this discussion about what those targets would be and we likely thought we would be able to agree on them.

Proceedings

ALJ WILES: The $500,000, I had a little trouble figuring out how that actually works. Is it $500,000 a year is the cap?

MR. MURPHY: We're deploying in multiple regions. And so the incentive is based on full deployment in each region, $250,000 incentive if we meet the agreed-upon targets in each region. And during the rate plan, we will complete two regions. So we have an opportunity to earn $500,000.

ALJ WILES: And the other three regions, I think, or four, are after the rate plan ends?

MR. MURPHY: Correct.

ALJ WILES: So this does not apply to that?

MR. MURPHY: Correct. We based it on what our plan for deployment was, that we would complete two regions during the rate plan.

ALJ WILES: Thank you very much for your help.

Proceedings

ALJ LECAKES: With the exception of Mr. Atzl, are we ready for the next panel?

MR. RICHTER: Can we have less than five minutes? We just want to talk to the panel about possible redirect.

ALJ LECAKES: Absolutely. My mistake.

MR. ADELBERG: I also had a follow-up to one of the responses to one of your questions. I wondered if that would be permitted. Your first question had to do with what would happen if the rates go into effect after January 1st. I just had a follow-up on that.

ALJ LECAKES: Go ahead.

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?

Proceedings

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.

MR. ADELBERG: So it's your position that the company should get the benefit of a year's value but a customer should not, is what you're in effect saying?

MR. ATZL: It wouldn't go to the benefit of the company either. In doing the make-whole, we would assess the make-whole in the case of SC2, which I think is what you're focusing on, it would

Proceedings

be assessing the volumetric rates rather than the customer charge.

MR. ADELBERG: But that would ensure that you get the revenue that you were seeking in the stipulation regardless of when the rate year starts; is that correct?

MR. ATZL: Yes. That's what the make-whole's for.

MR. ADELBERG: And so you're saying that you don't believe that should apply to the customer who's bargained for a discount under this joint proposal?

MR. ATZL: No, we do. But it may not be in every specific charge so the customer charge is set. We've agreed on what customer charges are. And in the make-whole process, we're not going to be altering customer charges. We're going to do it in the volumetric charge.

MR. ADELBERG: And that's a unilateral decision on your part? That's not reflecting any judgement as to fairness of the position? I'm trying to understand

Proceedings

why you seem so resolute and clear as to what you're doing at this point.

MR. ATZL: Because we think it is fair.

MR. ADELBERG: No further questions.

ALJ LECAKES: Thank you.

Why don't we just take our afternoon break now and come back at 10 after 3:00? And during that time you can confer with the panel as to whether there's any redirect.

(Whereupon, a short recess was taken.)

ALJ LECAKES: It's just after 10 after 3:00.

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

Proceedings

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.

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 filing in this case. 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.

ALJ LECAKES: Is there anything else?

MR. RICHTER: One more area, your

Proceedings

Honors.

Mr. Murphy, Judge Wiles and you had a short discussion before the break regarding an EAM associated with the AMI program and a discussion about the $500,000 EAM available under this rate plan. I understand you'd like to just expand upon or make sure we clarified the issue with respect to the $500,000.

MR. MURPHY: Yes. Your Honor, you asked about page 97 and the $500,000 EAM and I explained that that was for two of the territories that we're going to deploy in. And you asked me if the other deployment areas are considered in this joint proposal and I incorrectly said that they aren't addressed. In fact, there's a footnote on page 97 that indicates that if the company doesn't file rates after this rate plan, and that we still do have an opportunity to earn the same incentive on those points, so we earn $250,000 per each (inaudible) employment through 2022.

ALJ WILES: How many regions are

Proceedings

there?

MR. MURPHY: Six regions; five boroughs and Westchester County.

ALJ WILES: Thanks.

MR. RICHTER: That's all we have.

ALJ LECAKES: This panel is dismissed. Mr. Atzl, you may remain.

Let's have the company call its next panel up.

MS. KRAYESKE: The company calls its demand analysis and cost of service panel.

ALJ LECAKES: Panel members, when you get settled can you please state your names for the record spelling out your last name?

MR. ATZL: My name is William Atzl, A-T-Z-L.

MS. GRAVES: Kristin Graves, G-R-A-V-E-S.

MR. FLISHENBAUM: Yan Flishenbaum, F-L-I-S-H-E-N-B-A-U-M.

MS. VILLETA: Lucy Villeta.

ALJ LECAKES: Thank you.

Proceedings

Panel members, could you just stand and raise your right hand, please?

WHEREUPON,

WILLIAM ATZL,

having been first duly sworn by ALJ Lecakes, is examined and testifies as follows:

MR. ATZL: Yes, I do.

WHEREUPON,

KRISTIN GRAVES,

having been first duly sworn by ALJ Lecakes, is examined and testifies as follows:

MS. GRAVES: Yes, I do.

WHEREUPON,

YAN FLISHENBAUM,

having been first duly sworn by ALJ Lecakes, is examined and testifies as follows:

MR. FLISHENBAUM: Yes, I do.

WHEREUPON,

LUCY VILLETA,

having been first duly sworn by ALJ Lecakes, is examined and testifies as

Proceedings

follows:

MS. VILLETA: Yes, I do.

ALJ LECAKES: Ms. Krayeske, please lead us into putting their testimony into the record.

MR. KRAYESKE: Panel, did you submit testimony on October 21st, 2016?

MR. ATZL: Yes.

MR. KRAYESKE: And if I asked you those same questions and answers today, would they be the same?

MR. ATZL: Yes.

MS. KRAYESKE: Do you have any corrections you'd like to make to the testimony that you submitted on October 21st, 2016?

MR. ATZL: We do. On page 17, line 10, there's a case number there, 13E0300. It should be 0030.

On page 33, line 3, add the word is after the number 10.

On page 34, line 8, there's a reference there to a page number 16. That should be 18.

Proceedings

On that same page 34 in line 9, add as it does after transformers.

MR. LANG: Excuse me, Mr. Atzl, could you just give me the page 33 change again?

MR. ATZL: On page 33, line 3, we added the word is after the number 10.

MR. LANG: Thank you.

MR. ATZL: On page 45 in line 11, there's a reference there to a page 29. That should be page 28.

And on page 53 at the very bottom under source, change Schedule 3 to Schedules 5.1 through 5.3.

MR. KRAYESKE: Does that complete your corrections on this testimony?

MR. ATZL: Yes.

MR. KRAYESKE: I'd like to ask that the testimony be inserted into the record as if orally given.

ALJ LECAKES: Granted. At this point, I've handed to the court reporter a disc that's labeled on the front of it JP-DAC Panel Rebuttal Testimony -

Proceedings

Corrected. And on the disc is a file with that exact name. It's a Word file. There's only a single file on that disc. And that should be put into the transcript at this point.

(Whereupon, the following is the JP-DAC Panel Rebuttal Testimony-Corrected.)

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

JOINT PROPOSAL

DEMAND ANALYSIS AND COST OF SERVICE PANEL REBUTTAL TESTIMONY

Table of Contents

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

JOINT PROPOSAL

DEMAND ANALYSIS AND COST OF SERVICE PANEL REBUTTAL TESTIMONY

Introduction

Q. Please state your names.

A. William Atzl, Lucy Villeta, Kristin Graves and Yan Flishenbaum.

Q. Have you previously submitted testimony in this proceeding?

A. Yes, we have.

Q. What is the purpose of your rebuttal testimony on the Joint Proposal?

A. We are responding to the Statement in Opposition andDirect Testimony of the UIU Electric and Gas Rate Panels on the Joint Proposal regarding the Company's electric and gas embedded cost of service ("ECOS") studies, revenue allocation methodology and rate design.

Q. Does the Panel have any overall comments on UIU's testimony and Statement of Opposition?

A. Focusing entirely on a small number of issues associated with the Company's electric and gas ECOS studies, UIU claims that the Joint Proposal should be modified as it is not in the public interest. The issues UIU focuses on are:

Electric

1. Low tension demand allocator;

2. Introduction of customer component to primary;
3. Selection of sizes in determining minimum system of secondary conductors and transformers;
4. Revenue allocation and rate design issues;

Gas

5. Classification and allocation of costs associated with distribution mains (minimum system) including resulting revenue allocation and rate design issues;
6. Increase in the interruptible off-peak firm delivery rate;

Electric and Gas

7. AMI cost allocation; and
8. REV issues.

Q. Does the Company agree with UIU’s positions?

A. No. The Joint Proposal is based on electric and gas ECOS studies that were developed in a similar manner, with one exception in the electric study, that UIU and its predecessor CPB have not objected to in recent Con Edison settlements. As explained in this testimony and the accompanying statement, UIU provides no reasonable support for modifications to the Company’s electric and gas ECOS studies that would shift cost responsibility from residential customer classes to other customer classes.

Q. Are UIU's recommendations partial to particular classes of customers?

A. Yes. UIU's proposals serve two purposes: first, to shift cost responsibility away from residential and small commercial customers and second, to reduce fixed monthly customer charges. UIU's recommendations therefore benefit the Company's SC1 residential and SC2 small commercial electric customer classes and the Company's SC1 and SC3 residential gas classes. Effectively, UIU accepts all other aspects of the Proposal but claims that the Proposal is not in the public interest due to cost allocation issues that have a relatively minor impact on customers. For example, as noted in UIU's Statement in Opposition (p. 4), the RY1 electric SC1 residential delivery revenue impact of 4.2% is only slightly greater than the 3.6% overall average delivery revenue increase for all classes. Similarly, the RY1 delivery revenue impact on the SC1 and SC3 residential gas classes is 3.7% as compared with a 3.1% overall average delivery revenue increase for all classes.

Q. Please continue.

A. The Company’s cost allocation methodologies, which all but one of the signatories to the Joint Proposal agree with, follow established costing principles, are consistent with past Commission-approved practice, and have evolved with regulatory precedent over time. The Company does not simply introduce new costing methodologies but rather develops new methods considering cost causation and other factors.

Q. How is your testimony organized?

A. We will handle the electric and gas issues separately and then address AMIand REV issues as they pertain to both electric and gas service.

Electric

Q. Please summarize UIU’spositions regarding the Company’s electric ECOS study filed and reflected in the Joint Proposal in this proceeding.

A. UIU criticizes the manner in which the Company determines the demand and customer classification of distribution costs, arguing that the Company classifies too many costs as customer related. As discussed in our initial testimony, the Company introduced a customer component of primary distribution facilities. Only UIU and Pace oppose this change. UIU also challenges the Company's selection of conductor sizes in calculating the minimum system customer component of low tension distribution lines. UIU also recommends that transformers be classified as entirely demand related and therefore excluded from the minimum system.

Q. Does UIU raise other concerns?

A. Yes. UIU further recommends that the ECOS demand allocator for low tension distribution plant ("low tension demand allocator") be based exclusively on class Non-Coincident Peaks ("NCP").

Low Tension Demand Allocator

Q. Please explain Individual Customer Maximum Demands ("ICMD") and NCP.

A. ICMD represents the actual sum of billing demands for a set of customers which do not necessarily occur at the same time. NCP is the sum of demands for a class of customers at the time of the class peak.

Q. How does the Company's ECOS study handle ICMD and NCP?

A. In allocating low tension distribution costs, the Company uses a weighted average of 50% NCP and 50% ICMD for non-residential classes. A special adjustment is made for the SC1 residential class to allow for the diversity of individual customer loads in multi-family dwellings, resulting in a weighting of 75% NCP and 25% ICMD for this class.The Joint Proposal incorporates the Company's ECOS study, including its underlying assumptions regarding cost allocation and the inclusion of ICMDs in the low tension demand allocator.

Q. What is UIU’s position on including ICMDs in the low tension distribution allocator?

A. UIU believes that the inclusion of ICMDs is inappropriate and results in an over-allocation of costs to certain classes. UIU supports the exclusive use of class NCP as the appropriate allocator for low tension distribution costs claiming that"sections of secondary conductor or conduit or poles are not generally planned on the basis of individual customer demands." (pp. 13, 14)

Q. Do you agree?

A. No. UIU’s position assumes that local distribution facilities are sized to meet the coincident demands of customers served by them. While this may be true, the many local demands on a utility distribution system are not coincident with each other, nor are they necessarily coincident with the overall non-coincident peak of any individual class of customers. Localized demands, such as those on a single transformer, are driven more by ICMDs of the customers served by that transformer than by the overall NCP of the class to which the customers belong. Demands on system components further from the actual customers tend to be more coincident with the overall non-coincident peak. Therefore, the use of a blended allocator consisting of ICMDs and NCPs is an entirely appropriate approach.

Q. Is UIU's position supported by Exhibit __ (UERP-JP-10) to UIU's testimony?

A. No. Exhibit __ (UERP-JP-10)Charging for Distribution Utility Services: Issues in Rate Design,December 2000 (pp. 32-33) does not support UIU's position. Itstates, "As a general matter, distribution facilities are designed and operated to serve localized area loads. Substations are designed to meet the maximum expected load of the distribution feeders radiating from them. The feeders are designed to meet at least the maximum expected loads at the primary and secondary service levels. (As noted above, some investment in distribution capacity may be seen as reducing energy losses rather than serving peak demand.) For costing purposes it is the relevant subsystem’s (substation, feeder, etc.) peak that matters, but these peaks may or may not be coincident with each other or with the overall system’s peak. There can be significant variation among them. Consequently, one practice is to allocate the costs of substations and primary feeders (which usually enjoy relatively high load factors) to customer class non-coincident peaks and to allocate secondary feeders and line transformers (with lower load factors) to the individual customer’s maximum demand.”

Q. Does this Exhibit mention anything else related to NCP and ICMD?

A. Yes. The following footnote is included in the above-referenced text:

“Class non-coincident peak may not be the best measure of cost causation, since much of the system serves a variety of customer classes. Chernick, Paul, *From Here to Efficiency: Securing Demand-Management Resources,* Vol. 5, 1993, p. 81. Ideally, the object is to design rates that reflect the costs of customers' contributions to the relevant peak."

Q. Please continue.

A. UIU's position is not supported by its own Exhibit. Unlike UIU's position, the Exhibit agrees with the Company and allows distribution costs to be allocated based on both ICMD and NCP.

Q. What additional arguments does UIU make to support its position?

A. In an attempt to bolster its position, UIU makes a number ofeasily dismissiblearguments, as explained below. These arguments include:

1. an analogy of the ICMD/NCP methodology to roads;
2. that the Company did not explain the allocation in its testimony;
3. that distribution costs are incurred to meet peak demands and NCPs are the relevant loads;

4. that the Company plans its system to meet NCP, not ICMD;
5. that the use of this allocator was a concession to NYPA;
6. that distribution systems do not experience ICMD; and
7. that the Company agrees that smaller customers should be treated differently than larger customers.

These arguments are unpersuasive as we explain below.

Q. First, UIU uses an analogy to a road transportation system, arguing that roads are not sized to meet the maximum load of all cars being on the road at once. They claim that this is equivalent to an electric distribution system not being sized to meet the sum of individual customer maximum demands. Is this an appropriate analogy?

A. No, it is not. Roads are often crowded at rush hours and other peak times. The equivalent "rush hour" issue in an electric system would mean the potential for frequent brown-outs, voltage reductions, and other problems associated with over-loading of the electric system.

Q. Please continue.

A. Additionally, during winter storms or other stressed periods, denizens of a region understand that roads may be closed or nearly impassable. During storms and times of high summer temperatures accompanied by high humidity, Con Edison customers expect to be able to run their air conditioning and other systems uninterrupted. Electric systems are not and cannot be designed like roads. Therefore, UIU's analogy is inapt.

Q. Second, UIU claims that the Company did not make it clear in its pre-filed direct testimony that the low tension demand allocator includes any factors beyond NCP demand (p.11). Is UIU's claim relevant?

A. No. There are three places where the Company initially explained the low tension demand allocator. First, the Company's explanatory notes which preface exhibit __ (DAC-2) describe this allocation factor. Second, the weighting is demonstrated in the workpaper that determines the demand allocators, which was provided along with our initial testimony. Third, in the April 5, 2016 rate case walk-through for all parties, attended by two UIU staff, threeslides showed the inclusion of ICMD and NCP for the low tension allocator. See Exhibit __ (JP-DAC-1)

Q. Third, UIU states (pp. 10-11)that "it is generally accepted that most distribution costs are incurred in order to meet peak demands" and that "the relevant loads are the NCP loads of the various customer classes." Do you agree with these statements?

A. No. Not only does UIU’s own exhibit contradict their position, as mentioned above, the NARUC Manual (p. 97) states that "customer-class non-coincident demands (NCPs) and individual customer maximum demands are the load characteristics that are normally used to allocate the demand component of distribution facilities." The NARUC Manual goes on to say, "The facilities nearer the customer, such as secondary feeders and line transformers, have much lower load diversity. They are normally allocated according to the individual customer's maximum demands."

Q. Fourth, UIU states that "The Company thus admits ... that it plans its delivery system to meet NCP demand, not ICMD" (p. 12). Does this statement incorrectly characterize the Company's position?

A. Yes. UIU is summarizing the Company's response to UIU 8-152(included in Exhibit ___ (DAC-4)and (UERP JP-6)), in which the Company stated that it matches cable capacity to the demand in a load area. UIU mistakenly translates the phrase "in a load area" (which is a geographic concept comprised of a small number of customers in multiple customer classes) as being equivalent to "NCP demand" which is determined for an entire customer class, but these are completely different concepts. As mentioned earlier, the many local coincident demands that drive localized utility distribution system investment are not coincident with each other, nor are they necessarily coincident with the overall non-coincident peak of any individual class of customers. Localized demands, such as those on a single transformer, are driven more by ICMDs of the customers served by that transformer than by the overall NCP of the class to which the customers belong.

Q. Does the Company agree with UIU’s statement that the “ICMD is a hypothetical demand metric estimated by summing the peak demands of each individual customer in a given customer class?”(p. 11)

A. No. ICMD is not a hypothetical metric, but represents the actual sum of billing demands for a set of customers.

Q. Fifth, please address UIU’s claim that the Company’s introduction of ICMD in its low tension distribution demand allocator was a concession to NYPA first introduced in Case 96-E-0897 (p. 13).

A. The Company’s costing methodologies have evolved with regulatory precedent, whether litigated or settled, over time based on input from PSC Staff and other parties to the Company’s rate proceedings. The NCP/ICMD weighting has beenapproved by the Commission in multiple rate cases over two decades. UIU and its predecessor, the Consumer Protection Board (“CPB”), have participated in these proceedings and had ample opportunity to challenge this methodology. They chose not to.

Q. Sixth, UIU states that "Distribution systems do not actually experience ICMD” (p.11). Do you agree with this statement?

A. Yes. Distribution systems, in their entirety, do not experience ICMDs or class NCPs.Portions of the system closest to the customer experience loads closest to ICMDs while portions of the system further from the customer experience NCPs. This is why the Company weights the two factors in the low tension demand allocator.

Q. Lastly, UIU states that "The Company agrees that smaller customers should be treated differently from larger customers" regarding the weighting of ICMDs and NCPs (p. 13). Do you agree with this statement?

A. No. We do not agree that smaller customers should be treated differently and we are unsure as to where UIU believes the Company made such a claim. As stated in the Company's response to NYC 2-44(included in Exhibit ___ (DAC-4)), the reason for the 75%/25% NCP-ICMD weighting for SC1 is not due to customer size, but because a large portion of residential customers reside in multi-family buildings. That is, the ICMD of individual SC1 residential customers does not map directly to a building load. In other words, the 75%/25%weighting takes into consideration load diversity at the building level recognizing that not every residential apartment in a multi-family building will experience their highest billing demand at the same time. To use the sum of their ICMDs as a proxy for connected building load would over-allocate this class's use of the low tension system sincethis method would consider one ICMD for each apartment. Hence, the Company assigns less weight to the residential ICMD (25%) than to the residential NCP (75%).

Q. Are there any other points the Company would like to make regarding the low tension demand allocator?

A. Yes. The Company has consistently used its methodology in recent class demand studies. Additionally, the load diversity study undertaken by the Company supported this weighting and was submitted to and accepted by the Commission in Case 13-E-0030.

Q. Does the Company find instances where UIU contradicts itself?

A. Yes. UIU argues (p. 12-13) that ICMDs are not considered in sizing secondary conduit and poles, and goes so far as to cite the Company's planning practices in response to UIU 8-152 and 8-147 as supporting evidence (includedin Exhibit ___ (DAC-4) and Exhibit UERP-JP-6). In the very next sentence, however, UIU acknowledges that "there may be large commercial or industrial facilities which require that their individual demands be taken into account with regard to plant that is close to their facilities." UIU acknowledges that ICMDs come into play for large commercial customers but not for the Company's many residential apartments or small commercial storefronts in large buildings. UIU's testimony did not explain its contradictory position.

Q. UIU advocates for the sole use of NCP as the low tension demand allocator. What effect would this have on the various classes?

A. The table below reflects the results of UIU’s proposal, and is a collapsed version of UIU’s Table 1 (p. 21). This proposal has the effect of shifting cost responsibility away from the residential and small commercial customers to the other classes and is self-serving for UIU's constituency of residential and small commercial customers.If UIU went further to recommend ICMDs as a factor for large commercial customers but not for residential and small commercial customers, the bias would be more pronounced.

Low Tension D08 Allocator	SC1 Residential	SC2 Small Commercial	SC 9 Conventional
Company NCP/ICMD 75%/25% SC1 50%/50% others	39%	6%	30%
UIU Recommended 100% NCP	36%	5%	32%
UIU NCP/ICMD 100%/0% SC1 & SC2 50%/50% others	34%	5%	34%

Q. What is your conclusion regarding this issue?

A. For the reasons stated above, the Company’s methodology for the low tension demand allocator is reasonable and should be adopted.

Minimum System Customer Component

Q. Do you have any general comments on UIU’s claim that the Company’s ECOS study violates the principle of cost causation by allocating too many costs on the basis of customer allocations and thereby under-allocating demand-related costs?

A. Yes. Throughout its testimony,[1] UIU comments that costs classified as customer-related in the Company’s ECOS study

[1] See the following references:

are allocated to customer classes based on the number of customers.This understanding is simply not correct. The Company allocates the customer component of distribution plant (both primary and secondary) to customer classes based on the number of services. A service does not necessarily equate to a customer. For example, while a large industrial customer may be connected to the distribution system via several service connections, a small residential customer might share a single service connection with several adjacent customers.

Q. Please continue.

A. Company Exhibit __ (DAC-2), Schedule 1, Table 7, shows that SC1 has approximately 85% of total customers on the system. However, the SC1 allocator used to assign responsibility for customer related distribution costs is based, not on the number of customers, but on the number of services. For example, the SC1 allocator for underground services is approximately 50%.On the other hand, while SC9 conventional customers represent

---

- p. 9, lines 3-622 in general;
- p. 15, line 9-13 regarding primary distribution;
- p. 16, line 9-12 regarding secondary distribution; and
- p. 18, lines 23-24 regarding transformers.

approximately four percent of total customers, they account for almost 29% of underground services.

Q. Please continue.

A. The Company's use of services is an appropriate allocator of the customer component of distribution plant because it accurately reflects cost causation and is fair to all customers. UIU's testimony related to primary and secondary conductors and transformersis based on the false assumption that the Company allocates customer-related distribution costs via number of customers.

Minimum System Customer Component – Primary

Q. Please describe the Company's proposal regarding the classification of a portion of primary facilities as customer related.

A. In the ECOS study in this case, the Company used the same methodologies as it did in previous ECOS studies with one exception; we classified a portion of the primary distribution system as customer related.The Company's derivation of the 6% primary distribution customer component was based on the results of a minimum system methodology which parallels the Company's methodology used to determine the customer component of low tension distribution plant. This secondary distribution minimum system methodology was establishedin a Memorandum of Understanding ("MOU") agreed to and signed by the parties as a result of a collaborative initiated in Case 04-E-0572.

Q. Does the MOU specifically provide a methodology for determining an appropriate customer/demand split for primary assets?

A. No. The MOU does not specifically address the classification of primary assets. However, in introducing a customer component to primary distribution, the Company is employing a consistent classification methodology as it applies to the same distribution plant accounts (FERC Accounts 364-368) for both primary and secondary conductors.

Q. Why did the Company make this change in its ECOS study?

A. Under the 2014 Rate Order in Case 13-E-0030, discussed in our initial testimony, the Company was requiredto re-evaluate its cost of service methodologies related to how the Company classifies and allocates customer costs. In performing this task, not only did the Company re-consider current methodologies, it also considered the practices of other New York State Utilities (i.e., Central Hudson Gas and Electric ("CHG&E"), New York State Electric and Gas Corporation ("NYSE&G"), Rochester Gas & Electric ("RG&E"), and Niagara Mohawk Corporation d/b/a National Grid ("National Grid")). These utilities all recognize a demand and customer component to primary in their embedded cost of service studies. Furthermore, all but one of the signatories to the Joint Proposal agreethat the methodology and the results of the Company's ECOS study are reasonable and support the introduction of a primary customer component.

Q. Please continue.

A. As noted in UIU's statement in opposition, NYSEG/RG&E filed ECOS studies classifying distribution plant (including primary) as 50% demand and 50% customer in Case 15-E-0283,*et.al.*, but these cases resulted in a joint proposal that did not specifically identify an ECOS study underlying its revenue allocation. However, in approving the joint proposal, the Commission did not reject

NYSEG/RG&E's classification of distribution plant as 50% demand and 50% customer related.

Q. UIU's Statement alleges (p. 29) that the Company's reference to other New York utilities is"misleading" because in the 2015 NYSEG/RG&E case, the Commission approved a joint proposal that was not based on any particular ECOS study. Do you agree?

A. No. First, the Company was not misleading because, at the time of Con Edison's initial filing in this case (January 29, 2016), the Commission had not yet acted on the joint proposal in that NYSEG/RG&E case. Nonetheless, the electric ECOS study in the 2015 NYSEG/RG&E case was filed based upon a 50/50 percent customer/demand split for distribution plant and the Commission did not reject the 50/50% classification in approving that joint proposal.

Q. Please continue.

A. Despite UIU's arguments to the contrary, the Company's review of other utilities' costing methods was not limited to NYSEG/RG&E. The Company also reviewed the costing methodologies of Central Hudson and National Grid and found that these companies also recognize a demand and customer component to primary in their embedded cost of service studies.

Q. Is there industry precedent to classify primary distribution into both a demand and customer component?

A. Yes. NARUC recognizes that a “minimum size distribution system can be built to serve the minimum loading requirements of the customer” (p. 90). NARUC recognizes both demand and customer components of primary conductors (p. 89) and further recognizes the minimum system approach as an appropriate method to determine such classification (p. 90).

Q. UIU (p. 15)claims that the cost allocation of primary conductors should be based entirely on demand. Is it appropriate to classify primary conductors into both a demand component and a customer component in an ECOS study, as the Company proposes?

A. Yes. Much of the discussion UIU puts forth (pp. 16-17) related to secondary distribution also applies to primary distribution. We agree with UIU that a utility as provider of last resort must serve a customer with little to no usage.Some portion of both primary and secondary distribution investment is therefore incurred to connect customers with minimal load (p. 17).Indeed, without primary equipment, the minimum system would not be capable of delivering the minimum loading requirements of the customer. Hence,it is appropriate to classify a portion of both primary and secondaryequipment as customer related.

Q. Please address UIU’s argument that primary systems are a more efficient way of carrying significant loads by reducing line losses and that, if a utility were to build the least expensive system needed to provide a minimal amount of electricity to customers (minimum system), it could simply install secondary lines (p. 15).

A. Indeed, primary systems are a more efficient way of carrying loads by reducing line losses. Primary systems are also necessary to carryloads to customers who are physically located a distance away from the area stations that supply them. Without primary equipment, the minimum system would not be capable of delivering the minimum loading requirements of the customer, and it is therefore reasonable to classify a portion of primary distribution as customer related using the minimum system methodology employed by the Company.

Q. UIU implies that the factors underlying incremental investment should drive the allocation of the embedded costs of the primary distribution system (p. 15). Do you agree?

A. No. The subject of incremental (or decremental) load and investment is an important factor in a marginal cost study but is not relevant to an embedded cost of service study. Marginal costs are defined as the change in the cost that arises when the quantity produced is incremented by one unit. There would be no need to replace an existing conductor with a larger size conductor to serve existing or decreasing load. Marginal costs, however, would apply when an existing conductor is replaced with a larger-sized conductor to address increasing load.

On the other hand, an embedded cost of service study measures class cost responsibility based on existing infrastructure that supports existing customer loads. Therefore, UIU's argument that the factors underlying *incremental* investment should drive the allocation of the *embedded* costs of the distribution system is incorrect.

Q. What is your conclusion regarding this issue?

A. Based on the discussion above, the Company made a single change in its electric ECOS methodology to classify a portion of primary distribution as customer-related. This change was based on: (1) the fact that the minimum system requires primary equipment to deliver energy to customers; (2) other New York utilities recognize a demand component and a customer component for primary; (3) it parallels the Company's treatment of secondary; and (4) industry practice, such as the NARUC Manual, supports this methodology.

Minimum System Customer Component – Secondary Conductors

Q. In its ECOS study, did the Company make any changes in the classification and allocation of costs associated with secondary distribution facilities?

A. No. The Company followed its past methodology which was approved by the Commission in electric rate cases and has been in effect since Case 07-E-0523.

Q. Does the DAC Panel agree with UIU's assertion (p. 16) that the "secondary delivery system (poles, conductors, transformers) is primarily related to customer demand?"

A. No. This statement contradicts past Commission precedent as well as the NARUC Manual which states that "the number of poles, conductors, transformers, services, and meters are directly related to the number of customers on the utility's system" (p. 90). Indeed, NARUC recognizes both a demand and customer component of distribution plant (see references above in the discussion on primary).

Q. UIU (p. 16) states, "While we agree that meters and service plant are partly customer related, the secondary delivery system (poles, conductors, transformers) is primarily related to customer demand" and "We also note that in 2000, the most recent year for which we have found a reference, more than 30 states agreed with this approach and classified only meters and services as customer related. (Exhibit __ (UERP-JP-10), Charging for Distribution Utility Services: Issues in Rate Design, p. 29)."Does the Panel agree?

A. The document to which UIU refers states (p. 30, not 29):

> "There are a number of methods for differentiating between the customer and demand components of embedded distribution plant. The most common method used is the "basic customer" method, which classifies all poles, wires, and transformers as demand-related and meters, meter-reading, and billing as customer-

> related. This general approach is used in more than thirty states.”

UIU has “cherry picked” information that supports its case from this document, but fails to acknowledge that this document (p. 29) also notes that:

> “not all jurisdictions employ the same methods for analyzing the various cost components, and there is of course a wide range of views on their nature – marginal, embedded, fixed, variable, joint, common, etc. – and thus on how they should be recovered in rates.”

Although omitted by UIU, the document acknowledges a “minimum size” method, stating:

> “The ‘minimum size’ method operates, as its name implies, on the assumption that there is a minimum-size distribution system capable of serving customers’ minimum requirements. The costs of this hypothetical system are, so the argument goes, driven not by customer demand but rather by numbers of customers, and therefore they are considered customer costs. The demand related cost portion then is the difference between total distribution investment and the customer related costs.”

There is no question that there is a wide range of views as to the appropriate demand/customer classification of distribution costs. The fact that the methodology proposed by UIU has been used in certain states does not make that methodology appropriate for use in Con Edison's service territory.

Q. Please continue.

A. A more recent survey conducted by Commonwealth Edison in 2011 supports similar disparate findings recognizing that some utilities allocate according to demand only, while others split distribution into demand and customer portions. There is no one-size-fits-all solution to this as UIU would lead one to believe.

Q. Please address UIU's assertion (p. 17) that the Company's approach is flawed because it is "calculated based on an amount of plant that is significantly larger than the minimum amount needed to provide a connection."

A. The Company disagrees for two reasons. First, as mentioned in the Company's response to discovery request UIU 10-206(included in Exhibit ___ (DAC-4)), the Company is in compliance with the Case 04-E-0572 MOU. The MOU determined that the minimum size will be calculated using the weighted average unit cost of installed wire sizes from 1 to 10.

Q. Please continue.

A. Second, the sizes selected represent a range of sizes of the equipment currently installed and in use in the system. To select the absolute smallest minimum size conductor (1 AWG), as was done by UIU for their recommended ECOS study (p. 22 of Direct Testimony of UIU Electric Rate Panel on Joint Proposal), would mean basing the minimum system calculation on conductor sizes that represent only 0.02% and 0.003% of the total footage of overhead and underground secondary conductors, respectively.The approach taken by UIU creates a minimum system that is not representative of equipment typically used on the system.

Q. Please continue.

The minimum system methodology established by the MOU and employed by the Company was agreed upon by the parties during an ECOS study collaborative in the 04-E-0572 rate case. This collaborative was open to all interested parties, including UIU’s predecessor the Consumer Protection Board (“CPB”). The selection of a range of conductor sizes1 through 10is representative ofthe predominant minimum size of secondary distribution conductors installed. This methodology develops the customer-related portion of the minimum system, as agreed to by the parties in the MOU, and represents a balanced approach. It eliminates the ambiguity of having to choose one conductor size vs. another. It addresses the problem exhibited by UIU's approach in basing the calculation on a conductor size that does not have a meaningful representation on the system. It alsodoes not bias the customer component to very old or very new conductors by taking into account a range of sizes.

In addition, the MOU established a methodology to allocate the customer-related portion of the minimum system based on the number of overhead and underground services. This is contrary to UIU's continued insistence that the Company uses number of customers as the allocator for these costs.UIU's Electric Rate Panel has not provided any compelling arguments to demonstrate that methodologies agreed upon in the MOU need to be altered in any way.

Minimum System Customer Component - Transformers

Q. Please address UIU's assertion that the Company's selection of sizes for inclusion in the minimum system component of transformers “includes all transformers up to 25 KVA, although in reality it has much smaller transformers in service” (p. 18).

A. UIU presents a similar argument for transformers as it does for secondary conductors discussed above. UIU would advocate that smaller transformers should be selected for inclusion in the minimum system calculation transformers to benefit residential and small commercial customers. Instead, as the Company explained in response to discovery request City 6 – 205(contained in Exhibit ___ (DAC-4)), the Company follows a methodology that is a natural extension of its approach in the selection of sizes for secondary conductors. That is, the Company selects a range of minimum sizes up to and including 25 KVA transformers, which represents the predominant minimum size installed.

Q. UIU claims that the Company’s responses to discovery requests UIU 8-150 and UIU 10-207 (includedin Exhibit ___ (DAC-4))support the classification of transformers entirely as demand-related given that they are sized and installed taking into consideration the demand in a given load area. Please respond.

A. UIU's argument here is similar to that presented for primary conductors above, that is, UIU argues that because demand drives incremental investment, demand is the cost causative factor that should be considered in classifying transformers as entirely demand-related. This argument is flawed for the same reasons previously discussed above. Increased demand in a load area drives increased marginal costs. Embedded costs, on the other hand, recognize that that some portion of transformers is incurred simply to connect all customers regardless of load. The Company's minimum system methodology is recognized by NARUC as an appropriate approach to determine the demand and customer classification.

Q. Please address UIU's criticism that the Company's minimum size calculation is flawed because it "includes equipment called autotransformers, which are transmission voltage (up to 480,000 Volts), and regenerators, neither of which are installed to serve minimum load."

A. The Company has determined that, in certain instances, the voltage designations in the descriptions of autotransformers were misidentified in the Company’s plant account records. For example, the 480,000 Volts identified by UIU is actually 480 Volts, a secondary distribution voltage. Autotransformers that fall in the range of sizes used in the determination of the minimum system are properly included in the customer component of transformers.

Alternate ECOS Proposal

Q. Has the JP-DAC Panel reviewed the “corrections” provided by UIU presented as Exhibit __ (UERP-JP-1) and summarized in their testimony as Table 2?

A. Yes. UIU’s testimony includes Table 2, which shows the results of their alternate ECOS study implementing their proposed recommendations. It combines all of their changes (low tension on NCP, primary 100% demand, transformers 100% demand, and minimum system conductors based on minimum size 1AWG). It brings the SC1 residential rate of return up from 5.12% and a $37 million deficiency to a 6.58% rate of return and no deficiency.

Similarly, the SC2 small commercial rate of return increases from 5.27% and a $4 million deficiency to a 9.28% rate of return and a $38 million surplus. As evidenced by these results, the UIU alternate study is a results-oriented attempt to benefit residential and small commercial customers at the expense of other customers and, due to its shortcomings, should be rejected.

Revenue Allocation and Rate Design Issues

Q. What does UIU recommend regarding the Company's proposed rate design?

A. UIU recommends (pp. 41-43) thatcustomer charges for SC1 and SC 2 be reduced while volumetric charges are increased to provide “appropriate price signals” to influence customer behavior.Additionally, UIU believes the REV Track Two Order (at p. 119) encourages economic DER and conservation through increases in energy charges.

Q. Does the Panel agree with UIU’s recommendations?

A. No, it does not.

Q. Please explain why.

A. The Company opposes the UIU Electric Rate Panel’s recommendation to reduce the current customer charges for

SCs 1 and 2. As discussed above, there are many shortcomings in the methodology used in UIU's recommended ECOS study, and therefore, to reduce the current SCs 1 and 2 customer charges to reflect the customer costs calculated based on UIU's recommended ECOS study for SCs 1 and 2 is not appropriate. Additionally, the current customer charges for SCs 1 and 2,are below the customer costs as indicated by the Company's ECOS study. As summarized in the table below, the Company's current customer charge for the residential class is the second lowest of investor-owned utilities in New York State.

Summary of SC1 Customer Charges:

Electric Utility	SC1 Customer Charge
Central Hudson	$24.00
RG&E	$21.38
O&R	$20.00
NIMO	$17.00
CECONY	$15.76
NYSEG	$15.11

Fixed costs incurred to provide service to customers, which are independent of the costs associated with usage and demand for the service class, are recovered through the customer charge for the service class. Any shortfall in the revenue recovered through the customer charge shifts revenue responsibility to the per kWh usage charges resulting in a subsidy for lower usage customers at the expense of higher usage customers. Reducing customer charges for SCs 1 and 2, as recommended by the UIU's Electric Rate Panel, would exacerbate such subsidization. Furthermore, the UIU Electric Rate Panel has not provided any detailed bill impact analysis showing how customers with various usage levels in these service classes would be impacted by UIU's proposal. UIU's proposal to reduce the current customer charges for SCs 1 and 2 is unsubstantiated and, therefore, should be rejected.

Gas

Q. Please summarize UIU's issues relating to the Gas ECOS study and Gas Revenue Allocation?

A. As noted earlier, UIU's issues relate to:

- Classification and allocation of costs associated with distribution mains (minimum system) including resulting revenue allocation and rate design issues; and

- Increases in the interruptible off-peak firm delivery rate.

Q. In the Panel’s development of the gas ECOS study for this proceeding, did the Panel make any changes to the study developed for the last gas rate case?

A. No. In reviewing that study, the inputs and the results, the Company did not see any changed circumstances or issues that would require changes to the study. Therefore, the study was developed and completed using the same methodology as in the last case.

Q. Does UIU’s Gas Rate Panel on the Joint Proposal (“UIU Gas Rate Panel”) make any complaints regarding this study?

A. Yes. UIU makes several allegations related to one central issue, the classification and allocation of costs associated with distribution mains. As we explain below, UIU’s allegations do not warrant any changes to the Company’s gas ECOS study. In fact, UIU’s testimony provides a quote from the Commission in a Central Hudson case about changing ECOS studies, which is applicable to this case and requires that no changes be made to the Company’s ECOS study.

Q. Please explain the quote.

A. In the 20 or so new pages of testimony included in the UIU Gas Rate Panel testimony, UIU provides (pp. 48-49) a recitation of cases where the gas minimum system has been rejected by commissions other than this Commission. However, in a 2008 Central Hudson case, where Staff suggested removing the minimum system, the Commission adopted the Recommended Decision rejecting Staff's adjustment, stating:

> "… [B]oth the existing and proposed methodologies are deemed acceptable by NARUC with no indication that one or the other is superior. It concluded that such a large shift in cost responsibility should not be adopted without compelling evidence that it is necessary to rectify some serious inequity." (Case 08-E-0887, Central Hudson, Order Adopting Recommended Decision with Modifications, pp. 46-47).

Q. Does UIU's testimony explain a serious inequity that needs to be rectified?

A. No. UIU complains about the minimum system, which was reflected in ECOS studies for the last several Con Edison gas rate proceedings, to which UIU or its predecessor CPB was a party. The fact that it is not used in certain jurisdictions is not a reason to change the method the Company is using.

Classification and Allocationof Distribution Mains (Minimum System)

Q. What are UIU’s complaints regarding the classification and allocation of distribution mains (minimum system)?

A. UIU contends that it is not appropriate to classify a portion of the costs associated with distribution mains as customer related.

Q. Please summarize UIU’s recommendation (p.7) to reject the Joint Proposal’s proposed classification of a portion of the cost of distribution mains asa Distribution Customer Component.

A. UIU disagrees that these costs should be classified as customer-related. They contend that theprimary purpose of distributionmains is to move gas through the system to customers’ premises (p.17), regardless of the presence or absence of customers being connected to the system. In other words, they explain that the distribution system in essence is designed to move energy from one source to another,which ignores the fact that other customers use the system. They argue that the Company’s approach in assigning a portion of distributionmains to a Distribution Customer Component falls outside the “customer-related” classification, as these costs are not impacted by customers being connected to the system.

Q. Does the Company agree with UIU's explanation of customer-related costs?

A. No. The Company's testimonyexplains that customer-related costs are fixed costs caused by the presence of customers connected to the system, regardless of any customer's particular level of usage (pp. 12-13).

Q. Is there any support for the Company's classification?

A. Yes. The Company's approach adheres to the principles of cost allocation as described on page 22 of the National Association of Regulatory Utility Commissioners Gas Distribution Rate Design Manual ("NARUC Gas Manual"). The NARUC Gas Manual states, "Customer costs are those costs found to vary directly with the number of customers served rather than with the amount of utility service supplied."The Manual further explains, "A portion of costs associated with the distribution system may be included as customer costs."

These costs are developed on the basis of the minimum size main theory. "This theory assumes that there is a zero or minimum size main necessary to connect the customer to the system and thus affords the customer an opportunity to take service if he so desires." The Company's ECOS Study is consistent with the recommendationin the NARUC Gas Manual.

Q. What does UIU recommend?

A. In contrast to the NARUC approach, the UIU Gas Rates Panel employs a methodology that classifies costs associated with distribution mains as 100% demand related and, in turn, allocated such costs to the various customer classes on the basis of customer demands.

Q. What is the impact of UIU's methodology?

A. By employing only customer demands toassign distribution main costs to the customer classes, UIU increases the SC1 residential class' rate of return from 4.01% as filed by the Company to 11.48%. This is an increase of 186%. As a result, the SC1 class went from $14.9 million deficient to a surplus of $34.1, thus shifting $49.0 million of their cost responsibilities to the other service classes.

Q. Please comment on UIU's claims that the Company assigns customer related distribution costs to service classes on the basis of the number of customers in each service class.

A. Similar to claims made by UIU regarding the electric ECOS study, the UIU Gas Rate Panel makes erroneous assertions that the Company allocates the customer-related share of Distribution Gas Mains in Account 376 “in proportion to the number of customers in each class” (p.28). UIU expounds on this subject and presents numerous analogies in an attempt to prove that the uniform, per-customer allocator is not the right way to allocate these costs. But UIU fails to justify that its change is proper.

Q. Please continue.

A. UIU’s testimony is incorrect when it claims that the Companyallocates the customer-related portion of gas mains on the basis of the number of customers. Page 6 of Company’s Exhibit___(GRP-1) states that the distribution customer component is allocated to service classes “based on a study of the length of mains per service connection and the number of services for each class.” The Company’s services study recognizes that customer use of services is dependent on the type and size of each particular customer.

Table 7 of Exhibit ___(GRP-1) indicates that the SC1 residential share of the number of gas customers on the system is approximately 61%, while its allocator for the customer component is approximately 25%. On the other hand, while SC 2 non-heating customers represent approximately five percent of total customers, they account for over 12% of distribution customer component allocator.

Q. Please respond to UIU’s assertion that the Company chose to focus on the cost of 2.0 inch steel main pipe size because it would result in assigning more costs into the customer-related category “by choosing the more costly size, the Company shifted more costs into the ‘customer-related’ category.” (p. 30)

A. There is no basis for UIU’s assertion. The Company’s methodology reflected in the table below is backed by a detailed analysis of gas distribution mains as contained in workpapers supporting Exhibit GRP-1, Schedule 1 which were provided to all parties, including UIU. This detailed analysis follows a predominant minimum size approach.

Q. In an attempt to discredit the Company’s approach, UIU claims that if the Company were to focus on, for example, 1.5 inch steel mains rather than 2.0 inch steel mains, then the costs classified as customer related would have been less significant based on the fact that 1.5 inch pipe yields a price of $3.17 a linear foot as compared to $14.19 per foot for the 2.0 inch pipe used in the Company’s analysis. Do you agree?

A. No. If, as UIU suggests, the Company’s goal is to maximize costs assigned to the customer related category, the Company could have focused on 1.25 inch piping, which yields a price of $24.15 per linear foot and in turn would have placed even more cost into the customer related category. However, the Company did not choose a size of pipe with the intention of assigning more costs to the customer category. Instead, the Company’s criteria in selecting the 2.0 inch sizeis guided by the installed footage of each pipe size to determine the predominant minimum size of piping on the Company’s system (See table below). The selection of size is done independent of the average cost of any given size in the Company's analysis.

T & D MAINS	**BOOK COST ($)**	**QUANTITY (FEET)**	**OVERALL PRICE PER LINEAR FOOT**
SIZE (INCHES)	**T&D MAINS**	**T&D MAINS**	
STEEL(MATERIAL TYPE)			
1.25	$54,240	2,246	$ 24.15
1.5	$8,947	2,825	$ 3.17
2	$16,591,762	1,169,549	$ 14.19

Q. Is the Company's methodology in classifying and allocating distribution main costs consistent with the methodology adopted by the Commission in previous Con Edison gas rate cases?

A. Yes. As noted above the Company has not made any changes to its gas cost of service methodology used in its recent gas rate cases. Specifically, in the Company's last four gas rate cases the Commission approved revenue allocations based on the use of this minimum system methodology. In developing the ECOS study for this rate case, the Company evaluated this methodology and decided that no changes were warranted.

Q. Please address UIU’s comment (p. 32) that in the most recent Orange and Rockland (“O&R”) gas rate case (Case 14-G-0494)Distribution Gas Mains (Account 376) were classified as 100% demand related.

A. In its rebuttal testimony in that case, O&R’s Gas Rate Panel objected to this classification of gas main costs and provided similar arguments found herein to support the methodology of developing the customer component of distribution mains. Ultimately, the 100% demand allocation of distribution mains wasincluded in that joint proposal in the give and take of settlement negotiations to achieve an overall settlement.

Q. Does the Gas Rate Panel have any further comments on UIU’s recommendations?

A. Yes, given the unreasonable cost shift from residential to other customer classes that would result from adoption of the UIU Gas Rate Panel’sproposals, and the absence of any reasonable basis for accepting UIU’s view of customer-related costs, the Commission should reject UIU’smodification to the Company’s ECOS study reflected in the Joint Proposal .

Revenue Allocation

Q. Did UIUcomment on the revenue allocation reflected in the Joint Proposal?

A. Yes, UIUdisagrees with it, since it relies on the results of the Company’s ECOS study. UIU’s position is that the Company’s ECOS results should not be used since “the differences in class returns are relatively modest, and are entirely dependent upon aspects of the study which we believe are invalid and should be rejected.” (p.8) They also “strongly recommend the Commission reject the revenue allocations included in the JP, because the JP is heavily biased against small customers to the benefit of larger customers." (p.72)

Q. Please comment on their assertions.

A. As noted above in the ECOS section, the Company’s ECOS study is not invalid as UIU asserts. The Company and all but one of the signatory parties to the Joint Proposal support the Company’s gas ECOS study and its use in revenue allocation. The Company’s gas ECOS study methodology has been used in the Company’s gas ECOS studies in prior rate cases dating back to 2003, which were ultimately adopted by the Commission with no modifications. The fact that UIU does not like the results of the Company’s ECOS study does not in and of itself make the study biased against small customers.

Q. Please continue.

A. In addition, since UIU agrees that for the Company’s ECOS study, “the differences in class returns are relatively modest,” this is all the more reason to correct such differences now, while the bill impacts are small, rather than waiting until the differences become more substantial and correcting them causes significant bill impacts.

Q. Does UIU propose an alternate method for revenue allocation?

A. Yes. They propose that the revenue allocation be based upon an alternate UIU ECOS study that allocates the costs of distribution mains solely on the basis of demand, or a “less mechanical” (p. 68) approach that relies on an across-the-board revenue allocation - like the approach used by KEDNY and KEDLI in Cases 16-G-0058 and 16-G-0059.

Q. Do you agree with either of their proposals?

A. No. As noted earlier, there are flaws in UIU'sECOS methodology and, therefore, it should not be considered in revenue allocation and rate design.

Q. Please continue.

A. The KEDNY and KEDLI approach is to apply the overall revenue increase to firm service classes on an equal percentage basis. The Staff Gas Rates Panel in its testimony in these KEDNY and KEDLI cases recommended this approach "Due to the magnitude of the rate increases." (p. 45). They further stated that "At this time, we do not believe it is appropriate to move service class rates of return closer to the system average because of the projected bill impacts." (p. 45)

Q. Is the KEDNY/KEDLI approach appropriate in the Con Edison gas rate case?

A. No, for a number of reasons. First, the gas revenue increase in the Joint Proposal is not of a magnitude to warrant such an approach andthe Company's projected bill impacts are significantly lower than KEDNY's, as shown in the table below,which were cited as reasons for using this method.

Range of Total Bill Impacts (%): CECONY 16-G-0061 JP vs KEDNY 16-G-0059 JP

	Con Edison			National Grid (KEDNY)		
		Bill Impact Range			Bill Impact Range	
	SC	Min	Max	SC	Min	Max
Residential Non-Heating[1]						
Rate Year 1	1	5.53%	5.98%	1A	4.36%	24.34%
Rate Year 2		9.28%	9.82%		6.19%	26.85%
Rate Year 3		7.74%	8.73%		5.11%	27.58%
Residential Heating[2]						
Rate Year 1	3	0.00%	1.79%	1B	0.29%	11.08%
Rate Year 2		0.00%	5.72%		0.88%	9.65%
Rate Year 3		-0.13%	3.43%		0.88%	10.36%
Non-Residential Non-Heating[3]						
Rate Year 1	2 Rate I	-1.17%	0.00%	2-1	0.34%	6.94%
Rate Year 2		0.00%	3.93%		0.53%	7.33%
Rate Year 3		-0.60%	2.13%		0.53%	7.11%
Non-Residential Heating[4]						
Rate Year 1	2 Rate II	0.00%	1.53%	2-2	0.26%	8.47%
Rate Year 2		0.00%	5.89%		0.53%	8.80%
Rate Year 3		-0.09%	3.23%		0.52%	9.38%

[1] Reflects usage ranging from 0 to 100 therms

[2] Reflects usage ranging from 0 to 400 therms.

[3] Reflects usage ranging from 0 to 50,000 therms

[4] Reflects usage ranging from 0 to 250,000 therms

Source:
KEDNY: Appendix 3, Schedules 5.1-5.3 from the JP from Cases 16-G-0059 and 16-G-0058
Con Ed: Bill Impact tables provided to the parties on September 16, 2016

Second, this method would make no progress toward reducing the class deficiencies and surpluses. In fact, this method will likely increase deficiencies and surpluses, making them more difficult to correct in future rate cases. On the other hand, the Company's revenue allocation is intended to eliminate the deficiencies and surpluses over the term of the Rate Plan.

The Company's revenue allocation also mitigates the projected bill impacts by reflectingone-third of the class specific surplus or deficiency.

Q. UIU expresses great concern regarding the impact of the Joint Proposal on SC1 customers, noting that it disagrees, "with the proposal to increase rates for the SC-1 Residential and Religious class by more than the overall average increase." (p.69)

Q. Please comment on UIU's position regarding the SC1 impact.

A. In any rate case, class deficiencies and surpluses are identified through ECOS studies and an attempt is made to correct those deficiencies and surpluses. By definition, that results in customer classes receiving a revenue change that differs from the overall average. One must then determine whether the correction of the deficiency or surplus, combined with the class's share of the revenue increase, creates an undue burden on customers in that class and requires mitigation. For example, in Orange and Rockland’s last electric rate case, Case 14-E-0493,[2] the Commission adopted a revenue allocation in which delivery revenue changes by class were mitigated in a manner such thateach class did not receive a revenue change that was more than +2.0 times or less than -2.0 times the overall delivery revenue change on a percentage basis.[3] In other words, the Commission found it reasonable that certain classes would experience delivery revenue percentage increases that were up to two times the overall average increase. In this case, UIU cites the relationship between the impact on the SC1 class and the system average. The SC1 Rate Year 1 delivery revenue impact of 5.44% is 1.77 times the system average of 3.08%, well within the 2.0 limit supported by the Commission in the O&R case. Therefore, the Joint Proposal’s gas revenue allocation, and resulting impact on SC1 customers, is reasonable.

---

[2] Case 14-E-0493 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Orange and Rockland Utilities, Inc. for Electric Service, Order Adopting Terms of Joint Proposal and Establishing Electric Rate Plan, issued October 16, 2015.

[3] *Id*., at Attachment A (Joint Proposal), Appendix 18, page 1.

Rate Design

Q. Does UIU agree with the monthly minimum charges (sometimes referred to as customer charges) reflected in the Joint Proposal?

A. UIU seems inconsistent in its view on this subject. They "agree with the JP's proposal to leave many of its customer charges unchanged." (p.79) UIU then states (p. 82), "The proposed revenue increase should be collected exclusively through increases in these customers' delivery volumetric rates." This statement implies that customer charges remain unchanged. However, UIU later suggests (p. 82) "…it would be appropriate to moderately lower the fixed monthly charges in Rate Year 1, rather than maintaining them at their current levels – since the current customers' charges exceed the current customer costs." This view is not only inconsistent with UIU's position expressed elsewhere in its testimony, it is also misleading. The customer costs referred to in the aforementioned quote apparently refer to customer costs resulting from the UIU ECOS study. The Joint Proposal's gas ECOS study demonstrates that current customer charges are lower than customer costs. Therefore, at the very least, the customer charges (other than SC1) should remain unchanged to prevent them from moving further from costs. In addition, even with the increase in the SC1 customer charge, the SC1 customer charge for low income customers was reduced for RY1 (in RY2 and RY3 the discount to the customer charge was converted to a bill credit that results in the same benefit).

Q. Why should the Commission adopt the Joint Proposal’s position to increase the SC1 monthly minimum charge?

A. As explained in Appendix 21 to the Joint Proposal, the SC1 minimum chargeis increased in all three rate years to avoid disproportionately affecting customers using more than 6 therms per month and was set at a level which produces similar bill impacts, on a percentage basis, across all usage ranges.

Q. Did UIU have any other comments on the block structure adopted in the Joint Proposal?

A. Yes, UIU proposes (p. 83) “a block structure that declines less steeply,” arguing that the current declining block rates do not properly incentivize customers to conserve energy.

Q. Do you agree with their position on declining block rates?

A. No. When one considers the magnitude of supply costs and delivery surcharges that any customer has to pay for each incremental therm, a slightly lower tail block rate in the delivery component would not discourage energy efficiency. Furthermore, even modest steps toward a different block rate structure may have substantial bill impacts for some or all customer classes.

Q. DidUIU have any other comments related to rate design?

A. Yes. UIU recommends (pp. 83-84) that the Company implement a detailed study that would include “the various factors that impact residential bills and customer reactions to those bills.” UIU suggests that load characteristics, customer usage patterns, weatherization and installation of energy efficiency products, price elasticity, housing stock, affordability, and weather sensitivities all should be studied.

Q. Do you agree?

A. No, the Company already produces a detailed Demand Analysis that uses customer interval data to develop the load characteristics and customer usage patterns that are used to calculate the demand allocators. The demand allocators have a direct and sometimes significant impact on the Company's revenue allocation and rate design. The actual customer usage considered in the Demand Analysis reflects the impacts of the factors UIU lists.

Non-Firm Service

Q. What is UIU’s position in relation to the Joint Proposal’s increase in the interruptible off-peak firm deliveryrate, i.e., SC12 Rate 2 and SC9 Rate (C)?

A. UIU recommends increasing the rate to 11.5 cents per therm, as originally proposed by the Company.

Q. Why are the interruptible off-peak firm delivery rate increases in the Joint Proposal reasonable in this particular rate case?

A. Although the interruptible off-peak firm delivery rate of 8.0 cents per therm is maintained for one, two and three year contracts entered into during RY1 and increased to only 8.25 cents per therm in RY2 and 8.50 cents per therm in RY3, respectively for one, two and three year contracts entered into during RY2 and RY3, respectively, the increases in the delivery revenues in RY2 and RY3 resulting from these increased rates do reduce firm gas rates from what they otherwise would have been absent these increased Off-Peak Firm revenues. On the other hand, the Company, Staff and interested parties will engage in a collaborative to further study this issue during the term of the Gas Rate Plan. The Company found the combination of these provisions to reasonably address this very contentious matter in the context of reaching an overall comprehensive settlement.

AMI

Q. How does the Proposal allocate the costs of AMI during the term of the Rate Plan?

A. The electric and gas ECOS studies filed in this case do not include any costs associated with AMI since the Company had no AMI expenditures during the years the ECOS studies were based on. Therefore, AMI costs do not have an impact on the ECOS surpluses and deficiencies that are addressed prior to applying the revenue increases in the revenue allocation process. However, some AMI costs are included in the revenue increases for each rate year. They are allocated among customer classes in the same manner as the rest of the revenue increase in any rate year. This is consistent with the treatment of any costs included in the revenue increases. Any AMI costs that get closed to net plant during the term of the Rate Plan will be treated as any other capital program. In future rate cases, booked AMI costs will be included in the Company's ECOS studies and will be allocated based on appropriate cost allocation methodologies.

Q. Did the Commission make any statements in the AMI Order[4] related to allocating AMI costs?

A. Yes. The AMI Order states that "[c]ost allocation among customer classes and among Con Edison's various services (electric, gas and steam) will be determined in rate proceedings."

Q. Does the Proposal allocate AMI costs?

[4] Cases 15-E-0050 et al, Con Edison Electric Rates, Order Approving Advanced Metering Infrastructure Business Plan Subject to Conditions (issued March 17, 2016).

A. As noted above, the Proposal treats AMI costs included in the revenue increases as any other capital program.

Q. Does UIU have an issue with the treatment of AMI costs during the Rate Plan?

A. Yes. UIU disagrees with the Proposal’s allocation. UIU claims that AMI is a novel project, with large capital expenditures and allocation should be based on benefits because the expected benefits were what convinced the Commission to approve the project.

Q. Do you agree with UIU’s claim that AMI costs should be allocated based on benefits?

A. No. UIU’s suggestion that AMI cost allocation needs to be based on benefits has no precedent in any actual ECOS study or revenue allocation or manual that describes how an ECOS study should be implemented. To its knowledge, the Company has consistently treated capital project costs in the same way and exceptions have not been made for other programs with similar order of magnitude spending like storm hardening or substation construction. UIU (Statement, p. 12) claims that the “novelty” and capital costs of this program, including a “5-month long collaborative" for the program, somehow make this program different and therefore appropriate for a different cost allocation method. UIU's proposed change in allocation methodology is not justified by the theories it advances for the proposal, including the scale of a program or the fact that a cost benefit analysis was performed to justify the program and it cites no Commission decision in support.

Q. Please continue.

A. For example, the Company's recent storm hardening program, featuring a novel approach to protect facilities and costs close in magnitude to the AMI program, included a several year-long collaborative effort with cost benefit analyses for projects. In the 2013 case, no party proposed that only customers that would benefit from storm hardening, e.g., those in lower-lying flood prone areas, should pay for the storm hardening costs. All Con Edison electric, gas and steam customers were assigned the costs for that program.

Similarly, in the early to mid-2000s, the Company built a series of substations to meet forecasted loads.

Substation costs were allocated as any other capital cost or program. For example, neither the Company nor any rate case party suggested that Brooklyn customers should pay for a particular substation simply because it was built in Brooklyn and serves Brooklyn load. Or because a substation was built due to increases in commercial load, only commercial customers should pay for it. These costs are allocated among all customer classes.

Q. Are there other negative consequences associated with UIU's proposal to allocate costs based on benefits?

A. Yes. Applying UIU's benefits allocation theory, there would likely be no low income rate. If the cost of the low income discounts was borne by the people who benefit from it, then the discounts would be recovered solely from low income customers, not the entire customer population as is currently the case.

Q. Are there other drawbacks to allocating costs based on benefits?

A. Yes. The Company does not and cannot review each project to determine who receives the benefits and then allocate costs based on those benefits. Embedded cost of service studies would take years to develop and would rely on greater subjectivity and be subject to greater scrutiny as compared to the current methodology. Would any party really be able to agree to benefits? In addition, benefits can be viewed in two ways. There are customers for whom certain benefits are available and then there are customers that actually take advantage of those benefits. It is unclear whether UIU proposes to allocate AMI costs based on benefits available to customers or to customers that take advantage of those benefits.

UIU also claims that another reason to allocate AMI costs based on benefits is because much of the expected savings are for supply related items, which they claim will accrue in a greater amount to large users and not small users. Interestingly, UIU was not concerned when recommending a reduction in the SC1 customer charge and corresponding increase in volumetric charges, which would accrue benefits in greater amounts to small users and not large users. It is only over time that the actual benefits will be known and UIU’s assumptions that the level of benefits is greater for one category of customers than others may or may not be correct. Moreover, there is no justification for using benefits.

Q. Please continue.

A. UIU's claims that allocating AMI costs based on benefits is consistent with cost-causation and would advance REV are flimsy at best. Benefits allocation does not necessarily equal cost causation.UIU's cost allocation, which would move meter costs,the overwhelming majority of which are applicable to residential customers, to commercial customers based on "benefits," shows that UIU itself understands that the benefits approach is not necessarily aligned with cost causation. The arguments that the benefits allocation somehow supports and advances REV are similarly easily dismissible. The REV discussion in the Track Two Order quoted by UIU is focused on the importance of the alignment of utility *shareholder* incentives with customers' interests (UIU Statement, pp. 20-21). Nowhere does the Track Two Order suggest that cost causation, the foundation of all ECOS studies, should be revised to take benefits of certain projects into consideration. Moreover, UIU's suggested approach would be an enormous administrative undertaking that would not be feasible to implement. For example, analyses would also have to be updated over time to reflect the changing nature of benefits, such as supply benefits that would vary with changes in supply costs over time. Implementation of the UIU proposal would involve a separate and distinct rate case process where there would be contentious disagreement regarding the cost allocation on a project-by-project basis for any REV-related or "novel" initiative, rather than a single ECOS study.

REV issues

Q. Do you agree with UIU's justification for its rate design based on the REV Track Two Order?

A. No. UIU contends that the REV Track Two Order (at p. 119) supports UIU's claim that usage charges should be increased by stating "Rate design should encourage economic DER and conservation." This quote from the REV Track Two Order is not an invitation to increase usage charges to artificially improve the economics of DER and conservation. In the REV Track Two Order, the Commission encourages "economic" DER and conservation. This does not mean that rates should be arbitrarily modified simply to encourage additional DER and conservation. UIU also fails to mention the text in that same sentence indicatesthat rate design should also consider "avoiding the bypass that can occur if the individual customer savings from avoided usage are larger than the system and societal value of the avoided usage." This balance between encouraging DER/conservation and bypass concerns has yet to be established, and UIU has not demonstrated that REV-related concerns are addressed under UIU's proposed lower customer charges.

Q. Please continue.

A. In support of its statement that there is no evidence that existing customer charges contribute to adequate incentives and price signals, UIU quotes the REV Track Two Order "...Staff analyzed rate design in the context of REV and found that, much like the utility revenue model, current rate design practices fail to provide adequate incentives and price signals that are suitable for a modern electric system." (p.109) The Company notes that the REV Track Two Order highlights nine rate design principles proposed by Staff and the need for more analysis to make gradual changes. UIU has not demonstrated that its proposal addresses Staff's principles and achieves a better result that is not biased toward residential and small commercial customers.

Q. Does this conclude the JP DAC Panel's testimony?

A. Yes, it does.

Proceedings

ALJ LECAKES: Mr. Krayeske, we already took the company's exhibits with the last panel. I think we covered everything that was offered.

MS. KRAYESKE: I have one more little correction to add.

ALJ LECAKES: Okay.

MS. KRAYESKE: Mr. Atzl, were you a member of the company's gas rate panel that provided rebuttal testimony on June 21st, 2016, correct?

MR. ATZL: That's right.

MR. KRAYESKE: And that testimony has been marked as Exhibit 89, correct?

MR. ATZL: Yes.

MR. KRAYESKE: Do you have any changes to that testimony that you'd like to provide?

MR. ATZL: We do have one correction to that testimony. And that correction is on page 5 in line 6. And we'll strike the words, In contrast to the NARUC approach.

ALJ LECAKES: Thank you for

Proceedings

reminding me of that.

MR. KRAYESKE: And as we noted earlier, we had two changes in the initial and reply statements and Mr. Atzl went over all of them.

With this corrections in mind, the panel is available for cross-examination.

ALJ LECAKES: Thank you very much.

Mr. Zimmerman.

MR. ZIMMERMAN: Good afternoon.

MR. ATZL: Good afternoon.

MR. ZIMMERMAN: I'd like to start first by directing the panel's attention to page 3 of its testimony in the joint proposal. Beginning on line 15, passage reads, "Joint proposal is based on electric and gas ECOS studies that were developed in a similar manner with one exception in the electrical study that UIU and its predecessor CPB have not objected to recent Con Edison settlements." Is that exception referred to in that passage the

Proceedings

customer-related component of the primary electric distribution plan?

MR. ATZL: No. The last phrase of that sentence does not pertain to the exception.

MR. ZIMMERMAN: What is that one exception that that passage refers to?

MS. KRAYESKE: Are you speaking of the exception referred to on line 16 and 17?

MR. ZIMMERMAN: That's correct, with one exception in the electric study.

MR. ATZL: Right. So what we were saying there is that these studies were performed in a similar manner to past studies with one exception that was the introduction of a customer component's primary.

MR. ZIMMERMAN: Is it the panel's position that a party is limited to those objections that it's made in prior rate cases?

MR. ATZL: No.

MR. ZIMMERMAN: I'd like to

Proceedings

direct the panel's attention please to its response to UIU Information Request Set 19, No. 263.

MR. ATZL: Is this by any chance included in your exhibits that were filed?

MR. ZIMMERMAN: It is.

MR. ATZL: Can you repeat the discovery request in question here?

MS. KRAYESKE: Can you just let me know exactly where the discovery request exhibit is in?

MR. ZIMMERMAN: Yeah. It's included as Exhibit 6 to the UIU electric rate panel's testimony in the joint proposal.

ALJ LECAKES: And that would be Exhibit 181 for our hearing purposes.

MR. KRAYESKE: And what page is that on?

MR. ZIMMERMAN: Page 81, although I apologize. I believe I've got the number wrong.

MR. KRAYESKE: I'm sorry. Which question were we on, which page?

Proceedings

MR. ZIMMERMAN: We're on page 81 of 84 of Exhibit UERB JP 6, Exhibit 6 to the UIU electric rate panel's testimony on the joint proposal, the company's response to UIU Information Request No. 263. So the DAC panel provided the company's response to this IR, correct?

MR. ATZL: Yes.

MR. ZIMMERMAN: The second paragraph of the company's response reads, "Minimum system calculation is not performed based on a definition of 'minimum load.' The minimum system represents the cost of the smallest secondary system theoretically needed to physically connect all of the existing service points if the system was not required to supply any load." Does the panel see that paragraph?

MR. ATZL: Yes.

MR. ZIMMERMAN: Could the minimum system that the company used in its electric ECOS study carry greater than zero load?

MR. ATZL: Yes. It's meant to

Proceedings

carry a minimum amount of load.

MR. ZIMMERMAN: Did the company calculate how much load that minimum system could carry?

MR. ATZL: No. While we're on this interrogatory, though, I just want to point something out.

MR. ZIMMERMAN: No. I mean, you've answered my question.

ALJ LECAKES: The panel will have an opportunity to redirect.

MR. ZIMMERMAN: I'd like to refer the panel's attention to the company's response to Information Request New York City Set 6, No. 203, also included in the UIU electric rate panel's testimony on the JP Exhibit No. 6.

MR. KRAYESKE: What page?

MR. ZIMMERMAN: Page 1 of 84. I'd like to refer the panel to the attachment 1 to that item, speaking on page 3 of 84 of that exhibit. Can the panel please identify what this shows on this page?

Proceedings

MR. ATZL: I'm sorry. Are we on page 1 of 84?

MR. ZIMMERMAN: The attachment begins on page 3 of 84.

MR. ATZL: This shows conductor sizes, quantities and costs for low-tension secondary conductors.

MR. ZIMMERMAN: What do the shaded rows indicate?

MR. ATZL: The shaded rows are the rows that are used in a determination of the minimum system.

ALJ LECAKES: Mr. Zimmerman, I apologize for interrupting, but the yellow highlight that's there, was that part of the response or was that something that UIU did when they submitted the exhibit?

MR. ZIMMERMAN: Your Honor, I have it in black and white so it appears on my version as a shaded area. We did not make any changes to the document. I assume that it was included in the original.

ALJ LECAKES: Okay. Thank you.

MR. ZIMMERMAN: What's the

Proceedings

smallest conductor size included among these shaded conductor sizes that are included in the minimum system?

MR. ATZL: The smallest in that group is No. 10.

MR. ZIMMERMAN: And when you say "smallest," what do you mean by that?

MR. ATZL: Diameter.

MR. ZIMMERMAN: That's the smallest diameter?

MR. ATZL: Yes.

MR. ZIMMERMAN: What's the second smallest?

MR. ATZL: 8.

MR. ZIMMERMAN: Third.

MR. ATZL: 6.

MR. ZIMMERMAN: And the fourth smallest?

MR. ATZL: 4.

MR. ZIMMERMAN: Does 4 refer to a size 4 AWG cable or 4 aught AWG cable?

MR. ATZL: A No. 4 AWG.

MR. ZIMMERMAN: So is it the panel's assertion that size 1 AWG cable is

Proceedings

larger than 4 AWG cable, as represented on this chart here?

MR. ATZL: Yes.

MR. ZIMMERMAN: How many feet of 6 AWG cable are included in the company's system as shown in this chart?

MR. ATZL: It's shown right in the sum of quantity column.

MR. ZIMMERMAN: And I'm doing this on the fly but that's about just under half of the amount of size 4.00 cable; is that right?

MR. ATZL: I'm sorry. What's the comparison you're making?

MR. ZIMMERMAN: Between the footage of size 4 cable and the footage of size 6.

MR. ATZL: Yes, the footage of 6 is less than half of the footage of 4.

MR. ZIMMERMAN: But there's still over 745,000 feet in the company's system; is that right?

MR. ATZL: Yes.

MR. ZIMMERMAN: I apologize. Is

Proceedings

that unit sum or quantity, is that footage or mileage?

MR. ATZL: Footage.

MR. ZIMMERMAN: Thank you.

Does the company's minimum system cost include costs of rectifiers?

MR. ATZL: In that question, are you referring to this page in this exhibit still?

MR. ZIMMERMAN: I'm not referring to that page.

MR. ATZL: It does.

MR. ZIMMERMAN: What do rectifiers do?

MR. ATZL: They're used in the provision of DC service.

MR. ZIMMERMAN: Can you be more specific as to what they do?

MR. ATZL: They transfer AC to DC.

MR. ZIMMERMAN: To how many customers does Con Edison deliver DC power?

MR. ATZL: Con Edison no longer delivers DC power.

Proceedings

MR. ZIMMERMAN: When did it stop delivering DC power?

MR. ATZL: Approximately 2008 to 2009.

MR. ZIMMERMAN: I'd like to turn the panel's attention to the company's response to UIU Information Request Set 19, No. 261, as provided in the exhibit beginning on page 80 of 84. Would you please read the company's response to this information request?

MR. ATZL: So the response is the company no longer provides DC power. Any customers that need DC power for their own purposes convert the company's delivered AC power/DC power via rectifiers owned by the customer and located on customer premises.

MR. ZIMMERMAN: What does the phrase "owned by the customer" mean?

MR. ATZL: Owned by the customer.

Now, we found that there were some DC rectifiers in the transformer account used to develop the minimum system and took a look at what, if any, impact

Proceedings

that would have on the cost of service study in this case and found that it was a de minimis impact.

MR. ZIMMERMAN: Are there customers in the company service territory who use AC, not DC power?

MR. ATZL: You're asking if there's customers that use AC power?

MR. ZIMMERMAN: Yes.

MR. ATZL: Yes, we do have customers that use AC power.

MR. ZIMMERMAN: Is it fair to say that they constitute the majority of the company's customers?

MR. ATZL: That would be fair to say.

MR. ZIMMERMAN: And those customers do not need rectifiers to receive service; is that correct?

MR. LANG: Objection. Calls for speculation.

MR. ZIMMERMAN: I don't believe it does.

ALJ LECAKES: I don't believe it

Proceedings

does either. The witness can answer.

MR. LANG: Your Honor, I think a clarification is required. Is he asking what Con Ed's providing or what's on the customer's side of the meters?

MR. ZIMMERMAN: I can rephrase.

Do the customers who AC, not DC, power require rectifiers?

MR. ATZL: Some probably do.

MR. ZIMMERMAN: Can you tell me why that is?

MR. ATZL: Because they may have DC equipment within their facilities.

MR. ZIMMERMAN: My question was those customers who AC, not DC, power.

MR. ATZL: I understand that. When I say the vast majority of customers are AC, they are in terms of service from the company but they may have DC equipment within their facilities and thus need rectifiers.

MR. ZIMMERMAN: Again, I'm going to try to find a way to rephrase the question just so that it's clear.

Proceedings

If a customer does not need to use DC power for any reason, does that customer need a rectifier?

MR. ATZL: If the customer has no equipment whatsoever that requires DC power, then the customer would not require a rectifier.

MR. ZIMMERMAN: Does the company's minimum system cost include the cost of regenerative control devices?

MR. ATZL: Yes. And when I spoke of rectifiers, actually, the look at the cost study and the impact on it that was de minimus included both.

MR. ZIMMERMAN: Can you please explain what a regenerative control device does?

MR. ATZL: I believe we explained that in an IR response.

MR. ZIMMERMAN: For the record, is that IR response set 10, No. 209?

MR. ATZL: Are you referring to a page in your exhibit?

MR. ZIMMERMAN: Yeah. I can find

Proceedings

that for you. Page 49 of 84. In that response, the company's response reads in part, "The function of pieces" --

MR. KRAYESKE: Your Honor, I'm going to object. It's in there as a discovery response. Mr. Atzl referred to it. It's in the record. I don't think we need to read what it says.

MR. ZIMMERMAN: That's fair.

ALJ LECAKES: I agree. I just want to clarify one more time for the record that we are talking about hearing Exhibit 181.

MR. ZIMMERMAN: I guess my only question is does the panel have any amendments to make to that description of what a regenerative control device does?

MR. ATZL: No change to the description. I'll just reiterate that the inclusion of these devices were small and had a very de minimus impact on the study.

MR. ZIMMERMAN: Does the company have customers in buildings that lack regenerative control devices?

Proceedings

MR. ATZL: I don't know what's inside every building.

MR. ZIMMERMAN: Does it have -- again, that wasn't quite the question. Does it have customers that don't have regenerative control devices?

MR. LANG: Objection. It calls for speculation as to what customers possess on the customers' side of the meter.

ALJ LECAKES: I think that it doesn't so much call -- I think the witness can answer if he knows or not.

MR. KRAYESKE: And I think he answered already and said he doesn't know what's inside customers' buildings.

ALJ LECAKES: I'll let him repeat the answer again.

MR. ATZL: Can you repeat the question?

MR. ZIMMERMAN: To the best of your knowledge, does the company have any customers in buildings that lack regenerative control devices?

Proceedings

MR. ATZL: I imagine we do have some customers that lack regenerative control devices.

MR. ZIMMERMAN: I'd like to direct the panel's attention to the company's response to the information request UIU Set 2, No. 65, provided in the exhibit, beginning on page 32 of 84.

MR. KRAYESKE: That's in the same exhibit, correct?

MR. ZIMMERMAN: That's correct.

Can the panel please identify what the company's response shows here?

MR. KRAYESKE: Can you ask a more specific question? There's a bunch of boxes and numbers in here, so a more specific question would be useful.

MR. ZIMMERMAN: Well, it's the company's response so I'm trying to get some more description of what those boxes show. I'll phrase it like this: It's my understanding that these charts show for each respective rate plan the distribution or the classification between demand

Proceedings

related and customer related for both primary and secondary distribution plant components in Earth plant accounts 364 through 368; is that the panel's understanding of what is shown here?

MR. FLISHENBAUM: That is correct.

MR. ZIMMERMAN: The last row of each box is labelled 368, correct?

MR. FLISHENBAUM: Yes.

MR. ZIMMERMAN: And that refers to transformers?

MR. FLISHENBAUM: That's right.

MR. ZIMMERMAN: In the 2004 rate case, what's the percentage that Con Edison classified line transformers to for the demand-related component?

MR. LANG: Objection, your Honor. The document speaks for itself.

ALJ LECAKES: I agree. Could it be phrased in a way that you would refer to the document in saying something along the lines of, Isn't it true that...

MR. ZIMMERMAN: I can do that.

Proceedings

Isn't it true that the company classified transformers as 100 percent demand related in the 2004, 2007 and 2008 rate filings?

MR. KRAYESKE: Are you speaking of primary demand or secondary demand?

MR. ZIMMERMAN: Secondary.

MR. FLISHENBAUM: That's what the table shows.

MR. ZIMMERMAN: Isn't it true that in the 2009 rate plan company classified line transformers as 94 percent demand related?

MR. LANG: Again, I'm going to object. The document already speaks for itself. We don't need to ask what's already on the document.

ALJ LECAKES: Right. I agree that we're just rehashing the document here.

MR. ZIMMERMAN: That's fine.

Between 2009 and today has the company made substantial changes to its transformer engineering standards?

Proceedings

MR. ATZL: We can't speak for the company's engineering standards.

MR. ZIMMERMAN: Can the panel speak to the company's standards for planning transformers?

MR. ATZL: No. You've asked interrogatories on this topic and received responses from the company's infrastructure panel.

MR. ZIMMERMAN: But this panel can't speak to why the demand-related component for transformers went from 94 percent in 2009 down to 60 percent in the latest cost of service study?

MR. ATZL: Can you repeat that?

MR. ZIMMERMAN: Is this panel not able to explain why the demand-related component of line transformers went from 94 percent in the 2009 rate plan down to 60 percent in the most recent ECOS study that the company filed?

MR. ATZL: It's a reflection of the transformer assets on the company's books.

Proceedings

MR. ZIMMERMAN: That didn't answer the question.

MR. ATZL: I think it did.

MR. ZIMMERMAN: So earlier you said you couldn't identify changes between 2009 and today and how the company plans its transformers or engineers its transformers. Now you're saying that those changes in numbers reflect the company's treatment of its asset. Can you identify the change in that? What changed with the transformers?

MR. ATZL: The change is due to changes in the transformer account on the company books, not through changes in the methodology used to perform the study.

MR. ZIMMERMAN: Can you identify where in your testimony you explain why you made this change in the treatment of transformers on the company's books?

MR. ATZL: We didn't make a change in the treatment of transformers on the company's books.

MR. ZIMMERMAN: I'm sorry. I

Proceedings

believe that's what you just said you did do.

MR. KRAYESKE: No, he --

MR. ATZL: No, what I said to you was that it's based on the transformer assets on the company's books.

MR. ZIMMERMAN: Where in testimony did the panel describe the derivation of the 60-percent demand-related component of the transformers in its books?

MR. FLISHENBAUM: I believe you can find that in our work papers, so the --

MR. ZIMMERMAN: You can see the numbers in the work papers. I'm asking for the why.

We can move on.

I'd like to read a passage and ask the panel a question.

MR. ATZL: Are you reading it from one of the documents in the case?

MR. ZIMMERMAN: No.

MR. DIAMANTOPOULOS: Objection, you Honor.

MS. KRAYESKE: I'm going to

Proceedings

object as well.

MR. DIAMANTOPOULOS: Your Honor, I would ask --

ALJ LECAKES: I'm anticipating your objection.

Mr. Zimmerman, can you please identify the document at least for us that you're reading from so that people could make more informed objections if necessary?

MR. ZIMMERMAN: Absolutely. I'm holding and intending to read from the rebuttal testimony of the Con Edison electric rate panel in Case No. 07E0523.

ALJ LECAKES: And I assume that your follow-up questions will be along the lines of probably if they agree or if they can explain the changes between their testimony back then and testimony now.

MR. ZIMMERMAN: I don't intend to ask the panel any questions as to the merits of what's in that testimony. I don't intend to ask them to swear to it. But I do want to ask if they agree with the statements therein.

Proceedings

MR. KRAYESKE: I would ask that he show them the testimony that he's referring to so they can look at it.

ALJ LECAKES: I was about to say that, yes.

I will allow it but please bring a copy up to the witness.

I assume that this document is in DMM, the full document.

MR. ZIMMERMAN: Yes.

ALJ LECAKES: I don't think we need to mark this as a separate exhibit for this hearing. It's a publically available document on DMM. And could you just state the name of the panel one more time?

MR. ZIMMERMAN: Yes. It's the electric rate panel.

MR. KRAYESKE: And what page in this testimony are you referring to?

MR. ZIMMERMAN: I'm going to be starting on page 18. Just to make sure the labeling's clear, so it's the company's electric rate panel but it's labeled Electric Rate Panel - Rebuttal Electric.

Proceedings

ALJ LECAKES: And it was sponsored by Con Edison in 2007.

MR. ZIMMERMAN: The portion I'm going to read begins on page 18, line 20, as follows:

"QUESTION: Why didn't the electric rate panel allocate line transformers to the customer component and rather allocated those costs to the demand component?

"ANSWER: The cost associated with line transformers that covers sizes up to and including 50 KVA equates to less than 1 percent of total book costs account 368. The account is essentially composed of much larger transformers whose costs are considered to be related to demand."

Was the panel aware that the company made this statement in testimony in the 2007 rate case?

MR. ATZL: Yes. And what we were reacting to was the opposing witness proposing to include my transformers up to 50 KVA, which is not what we do.

Proceedings

MR. ZIMMERMAN: Is account 368 still predominantly comprised of transformers larger than 50 KVA?

MR. ATZL: I know it's composed of transformers largely greater than 25 where we draw the line but I can't say for sure about 50. But this just demonstrates that the company over time reevaluates cost of service methodologies and can sometimes make changes to it.

MR. ZIMMERMAN: Understood.

Akin to what we just did, I've got another document that I'd like to read from.

MR. KRAYESKE: Again, I'd ask that you show it to the witnesses.

MR. ZIMMERMAN: We're bringing documents around now. That document is the Recommended Decision in Case 07E0523. I'll wait until my colleague has handed copies.

MR. KRAYESKE: And what page in the testimony in the recommended decision?

MR. ZIMMERMAN: Page 145. Beginning at the top of the page,

Proceedings

recommended decision reads, "Con Edison also disagrees with the NYC government customers functionalization of low-tension distribution line transformers as being customer-related. The company that assigns the transformers to the demand component, because its system mostly had large transformers, less than 1 percent of the book costs of a line transformer account represents small transformers; therefore, the company believes it is entirely proper to classify the book costs as being related to demand."

Does the panel believe that this argument the company made in 2007 was unreasonable?

MR. ATZL: I think the company's view on the subject of line transformers has changed over time, so obviously this speaks for itself for that rate case in 2007; however, we've reviewed this methodology and found that customer component of line transformers is a methodology that's adopted by NARUC and

Proceedings

also is part of what's required for a minimum system to truly be a system that can deliver a minimum amount of load.

I think UIU's contention in this testimony that you can build a system purely out of secondary is simply ridiculous, and the addition of primary transformer components are necessary to have a minimum system that can actually function.

MR. ZIMMERMAN: So, Mr. Atzl, to use your own words, then, this argument that the company made in 2007 would argue that line transformers should be allocated 100 percent to demand, is that completely ridiculous?

MR. LANG: Objection, your Honor. That's not what the witness said.

MR. ATZL: Yeah, that's not at all what I said.

ALJ LECAKES: It's actually a pretty fair characterization of what the witness said.

MR. ATZL: No, no, not at all.

Proceedings

ALJ LECAKES: Then the witness is free to clarify.

MR. ATZL: What I'm clarifying is that UIU contends basically that you can build a system purely out of secondary conductors. That was what I was commenting on.

ALJ LECAKES: I do understand that. But Mr. Zimmerman's pointing out the fact that the change in the company's position between 2007 and now with regard to transformers and whether they make up a part of the primary distribution, whether they should be included in the demand component versus a customer component.

Go ahead, Mr. Zimmerman.

MR. ZIMMERMAN: UIU advocated in part that transformers should not be included in a minimum with the purposes of ECOS. Is it the panel's assertion that that is "completely ridiculous"?

MR. ATZL: No. I explained to you exactly what I was talking about, that that was the assertion that you could build

Proceedings

a system purely out of secondary conductors.

MR. ZIMMERMAN: Does the minimum system exist? Does the company build a minimum system?

MR. ATZL: No. What it does is it recognized that there's a system that needs to be in place, a minimum amount of system to connect customers, whether they use any power or not, that the system has to be there to serve those customers.

MR. ZIMMERMAN: Whether they use any power or not?

MR. ATZL: That's right.

MR. ZIMMERMAN: Including zero load?

MR. ATZL: We have to stand ready to serve. If a customer uses zero, we have to stand ready to serve when they use more than zero. So there's a system and there's cost associated with providing that system to make the connections to the customer service points and to provide service to all those points regardless of whether the

Proceedings

customer uses any power or not.

MR. ZIMMERMAN: Earlier you said that the company's minimum system carries greater than zero load -- is that correct -- could carry greater than zero load if more were to exist?

MR. ATZL: It's a minimum system that could carry some minimal amount of load.

MR. ZIMMERMAN: How much load is minimal?

MR. ATZL: It's not defined. It means greater than zero.

MR. ZIMMERMAN: I'd like to ask you about page 46 of the rebuttal testimony, please. That's the rebuttal testimony on the joint proposal. I'd like to ask you about the following quote, please.

MR. ATZL: Just a second, please. We're there.

MR. ZIMMERMAN: Beginning on line 14, I'd like to ask you about the following quote:

Proceedings

"QUESTION: Please respond to UIU's assertion that the company chose to focus on the cost of 2.0-inch steel main pipe size because it would result in assigning more costs into the customer-related category. By choosing the more costly size, the company shifted more costs into the customer-related category.

"ANSWER: There is no basis for UIU's assertion."

Panel, where does UIU assert --

MR. KRAYESKE: Mr. Zimmerman, I'd like to ask that if you're going to read into the transcript that you finish the entire response as opposed to just parsing the response out. There's another, you know, five or six lines here, so I think we need a complete record.

MR. ZIMMERMAN: So as the company and city have pointed out, these documents are already in the record. I'm asking about a particular assertion that the panel made in that quote. Now, I included the question before because it's useful for

Proceedings

setting up content.

If you want me to finish reading the answer, I'm happy to do that.

ALJ LECAKES: I think that the rest of the answer continues on lines 20 and 21 of page 46 and then 1 through 5 on page 47. The record's clear that this was a partial response and I understand where you're going with your question so you may proceed.

MR. ZIMMERMAN: Where does UIU assert that the company chose this pipe side in order to assign more cost to the customer-related category?

MR. ATZL: That's our interpretation of the quote.

MR. ZIMMERMAN: It's your interpretation of the quote? Can you read that quote again, please?

MR. ATZL: "By choosing the more costly size, the company shifted more costs into the customer-related category."

MR. ZIMMERMAN: Where in that quote speaks to the company's motives?

Proceedings

MR. ATZL: That's our interpretation of the quote.

MR. ZIMMERMAN: Does the quote speak to the company's motives?

MS. KRAYESKE: Objection, your Honor. Asked and answered.

ALJ LECAKES: Agreed. I understood the answer.

MR. ATZL: Our contention is that when we look at the minimum system we're not looking at cost. We're looking at size of the pipe. And when you get to a size that has a significant amount of footage, the smallest one with a significant amount of footage, going with pipe sizes that have tiny amounts of footage gives us problems in terms of the average cost per foot can be impacted by individual jobs that have different vintages, some older than others, some newer than others, and also the conditions under which the pipe was installed.

MR. ZIMMERMAN: Is it true that had the company chosen to use a small, a

Proceedings

cheaper pipe size, in its minimum system that would have resulted in a lower customer-related cost?

MR. ATZL: Yes. And for example, though, UIU suggests what amounts to a cheaper pipe size but a larger pipe size. And then UIU claims that the pipe size is too big, so...

MR. ZIMMERMAN: Actually, UIU's recommendation, UIU recommended not using a minimum system at all for gas. The quote that the panel repeated here imputes to UIU an assertion to the company's motive that UIU did not make. It observed a fact.

ALJ LECAKES: Mr. Zimmerman, we understand the point. You may proceed with your next question, please.

MR. FLISHENBAUM: Can I just add something?

ALJ LECAKES: There's no question pending, as far as I'm aware.

MR. ZIMMERMAN: I guess this is probably my last question.

ALJ LECAKES: There will be an

Proceedings

opportunity for redirect after.

MR. ZIMMERMAN: Does the panel wish to amend this portion of its testimony at this time?

MR. ATZL: No.

MR. ZIMMERMAN: Does the panel wish to amend a portion of the testimony on page 47, line 14; the sentence beginning, "If, as UIU suggests, the company's goal is to maximize costs assigned to the customer-related category"?

MR. ATZL: As I said, we were working based on our interpretation of UIU's statement. I think in the discussion here you may have clarified UIU's intention so I don't think we need to do anything here.

MR. ZIMMERMAN: So the panel wants to keep its testimony?

MR. ATZL: Well, does UIU want to clarify its statement?

ALJ LECAKES: No. We're not going to have a back-and-forth. But the judges do understand that this is the

Proceedings

company's characterization, the company witness's characterization, of UIU's testimony and not necessarily what UIU intended when they testified.

MR. ZIMMERMAN: Intended or said.

We have no further questions. Thank you.

ALJ LECAKES: Is there any --

MR. ZIMMERMAN: I apologize. Actually, I have one more because earlier I asked a question to the other company panel and I just want to ask if this panel has the answer.

And that question was for each rate year, how much of a --

MR. KRAYESKE: Hold on. I think in the question you're referring to the company's reply statement in support, page 3; is that what we're talking about?

MR. ZIMMERMAN: No, I'm not. I'm asking about AMI.

For each rate year, does this panel know how much of the joint proposal's revenue requirement is attributable to the

Proceedings

cost of advanced metering infrastructure?

MR. ATZL: We don't have that information with us.

MR. ZIMMERMAN: Okay.

I'm sorry. You know, company's counsel indicated you made reference to page 3 of the reply statement.

MR. KRAYESKE: Yeah. I should've kept my mouth shut. I felt that's where you were going. I apologize.

MR. ZIMMERMAN: It's actually page 6 of the reply statement. I do have a couple questions on that.

MR. KRAYESKE: Can't we just pretend I didn't say it?

MR. ZIMMERMAN: I'm way under my hour, for what it's worth.

I'd like to direct the panel's attention to the second chart, the one occurring just before paragraph letter B. Can the panel please identify what that chart shows?

MR. ATZL: The chart? Explain it? Well, I'll tell you what it shows. So

Proceedings

the first two columns come from UIU's statement, page 4, in which it lays out the impacts of the joint proposal. And then the third column is a ratio of the impact on the SC1 residential customers as compared with the overall revenue impact.

MR. ZIMMERMAN: Per rate year, correct?

MR. ATZL: That's right.

MR. LANG: Excuse me. Mr. Atzl, just for clarity, do you mean the fourth column, not the third column?

MR. ATZL: Yes. I was referring to columns of numbers. But technically, yes.

MR. ZIMMERMAN: Service classes SC1 and SC3 taken together as they are represented in the second and fourth columns in this chart, what percentage of the company's total firm gas customers do those service classes comprise?

MR. ATZL: I don't know the percentage offhand.

MR. ZIMMERMAN: Would the panel

Proceedings

agree subject to check that together they comprise approximately 88 percent of the company's firm gas customers?

MR. ATZL: Subject to check.

MR. ZIMMERMAN: So when calculating the overall rate increase to firm gas customers, the SC1 and SC3 customers taken together, the increase assigned to them, will largely determine what the overall percentage increase is, correct?

MR. ATZL: No.

MR. ZIMMERMAN: Can you explain why not?

MR. ATZL: Depends on the magnitude of the increase to that class versus the others.

MR. ZIMMERMAN: Together they constitute 88 percent of the customers.

MR. ATZL: I understand that.

MR. ZIMMERMAN: They constitute 88 percent of what goes into the average rate increase, correct?

MR. ATZL: No.

Proceedings

MR. ZIMMERMAN: Can you explain why not?

MR. ATZL: Because the rate increase is not allocated on a customer basis.

MR. ZIMMERMAN: When calculating the overall percentage rate increase, can you explain how that is accomplished?

MR. ATZL: That's the change in revenue divided by the total revenue, delivery revenue.

MR. ZIMMERMAN: So if 88 percent of customers get, for example, a 100-percent increase and the remaining 12 percent of customers get a zero-percent rate increase, what is the average rate increase?

MR. ATZL: Restate your question.

MR. ZIMMERMAN: If 88 percent of the customers get a 100-percent rate increase and the remaining 12 percent of customers get a zero-percent increase, what's the average increase? I know this sounds like a fifth grade math problem.

Proceedings

MR. ATZL: I have no idea what it is.

MR. ZIMMERMAN: I have no further questions. Thank you.

ALJ LECAKES: Is there any other party that has any questions for this panel?

MR. BURNS: I have a couple.

ALJ LECAKES: Go ahead, Mr. Burns.

MR. BURNS: You were asked, Mr. Atzl, you were asked about sort of how much of the AMI costs were going to be sort of hitting the books in this three-year settlement that's the subject of the joint proposal. And I believe you said you don't know how exactly much that is. But is it fair to state that most of the overall AMI costs will be recovered in the next rate plan, not the three years included in the joint proposal settlement?

MR. ATZL: I do believe that's correct.

MR. BURNS: And I think you

Proceedings

testified in the previous panel, Mr. Atzl, or maybe one of the other witnesses, about two of the six regions you're expected to have deployment within this rate plan; is that right?

MR. ATZL: That wasn't my response so I can't confirm that.

MR. BURNS: I guess we can read the transcript.

So AMI meters are going to be essentially replacing all gas and electric meters throughout Con Ed's territory; is that right?

MR. ATZL: Yes.

MR. BURNS: So it's not for just for new customers?

ALJ LECAKES: Mr. Burns, what is Pace's position on the joint proposal in this case?

MR. BURNS: Your Honor, what I'm trying to do is --

ALJ LECAKES: No, no. What is Pace's position on the joint proposal; is it in support or --

Proceedings

MR. BURNS: We're in support except for where we have a little asterisk on the signature page about one portion of the joint proposal which we are not in support of. What I'm asking for here is there's been testimony about the AMI allocation that is different from what's in the joint proposal and I'm just trying to spend a few minutes to clarify what's in UIU and what the staff -- and in the company have talked about things that are different about AMI allocation that are in the joint proposal. So what I'm trying to just elicit is the differences between what's in the joint proposal about AMI allocation versus what's in the new testimony file in the last couple of weeks.

ALJ LECAKES: To what end?

MR. BURNS: Because we signed on to the joint proposal we didn't sign on to the AMI allocation that's being discussed in the new testimony.

ALJ LECAKES: And so is Pace seeking a modification to that one

Proceedings

particular area in the joint proposal?

MR. BURNS: We're seeking a non-modification to the joint proposal. So to the extent that the testimony of this panel is going beyond what the joint proposal says, I'm just trying to clarify for the record what that is. We would like the joint proposal to be accepted as written with the exception noted on our signature page. But there has been testimony about AMI allocation and how it should take place, not necessarily just for this rate case but possibly in future rate cases that's not part of the joint proposal. So we want the joint proposal on the AMI allocation to remain as is. I'm just trying to clarify for the record what is different in the testimony that was submitted since the joint proposal on that narrow issue.

ALJ LECAKES: So the concern is that the rate allocation that's going to be set with the Commission might either have some precedential effect going into future

Proceedings

plans or may actually through whatever the Commission decides will order a rate allocation that continues into the next rate plans after; is that what you're saying?

MR. BURNS: Yes, your Honor, that's correct. The concern is that the joint proposal essentially doesn't deal with AMI allocation and it kind of punches it to the next case by sort of deferring any decision about how the AMI allocation will take place in the next rate case to the next rate case. But I don't think that it's -- I think what we want to avoid here is going beyond or altering the joint proposal on that particular issue so that the AMI allocation is you will be fully briefed and litigated in the next rate case to the extent the parties decided to do that. I mean, it's just -- I do think that the AMI allocation filings and testimony that have occurred since the joint proposal are something different than what we signed on to. And I just want to spend a couple

Proceedings

of minutes pointing out what those differences are.

MR. DIAMANTOPOULOS: I have an objection.

MR. KRAYESKE: Yeah. Help me understand what you think is different. There's nothing different in what we've said.

MR. BURNS: I could probably get through my questions in ten minutes and you can object as we go.

ALJ LECAKES: I'd rather spend ten minutes deciding whether the questions need to be asked or whether they're improper in some way.

Mr. Diamantopoulos.

MR. DIAMANTOPOULOS: I object to Pace asking questions which is not the basis on which they reserved on their signature page. So there really is no basis for Pace to be cross-examining in this manner.

ALJ LECAKES: I'm asking you because I was afraid this was straying in a

Proceedings

friendly cross and that UIU and Mr. Zimmerman were not objecting. But now I'm hearing something different than what I expected, which is confusing me.

MR. LANG: Your Honor, may I raise a different objection, then, that might clarify this? Section P6, which is on page 19, specifically states that none of the provisions of the joint proposal are precedential. If the Commission adopts the joint proposal as proposed, then it would be adopting that provision as well and Mr. Burns' concern is really addressed by that because this wouldn't be precedential for the next case.

ALJ LECAKES: I do agree with that. The concern that I have at this point, as Ms. Krayeske was getting at, which is what change does Pace believe is being made to the joint proposal? Because we have a joint proposal that's before us and Judge Wiles and I have not been notified of any modifications or changes anticipated to the joint proposal. And I

Proceedings

have not divined or read any testimony from any party that any supporter of the joint proposal is suggesting any modifications.

MR. BURNS: Your Honor, I can address that. UIU has indicated that there should be a different AMI allocation for this case and then presumably -- UIU has asked for a different method of allocating AMI costs for this case. And we believe that the company, instead of saying, Well, this case should proceed as follows, it shouldn't be based upon sort of benefits, it should be based on cost causation. And then in the future rate cases, though, if there's a decision in the merits on what AMI allocation will be, the joint proposal is silent on how the AMI allocation should be. So UIU has suggested a different way of allocating costs for AMI. And the company has said, Oh, it shouldn't be the way UIU proposes. We believe a decision on the merits on that particular issue for this rate case can affect the next rate case and, therefore, we're just trying to

Proceedings

clarify what's different between what the testimony of the company has said on the AMI allocation. We have very limited cross on this, your Honor, and --

ALJ LECAKES: But it's not appropriate cross, Mr. Burns. And here's the thing -- I don't know if this will make you feel better or worse -- UIU is not contesting AMI allocation. They're contesting the entire revenue allocation and rate design in this case. So it's not just an AMI issue. They're contesting the entirety of rate design and revenue allocation at least as it affects classes SC1 and SC3 for the electric. So if it has an incidental effect on AMI if the modifications were adopted by the Commission that UIU suggests, that is what it is but it's going to fall out in a whole lot of areas.

MR. ZIMMERMAN: If I can also add, just, I understand Mr. Burns' concern with precedent. I might also add one point of clarification, that in the electric rate

Proceedings

panel's testimony they specifically mention that this recommendation is for the purposes of this rate.

MR. KRAYESKE: In fact, our testimony says, and I hate to read into the record, but on page 61, "In future rate cases, booked AMI costs will be included in the company's ECOS studies and will be allocated based on appropriate cost allocation methodologies." So the company explains in that paragraph what is happening with AMI costs in this case as well as in future cases. There was no change made or no change intended.

And Judge Lecakes, I just want to follow up on what you said. UIU's cost allocation wouldn't just affect SC1 and SC3. It would affect a lot.

ALJ LECAKES: It would affect the entirety of revenue allocation and rate design in both electric and in gas rates. I understand that completely.

MR. BURNS: Your Honor, though, UIU has a number of different objections to

Proceedings

the ECOS methodology. That will affect everything, right? But they also have specifically talked about AMI allocation. Now, say the Public Service Commission rejects their arguments on the ECOS methodology. They could still say, All right, well, we're going to render that decision on the AMI allocation. And that is why I'm trying to limit my questions just to the AMI allocation portion, because the company went beyond the statement that Ms. Krayeske -- the problem is the company went beyond that statement and argued on the merits as to why there shouldn't be some form the beneficiary component of the AMI allocation moving forward since the allocation is not based upon cost causation, it's based upon sort of rev and other initiatives and things of that nature; and therefore, it's not being customer driven because it's not like new customers are added, they're just replacing AMI meters.

ALJ LECAKES: But that's a

Proceedings

theoretical discussion that they're free to visit in testimony or whatever. They're not proposing a modification to the joint proposal.

MR. BURNS: I'm sorry. Who's not proposing --

ALJ LECAKES: The company's not proposing -- the company witnesses might be talking about their beliefs in responding to Mr. Zimmerman's questions but they're not proposing a modification to the joint proposal as it exists before us. They have an agreement. They've submitted that agreement for the Commission to consider as it's written.

MR. BURNS: But I think it's the company's position that benefits should not affect AMI allocation as accepted in this case, notwithstanding the language that's in all of these joint proposals that it shouldn't set precedential value. We all know they kind of do set precedential value. So if there's a decision on that aspect of what the company has advanced in

Proceedings

its new testimony, then it's a possibility that that will be the rule going forward or if they don't come back in for another case, that will affect the next case.

ALJ LECAKES: That's not an issue in this case. The issue is is the joint proposal in the public interest as written. So the Commission's not going to make any decisions on the AMI unless on the theory behind the AMI or the reasons behind it, unless, of course, they adopt some of UIU's changes, which would require -- which would probably send the parties back to the bargaining table if there were time for that or -- that would be another question on how to deal with it. It's one thing to request a modification for the joint proposal that changes a little bit of the JP that people make to sign on to, is another thing. And UIU knows the mountain that they're climbing here to suggest changes to a joint proposal that would basically blow up a deal.

So I just don't see the need or

Proceedings

reason for the Pace cross-examination as it's proceeding at this point.

MR. LANG: Your Honor, I don't mean to belabor this conversation but, I guess some clarity, we'd like some too because it affects how we would be doing our cross later in this hearing. At page 38 of the UIU's direct testimony on the joint proposal they actually are suggesting a different allocation of AMI costs in this proceeding, not just in the future but in this proceeding.

ALJ LECAKES: Right. But they're also requesting an entirety of revenue allocation and rate design. And to the extent that cross-examination is coming from other parties supporting the joint proposal and against UIU's proposal, either an AMI or globally in revenue allocation rate design, how is that not friendly cross? And how is that not the company's position to clarify those issues on re-direct?

MR. LANG: I understand, your

Proceedings

Honor. Thank you.

ALJ LECAKES: I mean, it's the party supporting the joint proposal. That's why I started by asking what Pace's position was on the JP, because I'm really concerned that we're either in friendly cross territory, which is not permissible, or we're in territory that's suggesting something that I haven't heard suggested, that parties in support of the joint proposal are advocating a modification or some sort of future effect. And as you pointed out, is the company or do the parties to the joint proposal include in the standard provision that it's not precedential-setting for the future?

MR. BURNS: Your Honor, I believe, though that -- I mean the problem is is that if there is a decision that adopts what the company has said, which is beyond the joint proposal, that the benefits --

ALJ LECAKES: The Commission will not adopt statements beyond the joint

Proceedings

proposal is in the public interest. There might be some dicta or some other consideration of parties' positions and recitation or whatever, but the joint proposal is not being submitted on any one particular party's position about a certain issue. It's taking it as the entirety of the litigated case saying these are the different parties' positions and they've agreed to resolve their differences in this way and they've condensed it into this thing called a joint proposal, and we find that the joint proposal itself is in the public interest and, oh, by the way, there's this provision, as Mr. Lang cited, that says that this is not setting any precedent for any future, a joint proposal or litigated case or anything. So I'm still failing to see the problem. So I think we can end --

MR. BURNS: Well, your Honor, the only reason I'm sort of belaboring this is because in the rate cases I've been involved in, the Public Service Commission

Proceedings

has modified joint proposals and it has adopted it but it makes a few tweaks here and there. And if it adopts this joint proposal and, you know, it adopts the reasoning that the company has -- it seems to me that --

ALJ LECAKES: You're focused on reasoning. If it changes something in the joint proposal policy-wise as to an allocation or a rate design modification for AMI purposes, it's apt to do that based on an AMI proceeding or a rev proceeding or some policy issue. It's not going to do that based on testimony which has been offered into this proceeding as an exhibit from a litigated position and is unsworn or on statements made by a panel answering cross-examinations from another party that's advocating a change or modification.

I just don't see that there's any reason to pursue this area on cross-examination here.

MR. BURNS: Your Honor, respectfully, obviously I think it's

Proceedings

important for us to make sure that the Public Service Commission is aware of how some of the testimony has gone beyond what was agreed to in the joint proposal and that if they do make tweaks that affect AMI allocation in this case and the company doesn't come back, then it could just affect the AMI allocation that all of the parties intended to defer to the next rate case.

And so I just wanted to ask a few limited questions about how the testimony that the company has offered has gone a little bit beyond which we've agreed to in the joint proposal. It's not friendly cross in any way. In fact, nobody seems to like it.

ALJ LECAKES: But it's also not serving a relevant purpose as I see it because I don't see a danger of the Commission making a decision in the way that you're suggesting it might.

MR. FAVREAU: Even if so, your Honor, they could also petition for

Proceedings

hearing, the could petition for clarification, reconsideration. There's other avenues. This is all based on speculation of what the Commission may or may not do.

MR. BURNS: I just find that sometimes if you allow questioning to proceed and then deal with things on motions later, there's less of a chance of some kind of reversal or appeal. I mean, like I said, we spent more time talking about this than I could've asked these five questions and be done. I'm just trying to clarify what's different in their testimony. If you're going to tell me that I cannot proceed with this line of questioning, I've tried to make my point. I'm probably not as articulate as I could be. I'm relatively new to these types of --

ALJ LECAKES: Let me hear your questions without an answer first just to see where you're headed because it wasn't clear to me when I started asking you.

Proceedings

MR. BURNS: One question I have is page 62, lines 1 to 2 of this panel's testimony, they say, "The joint proposal treats AMI costs included in the revenue increases as any other capital program." What I was going to ask is what does that mean, where does the allocation specifically come from? And I think this comes out in staff's testimony but not the company's. The allocation is, I believe, based on Con Ed's 2013 ECOS study. So I'm just trying to figure out -- AMI wasn't in the 2013 ECOS study, right? But there were percentages of allocations in the different customer classes. And does that come from the 2013 ECOS study?

ALJ LECAKES: Again, why does that matter? The joint proposal is what it is. It proposes what it does. It's not --

MR. ZIMMERMAN: Your Honor, for informational purposes, I'd be interested in knowing the answer.

ALJ LECAKES: I know you would but you didn't ask the question.

Proceedings

MR. BURNS: I'm not conferring, your Honor.

MR. ZIMMERMAN: I think it helps to flesh out the record. It's not clear from the JP.

ALJ LECAKES: You know what, Mr. Zimmerman, I think you're right.

Go ahead. Ask your questions. If they get out of control, I'll stop it.

MR. ZIMMERMAN: I would like to reserve my right to object to friendly cross, your Honor.

ALJ LECAKES: For the purposes of making a complete record. We're already here tomorrow anyway.

MR. BURNS: Thank you, your Honor. I appreciate it.

So the Con Ed's ECOS study being used in this proceeding analyzes cost and revenues from 2013; is that right?

MR. ATZL: Can you repeat that?

MR. BURNS: Con Edison's ECOS study being used in this proceeding analyzes costs and revenues from 2013; is

Proceedings

that correct?

MR. ATZL: Yes, that's right.

MR. BURNS: And the joint proposal treats AMI costs including the revenue of -- your testimony, page 62, lines 1 and 2, it indicates in your answer, "The joint proposal treats AMI costs included in the revenue increases as any other capital program." Did I read that correctly?

MR. ATZL: Yes, you read it correctly.

MR. BURNS: Now, is the allocation of the AMI costs in this case that you are proposing based on Con Ed's 2013 ECOS study?

MR. ATZL: Well, it's based on revenues. So the revenues were realigned based on the results of the ECOS study before application of the rate increase. So just to clarify, there are no AMI costs in the imbedded cost of service study. The imbedded cost of service study does, however, identify surpluses and

Proceedings

deficiencies by class. And revenues are realigned based on those surpluses and deficiencies, one-third in each rate year before applying the revenue of increase. So any AMI costs are part of that revenue of increase that is then allocated based on the realigned revenues.

MR. BURNS: So your 2013 ECOS study allocated costs to different service classifications, correct?

MR. ATZL: Well, it identified classes that were surplus or deficient. And then in our revenue allocation prior to applying the revenue increase we correct for one-third of those surplus deficiency indications.

MR. BURNS: So essentially your 2013 ECOS study determined how much each customer class would have an increase or a decrease, correct? Came up with the percentages?

MR. ATZL: No.

MR. BURNS: How did you come up with -- AMI wasn't in the 2013 ECOS study,

Proceedings

right?

MR. ATZL: Right.

MR. BURNS: So the 2013 ECOS study, is it fair to say that it essentially determined how much each service classification would be facing an increase in rates, some sort of percentage?

MR. ATZL: What it determined was an adjustment to revenues prior to applying the revenue increase.

MR. BURNS: So using service class X, the ECOS study would say how much they would go up percentage-wise; a regular increase, a high --

MR. ATZL: The ECOS study tells us how much in terms of revenue the class and surplus are deficient. So in each rate year we take a third of that so it's a dollar amount then by class. That dollar amount is applied to the revenues by class. Then that results in what we refer to as realigned revenues. So the revenues have been realigned then based on the results of the ECOS study or at least based on part of

Proceedings

the results of the ECOS study. Then the revenue increase for that rate year is applied on an across-the-board percentage increase and any AMI costs in this particular case are in that revenue increase.

MR. BURNS: So the percentage increase for each service class for AMI in this case comes from the 2013 ECOS study, right?

MR. ATZL: No.

MR. BURNS: You have AMI costs now that you're seeking to recover in this rate plan, right?

MR. ATZL: Yes.

MR. BURNS: And they're going to be paid for by different customer classes, right?

MR. ATZL: Well, they're part of the overall increase that get allocated among the classes.

MR. BURNS: Right. So how do you determine how much of the AMI gets allocated to each of the different service

Proceedings

classes?

MR. ATZL: We don't determine anything specific for AMI. AMI is part of the overall revenue increase.

MR. BURNS: And how do you determine how much of the overall revenue increase is applied to each service class?

MR. RICHTER: Asked and answered.

ALJ LECAKES: That's been asked and answered. And not only has it been asked and answered here, the questions without the AMI-specific component are all asked and answered in this panel's initial testimony on the underlying litigated case where they explain the ECOS and the revenue allocation rate design and methodology. There's a pool of costs that a cost of service study is done and it's determined where each of these service classes are either in surplus or deficient and then they try to move them closer to zero, to no surplus, no deficiency. And since we have the benefit of a three-year joint proposal here before us, we have the benefit of

Proceedings

moving them more gradually than the parties might suggest would otherwise be done in a single-year-rate case.

I mean, the issue that you're concerned with as to AMI, the witness has stated that it's not a separate cost component that gets allocated on its own but it's thrown into that entire pool of cost increases.

MR. BURNS: So the allocation of the entire pool of cost increases that include AMI comes from the 2013 ECOS; is that right?

MR. KRAYESKE: Again, your Honor, asked and answered.

MR. BURNS: Do you think he answered it then?

ALJ LECAKES: Yes, he did answer it. And his answer was yes, the movement that's recommended in the joint proposal is based on the 2013 ECOS study.

MR. BURNS: Can I ask, Mr. Atzl, do you agree with what the judge just said? Is that accurate? Does that properly

Proceedings

characterize your answer? I'm just trying to understand it as sort of a layperson here.

MR. ATZL: I think it's correct. When you say the word the movement, I interpret that to mean the surplus deficiency indication.

ALJ LECAKES: Yeah, the movement toward getting away from adding a class surplus or a class deficiency toward trying to equal out each service class paying for its cost.

MR. BURNS: Ms. Krayeske, if you could turn to page 61, lines 9 to 12, you said, "In future rate cases, booked AMI costs will be allocated based on appropriate cost allocation methodologies." Did I read that correctly?

MR. ATZL: No. I think you skipped a chunk of the sentence.

MR. BURNS: Do those words appear, "In future rate cases, booked AMI costs will be allocated based on appropriate cost allocation methodologies"?

Proceedings

MR. ATZL: Those words appear but you left the middle of the sentence out. You asked me if you read it accurately.

ALJ WILES: The sentence you're talking about says -- and look at your copy -- "In future rate cases, booked AMI costs will be included in the company's ECOS studies and will be allocated on appropriate cost allocation methodologies." That's the complete sentence, right?

MR. ATZL: Yes, that's right.

MR. BURN: I apologize I left out some words while translating. I'm not trying to be --

So what Judge Wiles just read is part of what appears on that page, correct, in your testimony?

MR. ATZL: Yes.

MR. BURNS: So in future rate cases, you indicate, booked AMI costs -- and I'm paraphrasing, not reading all the words -- will be included based in the company's ECOS studies based on appropriate cost allocation methodologies. Does the

Proceedings

joint proposal indicate what would be the appropriate cost allocation methodologies for AMI allocations?

MR. RICHTER: Objection. There's nothing precedential about that.

ALJ LECAKES: I agree. Again, now we're addressing a concern that I know for a fact doesn't exist.

I think that this line is done. Thank you, Mr. Burns.

MR. BURNS: Can I ask, your Honor, I have one further question in a different section.

ALJ LECAKES: One?

ALJ WILES: Different section?

MR. BURNS: Different section.

MR. ZIMMERMAN: Could we hear it without getting an answer from the panel first?

ALJ LECAKES: Ask the question and I'll hear any objections, if any.

MR. BURNS: Page 62, lines 12 to 14 indicates that "UIU's suggestion that AMI cost allocation needs to be based on

Proceedings

benefits has no precedent in any actual ECOS study." What does that mean, "has no precedent in any actual ECOS study"?

MR. ZIMMERMAN: Objection.

ALJ LECAKES: Mr. Zimmerman, the basis of your objection?

MR. ZIMMERMAN: This is friendly cross. This is giving the panel an opportunity to testify again.

MR. BURNS: I don't think this is friendly cross.

ALJ LECAKES: What is the purpose of asking the question, Mr. Burns?

MR. BURNS: What is the importance of having an actual ECOS study which includes AMI when you're allocating AMI costs?

ALJ LECAKES: That's a better question, but...

MR. ZIMMERMAN: Objection. But it's still awfully open-ended. I don't understand why we need to give the panel another opportunity to testify here. They wrote their testimony.

Proceedings

ALJ LECAKES: I agree.

I think we're done with the cross-examination unless there's another party that has any cross for this panel.

Company, how much time do you need to determine redirect?

MS. KRAYESKE: Just a couple, your Honor.

MR. RICHTER: Five.

ALJ LECAKES: We'll go off the record. We'll reconvene in five minutes.

(Whereupon, a short recess was taken.)

ALJ LECAKES: Ms. Krayeske.

MR. KRAYESKE: The company has no redirect, your Honor.

ALJ LECAKES: Thank you very much. This panel is excused.

Let's go off the record for a second.

(Whereupon, a short recess was taken.)

ALJ LECAKES: Staff, can you please call your next witness, recognizing

Proceedings

that there's been a change in presentation.

MR. FAVREAU: Could I call the staff joint proposal and policy panel?

ALJ LECAKES: Panelists, can you please identify yourselves by name and please spell your last name?

MS. KENNEDY: Honor, H-O-N-O-R, Kennedy, K-E-N-N-E-D-Y.

MR. HIGGINS: Kevin Higgins, H-I-G-G-I-N-S.

MR. WHEELER: Daniel Wheeler, W-H-E-E-L-E-R.

MS. SORRENTINO: Mary Ann Sorrentino, S-O-R-R-E-N-T-I-N-O.

MR. CULLY: Robert Cully, C-U-L-L-Y.

MS. JONES: Nicola Jones, J-O-N-E-S.

ALJ LECAKES: Panel members, can you please stand and raise your right hand?

WHEREUPON,

HONOR KENNEDY,

having been first duly sworn by ALJ Lecakes, is examined and testifies as

Proceedings

follows:

MS. KENNEDY: Yes, I do.

WHEREUPON,

KEVIN HIGGINS,

having been first duly sworn by ALJ Lecakes, is examined and testifies as follows:

MR. HIGGINS: Yes, I do.

WHEREUPON,

DANIEL WHEELER,

having been first duly sworn by ALJ Lecakes, is examined and testifies as follows:

MR. WHEELER: Yes, I do.

WHEREUPON,

MARY ANN SORRENTINO,

having been first duly sworn by ALJ Lecakes, is examined and testifies as follows:

MS. SORRENTINO: Yes, I do.

WHEREUPON,

ROBERT CULLY,

having been first duly sworn by ALJ Lecakes, is examined and testifies as

Proceedings

follows:

MR. CULLY: Yes, I do.

WHEREUPON,

NICOLA JONES,

having been first duly sworn by ALJ Lecakes, is examined and testifies as follows:

MS. JONES: Yes, I do.

ALJ LECAKES: You may be seated.

MR. FAVREAU: Panel, has your pre-filed reply testimony for this case been prepared by you or under your supervision?

MR. CULLY: Yes.

MR. FAVREAU: Your Honor, there are a number of corrections throughout the testimony. Throughout the testimony, we referred to the Riverbay witness, Mr. Lukas, as L-U-C-A-S when it should be L-U-K-A-S. I don't know if you want that corrected. It's about fifteen times on the record right now.

ALJ LECAKES: No. We'll assume for the purposes of the record that

Proceedings

wherever the testimony refers to Mr. Lucas with a C, that it's referring to the witness Ronald Lukas, L-U-K-A-S.

MR. FAVREAU: Thank you, your Honor.

With those changes, panel, do you have any other changes to your testimony?

MR. CULLY: Yes. On page 16 of our October 2016 prepared testimony of the staff joint proposal and policy panel, on line 19 the word "Eastern" should be inserted between "Great" and "Energy".

MR. FAVREAU: Is that all?

MR. CURRY: Yes.

MR. FAVREAU: If I were to ask you the same questions today as in that testimony, would your answers be the same?

MS. SORRENTINO: Yes.

MR. FAVREAU: Your Honor, I ask that the testimony be incorporated in the record as if given orally today.

ALJ LECAKES: It's granted. This will be labeled the Staff Joint Proposal and Policy Panel Reply Testimony. There's

Proceedings

also another label for Staff Reply Testimony of E&G Rates Panel. The file that should be inserted at this point in the transcript is a Word document titled, Staff Joint Proposal and Policy Panel Reply Testimony-102116-1510-clean.

(Whereupon, the following is the Staff Joint Proposal and Policy Panel Reply Testimony-10.21.16-1510.)

BEFORE THE
STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of

Consolidated Edison Company of New York, Inc.

Cases 16-E-0060 and 16-G-0061

October 2016

Prepared ReplyTestimony of:
Staff Joint Proposal and
PolicyPanel

Kevin Higgins
Supervisor, Utility Accounting
and Finance
Office of Accounting, Audits
and Finance

Daniel J. Wheeler
Utility Supervisor

Mary Ann Sorrentino
Utility Supervisor

Nicola Jones
Utility Engineer 3
Office of Electric Gas and Water

Honor Marie Kennedy
Utility Consumer Specialist 4
Office of Consumer Services

Robert Cully
Utility Engineer 2
Office of Markets and Innovation

State of New York
Department of Public Service

Three Empire State Plaza
Albany, New York 12223-1350

90 Church Street
New York, New York 10007

Q. Please state your names, employer, and business address.

A. Our names are Kevin Higgins, Mary Ann Sorrentino, Daniel Wheeler, Robert Cully, Honor Kennedy and Nicola Jones. We are employed by the New York State Department of Public Service (Department) located at Three Empire State Plaza, Albany, New York 12223, and 90 Church Street, New York, New York 10007.

Q Panel, have you previously provided pre-filed testimony in these proceedings?

A. Yes, we are members of the Staff Electric Policy Panel (Higgins, Sorrentino and Cully), the Staff Gas Policy Panel (Wheeler), the Staff Electric Infrastructure and Operations Panel (Jones), the Consumer Policy Panel(Kennedy). Our education and professional experience can be found in those testimonies filed as Exhibits to these proceedings.

Q. Are you sponsoring any exhibits with your testimony?

A. Yes. We are sponsoring oneexhibit in our testimony.

Q. Please briefly describe the exhibit.

A.   Exhibit__(SJPP-1) contains an analysis of historical cooling degree day trends for the months of June and September.

Q.   What is the purpose of thePanel’s replytestimony?

A.   The purpose of our reply testimony is to: address 1) New York Independent Contractors Alliance (NYICA) Testimony in Opposition of the Joint Proposalas it relates to the potential impact on Interference costs as a result of changes Con Edison made in awarding work under its Standard Terms and Conditions for construction contracts; and 2) the opposition to the Reliability Credit; specifically, (i) the direct testimonies of Ronald G. Lucas and David Ahrens, submitted on behalf of Intervenors Energy Spectrum, RiverBay Corporation, and Great Eastern Energy, related to the Reliability Credit which would be available to all standby rate customers per the stipulations of the Joint Proposal; and, (ii) the Statement in Support submitted by Digital Energy Corp. regarding metering requirements, the Reliability Credit, and provisions related to Service Classification

11 (SC-11).

NYICA Opposition

Q. What is NYICA's position regarding municipal interference cost?

A. On page 5 ofthe testimony of Mr. Kilkenny, NYICA states that interference costs are excluded from rates; therefore, Con Edison has a significant incentive to monitor and control costs. It is NYICA'sunderstanding that the Company is now asking the Commission to permit Con Edison to recover some of its future interference costs from the ratepayers if it spends above the target numbers, as set forth in Appendices 8 and 9 of the Joint Proposal.

Q. Is it correct that interference costsare excluded fromelectric and gas rates?

A. No. Currently, electric and gas rates provide funding for Operation and Maintenance (O&M)interference costs associated with the support, protection and maintenance of the Company's existing electric and gas facilities,as well asfunding for capital interference costs associated with new electric and gas facilities.Furthermore, the Company's current electric and gas rate plans provide for a full downward reconciliation of actual expense below the respective electric and gas rate allowance and reconciliation of amounts up to 30 percent above the rate allowances, shared on an 80/20 basis between customers and the Company, respectively, with limited exceptions.

Moreover, for electric capital expenditures, interference costs are subject to downward-only reconciliation, and for gas capital expenditures, interference costs are subject to a downward reconciliation with a limited upward reconciliation.

Q. Does the Joint Proposal continue to provide Con Edison funding for both O&M and capital interference costs?

A. Yes.

Q. Does the Joint Proposal continue the same reconciliation provisions for O&M and capital interference related expenditures contained in Con Edison's electric and gas rate plans?

A. Yes.

Q. What does NYICA state regarding the cost estimates provided by Con Edison for municipal interference in these proceeding?

A. NYICA states, at page 6 of the Kilkenny testimony, that the Company has not presented an accurate and complete budget forecast for interference costs, and has a track record of making decisions that increase its construction costs for non-business purposes that present a risk of future unwarranted costs to the ratepayer.

Q. Did Staff review Con Edison’s proposed rate year forecasts of electric and gas interference expenditures?

A. Yes. That review, including afinding that the Company’s rate year forecastswere reasonable and in line with actual historic expenditures,was discussed in the pre-filed direct testimony of Staff Shared Services and Municipal Infrastructure Support Panel.

Q. Does Staff share NYICA’sassumptionthat the changes Con Edison made to its Standard Terms and Conditions for construction contracts,specifically, requiring contractors to be a part of the Building and Construction Trades Council (BCTC) of Greater New York, will lead to interference costs in excess of the rate allowances provided in the Joint Proposal?

A. As noted above, the forecasts reflected in the Joint Proposal are in line with actual historic expenditures. As NYICA indicated in their opposition, the first contracts under the new terms and conditions will be bid, awarded and executed by 2017. Thus, the forecasts are based on historic costs of 2011-2015 incurred prior to the change in the Standard Terms and Conditions.

Additionally, in the event, the Company defers O&M costs under the reconciliation mechanism for future recovery provided for in the Joint Proposal, Staff reviews this deferral and could take issue with costsdirectly related to the change.

Finally, as noted above, for electric capital expenditures, interference costs are subject to downward-only reconciliation and for gas capital expenditures, interference costs are subject to downward reconciliation with a limited opportunity upward reconciliation.

Q. Does Staff have any final comment on the matter?

A. Yes. To assure that customers will not be harmed in the future as a result of Con Edison's business decision to change its Standard Terms and Conditions for construction contracts, Staff recommends that the Commission require the Company to make a showing in its next electric and gas rate filings that its O&M and capital costs have not increasedas a result of this change.

Reliability Credit

Q. Please provide an overview of the Reliability Credit under the Joint Proposal.

A. The Reliability Credit is designed to provide a financial incentive for customers whom are able to reliably maintain the electric demand they take from Con Edison's distribution system below their respective Contract Demand amounts during two consecutive summer periods, thus allowing Con Edison to consider this reliably-lowered amount of demand during system planning activities.

Q. Please describe the Reliability Credit, in dollars, and the timing of its implementation.

A. The Reliability Credit, in dollars, is equal to the product of: (a) the Reliability Adjustment, defined as the customers Contract Demand amount, in kilowatts (kW), less the highest kW demand recorded on the meter(s) used for monthly billing, net of generation, during a defined Measurement Period; and, (b) the Delivery Service Contract Demand Charge, in dollars per kW, that is in effect on October 1 of each year in which the Reliability Credit is determined. Once determined, the Reliability Credit will be applied to the customer’s successive 12 monthly bills, commencing in November of the year for which the Reliability Credit has been determined.

Q. Please explain the Measurement Period as stated in the Joint Proposal.

A. The Measurement Period is defined as specific Measurement Hours during the previous two consecutive summer periods; provided, however, that the first year in which a customer seeks the Reliability Credit, the Measurement Period will only be the Measurement Hours during the previous full summer period. The Joint Proposal adopts a phased-in approach whereby the

Measurement Period for Rate Year 1 is set using the same Measurement Hours and definition of “Summer Period” currently-effective for the Performance Credit in order to allow current customers whom are used to optimizing their systems to earn the Performance Credit an additional year to get accustomed to the Measurement Period which will be in effect for Rate Years 2 and 3.

Q. What are the Measurement Periods for each Rate Year under the Joint Proposal?

A. The Measurement Period for Rate Year 1 is defined as Monday through Friday, excluding holidays, from 10 AM to 10 PM, from June 15 through September 15. The Measurement Period for Rate Years 2 and 3 is defined as Monday through Friday, 8 AM to 10 PM, from June 1 through September 30.

Q. Do you have any initial comments regarding Mr. Lucas’ and Mr. Ahrens’ testimonies.

A. Yes. The description of the Reliability Credit is incorrect in both Mr. Lucas’ and Mr. Ahrens’ testimonies. Both Mr. Lucas and Mr. Ahrens incorrectly describe the Reliability Credit as being based on a “billing determinant [that] is the minimum generation output during the measurement period,” on pages 4 and 5 of their testimonies, respectively. Both witnesses mistake the Reliability Credit for the currently-effective Performance Credit.

Q. Please explain how the Reliability Credit and Performance Credit differ.

A. While the Reliability Credit and Performance Credit are similar conceptually, the Performance Credit is based solely upon a customer’s minimum generator output during the Measurement Period, whereas the Reliability Credit is technology-agnostic and rewards customers for any actions they may take to reduce demand on the Company’s distribution system.

Q. Please explain why the Measurement Period defined in the Joint Proposal for Rate Years 2 and 3 is reasonable.

A. The Measurement Period for Rate Years 2 and 3 should be viewed not in the context of a change from the requirements of the Performance Credit, but on its own merits. The months of June through September used for the Measurement

Period in Rate Years 2 and 3 conform to the definition of Summer Billing Period already in use for all demand-billed customers, and the hours of 8 AM to 10 PM used for the Measurement Period during Rate Years 2 and 3 is the same as Daily As-Used Demand billing determinants used for all standby rate customers connected to the Company's distribution system.

Q. Should the Measurement Period related to the Performance Credit be considered precedential for the Reliability Credit?

A. No. In fact, the Measurement Period related to the Performance Credit is the result of a negotiated settlement in Case 15-E-0050. The Measurement Period for the Performance Credit, as originally proposed on page 53 of the Con Edison Electric Rate Panel Initial Testimony from Case 15-E-0050 was initially proposed to be from June 1 through September 30 of each year. Since the Performance Credit is based solely on minimum generator output, the Measurement Period related to the Performance Credit was designed to avoid perverse outcomes of providing an incentive to customers to generate electricity, usually by burning fossil fuels, to the maximum extent possible, even during hours and days when a customer's load may be relatively low in comparison to its maximum demand.

Q. Does the Reliability Credit correct for this perverse incentive?

A. Yes. The Reliability Credit does not provide a perverse incentive for customers to maximize generator output regardless of customer load. Instead, the Reliability Credit only provides an incentive for customers to use their generation, or other demand-reducing actions, to minimize demand. That is, unlike the Performance Credit, there are no additional incentives under the Reliability Credit which would spur customers to operate their generating equipment uneconomically solely to earn the credit based on their generation. Therefore, we believe that it is reasonable to return to the Measurement Period initially proposed by Con Edison in 2015 and Staff in this proceeding: 8 AM to 10 PM, weekdays, excluding holidays, between June 1 and September 30 of each year, as stated in the Joint Proposal for Rate Years 2 and 3.

Q. Are there other reasons you believe the Measurement Period for the Reliability Credit under the Joint Proposal for Rate Years 2 and 3 is superior to the Measurement Period established for the Performance Credit?

A. Yes, we believe that the June 1 through September 30 measurement period acts as a superior incentive mechanism for eligible standby service customers to maintain low levels of demand, and thereby reduce Con Edison's need to build T&D Infrastructure in the future.

Q. Please explain.

A. It is well known that hotter weather drives customer demand and energy use, measured in the summer months in Cooling Degree Days (CDD). The number of CDD in a given time period is strongly related to the use of electricity for cooling purposes, such as air conditioning, which generally drives summer peak demands. As can be seen on page 1 of Exhibit__(SJPP-1), the average number of CDD in both the month of June and the month of September has been steadily rising, and we expect a warming trend to continue in the future.

Q. What conclusions do you draw from these data?

A. These data indicate that it will be increasingly important to control load during the months of June and September. The Measurement Period for Rate Years 2 and 3 as defined in the Joint Proposal provides an incentive for standby service customers to manage their load during the entirety of June and September, whereas the Measurement Period as requested by Mr. Lucas and Mr. Ahrens does not.

Q. Are there other portions of Mr. Lucas’ or Mr. Ahrens’ testimony that you take objection to?

A. Yes. First, on page 8 of the Lucas testimony, he states that the Measurement Period for the Reliability Credit does “not provide an incentive for customers to reduce demand during higher-cost hours in that they (sic) treat all hours the same.” Mr. Lucas’ claim that the Reliability Credit does not provide an incentive for customers to reduce their demand during higher-cost hours is factually incorrect. Although the Reliability Credit considers all hours of the Measurement Period on an equal footing, it does inherently provide for an equal incentive for customers to reduce demand during higher-cost hours as well as relatively lower-cost within the Measurement Period.

Q. Please continue.

A. Second, on pages 8 and 9 of his testimony Mr. Lucas claims that “certain customers were able to negotiate a ‘carve out’ whereas the concerns of others who may provide significant system benefits were not taken into account.” He goes on to cite examples of a limited exemption to standby rates for battery storage technologies up to 1 MW and the tightening of Nitrous Oxide (NO_X) emissions standards required for combined heat and power (CHP) facilities to qualify for an exemption to standby rates. Mr. Lucas’ claim is incorrect. Staff has a well-established history of supporting policies to help incent greater penetration of nascent technologies, such as batteries, as well as supporting the State of New York’s environmental goals.

Q. What is your third concern with Mr. Lucas’ and Ahrens’ testimonies?

A. Third, both Mr. Lucas and Mr. Ahrens claim repeatedly that Staff did not take into account local laws pertaining to large residential complexes when it proposed the Measurement Period. Both witnesses had ample opportunity to present arguments on the record prior to the filing of the Joint Proposal demonstrating whether RiverBay and other large residential customers should be given preferential treatment due to factors outside of Staff's expertise or knowledge, yet neither witness provided direct or rebuttal testimony prior to the Joint Proposal to that effect. It is our understanding that the Intervenor parties did not become involved until on or about September 8th, approximately two and one-half months after settlement negotiations began. We believe that the Measurement Period is reasonable. If, in fact, local laws affect the Measurement Period for large residential complexes, given that Great Energy entered the fray beyond the eleventh hour, it has the burden to establish this fact decisively, and we are of the opinion that, without more, such a conclusory statement should not decide the issue.

Q. Do the witnesses claim that the Intervenors will not be able to earn any Reliability Credit?

A. Mr. Ahrens makes a number of factually incorrect statements regarding RiverBay and other large residential customers' ability to earn a Reliability Credits under the Joint Proposal. On page 5 of Mr. Ahrens' testimony, he states that a Measurement Period of June 1 through September 30 "would require RiverBay to maintain high powerplant production during a required maintenance period in the late summer" and, "compliance with that requirement is impossible for RiverBay." Furthermore, on pages 7-8 of his testimony, Mr. Ahrens states that the Measurement Period defined in the Joint Proposal "makes it impossible for RiverBay to earn a Reliability Credit," and "we do not believe it was the Commission's intent to exclude residential properties from the Reliability Credit." Further, Mr. Ahrens' assertions that the Measurement Period defined in the Joint Proposal would make earning Reliability Credits impossible for RiverBay and other large residential customers is factually incorrect. The Reliability Credit does not require that customers maintain any powerplant production, since the Reliability Credit is based on the maximum load on the customer’s revenue meter, net of generation, allowing customers to earn Reliability Credits for any actions which reduce net load. Customers may even earn Reliability Credits for taking no actions whatsoever, provided that the maximum Daily As-Used Demand during the Measurement Period does not meet or exceed the customer’s Contract Demand amount.

A. Did Mr. Ahrens make any assertions specific to RiverBay’s experiences under the Performance Credit versus the Reliability Credit?

Q. Yes. Mr. Ahrens states that while RiverBay was able to earn Performance Credits for 2015 and 2016, respectively, “these credits would be lost because RiverBay needs to change over from cooling to heating by October 1st and also needs to shut down the system to clean, descale and disinfect the 5 cell cooling tower.”

Q. Do you agree with Mr. Ahrens’ claims?

A. No.It is our understanding that RiverBay has operated its powerplant well into late September, demonstrating that it can, in fact, earn a Reliability Credit by managing its systems and judiciously using its allowed Outage Events. Furthermore, RiverBay would, in fact, have been able to earn Reliability Credits for 2015 and 2016, respectively, if the Reliability Credit program per the Joint Proposal were applied to RiveryBay’s historical performance during these periods.

Q. Please summarize the exceptions that Digital Energy Corp (Digital Energy) took to the Joint Proposal.

A. Digital Energy objects to: (1) the requirement that standby customers must provide interval metering at their own cost in order to qualify to earn the Reliability Credit; (2) the Measurement Period in Rate Years 2 and 3 for the Reliability Credit; (3) the structure of SC-11 rate design; and (4) using minimum generator output data for the SC-11 Bill Credit.

Q. What is your reaction to Digital Energy’s objections?

A. Before we enumerate our observations on Digital Energy’s comments, it should be noted that, in its Statement in Support, Digital Energy improperly disclosed confidential information related to settlement negotiations. Therefore, we will limit our testimony only to those portions of Digital Energy's Statement which we deem non-confidential, and request that the confidential portions of its Statement not be considered.

Q. What is your response to Digital Energy's objection regarding themetering requirement?

A. Digital Energy argues that the metering requirements of the Reliability Credit are "unjust and unfair as Con Edison will not use the data to compute the credit," and "the generation meter data will be used instead for Con Edison's own internal purposes and reporting to the [Public Service Commission] PSC," however, the Commission has supported requirements for customers to provide Commission-approved interval metering and telecommunications equipment. On page 14 of its Order Denying Rehearing and Making Other Findings, issued on November 25, 2015, in Case 14-E-0488, the Commission required customers with new CHP units greater than 1 megawatt (MW) taking advantage of the exemption to standby rates for CHP units between 1 MW and 15 MW to install Commission-approved, revenue grade, interval metering and telemetry at the customer’s expense. The generation metering required by the Commission in the context of the exemption to standby rates was approved for the same purposes as the Reliability Credit, and is similarly not required to be used for purposes other than information gathering.

Q. What is your response to Digital Energy’s objections concerning the Measurement Period?

A. On page 2 of its statement, Digital Energy claims that the Reliability Credit is based on “the use of minimum performance over two years with a minimum performance ratchet.” Digital Energy is factually incorrect. Instead, the Reliability Credit is based on the maximum demand, net of generation, on the customer’s revenue meter during the Measurement Period. Furthermore, Digital Energy ignores the contributions of any action a customer may take to reduce load, and does not consider that the customer may be able to earn the Reliability

Credit even if its generation is offline during low-load conditions.

Q. Do you agree with Digital Energy's concerns with the SC-11 buyback service rate design?

A. No. Digital Energy notes its dissatisfaction with SC-11 buyback service rate design, and proposes that the Commission institute a process to explore deficiencies in such rate design. The process proposed by Digital Energy is unnecessary because the Joint Proposal already allows for significant examination, testing, and implementation of SC-11 rate design improvements.

Q. How does the Joint Proposal incorporate changes to the SC-11 rate design?

A. Page 63 of the Joint Proposal states that "the Company expects to file the standby matrix, including changes in the standby rates and buyback tariff (SC 11), pursuant to the Track Two Order," and allows for any resulting changes to standby or buyback rates to be implemented during the term of the Rate Plan. Furthermore, Page 5 of Appendix 20 of the Joint Proposal states that the Standby Rate Pilot will "develop and test new export delivery rates for SC 11 customers", allowing for further examination and testing of buyback service rate design.

Q. Did Digital Energy make any other claims regarding SC-11?

A. Digital Energy expresses dissatisfaction in the SC-11 Bill Credit in that it deems that program to be a reliability program which, unlike other reliability programs at the New York State Independent System Operator (NYISO) and Con Edison's demand response programs, is based on minimum generation during its defined Measurement Period instead of average performance during such period.

Q. Please provide a brief overview of the SC-11 Bill Credit.

A. The SC-11 Bill Credit allows export-only SC-11 customers to earn a credit for value of the output of their generation assets during the Summer Capability Period applicable to the Company's Commercial System Relief Program (CSRP) demand response program in lieu of participation in such program. The SC-11 Bill Credit is modelled after the CSRP in that the

Measurement Hours applicable to the SC-11 Bill credit are based on the CSRP Summer Capability Period of May 1 through September 30 of each year, and the CSRP event call window effective in the network or radial load area that the export-only SC-11 customer is interconnected to.

Q. Why would an export-only SC-11 customer participate in the SC-11 Bill Credit and not participate in the CSRP?

A. Participation and performance in the CSRP is measured by comparing a customer’s actual load during demand response events against the same customer’s baseline load, requiring customers to take action to reduce load during demand response events to earn payments under the CSRP. Since export-only SC-11 customers have no load to reduce and may take no actions other than to continue generating during demand response events, export-only SC-11 customers do not have a baseline against which their performance during events can be measured, and are therefore excluded from participating in the CSRP. The SC-11 Bill Credit provides a financial benefit to export-only customers for the value of their generation to the grid during the hours when a CSRP participant could be called to perform under that program.

Q. Do you object to Digital Energy’s assertions regarding the SC-11 Bill Credit?

A. Yes. Digital Energy is factually incorrect in its assertion that the SC-11 Bill Credit is a reliability program, and furthermore we believe that the measurement methodology established by the Joint Proposal for the SC-11 Bill Credit is reasonable.

Q. Please explain how Digital Energy is incorrect.

A. Digital Energy asserts that it deems the SC-11 Bill Credit to be a reliability program, and claims that “the Company’s own reliability program, CSRP and [Distribution Load Relief Program] DLRP use averages to determine performance.” Digital Energy’s claim is incorrect, as the CSRP, which we have already explained is the basis for the SC-11 Bill Credit, is a peak-shaving demand response program. The Commission has acknowledged the differences in peak-shaving programs versus reliability programs, and held Con Edison’s CSRP as an example of a peak-shaving program in its December 15, 2014 Order Instituting Proceeding Regarding Dynamic Load Management and Directing Tariff Filings in Case 14-E-0423.

Q. What is the difference between a peak-shaving program and a reliability program?

A. Peak-shaving programs seek to reduce the need for transmission and distribution (T&D) infrastructure building over the long term, whereas reliability programs are designed to respond to conditions on the grid to lessen the impacts of or fully avoid outages.

Q. Why is the SC-11 Bill Credit measurement methodology reasonable?

A. The SC-11 Bill Credit allows export-only SC-11 customers to earn a credit for the value of their generation to the distribution system which would otherwise be lost to them. Instead of the standard measurement and verification required for other CSRP participants which requires direct action by participants to reduce demand, SC-11 Bill Credit participants will be paid based solely on their minimum generation, excluding up to three 24-hour outage events per year for Rate Year 1 and two outage events for Rate Years 2 and 3. It is reasonable to require a higher standard of measurement for the SC-11 Bill Credit to ensure that Con Edison can rely on SC-11 Bill Credit participants to be providing electricity to the grid when planning its system.

Q. Does this conclude your testimony?

A. Yes.

Proceedings

ALJ LECAKES: Go ahead, Mr. Favreau.

MR. FAVREAU: Concerning the exhibit, it's already been premarked as Exhibit 139, SJPP 1. Do you want me to go through the -- it's already been marked.

ALJ LECAKES: Right. That one's been premarked.

Panel, is there any corrections to that exhibit?

MS. SORRENTINO: No.

ALJ LECAKES: And additionally, I note for the record that there are several exhibits that were offered that were premarked for identification. I actually took the liberty of assigning staff to the first three exhibits, which were the filing cover letter for the joint proposal, the JP itself, as well as the appendices for the joint proposal.

In addition, we marked for identification today's hearing Exhibits 94 through 138 as staff's pre-filed litigated case in this matter, and then 139 was the

Proceedings

joint proposal and policy panel reply exhibit that we just mentioned. I think that covers it for now. The other exhibits we'll get to with the next panel.

MR. FAVREAU: I think with that, the panel is ready for cross-examination.

ALJ LECAKES: For the policy panel exhibit list, I have cross listed from -- NYICA?

MR. POLLACK: No.

ALJ LECAKES: Riverbay, Mr. Buss?

MR. BUSS: Can I sit up here somewhere?

ALJ LECAKES: Right next to Ms. Orietas.

MR. BUSS: Good afternoon, your Honors. Jeffrey Buss for Riverbay Corporation.

I'd like to direct staff's attention to the reply testimony of October 2016. And starting on page 13 of your testimony, you reference a staff exhibit, SJPP 1, relating to cooling degree days. Do you have that exhibit?

Proceedings

MS. SORRENTINO: Yes.

MR. BUSS: I'm looking at page 7 of that exhibit. Is that a summary by month of the cooling degree days for the 10-year rolling average?

MR. CULLY: Yes. Page 7 indicates the final three years by month of that 10-year rolling average.

MR. BUSS: And looking at the monthly averages, which month or months would constitute the peak demand?

MR. CULLY: That would be June through September, as testified by staff.

MR. BUSS: Well, September has 176, correct?

MR. CULLY: In the final year, yes.

MR. BUSS: And July has 430; is that correct?

MR. CULLY: That's correct.

MR. BUSS: And is it your testimony that those months are treated the same by the company when they make plans for construction and other transmission and

Proceedings

distribution systems?

MR. CULLY: That's not our testimony.

MR. BUSS: Are those months the same, in your opinion?

MR. CULLY: No.

MR. BUSS: And why not?

MR. CULLY: Well, they are --

MS. SORRENTINO: Can you clarify the question; are they the same in what way?

MR. BUSS: In your testimony, you indicate that the months of June and September are important for -- let me find the exact language you said. You said that this data indicates it will be important to control --

MR. FAVREAU: Counsel, point me to where in their testimony you are.

MR. BUSS: Page 14.

-- "indicates it will be increasingly important to control load during the months of June and September." Do you see that?

Proceedings

MS. SORRENTINO: Yes.

MR. CULLY: Yes.

MR. BUSS: And how will controlling load during the months of June and September impact the system?

MS. SORRENTINO: We don't know what the loads in June and September will be going forward.

MR. BUSS: And do you have any data that breaks out cooling degree days for the last two weeks of September as opposed to the month of September?

MR. CULLY: We do not. The National Weather Service data that we were able to obtain was monthly.

MR. BUSS: And I then want to direct your attention to pages 15 and 16 of your testimony of October 2016. You make reference to whether or not Riverbay, another large customer, should be given preferential treatment due to factors outside of staff's expertise or knowledge. Do you see that?

MS. SORRENTINO: Can you direct

Proceedings

us to the line?

MR. BUSS: It's lines 3 through 9 of page 16.

MR. CULLY: That's what our testimony reads.

MR. BUSS: What are the factors that are outside of your areas of expertise or knowledge?

MR. CULLY: Can you specify what particular topics you're referring to?

MR. BUSS: Well, starting on page 15, line 23, "Third, both Mr. Lukas and Mr. Ahrens claim repeatedly the staff did not take into account local laws pertaining to large residential complexes when it proposed the measurement period." You see that?

MR. CULLY: Yes.

MR. BUSS: And the sentences that I just read following that refer to those local laws and the measurement period; is that correct?

MS. SORRENTINO: It pertains to the local laws.

Proceedings

MR. BUSS: Do you know whether or not Multiple Dwelling Law 79 is a statewide law that applies to every apartment building, including those in Albany that have three or more units, or if it's a local law that only applies in the Bronx?

MS. SORRENTINO: We don't know.

MR. BUSS: If I told you that it was a statewide law that's been on the books since 1959 and that it requires a building with three or more tenants to have the owner prepared to supply heat on October 1st, would that change staff's position on whether or not it's reasonable to require a central heating customer to be able to transition on one day's notice or less?

MS. SORRENTINO: Can you please repeat the question?

MR. BUSS: If I told you that the local law is actually a law of statewide application and that it requires owners of any property with three or more tenants to supply heat on October 1st, would that

Proceedings

change staff's opinion about whether or not the continuation of measurement period for the reliability credit through the last day before has to be supplied is reasonable?

MS. SORRENTINO: No.

MR. BUSS: And why not?

MR. CULLY: The reliability credit is based on the net load and has -- is not measured based on the output of any particular generating unit whether that generating unit is used to produce heat or not; therefore, we believe that it is not necessary to modify the measurement period for these customers.

MR. BUSS: If a customer, a central heating and cooling customer, turns off its cooling system before the end of the measurement period, is that beneficial?

MR. CULLY: What's beneficial is the net load irrespective of what the customer does with the cooling system.

MR. BUSS: When I asked you earlier, the questions getting to the cooling degree days, you indicated in your

Proceedings

testimony that air conditioning was a major factor impacting net load; is that correct?

MR. CULLY: Yes.

MR. BUSS: And if it's a central cooling system and it's turned off, wouldn't that benefit the system?

MR. CULLY: The purpose of that statement in our testimony was to show that cooling degree days are often linked very closely with load on, especially Con Edison system.

MR. BUSS: Do you have any specific studies that show that it's beneficial to end the measurement period on September 30th rather than on September 15th?

MR. CULLY: So we have performed such a study. We would like to enter an exhibit into evidence at this time.

MR. BUSS: I'm going to strongly object. I was told that the primary focus of this was whether or not -- of cross, was whether or not it would "produce results that were within the range of reasonable

Proceedings

results that would likely have arisen from a Commission decision in a litigated proceeding." So what I'm now hearing is that staff wants to introduce data or facts or evidence that they've never produced before they promulgated the joint proposal. And the testimony that I'm looking at here on pages 15 and 16 criticize my client and its representatives for not speaking up sooner and telling them of the difficulty of having a central heating and cooling system transition without having an adequate number of days to do so.

ALJ LECAKES: I'm going to uphold the objection to the extent of offering a new exhibit by the panel, especially since it didn't come from your attorneys, and because it came from the witness in response to a cross-examination question.

If you could, please restate your initial question that led to that.

MR. BUSS: I think it was if they had any studies that would support a benefit to the system by extending the

Proceedings

reliability credit measurement period for
an additional two weeks.

MR. CULLY: So as the Con Edison
panel before us said, this is not an
extension of a previously shorter
measurement period but a wholly new
reliability credit versus the previous
performance credit.

MR. BUSS: And so if there were
no studies to support the previous
extension, is it your testimony that
creating a newly named credit that you have
less obligations to support it with data?

MR. FAVREAU: Objection, your
Honor.

ALJ WILES: That's argumentive.

ALJ LECAKES: Agreed. That's an
argumentative question. Please rephrase or
restate.

MR. BUSS: What is the basis for
what benefits does a system derive by
extending the reliability credit
measurement period to September 30th?

MS. SORRENTINO: I think we've

Proceedings

already answered the question. We see a rise in the cooling degree days and we feel that it's important for the net load to be managed during that period.

MR. BUSS: But you also testified that there was no data about the last two weeks for cooling degree data; is that correct?

MR. CULLY: We testified that the data we relied upon is monthly.

MR. BUSS: And also that the monthly datas show that July and August poses a greater demand on the system than September; is that correct?

MS. SORRENTINO: No. We've seen peak days in early June. Just because the heating degree days -- just because the cooling degree days in June overall are lower doesn't mean that your peaks on any hour will be lower.

MR. BUSS: I'm only interested in the period of September 15th to September 30th. We have no objection to the reliability credit, we have no objection to

Proceedings

all the other components of it. We only are asking questions related to the two weeks, September 15th to September 30th. Is there any data showing peak cooling degree days between September 15th and September 30th?

MR. CULLY: There are cooling degree days between September 15th and September 30th.

MR. BUSS: Any peak days?

MR. CULLY: I'm not aware of any definition of peak cooling degree day.

MR. BUSS: Are there any cooling degree day numbers for the period September 15th to September 30th that exceed the average for the month of July?

MR. CULLY: It's possible. We have not tabulated the average for the month of July.

MR. BUSS: I have no further questions.

ALJ LECAKES: Thank you, Mr. Buss.

Is there anyone else who has

Proceedings

questions for this panel, any parties, at this time?

ALJ LECAKES: Judge Wiles, would you like to ask the policy panel some questions that --

ALJ WILES: I just had that one.

If you could look at the joint proposal at page 84. In the second paragraph on the page, the last line, it says, "If the collaborative cannot agree upon targets by May 31, 2017, DPS staff will set the targets." And I asked the company panel whether they knew what criteria the DPS staff would use in that instance to set the target and they didn't identify anything. So my question here to the staff panel is what criteria would staff use should it be asked to set the targets pursuant to the joint proposal?

MS. JONES: So what we would do is from January to March of 2017, the company is tasked to establish a baseline for customer satisfaction through the survey process. We would use that as a

Proceedings

baseline to set the target also considering what is stated in the track 2 rev order where the goal is to strive for the company to improve its satisfaction rating related to DG interconnection process. We would also consider input that's received through the collaborative process. If there are any consensus, we would take that into consideration. But at this point, I cannot specify all of the specific criterias we will use to set the target. But in general, it would be a combination of the track 2 order on the rev, the baseline that would be -- that would be established after March of next year, and also the input that we receive through the collaborative process.

ALJ WILES: And when you talk about the baseline, what would you be referring to, what measurement or what would be the metric that expresses the baseline?

MS. JONES: So we're actually in the process of -- one of the questions that

Proceedings

you asked earlier is if this collaborative has started already and we're in the process of determining what the survey instrument that Con Edison will use in order to determine the satisfaction rating for the DG developers or DG applicants. So long story short, we haven't actually specified what metrics, what survey, will be used. That would be part of the collaborative process and that's also why I cannot specify all the reasons why or all the reasons on how we would determine a target.

ALJ WILES: Thank you.

MR. FAVREAU: I need a couple minutes.

ALJ LECAKES: Let's go off the record while the staff attorney's consulting.

(Whereupon, a short recess was taken.)

ALJ LECAKES: Mr. Favreau.

MR. FAVREAU: Your Honors, there's no re-direct.

Proceedings

ALJ LECAKES: The policy panel is excused. Ms. Sorrentino, we'll just swear you in again with the rates panel since it may not happen until tomorrow.

We'll do a process check after Mr. Ahrens. Actually, let's go off the record.

(Whereupon, an off-the-record discussion was held.)

ALJ LECAKES: Mr. Buss.

MR. BUSS: Yes. Good afternoon, your Honors. At this time, I'd like to call David Ahrens of Energy Spectrum as a witness on behalf of Riverbay Corporation.

ALJ LECAKES: Thank you, Mr. Buss.

Mr. Ahrens, can you just give us your business address, please?

MR. AHRENS: Sure. 1114 Avenue J, Brooklyn, New York 11230.

ALJ LECAKES: Can you please stand and raise your right hand?

WHEREUPON,

DAVID AHRENS,

Proceedings

having been first duly sworn by ALJ Lecakes, is examined and testifies as follows:

MR. AHRENS: Yes, I do.

ALJ LECAKES: Mr. Buss, could you just lead Mr. Ahrens through the preliminary questions to get his testimony into the record?

MR. BUSS: Yes, your Honor.

Good afternoon, Mr. Ahrens.

MR. AHRENS: Good afternoon.

MR. BUSS: Did you prepare and file testimony in this proceeding October 13th, 2016?

MR. AHRENS: Yes.

MR. BUSS: And is a full and complete copy of that testimony contained in the disc that we've supplied as part of this proceeding?

MR. AHRENS: Yes.

MR. BUSS: And is that testimony true, to the best of your knowledge?

MR. AHRENS: Yes.

MR. BUSS: Is that sufficient,

Proceedings

your Honor?

ALJ LECAKES: That's sufficient. Thank you very much, Mr. Buss.

Before we put the testimony into the record, there's been some concern that I've expressed that there was two redactions that were made to the testimony, that both redactions indicate a numerical figure of the amount of a credit that Riverbay received. I asked for a brief to explain why they're confidential and what I got back mentioned Energy Spectrum. How does Energy Spectrum relate to Riverbay?

MR. AHRENS: Provide energy consulting services to Riverbay under contract.

ALJ LECAKES: And how would the numbers that appear in the testimony affect the competitive position of Energy Spectrum?

MR. AHRENS: We believe they provide nonpublic information associated with this particular credit.

ALJ LECAKES: Right. But the

Proceedings

issue that I have with that is that Riverbay is voluntarily providing that information in its testimony. Now, granted it did mark it as confidential. But if it was Riverbay's own confidential material alone, it's perfectly free to waive the objection. How does the amount of the credit in 2014, 2015 affect Energy Spectrum's competitive position? First of all, who are the competitors of Energy Spectrum that might stand to benefit from this?

MR. AHRENS: Anybody who's providing energy consulting services in New York City.

ALJ LECAKES: And so the concern then is that somebody might bid to provide those services to Riverbay in replacement of Energy Spectrum?

MR. AHRENS: That's a possibility.

ALJ LECAKES: And then they would have those figures available as to what the credit was received over those two years?

Proceedings

MR. AHRENS: That's correct.

ALJ LECAKES: Based on the submission of the brief and the supplemental testimony provided here, and I do find that there is reason under the Public Officers Law to provide a trade secret exception to the figures that are provided in Mr. Ahren's testimony; therefore, we would put the testimony into the record as given to me. But I will note that there are two discs that will contain testimony on it. The first one, which will be our public transcript, is called the Redacted Testimony of David Ahrens and it's on a disc labelled Public Redacted Con Ed Case 16E-0060 Energy Spectrum, Great Eastern Energy and Riverbay. And again, the file for this testimony is called Redacted Testimony of David Ahrens.

And then we also have a confidential disc. Mr. Buss, is it just the one testimony that's on this disc here?

MR. BUSS: I believe the difference between the two is they both

Proceedings

have Mr. Lukas' testimony but one has the redacted version of Mr. Ahrens and one does not.

ALJ LECAKES: So a second confidential transcript does need to be made for today. On the front of the disc, it's labelled Confidential Con Ed Case 16E-0060 Energy Spectrum, Great Eastern Energy and Riverbay. And I assume that the file is called the Confidential Testimony of David Ahrens as supplied on this disc; is that correct?

MR. BUSS: I assume so. I didn't put it on.

ALJ LECAKES: I'll look at the name just to confirm. I don't want to take a chance with a confidential document. This one, actually, is the full title, just Testimony of David Ahrens, Riverbay. So the only indication on this disc that it's confidential appears on the disc itself where the word confidential appears. So if it doesn't say "publicly redacted" on the file name, then it is the confidential

Proceedings

version and that should only go into the confidential transcript. So we've got Mr. Ahren's testimony.

(Whereupon, the following is the Redacted Testimony of David Ahrens, Riverbay.)

STATE OF NEW YORK

PUBLIC SERVICE COMMISSION

In the Matter of

Case 16-E-0060

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

Electric Rates

October 2016

REDACTED

Prepared Testimony of

David Ahrens.
Director
Energy Spectrum
1114 Avenue J
Brooklyn, NY 11230

Q. Please state your name and business address.

A. David Ahrens, 1114 Avenue J; Brooklyn, NY 11230,

Q. By whom are you employed?

A. I have been employed by Energy Spectrum. Inc as a Director since October 2003, and in this capacity I currently serve as Technical Advisor to RiverBay Corporation. My educational qualifications include a B.E. from SUNY Maritime College and an MBA from Old Dominion University. I am a Certified Energy Manager and a Certified Demand-Side Management Professional.

Q. On whose behalf are you submitting this testimony?

A. I have been asked by RiverBay to testify.

Q. What is the purpose of your testimony?

A. I will discuss the effect of the new requirements related to the Reliability Credit negotiated in this case, and explain how those requirements prevent residential customers, including RiverBay, from achieving the relief from standby service costs required by the Commission Order of May 19, 2016 ("Track Two Order"). The problems caused by the JP proposals for RiverBay and other residential customers were not considered by the DPS Electric Rates Panel.

Q. What is RiverBay?

A. RiverBay Corporation, commonly known as "CoOp City", is a residential cooperative located on 330 acres in the Baychester section of the Bronx. RiverBay was formed pursuant to Article II of the Private Housing Finance Law, referred to as the “Mitchell-Lama” program, to provide affordable housing for middle income households. RiverBay consists of 15,372 residential units, 14,900 of which are residential apartments located in 35 high-rise towers and 472 of which are townhouses located in seven (7) separate clusters. RiverBay also contains three (3) separate shopping centers, 50 commercial offices located on the ground floor of the various high rise towers, 8 multi-story garages with 10,790 parking spaces, a forty megawatt (40MW) electric generating facility, and various recreational and community facilities. RiverBay has over 1,065 employees, including its own police force, and is home to approximately 59,000 individuals.

Q. Please describe the power plant serving RiverBay.

A. RiverBay is served by an efficient central combined heat and power plant (CHP).RiverBayacquires from Con Edison (1) standby electric service, SC 13and(2) interruptible gas delivery service under SC12, rate 2

The plant includes:

- A dual-fuel package boiler and steam turbine.
- Two 750,000 gallon fuel oil tanks
- Two dual-fuel gas turbines (GT) with heat recovery steam generators (HRSG) and selective catalytic reduction (SCR).
- A five cell cooling tower.
- A substation including a connection to Con Edison facilities (that is now shared with additional customers) at no significant cost to Con Edison.
- Electric, steam, cooling water and domestic hot and cold water distribution systems.

In 2004 RiverBay began, and subsequently completed an extensive renovation to both its buildings and the Cogeneration(CHP) electrical power plant serving them. This included installation of two12-MW GTs and a 16-MW extraction steam turbine (ST). Summertime electrical demand typically ranges from 14 to 24 MW, and 12 to 23 MW in winter.

RiverBay's thermal and electrical demand can vary dramatically with the season. For example, during spring and fall when no space heating is required, steam demand may be as low as 30,000 to 50,000 lb/hr. In winter it might be 500,000 lb/hr, possibly more.

Two thermal supply lines link the Central Plant and the buildings: One is exclusively for domestic hot water, the other is a dual-temperature loop. During the cool months, the latter carries hot water for apartment heating; in the warm months, it transports chilled water. Two 180-million-Btu/hr heat exchangers were installed in the central plant to maintain domestic hot water at 210F to 220F using 165-psig steam. Four 125-million-Btu/hr heat exchangers make hot water for space heating, also using the 165-psig steam. Temperature of water in that distribution main ranges from 100F to 160F depending on ambient air temperature.

The microgrid distributes power from the plant to the community with surplus powerexported to the main grid. The plant achieved commercial operation in 2007 and cuts Co-op City's energy costs by approximately $15 million a year.

The RiverBay Cogeneration Plant demonstrated and served as a model for the resiliency of distributed generation and microgrids by remaining online during and after the Super Storm Sandy, supplying power to Co-op City's more than 59,000 residents while Sandy knocked the vulnerable utility power grid flat.

Q. Has RiverBay participated in the Performance Credit included in Con Edison tariff for standby service?

A. RiverBay was one of six standby customers to achieve savings from that program from the first year, earning monthly credits of approximately [redacted] in 2015 and [redacted] in 2016. Under the terms as described in the JP, these credits would be lost because RiverBay needs to change over from cooling to heating by October 1st and also needs to shut down the system to clean, descale and disinfect the 5 cell cooling tower.

Q. How does the proposed Reliability Credit differ from the Performance Credit it would replace?

A. Both credits are priced at the Contract Demand (CD) rate, and both are applied pro rata over 12 months after proven performance over a measurement period. The Reliability Credit billing determinant is the minimum generation output during the measurement period. The new Performance Credit determinant is the difference between the maximum load and the CD amount (in MW). The objectionable difference is that after Rate Year 1, the measurement period will be extended an additional 30 days, from June 15 through September 15 to June 1 through September 30, and the measured hours will increase from 12 to 14 each day. This increases the total number of measured hours from 780 to 1204, an increase of 54 percent.. This is a critical change, as it would require RiverBay to maintain high powerplant production during a required maintenance period in the late summer. Compliance with that requirement is impossible for RiverBay, and I believe for many or most residential customers as well.

Q. What revision to the JP do you recommend?

A. I recommend that the JP be amended to retain the current measurement period for the entire term of the rate plan.This will result in a consistent measurement and verification regime for five years, from the first use of the Performance Credit in 2015 until the end of the rate plan in 2019.

Q. Why was the measurement period increased?

A. The increased measurement period was proposed in this Case by the Department of Public Service staff's (DPS or staff) initial testimony. The Electric Rates Panel referred to the Track 2 Order of May 19, 2016 which requires that the Reliability Credit be based on net load during the peak period. However, the Order does not specify any particular number of hours to be measured each year, nor does it define the term *peak period.* Neither does a Staff White Paper on which the Track 2 Order relies. The Order does refer to Con Edison's current Performance Credit. The Commission supported the same exclusion of outage events from measurement, but nowhere does it require extending the measurement period. One would expect the Commission to explicitly define a measurement period if it found the current period unacceptable, but the Commission did not do so.

Q. What problems are caused by the change in the peak period as proposed by staff?

A. The extended peak period will make it difficult or impossible for RiverBay to achieve the same amount of credit as it has in the past.

Q. Is it feasible to complete annual maintenance and reconfigure the RiverBay plant during the measurement period without losing the benefit of the Reliability Credit?

A. No. The reconfiguration of the system from summer cooling to winter heating requires a full shut down of the CHP plant for up to two weeks. This reconfiguration must be accomplished by October 1 of each year, in order to meet mandatory heating requirements of New York Law applicable to all residential buildings housing three (3) or more tenants. Multiple Dwelling Law Section 79 and NYC Administrative Code Section 27-2029 require heat to be supplied between October 1 and May 31st whenever the outside temperature drops below 55 degrees in the day time or 40 degrees at night. (The attached notice to tenants details the requirements applicable to all residential properties.) In addition, the City of New York enacted new laws requiring the cleaning of all cooling towers bi-annually. Compliance with these heating and cleaning mandates requires a full shutdown of the GTs for inspection and maintenance, conversion of the heating/cooling water system from cooling water to hot water heat distribution, and a complete shutdown of the cooling tower.

Typically, this effort takes at least 8 or as many as 15 days, depending on the results of initial inspections and the time required to source replacement parts.

Q. What else does this effort require?

A. In addition to RiverBay facilities managers, the work force required to accomplish this annual change-over include:

- Certified inspectors
- Licensed plumbers
- Licensed electricians
- Qualified welders

- Qualified steamfitters

RiverBay employs workers with all these skills and qualifications, and occasionally uses contractors to complete the seasonal reconfiguration on a timely basis.

Q. Were the problems caused for RiverBay and other residential customers considered by the DPS Electric Rates Panel?

A. They were not.

Q. Were these problems addressed in the JP?

A. They were not.

Q. What is the result of the change in peak period?

A. The new proposed measurement period for the revised program makes it impossible for Riverbay to earn a Reliability Credit, as it has done with the current Performance Credit. We do not believe that it was the Commission's intent to exclude residential properties from the Reliability Credit, but that is the result. Now is the opportunity to revise that.

Q. Why is it appropriate for the Commission to modify the JP to retain the current measurement period?

A. As I discussed above, the May 19 order does not specify any measurement period. The order refers to Con Edison Performance Credit, and even extends its rule forgiving three outages to all utilities, but does not define the term “peak period” for any utility. The order expresses no dissatisfaction with the current twelve hour, three month period. Clearly, the Commission could have included type of changes proposed by included in the JP, but it chose not to do so. In the absence of that direction by the Commission, it is appropriate to retain the shorter period.

Q. Does this complete your prepared testimony?

A. Yes.

Proceedings

ALJ LECAKES: Mr. Ahrens, you're excused. Thank you very much.

Call your next witness, Mr. Buss.

MR. BUSS: Thank you, your Honor.

At this time, Riverbay Corporation would like to call Ron Lukas as a witness.

ALJ LECAKES: Mr. Lukas, before you stand, could you please just give us your business address?

MR. LUKAS: 1515 Sheepshead Bay Road, Brooklyn, New York 11235.

ALJ LECAKES: And now could you please stand and raise your right hand?

WHEREUPON,

RONALD LUKAS,

having been first duly sworn by ALJ Lecakes, is examined and testifies as follows:

MR. LUKAS: Yes, I do.

ALJ LECAKES: You may be seated.

MR. BUSS: Mr. Lukas, did you prepare and file testimony in this proceeding on behalf of Riverbay dated

Proceedings

October 13th, 2016?

MR. LUKAS: Yes, I did.

MS. BUSS: And is that a full and complete copy of that testimony contained on the disc that has just been identified by the Honor in this proceeding?

MR. LUKAS: Yes, it is.

MR. BUSS: Is that a true and complete statement of your testimony?

MR. LUKAS: Yes.

MR. BUSS: And is that testimony true, to the best of your knowledge and belief?

MR. LUKAS: Yes.

MR. BUSS: Your Honor, I offer this testimony into evidence.

ALJ LECAKES: And assuming there's no corrections to the testimony?

MR. LUKAS: No corrections.

ALJ LECAKES: Motion to have the testimony put into the record as if orally given is granted. On the disc, Public Redacted, the file name is Testimony of Ron Lukas, Great Eastern Energy. And actually,

Proceedings

that same file will be on the confidential version. But there is no confidential material contained in that testimony.

(Whereupon, the following is the Testimony of Ron Lukas, Great Eastern Energy.)

STATE OF NEW YORK

PUBLIC SERVICE COMMISSION

In the Matter of

Case 16-E-0060

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

Electric Rates

October 2016

Testimony of Ronald G. Lukas

Submitted by:
BBPC, LLC d/b/a Great Eastern Energy

GREAT
EASTERN
ENERGY

Before the Public Service Commission

BBPC, LLC d/b/a Great Eastern Energy

Testimony

of

Ronald G. Lukas

October 2016

Q. Please state your name, by whom you are employed and in what capacity.

A. Ronald G. Lukas. I am an independent consultant. I am currently engaged by BBPC, LLC d/b/a Great Eastern Energy (GEE) as Chief Consultant to the CEO. GEE is a mid-size regional ESCO serving over 30,000 electric and gas customers in New York, New Jersey and New England.

Q. Please briefly describe your educational background and professional experience.

A. I graduated from the City College of New York with a Bachelor's degree in Chemical Engineering in 1970. I have over 45 years of experience in the energy and utility industry. Upon graduation I started my career with the New York Public Service Commission (PSC) and was employed there until 1977. At the PSC I was engaged in a wide range of ratemaking activities. After a brief stay at American Electric Power, I joined Brooklyn Union Gas in 1978, which eventually became part of KeySpan Energy, Inc. (KeySpan). I retired from KeySpan in 2007. During my tenure at KeySpanI was involved is a wide range of matters, including executive responsibility in both the regulated and unregulated divisions of the business. On the regulated side, these responsibilities included Regulatory Strategy and Relations and Supply Procurement and Planning for KeySpan's gas LDCs. In this capacity, I testified before the PSC numerous times on rate and supply matters including embedded and marginal cost of service studies, gas procurement and rate design. On the unregulated side, I was responsible for the Company's Electric Wholesale Trading business and the electric and gas Retail Commodity businesses. Upon leaving KeySpan, I formed R LUKAS CONSULTING, LLC and I have continued to work on numerous gas supply and regulatory matters for ESCOs and electric and gas project developers.

Q. What is the purpose of your testimony in this proceeding?

A. I will address the changes to the Reliability Credit Measurement Period which was adopted in The Consolidated Electric Company of New York, Inc. Joint Proposal (JP) in Case No. 16- E – 0060, filed on September 19, 2016. The proposed change will have a negative impact onRiverbay Corporation's (Riverbay) ability to earn Reliability Credits under Con Edison's Standby Service. Riverbay is one of GEE's largest customers. The proposed changes to the Reliability Credit Measurement Period reflect the testimony of the Staff Rate Design Panel (Panel).

The Panel's objective was to applythe general language and guidance for setting Reliability Credits as set forth in the Order Adopting a Ratemaking and Utility Revenue Model Policy Framework, issued May 19, 2016, in Case 14 14-M-0101 (Track Two Order) . The Panel is the only party that filed testimony relating to the changes in the Measurement Period and, therefore, their logic is the only documented justification for the changes. My testimony will discussthe deficiencies in the application of the general language in the Track Two Order from a rate design perspective. Witness Ahrens will explain the system benefits Riverbay provides as well as why, from an operational perspective, the revised Measurement Hours will inhibit Riverbay’s ability to earn Reliability Credits.

Q. Please provide a general description of Riverbay.

A. Riverbay , commonly known as ” Co-op City”, is a New York City Mitchell-Lama cooperative located in the Northeast Bronx. With 15,372 apartments in 35 high-rise buildings and 7 townhouse clusters, Co-op City has approximately 60,000 residents.Riverbay operates a cogeneration plant that serves the development’s electric load as well as the heating and cooling needs of the complex. Witness Ahrens will describe the design and operation of the plant and the local laws it is subject to. In my testimony, I will refer to it as a “steam load driven” customer.

Q.What is the general language of the Track Two Order you are referringto as it regards Standby Service and Reliability Credits?

A. Page 166 of the Track 2 Order states that utilities will establish Reliability Credits for standby customers whose actual demand consistently falls below their contract demand.

Q. Do you agree with the new "general" criterion?

A. Yes, the new criterion represents sound ratemaking practices and incents customer based on their behavior.Currently,Reliability Credits for Standby Rates are based solely on the output of an on-site generator, and do not provide any credit for other actions customers may take to consistently reduce their peak demand. As explained below, GEE objects primarily to the fact that the new Measurement Period wasproposed without any studies that take into account generallyaccepted ratemaking principles.

Q. Please explain how the Measurement Period currently used in Con Ed's tariff to determine Reliability Credits for Standby Rates has been modified in the JP?

A. Under the current tariff, the Measurement Period is from Monday to Friday, except holidays, from 10 AM to 10 PM from June 15 to September 15. As proposed in the JP after Rate Year 1 the Measurement Period would be Monday to

Friday, except holidays, from 8 AM to 10 PM from June 1 to September 30. This is an extension of 15 days each for June and September.

Q. What criterion did the Panel use to set the new Measurement Period which was adapted in the JP?

A. The Panel simply states that:

"The definitions of peak hours and summer period would be set consistently with the peak demand hours and summer period used for charging demand-metered customers." I cannot find any other justification.

Q. Do you concur with the Panel's reasoning?

A. In my opinion, simply applying the demand hours and summer period used for charging demand-metered customers without any further study does not reflect the principles of sound rate design and does a disservice to the intentions of the Track 2 Order. It may have been set that way for administrative ease or some superficial sense of cost causation.

Q. Please explain further.

A. There are many principles that govern a sound rate design proposal. In fact, Appendix A of the Track Two Order includes a fairly lengthy list of these principles. While it may not be possible to entirely satisfy each and every one, there are certain minimum standards that need to be met.

Q. Does the Track Two Order specify a method for computing Standby Rates?

A. No. Both the Track Two Order and the JP make it clear that Standby Rates will change. It states that the cost allocation methodology for standby rates needs to be refined. Pages 127 to 132 of the Track Two Order contain a fairly detailed explanation of various factors that should be considered in the design of such rates. It also requires the filing of a so called "standbymatrix" to allocate the costs of local facilities and shared facilities.In theJP Con Ed statesthat it will be filing a "standby matrix" by Oct 1 which obviously is after the JP was negotiated. The JP even calls for a revenue neutral reconciliation of revenues in case Standby Rates (and I presume associated Reliability Credits) are given a fresh look under Reforming the Energy Vision (REV) principles.

Q. Please expound upon some of the rate design principles you believethe JP overlooks as it pertains to the proposed Measurement Period.

A. One dominantprinciple is "cost causation" or the fact that rates and credits should be related to the reason that the costs were incurred in the first place, or why they will presumably be incurred in the future. The Track 2 Order seeks to align the way the Standby rates will be computed with this principle. Reliability Credits and the Measurement Period need to be developed in conjunction with the new Standby Rates.They are intrinsically linked. The Panel does not provide anyload profile studies showing why the new extended Measurement Period has any relationship to the benefits to the system that DG customers would provide. More specifically, extending the period 15 days to September 30 raises the followingunanswered questions:

- Are there any incremental benefits to the system?
- Is the September 15th to 30thperiod a high load period?and
- Is a planned outage from September 15th to 30th the same as a forced outage during a July heat wave?
- Have the “probabilistic” studies as they relate to “an unplanned coincident peak” refer to in the Track Two Order been performed?

None of these studies or any of the cost studies called for on pages 127 to 132 of the Track Two Order have been completed or were filed in order to justify the new Measurement Period.

Q. Do you believe the Panel has given due consideration to Customer Impact as a criterion in setting the Measurement Period as it pertains to the Reliability Credits?

No. The Panel's testimony is devoid of any discussion of impact on customers. It does not explain who the existing customers are or even who the customers that may be eligible for these credits in the future are. As explained in the testimony of

Witness Ahrens,“steam driven” customers like Riverbay and,many others like them,would be adversely impacted by the new rules. Typically, the Commission requires bill impact studies to accompany rate design changes including the number of bills increased, decreased, or remain the same. Also, not mentioned or even acknowledged are any of the local lawsthat–as Witness Ahrens explains–large residential complexes and other customers must comply with when operating their systems.

Q. What other deficiencies do you see with the revisions to the Measurement Period for the Reliability Credits?

A. They do not provide an incentive for customers to reduce demand during higher-cost hours in that they treat all hours the same. As Witness Ahrens explains, Riverbay’s system is design for maximum reliability during the peak summer months. Not providing incentives for steam driven load which provides system benefits during peak hours and should be encouraged going forward,violates a principle tenet of Reforming the Energy Vision (REV) that a variety of DER resources and customer activities should be encouraged to produce desired outcomes.

Q. Have any customers been exempted from Standby Rates in the settlement?

A. Yes. Battery Storage up to 1 MW of inverter capability and certain NOx emissions standards were excluded from standby rates. This implies to me that certain customers were able to negotiate a "carve out" whereas the concerns of others who may provide significant system benefits were not taken into account. Riverbay's availability during Super Storm Sandy demonstrated the value and resiliency provided by distributed generation.

Riverbay may have been the one customer that provided reliable service to the greatest number of the city's residents during one of the worst reliability events in recent memory, and the new Reliability Credit would reduce the value Riverbay receives for that benefit.

Q. Do you propose a rule specifically for Riverbay?

A. No. I propose that the Measurement Period not be increased for all customers. In the alternative, I propose that the Measurement Period be modified to recognize the operating constraints placed on customers such as Riverbay.

Q. What are your recommendations concerning how Reliability Credit Measurement Period contained in the JP should be revised?

A. GEE's and Riverbay's major problem with the Measurement Period is after Year 1. Since it is a Year 2 problem, there is time to complete all the cost studies and questions raised in the Track Two Order as they pertain to the development of Standby Rates as well as Reliability Credits and the Measurement Period. This would allow a solution based on the rate design principles outlined in the Track Two Order. I also recommend that consideration be given to revising the

Measurement Period to accommodate a class of customers like Riverbay so that steam combined heat and power customers are encouraged to install and operate Distributed Generation units. As explained by Witness Ahrens, some practical ways to accomplish this are to keep the existing Measurement Period in place, at least for those customers who are subject to regulatory requirements that prevent compliance with the longer period. An alternative would be to allow 10 days of planned outages be exempt from the Reliability Credit calculation.

Q. Does this complete your testimony?

A. Yes, it does.

Proceedings

ALJ LECAKES: So just for the record, for clarity, there should be two transcripts produced; one that has the redacted testimony of David Ahrens and it's a public transcript. The second that has a file that's labelled just Testimony of David Ahrens-Riverbay, which has confidential material in it. And then the other file that is on both of these discs is identical and is completely publicly available. And it is entitled Testimony of Ron Lukas-Great Eastern Energy.

Thank you, Mr. Lukas. You are excused.

MR. BUSS: Thank you, your Honor.

ALJ LECAKES: Staff, do you want to call your next?

MR. FAVREAU: Yes, your Honor. Thank you very much.

The staff electric and gas rates panel, please.

MR. ZIMMERMAN: Your Honor, as a process check, I don't know if you want to go off the record briefly or we could do it

Proceedings

on?

ALJ LECAKES: Let's go off the record.

(Whereupon, an off-the-record discussion was held.)

ALJ LECAKES: While we were off the record, we had a brief conversation about process and what we've agreed to do is to swear the panel in tonight for the purposes of getting their testimony and their exhibits into the record. And then tomorrow morning we will pick up after we adjourn for the evening with the cross-examination of UIU.

Mr. Favreau -- actually, the panel's been called up. I haven't started.

Panel members, could you just identify yourselves and spell your names as you do.

MS. MILLER: Johana Miller, M-I-L-L-E-R.

MS. SORRENTINO: Mary Ann Sorrentino, S-O-R-R-E-N-T-I-N-O.

MS. RANDT: Liliya Randt,

Proceedings

R-A-N-D-T.

ALJ LECAKES: Panel members, could you please stand and raise your right hand?

WHEREUPON,

JOHANA MILLER,

having been first duly sworn by ALJ Lecakes, is examined and testifies as follows:

MS. MILLER: Yes, I do.

WHEREUPON,

MARY ANN SORRENTINO,

having been first duly sworn by ALJ Lecakes, is examined and testifies as follows:

MS. SORRENTINO: Yes, I do.

WHEREUPON,

LILIYA RANDT,

having been first duly sworn by ALJ Lecakes, is examined and testifies as follows:

MS. RANDT: Yes, I do.

ALJ LECAKES: You may be seated.

Mr. Favreau, could you lead the

Proceedings

witnesses into getting their testimony into the record?

MR. FAVREAU: Panel, has your pre-filed reply testimony been prepared by you or under your supervision?

MS. SORRENTINO: Yes.

MR. FAVREAU: And do you wish to make any changes to that testimony?

MS. MILLER: Yes, we do.

MR. FAVREAU: Would you please indicate what page and line?

Page 17, beginning on line 23. We would like to strike the sentence, "The remaining balance of distribution main cost was classified as demand."

ALJ WILES: Could we get the page and line reference again?

MS. MILLER: Page 17, beginning on line 23.

MR. FAVREAU: And going over to page 18, line 1.

MS. MILLER: Line 1.

ALJ WILES: This is staff's --

ALJ LECAKES: This is staff reply

Proceedings

testimony of electric and gas rates panel.

ALJ WILES: Page 17?

MS. MILLER: Correct.

ALJ WILES: Line 24?

MR. FAVREAU: Starting on line 23 with "The" and going to 18, line 1.

ALJ WILES: And what's the correction?

MS. MILLER: We'd like to strike the sentence.

And on page 18, line 17, it should state UIU gas rate panel, not "UIU electric rate panel."

MR. FAVREAU: Any more corrections?

MS. MILLER: No.

MR. FAVREAU: If I were to ask you today the same questions on your testimony, would your answers be the same?

MS. SORRENTINO: Yes, it would be.

MR. FAVREAU: Your Honor, I would ask that this testimony be incorporated into the record as if given orally today.

Proceedings

ALJ LECAKES: It's granted. And the file that's inserted here is located on the disc that had a green cover on it. And this is the Staff Reply Testimony of E&G Rates Panel, which is the label on the front of the disc holder as well as the name of the testimony itself that is on the disc.

(Whereupon, the following is the Staff Reply Testimony of E&G Rates Panel.)

BEFORE THE
STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of

Consolidated Edison Company of New York, Inc.

Cases 16-E-0060 and 16-G-0061

October 2016

Reply Testimony of:

Staff Electric and Gas RatesPanel

Mary Ann Sorrentino
Utility Supervisor

Liliya A. Randt
Utility Engineer 3

Johanna Miller
Utility Engineer 2

Office of Electric, Gas and Water

State of New York
Department of Public Service
Three EmpireStatePlaza
Albany, New York, 12223-1350

Q. Please state your names, employer, and business address.

A. Mary Ann Sorrentino,Liliya A. Randt, and Johanna B. Miller. We are employed by the New York State Department of Public Service (Department). Our business address is Three Empire State Plaza, Albany, New York 12223-1350.

Q. Have you previously sponsored testimony inthis proceeding?

A. Yes.We offeredinitialtestimonies, filed on May27, 2016;Ms. Sorrentino was a member of the Staff Electric Policy Panel and the Staff Gas Policy Panel,Ms. Randt was a member of the Staff Electric Rates Panel (SERP), Staff Depreciation Panel, and Staff Shared Services and Municipal Infrastructure Support Paneland Ms. Miller was a member of theStaff Gas Policy Panel and Staff Gas Rates Panel (SGRP). Theinitial direct testimony of the SERP and SGRP eachaddressedthe Company's embedded cost of service (ECOS)studies, revenue allocation, rate design, and price out of Staff’s sales forecast for electric and gas, respectively. We will be testifying herein jointly as the Staff Electric and Gas Rates Panel (SEGRP).

Q. What is the purpose of your joint reply testimony?

A. The purpose of our reply testimony is to address certain aspects of the testimonyofthe Utility Intervention Unit (UIU) Electric and Gas Rate Panels on the Joint Proposal (JP). Specifically, we will discuss issues raised by UIUrelated toCon Edison Company of New York Inc.'s (Con Edison or the Company) ECOSstudiesfor electric and gas.

Q. Is the SEGRP sponsoring any exhibits?

A. Yes. The SEGRP is sponsoring Exhibit__(SEGRP-1), which contains excerpts from the National Association of Regulatory Utility Commissioners (NARUC) Electric Utility Cost Allocation Manual (Electric NARUC Manual). The SEGRP is also sponsoring Exhibit__(SEGRP-2), which contains excerpts from the NARUC Gas Distribution Rate Design Manual (Gas NARUC Manual). The Panel can provide full copies of these manuals to the parties upon request.

Q. Please summarize the issuesthe Panelwill address from the UIU Electric and Gas Rate Panels' testimonies on the JP.

A. Wewill address the followingrevenue allocation/rate design issues raised by UIU in opposition to the JP: classification of the electric primary distribution system; classification of the electric secondary distribution system; the electric distribution system demand allocator (D08); interpretation of the Order Adopting a Ratemaking and Revenue Model Policy Framework, issued May 20, 2016, in Case 14-M-0101 (REV Track Two Order) with respect to rate design principles;AMI cost allocation; classification of Account 376 – Gas Distribution Mains; gas revenue allocation; gas rate design; and, non-firm gas rates.

Primary Electric Distribution Facilities

Q. Please explain how Primary Distribution facilities were classified in the ECOS study that was relied upon for revenue allocation purposes in the JP.

A. Con Edison's 2013 ECOS study was relied upon for revenue allocation purposes in the JP. In the 2013 Electric ECOS study filed in this case, Con Edison allocated costs of the high tension primary distribution system based on a customer component and a demand component. The customer component was based on the cost of the smallest size cable of 2.4 kV for overhead and underground systems.

Q. Please explain UIU’s positionwith regards to classification of the primary distribution facilities.

A. On page 15 of the UIU Electric Rate Panel on the Joint Proposal testimony, UIU arguedthat“[p]rimary distribution costs should be classified purely as demand related and should be allocated on the basis of the peak loads that they are designed to meet. Classifying any portion of primary distribution as customer-related is inappropriate because the number of customers has no bearing on how the primary distribution system is planned or constructed-the primary system is designed to meet the demand on it.”

Q. Does the Panel agree that the number of customers has no bearing on the cost of the primary distribution system?

A. No. UIU’s argument that the primary

distribution system should be allocated exclusively on demand defies logic. The cost of the primary distribution system is based on length of electric wires and number of transformers, which are a function of the number of customers served on the system.

Q. What support can the Panelprovide for theclassification of primary electric distribution plant used in the ECOS study?

A. The Company’s Electric ECOS study follows the NARUC ElectricManual,included in Exhibit__(SEGRP-1), whichspecifies, on page 89, that “because there is no energy component of distribution related costs, we need consider only the demand and customer components.” The NARUC Electric Manual further specifies that the typical classification of Primary Overhead and Underground voltage levels has demand and customer components.

Q. What support can the Panel provide with respect to the use of a minimum system method to determine the customer component of the primary distribution system?

A. The NARUC Electric Manual specifically identifies the minimum size of facilities method as a way to determine the demand and customer components of distribution facilities, including primary distribution facilities. Therefore, UIU's argument that the primary distribution system should not have customer component should be rejected.

Secondary Distribution System

Q. What size conductors are considered in the minimum secondary distribution system included the ECOS study relied upon in the JP?

A. Pursuant to the Memorandum of Understanding on Embedded Cost of Service Study, filed March 17, 2006, agreed to and signed by the parties thereto as a result of a collaborative initiated in Case 04-E-0572 (as contained in Exhibit__(UERP-JP-6), the minimum system calculation uses the weighted average unit cost of installed wire sizes from 1.0 American Wire Gauge (AWG) to 10.0 AWG.The methodology established in the MOU was approved by the Commission in the 2007 rate order.

Q. Please explain UIU's position with regards to the classification of the secondary distribution facilities in the ECOS study underlying the JP.

A. UIU contends (on page 17 of the Electric Rate Panel on the Joint Proposal) that the ECOS study "is flawed because it applies a hypothetical 'minimum system' that consists of much larger than minimum sized equipment."

Q. What modifications did UIU make to the minimum system analysis with respect to conductors?

A. UIU used a minimum wire size of 1.0 AWG in its calculation on the basis that it is the minimum size distribution wire on Con Edison's system.

Q. Do you agree with the modification as proposed by UIU?

A. No. Con Edison has very limited 1.0 AWG wire on its system. In fact, 1.0 AWG wire comprises less than 0.1% of the small gauge wire on the Con Edison system. Therefore, it is inappropriate to only use 1.0 AWG wire in the minimum system calculation.

Q. What modifications does UIU recommend with respect to classification of transformers on the secondary distribution system?

A. On page 18 of the Electric Rate Panel on the Joint Proposal testimony, UIU treated transformers as entirely demand-related,asserting that transformers are installed to meet demand and therefore are not related to the number of customerson the system.

Q. Does this Panel agree with UIU's assertion?

A. No. UIU's argument is flawed. The number of transformers on an electric utility's systemis a function of the number of customers on that system. For example, if there is only one customer on a system with a large load,only one transformer would be required to serve the customer. However, if the same load is caused by multiplecustomers, more than one transformer would be required to serve the load. Therefore, UIU's proposal to allocate transformers strictly on demand should be rejected.

Distribution System Demand Allocator (D08)

Q. Please explain how the D08 allocator is used in the ECOS studyrelied upon in the JP.

A. The D08 allocator is used to allocate the demand portion of the distribution system costs to the service classifications.

Q. How is the D08 allocator calculated?

A. In the 2013 Electric ECOS study,the D08allocator is a weighted average of Non-coincident Peak (NCP) and Individual Customer Maximum Demand (ICMD). For SC1, the NCP is weighted75% and the ICMD is weighted 25%; for all other service classes,the weighting is 50% NCP and 50% ICMD.

Q. Did UIU propose any modifications to the D08 allocator?

A. Yes. As described in the UIU Electric Rate Panel, UIU recommends that the demand allocator for the secondary distribution system reflect only the NCP demand.

Q. Does the Panel agree with UIU’s recommendation to base the D08 allocator solely on NCP?

A. No. The Electric NARUC Manual (page 97) states that “customer–class NCPs and ICMDs are the load characteristics that are normally used to allocate the demand component of distribution facilities.” The Manual also states, “The facilities nearer the customer, such as secondary feeders and line transformers, have much lower load diversity. They are normally allocated according to the individual customer’s maximum demands.”

Q. Historically, has the D08 allocator been calculated using both the NCP and ICMD?

A. Yes. A split of 75% NCP and 25% ICMD for SC1 and 50% NCP and 50% ICMD for all other classes in the D08 allocator was used in several Con Edison ECOS studies that were approved by the Commission in past rate orders. As a result of the 09-E-0428rate case,Con Edison conducted a load diversity study in 13-E-0030 rate case to address the issue of cost-of-service allocation of low tension costs, specifically the allocation used for individually metered residential customers. The load diversity study confirmedthat the current split of 75% NCP and 25% ICMD in the D08 allocator for the residential class is reasonable.UIU has not presented the results of any studies that contradict the results of Con Edison’s study. Therefore, no change in existing allocation methodology is warranted or recommended.

REV Track TwoOrder

Q. Please summarize UIU’s interpretation of the REV Track Two Order related to the classification of distribution plant in this proceeding.

A. In its testimony, on page 31, the UIUElectric

Rate Panel on the Joint Proposal stated that "the Commission's position on rate design as expressed in the REV Ratemaking Order appears to support UIU's position that much of the distribution plant that Con Edison classifies as customer-related should be considered demand related, because it varies with usage."

Q. Do you agree with UIU's interpretation of the REV Track Two Order?

A. We do not. In Appendix A of theREV Track Two Order,the Commission stated,"Fixed charges should only be used to recover costs that do not vary with demand or energy usage."The ECOS study acknowledges that much of Con Edison's distribution system costs vary with demand; however, the minimum system method identified a portion of primary and secondary distribution system costs that do not vary with demand or usage. Those costs, instead, are attributable to the number of customers, and, therefore, are properly classified as customer-related costsin the ECOS study.

Q. What other support does UIU offer to support its position?

A. UIU’sstatementthat “[i]nvestment in poles, conduit, and transformers is basically invariant with regard to the number of customer, but is variant with regard to the demand of those customers” is flawed and directly contradicts the NARUC Electric Manual which states, “Distribution plant Accounts 364 through 370 involve demand and customer costs. . .[T]he number of poles, conductors, transformers, services, and meters are directly related to the number of customers on the utility system.” For example, the infrastructure costs (distribution lines and transformers) to serve ten individual customers on a street, with 1 kW of load each, will be differentthan one customer with 10 kW of load because ten 1 kW customers require several poles, longer distribution lines and more transformers depending on the locations of the customers.

AMI Cost Allocation

Q. How have AMI costs been allocated in the JP?

A. To determine business specific revenue requirements, AMI costs were allocated between the Company’s electric and gas businesses. The allocated costs are included in the models used to determine the respective revenue requirements. The capital costs of meters and auxiliary components were directly assigned to each business unit. The AMI backbone and other common capital costs were allocated 83% to electric and 17% to gas. This split reflects Con Edison’s current common plant allocation factors.

Q. Once allocated to the business units, how were the AMI costs allocated to service classifications in the JP?

A. The costs were not allocated to service classifications in the ECOS studies since there were no AMI costs incurred during the time period of the ECOS studies. The revenue requirements associated with AMI in the Rate Years are allocated to the service classifications proportionally pursuant to the results of the ECOS studies.

Q. Please explain UIU’s proposal regarding the allocation of AMI related costs.

A. As described on page 38 of the testimony of the UIU Electric Rate Panel on the JP, UIU recommends that AMI costs be allocated using a "value of service" approach, and that the value of service is equivalent to the benefits provided by the AMI system. This proposal is also discussed in the testimony of the UIU Gas Rate Panel on the JP.

Q. Please explain why UIU proposes to allocate AMI costs based on expected benefits?

A. UIU rationalizes allocating AMI costs based on benefits by claiming that the "Company's entire justification for installing AMI is not that the system is necessary . . . but rather that it would yield net benefits." UIU also claims, "In the case of AMI, whose costs are justified and caused entirely on the basis of the benefits they are expected to yield, costs should be allocated to customers on the basis of the portion of benefits."

Q. How does UIU recommend AMI costs be allocated in these proceedings?

A. In the current proceedings, UIU proposes that the revenue requirement associated with AMI be allocated to the service classifications based on energy. On page 38 of the UIU Electric Rate

Panel on the JP, UIUstated that its proposed "value of service" principle can be closely approximated by energy usage.

Q. Does allocating metering costs on energy follow this cost causation principle?

A. No. The cost of a meter is customer-specific and should be allocated to the customer based on cost causation. Of the $1.285 billion of forecasted capital expenditures, approximately $747 million is related to meters. These costs are properly allocated directly to the electric and gas businesses. The allocation of meter costs to service classes should follow the same principle.

Q. Does this Panel agree with the UIU recommendation to allocate AMI costs based on benefits and to use energy as a proxy for benefits in these proceedings?

A. Since larger customer already have hourly meters,the benefits such as reduced bills resulting from more detailed understanding of usage, reduced distribution losses, and lower meter reading costs, would inure primarily to smaller customers. It would be inappropriate to allocate all AMI costs exclusively to smaller customers who are benefitting the most from AMI.

Q. Does the UIU proposal to allocate AMI costs based on benefits (or energy) comport with the Commission’s Track Two Order?

A. No. In the Track Two Order, the Commission adopted Rate Design Principles as included in Appendix A to the Order. The first principles states that “rates should reflect cost causation” which is in contrast to the beneficiaries pay approach to cost allocation proposed by UIU.

Q. Is it appropriate to allocate one cost element of the revenue requirement differently than the other cost elements, as proposed by UIU?

A. We do not believe so. There are numerous projects and programs that provide benefits to a specific group of customers, which are allocated to all customers. For example, the low income program provides benefits to residential customers only, but the cost of the program is recovered from all Con Edison customers. Moreover, AMI will provide other system-wide benefits such as voltage control, outage detection and situational awareness which are not dependent on individual volumetric consumption.

Q. Does this Panel agree with the recommendation to allocate any portion of AMI costs based on benefits?

A. Not at this time. The benefits of AMI will change over time, as the benefits are dependent upon costs that are not constant (such as labor costs, energy costs, and capital costs). If AMI costs were to be allocated based on benefits, it would be essential to perform a benefit cost analysis study each time the costs are allocated. Additionally, the benefits may be subject to debate and could result in a potential controversy among parties.

Account 376 – Gas Distribution Mains

Q. How was Account 376 - Distribution Mains classified in the Gas ECOS study relied upon in the JP?

A. Distribution mains were classified as 54% demand-related and 46% customer-related. The remaining balance of distribution main costs was classified as demand.

Q. How was the customer component of Account 376 determined?

A. The customer component was determined using a minimum system approach. The minimum system analysis used the installed costs of 2.00 inch steel main and 1.25 inch plastic main to determine the customer component because these are the predominant pipe sizes on the Company's distribution system for steel and plastic mains, respectively.

Q. Please summarize UIU'sproposal with respect to the allocation of Account 376 – Distribution Mains.

A. UIU proposes to allocate Account 376 – Distribution Mains solely on demand. On page 81 of the UIU Electric Rate Panel on the JP testimony, UIU states that no portion of the cost of distribution mains should be treated as customer-related or recovered through customer charges. UIU provides two ECOS studies, one that allocated mains on the 1 hour non-coincident peak, and another that allocated mains on design day peak demand.

Q. Do you agree with UIU's proposal to classify distribution gas main costs as entirely demand-related?

A. No, we do not agree that distribution main costs should be classified as entirely demand-related. We agree with the methodology proposed by Con Edison and adopted by the JP, which classifies a portion of distribution gas main costs as customer-related. The JP methodology is recognized as an acceptable approach by the NARUC Gas Manual, which states, “Customer costs are those operating capital costs found to vary directly with the number of customers served rather than with the amount of utility service supplied.” Therefore, “[a] portion of the costs associated with the distribution system may be included as customer costs.” The NARUC Gas Manual recognizes the “zero or minimum size main theory” for classification of distribution-related accounts. The theory assumes that there is a zero or minimum size main necessary to connect the customer to the system. Using the minimum size main methodology, distribution mains are priced out at the historic unit cost of the smallest main installed on the system, and assigned as customer costs,while the remaining book cost of distribution mains is assigned as a demand cost.

Q. Did UIU provide additional views on the minimum system study relied upon in the JP?

A. UIU claimed that the results of the minimum system analysis are unreliable. UIU argued that, had the minimum system analysis used the installed costs of 1.50 inch steel mains and 2.00 inch plastic mains, rather than 2.00 inch steel mains and 1.25 inch plastic mains, the customer-related component would have been 18% rather than the 46% customer-related component resulting from the Gas ECOS study relied upon in the JP.

Q. Do you have concerns about the main sizes that UIU used to develop the 18% customer component?

A. Yes. UIU simply used the diameter of main with the least cost per linear foot rather than the predominant main size used throughout Con Edison’s distribution system. There is very little 1.5 inch steel main on Con Edison’s gas system; in fact, the 1.5 inch steel distribution main installed on Con Edison’s system constitutes less than 0.5% of the nearly 1.2 million linear feet of steel distribution main with a diameter of 2.0 inches or less. Additionally, Con Edison no longer installs 1.5 inch steel distribution mains on its system. As such, the minimum system would not be comprised of such pipe.

Gas Revenue Allocation

Q. Please explain UIU’s proposed gas revenue allocation methodology.

A. Based on the UIUGas Rate Panel testimony filed in opposition to the JP, it appears that UIU is advocating for an “across the board” approach to revenue allocation. UIU recommends against strict use of a highly mechanical approach to applying the results of the Gas ECOS study. UIU claims, among other things, that strict use of the ECOS study does not consider potential hardships imposed on particular classes. However, the workpapers supporting its proposed revenue allocation show that UIU used the results of its gas ECOS studies to allocate the gas revenue increase to the service classifications.

Q. Do you agree with UIU’s proposed revenue allocation?

A. We do not see a need to use an “across the board” approach to allocate the revenue increase to the service classifications in this case. The allocation methodology used in the JP mitigates large bill impacts by applying one-third of the ECOS surpluses and deficiencies in each Rate Year. This gradual approach will bring those service classifications with a surplus or deficiency to a level within the tolerance band over the term of the Rate Plan, thereby avoiding ongoing deficiencies or surpluses.

Gas Rate Design

Q. In the JP, what service classification has an increase to the monthly minimum charge?

A. The JP contains an increase to the SC 1 minimum charge. In the JP, the minimum charge for SC 1 will increase from $18.60 to $19.75, which is well below the Gas ECOS study customer cost indication of $24.00. According to the Gas ECOS study used to allocate the revenue requirement increase in this case, the SC 1 class is $14.9

million deficient.

Q. Does the Panel agree with UIU's recommendation not to increase minimum charges for any service classifications?

A. No, we do not believe it is reasonable to hold the minimum charges constant for every service classification. Customer bill impacts must be considered when designing rates for each service class.

Q. Why does the JP propose a minimum charge increase to SC 1?

A. Because the average usage of SC 1 customers is so low, on average 6 therms per month, the majority of SC 1 delivery revenue is derived from the minimum charge. Applying the revenue increase solely to the volumetric charge, as proposed by UIU, would result in large bill impacts for customers that use more than six therms per month.

Q. Please explain the modifications UIU recommends with respect to rate design.

A. As explained on page 82 of the UIU Gas Rate Panel on the JP, UIU believes that the rate design in the JP can be improved by lowering the minimum charges and increasing the tail block rates to incentivize customers to conserve energy.

Q. Does this Panel agree with UIU's recommendation?

A. No. We do not agree with UIU's proposal to increase block rates and decrease minimum charges. The minimum charges included in the JP are below the customer-related costs indicated in the ECOS study. Minimum charges should not be decreased because this will result in further deviation from the ECOS results. While we acknowledge increasing tail block rates may, in theory, incentivize customers to conserve energy, a minor increase in tail block rates will likely have little impact on incentivizing efficiency and conservation because the tail block rate is only a small component of the total customer bill.

Non-Firm Gas Rates

Q. Please summarize UIU's position with respect to non-firm gas rates.

A. On page 91 of the UIU Gas Rate Panel on the JP, UIU recommends that the Commission consider increasing non-firm rates beyond the levels included in the JP. UIU argues that these rates have not “kept pace with recent changes in the value of service being provided.”

Q. What basis does UIU provide for its recommendation that SC12 Rate 2 rates be increased?

A. On page 85 of the UIU Gas Rate Panel on the JP testimony, UIU asserts that firm customers are not receiving the maximum non-firm revenue margin possible, claiming that the interruptible rates in the JP are lower than “rates that would maximize non-firm revenue margins for the benefit of firm customers. In other words, there is room to increase these rates without risking the loss of contribution from these customers due to bypass.” However, UIU has not provided any analysis supporting its claim.

Q. Does the JP contain any provisions that will aid in determining appropriate interruptible rates in the future?

A. The JP establishes an Interruptible Gas Collaborative that will examine both the cost and value of interruptible service. It is expected that the report from this collaborative will provide information that will be useful in setting appropriate interruptible rates in the future.

Q. Does the Panel agree with UIU’s claim that SC12 Rate 2 customers are receiving “inordinately favorable treatment” under the terms of the JP?

A. No, UIU fails to acknowledge that, under the terms of the JP, these customers will receive a delivery service increase of 3.1% in Rate Year 2 and 6.1% in Rate Year 3, and that these rates will be under review in the Interruptible Gas Collaborative.

Q. Does this conclude yourreplytestimony at this time?

A. Yes.

Proceedings

ALJ LECAKES: Mr. Favreau, there were also exhibits with this panel?

MR. FAVREAU: Correct. And before, there was a revised exhibit that was sent to your Honors and the parties on Monday. The revision was not substantive in nature. All we did was -- just for clarification purposes, there were two exhibits, so the headers properly say SEGREP with the appropriate page numbers.

ALJ LECAKES: And where --

MR. FAVREAU: The unrevised has been premarked as 140.

ALJ LECAKES: Okay. And we will continue that designation as Exhibit 140 and I will have the file that you e-mailed put onto DMM for clarity and label it Exhibit 140 revised.

MR. FAVREAU: Thank you, your Honor.

ALJ LECAKES: You're very welcome.

MR. FAVREAU: I guess that does it for tonight.

Proceedings

ALJ LECAKES: Well, that does it for this panel for tonight. You are still under oath and you will need to remember that when you are being cross-examined by UIU tomorrow.

I think we can deal with the other matters tomorrow. So we are adjourned. Let's go off the record for a second.

(Whereupon, an off-the-record discussion was held.)

ALJ LECAKES: We are adjourned until tomorrow morning, 9:30 a.m. Thank you, everyone.

(Time noted: 5:45 p.m.)

November 2, 2016

I N D E X

E X H I B I T

FOR INDENT.	DESCRIPTION	PAGE
310	Affidavit of James Kilkenny	
311	Interrogatories DPS Set 58 - Q733	
312	Interrogatories DPS Set 59 - Q734	

C E R T I F I C A T I O N

STATE OF NEW YORK)
) Ss.:
COUNTY OF RICHMOND)

I, DANIELLE CAVANAGH, a Shorthand Reporter and Notary Public within and for the State of New York, do hereby certify:

I reported the proceedings in the within-entitled matter and that the within transcript is a true record of such proceedings.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th of November, 2016.

DANIELLE CAVANAGH