

**PUBLIC UTILITY LAW PROJECT OF NEW YORK, INC.**

October 13, 2016

**BY E-MAIL**

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

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

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

**STATEMENT OF THE  
PUBLIC UTILITY LAW PROJECT OF NEW YORK  
ON THE JOINT PROPOSAL**

Dear Judges Wiles and Lecakes:

Pursuant to your Ruling on Schedule, issued September 28, 2016, in the above referenced proceedings, the Public Utility Law Project of New York, Inc. (“PULP”) submits this statement on the Joint Proposal (“JP”) filed on September 20, 2016. PULP neither supports or opposes the JP.

Since Consolidated Edison’s (the “Company’s”) tariff filing on January 29, 2016, PULP has been an active party in this case, filing both direct and rebuttal testimony, appearing at public hearings across the service territory, engaging in discovery, and participating in rigorous negotiations leading to this proposed settlement. Arising from our organizational mission, PULP’s key concern when reviewing proposed rate increases of a utility is the impact that increase would have on the low-income and fixed-income consumers in that utility’s service territory. As explained in our filed testimony and in our comments at public hearings, in reviewing the Company’s existing rates and rate structure, we have found that there has been an extraordinary increase in the negative impacts of the Company’s high rates on the low-,

moderate-, and fixed-income residents in its service territory. In fact, the rate increase, along with a number of issues concerning embedded cost of service (ECOS) methodology, Return on Equity (ROE), earning sharing mechanisms, “dead bands,” “stay-out premiums,” and various incentive mechanisms including the terminations and uncollectible incentive mechanisms, when reviewed collectively, do not comprise a JP that PULP is willing to support.

However, there are aspects of the JP that specifically recognize key concerns we raised in our testimony – see below -- and which we believe should significantly enhance consumer protections throughout the rate plan. As such, PULP is not opposing the JP.

#### Notifications for Potential Replevin Action

PULP raised concerns in our filed testimony that the Company had relied on certain legal practices, arguably in violation of the Home Energy Fair Practices Act, in its verbal and written communication with those customers against which it initiated legal action to seize utility meters.<sup>1</sup> As explained at length in PULP’s testimony, we believe the Company’s communication with customers facing replevin action misled customers to come into intimidating courtrooms for “voluntary conferences” by legal-seeming documents. Further, while those conversations took place in civil court rooms, no court staff was present to oversee the interactions or advise consumers of their procedural and/or substantive due process rights.

In contrast, the proposed JP contains a provision implementing a new Company practice whereby the Company will send a letter, that was developed in partnership with PULP, notifying customers of potential replevin action and providing information as to customer rights and responsibilities. This letter, which will be written in English and Spanish, will be mailed to customers 7-10 days in advance of the initiation of any replevin action, and specifically explains the legal process and how a customer can be prepared for it.<sup>2</sup> We believe this new communication substantially resolves our replevin-related concerns set forth in our testimony on a going-forward basis, and is in accordance with newly applicable court practice and process.<sup>3</sup> Most importantly, we believe this new communication, written in plain English, and with

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<sup>1</sup> Cases 16-E-0060 & 16-G-0061, *Testimony of Alfred Fuente, Esq. on behalf of PULP*, filed May 27, 2016.

<sup>2</sup> See JP, Section L, item 6 and Appendix 23.

<sup>3</sup> Chief’s Clerk’s Carol Alt’s Memo: NYC Civil Court: CMM-117-A (Eff. Date: August 15, 2016) amended the procedures previously established with regard to the filing of an action for replevin that were the subject of PULP’s testimony filed in this case.

descriptive and clear language, provides a straight-forward explanation that will ensure that these customers facing the most dire consequence of holding utility debt are given the fullest opportunity to address their arrears, and represent their personal interests during any legal action pursued by the Company.

#### Additional Customer Service Reporting

Beginning January 1, 2017, the Company will, for information purposes, file a quarterly report with the Secretary during the rate plan that will capture additional customer service data points which PULP views as essential to better understanding the impact the Company's policies and practices have on its most vulnerable customer base.<sup>4</sup> Under the proposed JP, the Company will report the:

- Number of residential customers who are subject to a \$10 minimum written DPA as of the last date of each month in the Reporting period;
- Number of residential customers who are subject to a payment plan for arrears as of the last date of each month in the Reporting period;
- Number of residential late payment charges assessed as of the last date of each month in the Reporting period;
- Number of residential customers at end of month with arrears greater than 60 days that are supplied by an ESCO as of the last date of each month in the Reporting period;
- Number of residential customers who had meters removed under a replevin action as of the last date of each month in the Reporting period;
- Number of residential customers for which replevin actions were commenced for non-payment of utility bills for service supplied by ESCOs as of the last date of each month in the Reporting period; and
- Number of residential customers who had meters removed under replevin actions for non-payment of utility bills for service supplied by ESCOs during prior 12 months as of the last date of each month in the Reporting period.

PULP believes that this additional monthly reporting will characterize Company procedures in a distinct way from that of regular reporting already provided to the Commission. For example, prior evidence suggests that we need to examine the amount of written DPAs

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<sup>4</sup> JP, Appendix 22, section 3.

offered by the Company, compared to payment plans in general, and specifically, how many of those written DPAs offer the minimum monthly amount of \$10. As reported in PULP's filed testimony and in comments given at public hearings, the annual number of termination notices the Company has issued since 2005 has increased by 75%, which suggests that the Company has substantially scaled up its collections procedures<sup>5</sup>. Concomitantly, there has also been a 12.7% increase in the number of DPAs since 2005; however, there has also been a steady rise in the rate of default on DPAs since 2013—higher even than during the years of the financial collapse and the Great Recession. Meanwhile, in the Final Report of Comprehensive Management and Operations Audits of Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. in Case 14-M-0001, it was noted that very few of the Company's customers are on the \$10 minimum agreement.<sup>6</sup> Monitoring the affordability of DPAs in general, and specifically of those that offer the \$10 minimum, against the period of the rate plan, will help PULP and other consumer advocates to examine the affordability problem and its relationship to written payment agreements.

PULP believes it is critical to monitor data to determine how much of increasing customer arrears is due to late payment charges; especially in light of the fact that these fees are not part of the Company's revenue requirement calculation. Based on our analysis, it appears that one of the prime reasons arrears per customer are increasing is due to the compounding effect of late payment charges on customers' increasing utility debt. Additionally, adding new reporting metrics to track the number of residential customers with arrears greater than 60 days that are supplied by an ESCO will provide helpful information in determining how much of increasing customer arrears are comprised of customers serviced by ESCOs, especially compared against overall customer debt, and in light of DPS and the Commission's identification of the ESCOs as important sources of overcharging on energy bills.

Additionally, PULP believes additional reporting with regards to practices in replevin actions will provide meaningful data to analyze and compare replevin actions across the Company's customer base, including customers whose service is supplied by ESCOs.

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<sup>5</sup> Cases 16-E-0060 & 16-G-0061, *Testimony of William D. Yates, CPA on behalf of PULP*, filed May 31, 2016, pg. 13.

<sup>6</sup> See, Case 14-M-0001, *Final Report of Comprehensive Management and Operations Audits of Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc.*, Section IX-21.

Finally, we believe the additional monthly collection activity indicia contained in the proposed JP could provide PULP, other parties/stakeholders and DPS with information that would be helpful to the Company in formulating a strategic plan for reducing both terminations and uncollectible bills.

## **Conclusion**

As explained above, PULP is neither opposing nor supporting the JP. While we are in favor of several discreet issues of key importance to our mission, in which Con Edison engaged with PULP and DPS in seeking solutions, PULP cannot fully support the JP, and therefore files this statement of neutrality on the joint proposal.

Sincerely,

/s/

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Cc: Other Active Parties (By E-mail only)