STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

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

CASE 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 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.

NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE STAFF POST EVIDENTIARY HEARING BRIEF

John Favreau
Lindsey Overton Orietas
Anthony Belsito
Jalila Aissi

Staff Counsels
State of New York
Department of Public Service
Three Empire State Plaza
Albany, New York 12223-1350

November 16, 2016

INTRODUCTION

This post-evidentiary hearing brief is filed by Department of Public Service Staff ("Staff") in response to the following three issues raised during the November 2-3, 2016 evidentiary hearing: 1) Department of State, Utility Intervention Unit ("UIU") opposition to the Electric and Gas Revenue Allocations and Rate Design set forth in Sections G and H of the Joint Proposal; 2) New York Independent Contractors Alliance ("NYICA") opposition to the revenue requirements for the Joint Proposal's three year Electric and Gas Rate Plans ("Rate Plans"); and 3) Intervenors Energy Spectrum, RiverBay Corporation and Great Eastern Energy (collectively referred to as "RiverBay")[1] opposition to the Reliability Credit (Section G.6.c of the Joint Proposal) measurement period from September 15 to September 30. Pursuant to the Notice of Evidentiary Hearing, issued October 12, 2016, an evidentiary hearing was held on November 2 and 3, 2016. As stated in the Notice, the purpose of the hearing was to receive into evidence and evaluate the Joint Proposal filed on September 20, 2016. The hearing also provided an opportunity to address the reasonableness of the Joint Proposal and to further the record to determine whether the Joint Proposal was in the public interest in accordance with the well-established Settlement Guidelines of the New York Public Service Commission ("Commission"). The vast majority of the parties to these proceedings were either signatories to the Joint Proposal, including Staff, Consolidated Edison of New York, Inc. (Con Edison or Company), the City of New York ("City"), the New York Power Authority ("NYPA"), the New York Energy Consumer Council, Inc. ("NYECC"), the Consumer Power Advocates ("CPA"), Environmental Defense Fund ("EDF"), Pace Energy and Climate Center ("Pace") and many others (hereinafter referred to collectively as the "Signatory Parties"). A number of the aforementioned parties, along with other parties to the proceeding, opposed discreet terms and conditions of the Joint Proposal, and cross-examination was allowed on these issues.[2]

[1] In the Statement in Support of the Joint Proposal, Staff referred to this group collectively as "Great Eastern Energy." At the evidentiary hearing, however, cross-examination was conducted on behalf of RiverBay Corporation (November 2 Tr., pp. 7-8); thus, this brief will refer to the group collectively as "RiverBay."

[2] References to the transcript will be "Tr." preceded by the date.

ARGUMENT

I. UIU Rate Design and Revenue Allocation Opposition

A. The Allocation of Advanced Metering Infrastructure (AMI) Costs as Provided in the Joint Proposal Should Not Be Modified as Recommended by UIU

UIU urges the Commission to modify the Joint Proposal and allocate the costs of AMI based upon energy, thereby using energy as a surrogate for benefits in these proceedings. This recommendation, however, is based on UIU's flawed understanding of the benefits that will be realized as a result of the deployment of AMI. For the reasons that follow, UIU's recommendation lacks merit and should be rejected.

During cross-examination, the Staff Electric and Gas Rates Panel agreed that AMI is anticipated to allow Con Edison to realize energy and capacity savings; however, it is important to note that those savings are not guaranteed and, more importantly, are currently unquantified.[3] In the Order approving Con Edison's AMI Business Plan ("AMI Order"),[4] the Commission noted that there are substantial unquantified future benefits of AMI. While some of these benefits are generally known, the potential savings have not been quantified. However, there are energy savings associated with Conservation Voltage Optimization ("CVO"), meter accuracy, and revenue protection benefits that were quantified in the Benefit Cost Analysis ("BCA") included in the Company's Business Plan.[5] While these energy benefits do represent a large portion of the savings anticipated with the deployment of AMI, some of the energy savings associated with CVO included in the BCA could be achieved prior to full AMI deployment.[6] As explained by the Staff Electric and Gas Rates Panel, there are no energy savings associated with

---

3 November 3 Tr. p. 22.

4 Case 15-E-0050, Con Edison – Rates, Order Approving Advanced Metering Infrastructure Business Plan Subject to Conditions (issued March 17, 2016).

5 Case 15-E-0050, Con Edison AMI Business Plan (filed November 16, 2015):

- CVO capture the energy benefits associated with operating the electric system as a reduced optimal voltage level.
- Meter accuracy captures the benefits realized in two areas: Increased meter accuracy, and decreased irregular meter conditions including errors in billing due to failed components and incorrect data entry.
- Revenue protection refers to improved theft detection associated with increased monitoring and measurement capabilities of AMI meters.

6 November 3 Tr. p. 25, lines 3-10.

meter accuracy and revenue protection under the societal cost test.[7] Furthermore, the quantified benefits associated with other areas of AMI deployment far outweigh the quantified energy benefits. As shown in the BCA, benefits associated with meter reading labor, field services labor, call center labor, billing improvements, and meter reading support systems are anticipated to provide significant savings. These savings, however, cannot be achieved without AMI deployment. UIU's recommendation to allocate costs on benefits that have either not been quantified, could be achieved through other measures, or provide no benefit on a societal basis is without merit and should be rejected.

In addition, UIU's reliance on the Staff Report and Recommendations in the Value of Distributed Energy Resources ("DER") Proceeding ("Staff DER Report"), filed October 27, 2016, in Case 15-E-0751, to support its recommendation to allocate AMI costs based on anticipated benefits is misguided. During cross-examination, UIU pointed to specific language seeming to suggest that Staff supports the allocation of utility costs based on benefits in that proceeding.[8] The Staff Electric and Gas Rates Panel has since reviewed the Staff DER Report in full and notes that the cost allocation principles recommended by Staff therein are consistent with traditional practices in New York and with the positions held by Staff related to the allocation of AMI costs in these proceedings.

B. <u>The Gas Embedded Cost of Service Study Underlying Gas Revenue Allocation in the Joint Proposal is Reasonable and Should Not be Modified as Recommended by UIU</u>

The gas Embedded Cost of Service ("ECOS") study and associated revenue allocation, as provided in the Joint Proposal, are reasonable and should be adopted by the Commission without modification. The cost allocation methodology used to develop the rate design and revenue allocation for gas in the Joint Proposal is a widely-accepted and reasonable approach, and, further, is consistent with the method used in Con Edison's most recent rate proceedings.[9] Throughout the instant proceedings, UIU has taken issue with the Company's ECOS studies for electric and gas, arguing that UIU's ECOS studies align more closely with cost causation principles. UIU, however, has failed to identify any basis for modifying the rate design and revenue allocation provisions of the Joint Proposal. Therefore, the Commission

---

[7] November 3 Tr. pp. 30-31.

[8] November 3 Tr. p. 12, lines 9-14; Exhibit 314, p. 24.

[9] November 2 Tr. p. 246.

should reject UIU's recommended modifications and adopt the rate design and revenue allocation terms of the Joint Proposal proposed by the Signatory Parties.

With respect to Con Edison's gas ECOS study, UIU specifically takes issue with the allocation of distribution mains. Through cross-examination, UIU questioned the Staff Electric and Gas Rates Panel as to the reasonableness of a specific statement made in the testimony of the Staff Gas Rates Panel in Case 16-G-0369, Corning Natural Gas Corporation ("Corning Staff Gas Rates Panel").[10] Specifically, the Corning Staff Gas Rates Panel's testimony stated, "First, as explained in the NARUC Utility Cost Allocation Manual, main that is two inches or smaller diameter still has a certain load carrying capability. Thus, the entire cost should not be classified as customer costs."[11] The National Association of Regulatory Utility Commissioners ("NARUC") Electric Utility Cost Allocation Manual ("NARUC Electric Manual") states, "Cost analysts disagree on how much of the demand costs should be allocated to customers when the minimum-size distribution method is used to classify distribution plant. When using this [minimum size] distribution method, the analyst must be aware that the minimum sized distribution equipment has a certain load-carrying capability which <u>can</u> be viewed as demand-related."[12] For this reason, the Staff Electric and Gas Rates Panel concluded that the statement made by the Corning Staff Gas Rates Panel was reasonable.

The Corning Staff Gas Rates Panel found Corning's distribution main allocation in its ECOS study to be unreasonable and, instead, advocated for a portion of the distribution main to be classified as customer-related and the other portion as demand-related. Since the Corning Staff Gas Rates Panel did not agree with the classification or allocation of distribution mains in the Corning ECOS study, the Panel did not use the resulting rate of returns produced by Corning's ECOS study for revenue allocation or rate design purposes. To correct the ECOS study moving forward, the Corning Staff Gas Rates Panel recommended that Corning be required to use a zero intercept method to determine the customer-related component of distribution mains when classifying costs in the ECOS study in its next rate filing.

---

[10] November 3 Tr. pp. 8-9.

[11] NARUC Gas Distribution Rate Design Manual ("NARUC Gas Manual") does not contain this specific language.

[12] NARUC Electric Manual, p. 95 (emphasis added).

In Con Edison's Joint Proposal Demand Analysis and Cost of Service Panel's Rebuttal testimony, the Company noted that historic unit costs for steel mains of 1.25 inches, 1.5 inches and 2.0 inches were significantly different.[13] Due to these significant differences in unit costs, a zero-intercept analysis would be statistically unreliable for Con Edison. The NARUC Electric Manual identifies this problem and explains that using the zero-intercept method can sometimes produce statistically unreliable results. The gas ECOS study, on which revenue was allocated under the terms of the Joint Proposal, used a minimum-size method to classify gas distribution mains, which is more appropriate than the zero-intercept method in this case.

Additionally, the gas ECOS study, which guided the revenue allocation included in the Joint Proposal, is consistent with the method used in Case 13-G-0031, the last Con Edison gas rate case.[14] The Commission adopted the Joint Proposal in Case 13-G-0031 without modification to the revenue allocation or underlying ECOS study. In its testimony, UIU acknowledged that the Commission indicated a "preference for rate continuity and the desire to avoid potential customer impacts that might result if it were to change allocation methods from what was historically the practice of that utility."[15] The classification of distribution mains in the ECOS study and proposed revenue allocation in the Joint Proposal use sound cost allocation principles that have been used historically, and for the above reasons, should be adopted as proposed.

C. The Minimum System Method of Determining Customer Component of Electric Distribution Plant is Reasonable and Should Not be Modified as Proposed by UIU

The electric ECOS study that guided the electric revenue allocation included in the Joint Proposal should be adopted without modification. The use of a minimum system analysis to determine the portion of costs of primary distribution conductors and distribution transformers to be classified as customer-related is reasonable and consistent with the NARUC Electric Manual, and has been adopted in other New York State electric rate proceedings. Additionally, the inclusion of conductors between 10 AWG and 1 AWG (as agreed to in the Memorandum of Understanding)[16] in the minimum system analysis used to determine the costs

13 November 2 Tr. p. 254.

14 November 2 Tr. p. 246.

15 November 3 Tr. p. 274.

16 November 2 Tr. p. 441.

of secondary distribution conductors to be classified as customer-related is reasonable as these are the smallest conductor sizes currently installed and in use on the Con Edison system.[17] Using the smallest conductor of 10 AWG, as recommended by UIU,[18] results in a minimum system calculation that is based on a conductor size that represents less than 0.0006% of the underground low tension conductor[19] and 0.015% of the overhead low tension secondary wire[20] installed on Con Edison's system.

II. RiverBay Reliability Credit Measurement Period Opposition

The measurement period and the Reliability Credit, as provided in the Joint Proposal, are reasonable and should be adopted without modification. As noted in the Staff Joint Proposal and Policy Panel's testimony, hourly peaks can and have been experienced outside the June 15 through September 15 measurement period for the current Performance Credit program.[21] Due to the increase in cooling degrees days experienced during the month of September, the Reliability Credit measurement period during the month of September should not be shortened from September 30 to September 15 for RiverBay or any other standby rate customers.[22] RiverBay has failed to provide any reasonable basis for modifying the June 1 through September 30 measurement period of the Reliability Credit program.

On several occasions during cross-examination, both Staff and the Company were questioned about the "extension of the measurement period" for the Reliability Credit from September 15 to September 30. This characterization of the Reliability Credit measurement

---

17 November 2 Tr. p. 238.

18 November 3 Tr. p. 60.

19 UIU Exhibit UERP-JP-6, p. 24 of 84.

20 Id., p. 3 of 84.

21 November 2 Tr. p. 393, line 16-21.

22 At the evidentiary hearing, RiverBay conceded that the only part of the Reliability Credit at issue in these proceedings is the period of September 15 through September 30 (November 2 Tr. pp. 393-394). This concession negates the testimony of witnesses Ahrens and Lukas, both of whom advocated for the measurement period under the Performance Credit of June 15 through September 15 to be adopted for the purposes of the Reliability Credit during Rate Years 2 and 3, as well as the 8:00 a.m. to 10:00 a.m. time period.

period, however, is inaccurate. As explained by both the Company[23] and Staff,[24] the Reliability Credit is not an extension of the existing Performance Credit program; rather, the Reliability Credit is a new program, replacing the Performance Credit, with distinct determinants and a different measurement period. Unlike the previous Performance Credit program, which was based solely on minimum generation, the Reliability Credit uses the difference between maximum demand during the measurement period and the customer's contract demand. As such, and as previously explained by the Staff Joint Proposal and Policy Panel,[25] the specific guidelines in place for the Performance Credit should not be considered precedential for the new Reliability Credit program. Furthermore, although the Reliability Credit program uses the existing measurement period for the Performance Credit for Rate Year 1, this was a negotiated outcome,[26] intended to be an accommodation for those customers who participated in that program,[27] and, therefore, this should also not be considered precedential for setting the measurement period for Rate Years 2 and 3.

RiverBay also questioned whether Con Edison would be able to complete studies the Company referenced on page 38 of its Statement in Support of the Joint Proposal[28] during the next year. The studies to which RiverBay referred are actually a filing required by the REV Track Two Order[29] related to the allocation of costs between the contract demand charge and daily as-used demand charge. To be clear, the REV Track Two Order does not require the Company to perform an additional study related to the Reliability Credit or the measurement period associated therewith. Rather, the Company is required to "make a filing that describes in detail the cost allocation methodology that is currently in use for the calculation of standby rates," including a discussion of "a rate that rewards customers that engage actively with the

[23] November 2 Tr. p. 141, lines 4-11; Tr. p. 146, lines 10-16; Tr. p. 146, line 25 through Tr. p. 147, line 6; Tr. p. 147, lines 19-22.

[24] November 2 Tr. p. 392, lines 4-9.

[25] Staff Joint Proposal and Policy Panel Reply Testimony, p. 11, line 9 though p. 12, line 24.

[26] November 2 Tr. p. 149, lines 7-8.

[27] November 2 Tr. p. 148, line 22 through Tr. 149, line 3.

[28] Case 16-E-0060, et al. Con Edison – Rates, Statement in Support of Electric and Gas Joint Proposal (filed October 13, 2016) ("Company Statement in Support").

[29] Case 14-M-0101, Reforming the Energy Vision, Order Adopting a Ratemaking and Utility Revenue Model Policy Framework (issued May 19, 2016) ("REV Track Two Order").

utility to provide system value; a reduction in the percentage of costs allocated to the contract demand with a corresponding increase to the daily as-used demand charges; a potential distinction between new load and existing load, with a phase-out for new load status; and a method which first identifies the marginal cost-of-service and then applies an adder for non-capital related cost recovery."[30] Furthermore, in his testimony, Mr. Lukas questions whether "'probabilistic' studies as they relate to 'an unplanned coincident peak' referred to in the [REV] Track Two Order" have been performed with regard to the Reliability Credit measurement period between September 15 and September 30.[31] Although the REV Track Two Order does suggest that "a probabilistic analysis of the likelihood that the DER resource will fail at peak should be considered when allocating costs to standby rate customers,"[32] the plain language of the Order states that such studies should be done for the purposes of cost allocation, not, as RiverBay suggests, for determining the measurement period of the Reliability Credit.

For the foregoing reasons, the Commission should reject RiverBay's proposed modification and adopt the measurement period of June 1 through September 30 as provided in the Joint Proposal.

III. NYICA Revenue Requirement Opposition

As succinctly stated by Administrative Law Judge Lecakes, there wasn't "anything that has furthered the concerns of NYICA" during the evidentiary hearing.[33] ALJ Lecakes further stated that, given his understanding of the decision of the National Labor Relations Board (NLRB), the pending motion to dismiss the corresponding federal litigation, and subsequent discovery stay, and the withdrawal by NYICA of a 2014 Commission complaint on the very same issue, the ALJs would not allow the "use of the Joint Proposal and the order that the Commission would produce to require Con Edison to make a change to its terms and conditions, or roll back the clock . . . to the pre-2014 time" because it was not appropriate in these proceedings.[34]

---

30 REV Track Two Order, p. 130.

31 Testimony of Ronald G. Lukas, p. 7, lines 3-11.

32 REV Track Two Order, p. 129.

33 November. 2 Tr. p. 127.

34 November 2 Tr. p. 127.

Prior to that statement, there was much discussion of NYICA's concern with the revenue requirements established in the Joint Proposal, and, in particular, the effect and reasons surrounding the Company's business decision to amend its Standard Contract Terms and Conditions. NYICA generally claimed that, because of this change, fewer companies would bid for municipal interference paving work, which would, in turn, increase paving costs borne by ratepayers. NYICA, however, provided no evidence or support for this claim, and had no response to refute the Company's evidence that the number of bids increased for a 2015 project. The Company correctly pointed out that only the Municipal Interference reconciliation mechanism (Joint Proposal, Sec. E.2) is at issue in these proceedings. As to that issue, it was noted that Staff has the ability to review and audit any deferral and related costs, and the Company, with limited exception, agreed with Staff's recommendation requiring 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 Con Edison's amended terms and conditions.

The Joint Proposal, and subsequent conditions, protects ratepayers, and NYICA has failed to establish otherwise; therefore, NYICA's opposition of the Joint Proposal should be rejected.

CONCLUSION

As explained in Staff's Statement in Support, Reply Statement, and Reply testimony and Exhibits, the Joint Proposal meets the requirements of the Commission's Settlement Guidelines. The Joint Proposal is consistent with the Commission's goals and policies, compares favorably with the likely result of a litigated case, fairly balances the interests of ratepayers and investors, and provides the Commission with a rational basis for its decision. Concerning the limited opposition to the Joint Proposal, the revenue allocation and rate design, revenue requirements, and Reliability Credit, as agreed to by the Signatory Parties, should remain intact and should be adopted.

For all of the above reasons, Staff respectfully recommends that the Joint Proposal be found to be in the public interest and adopted by the Commission in its entirety.

Respectfully submitted,

________/s/________
John Favreau
Lindsey Overton Orietas
Anthony Belsito
Jalila Aissi

Dated: November 16, 2016
Albany, New York