STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Petition of Consolidated Edison Company of New York, Inc. for a Declaratory Ruling Concerning the Commission's Jurisdiction of Gas Service Lines while Indoor Gas Meters are Being Relocated Outdoors	23-G-_____
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	22-G-0065

PETITION FOR DECLARATORY RULING

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Gas corporations including Consolidated Edison Co. of New York, Inc. ("Con Edison" or the "Company") supply natural gas to customers through a system of underground pipes and customer meters. Larger pipes, called mains, carry gas through the utility's service territory, while smaller pipes, called service lines, deliver gas from mains to meters at customer buildings. Meters may be located inside or outside of customer buildings and measure the volume of gas a customer consumes. Service lines and meters are thus necessary components of each gas corporation's distribution system.

The Public Service Law vests the New York State Public Service Commission ("Commission") with broad regulatory authority and jurisdiction over each gas corporation ("utility") for the protection of consumers, and to ensure safe and adequate service at just and reasonable rates.[1] The Commission's jurisdiction includes gas service lines and meters, in part

[1] N.Y. Pub. Serv. Law §§ 65, 66.

to make sure that such components are properly connected and safely operated. When a meter is located indoors, the Commission has exclusive jurisdiction over the gas service line on both sides of the building foundation wall up to the outlet of the meter.

Among the safety programs the Commission oversees, is Con Edison's Inside Meter Relocation Program ("Relocation Program"). Under this program, Con Edison moves indoor gas meters outdoors during certain types of planned work, including service line replacements.[2] Con Edison agreed to undertake the Relocation Program after it was proposed by Department of Public Service Staff ("Staff") in a 2016 rate case.[3] In its order approving the resulting rate plan, the Commission recognized several benefits of moving indoor gas meters outdoors. These benefits include greater accessibility and enhanced gas safety and reliability.[4] That order also made the Relocation Program a legal requirement.

In recent years, however, Con Edison and its customers have been hindered in carrying out the Relocation Program by municipalities asserting local jurisdiction over limited aspects of work required under the Relocation Program. For instance, the New York City Department of Buildings and various Westchester County municipal agencies[5] have claimed or suggested that

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[2] The following exceptions apply: (1) where a customer refuses to allow an indoor meter to be relocated outdoors; (2) where local building codes or regulations preclude outdoor meters; (3) where space constraints or physical barriers preclude relocation; (4) when the work involves an emergency service line repair or replacement; and (5) for other safety-related considerations.

[3] 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. See Staff Gas Safety Panel Testimony filed May 27, 2016, pages 64-66.

[4] Id. Order Approving Electric and Gas Rate Plans. (Issued and Effective: January 25, 2017). See page 100 ("Finally, the rate plan enables Con Edison to **meet other policy objectives related to gas service lines inside buildings and to the relocation**, when needed, **of natural gas meters to a more accessible location, both of which will enhance safety and reliability** by reducing possibility of natural gas leaks within the customer's building.") (emphasis added).

[5] Including the New Rochelle Bureau of Buildings, the Yonkers Department of Housing and Buildings, the Westchester County Department of Consumer Protection, and the Westchester County Board of Plumbing Examiners.

Con Edison lacks authority to complete a critical step in the relocation process: installing a small segment of piping to reconnect the service line after the indoor meter is removed, so that Con Edison can restore service to the customer.[6] According to these municipalities, such work, if performed by Con Edison, constitutes a violation of applicable Fuel Gas Code. On this basis, some municipalities have issued violations and citations to Con Edison and its customers where such piping has been installed and connected by the Company without a licensed plumber or a local plumbing permit.[7]

The Public Service Law vests the Commission with exclusive and comprehensive jurisdiction over all aspects of gas service lines and meters including installation, repair, replacement, and inspection. The Commission's exclusive jurisdiction continues throughout the entire meter relocation process, which concludes only when Con Edison restores gas service after installing the outdoor meter and reconnecting the service line. Only then is there a new active piping and meter configuration resulting in a different jurisdictional analysis. From the point of restoring service forward, the service line – and Commission jurisdiction – ends at the exterior of the foundation wall instead of where the outlet of the indoor meter had been prior to the move. Thereafter, municipal code governs all future work on indoor piping. At all times during the relocation process, however, the Commission retains its jurisdiction over all work necessary and

[6] When an indoor gas meter is removed, the service line is no longer continuous, requiring a small segment of piping to be installed where the meter had been located. This small segment of piping is typically no longer than approximately 24-36 inches in length. Prior to the meter relocation, this limited segment of piping is before the outlet of the indoor meter and clearly part of the "service line" as defined in state and federal regulations. Notwithstanding, the municipalities at issue are asserting local jurisdiction over this limited segment of piping and requiring it to be installed by a licensed plumber with a local permit.

[7] As an example, the Company recently received a Notice of Violation (NOV) from the Westchester County Board of Plumbing Examiners. The NOV alleges that Con Edison violated Section 277.503 of the Westchester County Plumbing License Law while performing limited pipework to reconnect a gas service line during a meter relocation in Yonkers. A hearing before the Westchester County Board of Plumbing Examiners to address this NOV has been adjourned pending the outcome of this petition.

proper to carry out the Commission-mandated Relocation Program, including all pipework needed to reconnect the service line and restore service after removal of the indoor meter. Attachment 1 shows a typical service line configuration before and after an indoor meter is relocated outdoors, and identifies the limited pipework at issue, as described above.

To protect customers from future municipal fines and remove an impediment to carrying out the Relocation Program, Con Edison respectfully requests that the Commission issue a Declaratory Ruling pursuant to 16 NYCRR § 8.1 confirming that: (1) a meter relocation under the Relocation Program is complete when, and remains ongoing until, Con Edison has restored service after installing the outdoor meter and reconnecting the service line; and (2) during a meter relocation under the Relocation Program, the Commission retains exclusive jurisdiction over all work necessary and proper for Con Edison to complete the relocation, including all pipework needed to reconnect the service line and restore service after removal of the indoor meter.[8] The requested Declaratory Ruling is appropriate and in the public interest to eliminate confusion and minimize adverse effects to customers including delays and costs associated with relocating their indoor gas meters outdoors. Specifically, as applied, the local ordinances at issue adversely affect customers without providing any increase in gas safety.

I. Background

Con Edison distributes natural gas to more than one million customers in New York City and throughout Westchester County. The Company's distribution system, which includes more

[8] As part of the rate plan approved by the Commission on July 20, 2023, Con Edison agreed to file this Petition to confirm and clarify the scope of the Commission's gas service line jurisdiction, in part to eliminate further potential confusion with respect to Con Edison's Relocation Program. See the Commission's July 20, 2023 Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plans with Additional Requirements, page 92 of the Joint Proposal (describing the Company's commitment to file a petition for declaratory ruling within three months of the Commission's Order approving the Joint Proposal to determine, when a utility moves an indoor meter outside, if any work done on the gas piping up to the outlet of the existing indoor gas meter is subject to the Public Service Law or the local municipal plumbing code prior to the new outdoor gas meter being installed and the gas service being reactivated).

than 4,300 miles of gas mains and approximately 376,000 service lines, delivers over 300 million dekatherms of natural gas annually to its customers. Con Edison's system also includes approximately 1.1 million indoor gas meters. These indoor meters are generally located in each customer's basement, in the area where the Company's gas service line enters through the foundation wall.

In April 2015, the Commission amended the New York State definition of "gas service line" [9] to align it with the corresponding federal definition.[10] Under the amended New York definition now in effect, gas service lines and Commission jurisdiction extend from the main to the outlet of an indoor meter.[11] As a result, for gas service lines with indoor meters, gas utilities such as Con Edison are solely responsible for all service line work including installation, repair, replacement, and inspection, up to the outlet of the meter.

Con Edison established the Relocation Program after it was recommended by Staff and approved by the Commission in the Company's 2016 rate case.[12] The Relocation Program has continued to be part of the Company's Commission-approved rate plans since,[13] including the

[9] Recognizing the significant potential impact that would result from the new gas service line definition, the Commission initiated a separate proceeding to examine and develop the approach to implementing survey and inspection requirements for inside meters and associated service line piping under the new definition. See Case 14-G-0357, In the Matter of Revising 16 NYCRR Gas Safety Regulations for Consistent Application of More Stringent Federal Gas Safety Standards in 49 CFR.

[10] See 49 C.FR. § 192.3 (defining a "service line" as "a distribution line that transports gas from a common source of supply to an individual customer, to two adjacent or adjoining residential or small commercial customers, or to multiple residential or small commercial customers served through a meter header or manifold. A service line ends at the outlet of the customer meter or at the connection to a customer's piping, whichever is further downstream, or at the connection to customer piping if there is no meter.").

[11] Under the prior definition, at locations with inside gas meters, the service line ended at the "first accessible fitting" inside the wall of the customer's building. See 16 N.Y.C.R.R. § 255.3(29) (May 21, 2013).

[12] 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.

[13] The Company's subsequent 2019 Gas Rate Plan, approved by the Commission on January 16, 2020 in Case 19-G-0066, continued the Company's Relocation Program with minor modifications recommended in Staff's Pipeline

currently effective rate plan approved by the Commission on July 20, 2023. Con Edison has completed more than 6,000 indoor meter relocations since inception of the program.

Relocating indoor meters during planned work including service line replacements involves several steps. These steps generally include obtaining customer approval to relocate the existing indoor meter; identifying a new suitable location for the outdoor meter; shutting down service and removing the indoor meter assembly; installing the new outdoor meter assembly; installing limited piping to reconnect the service line in the area where the indoor meter was removed; and restoring service to the customer.

II. Analysis

A. The Commission's Jurisdiction of Gas Service Lines Ends at the Outlet of an Indoor Meter

The Commission has statutory jurisdiction over all "gas corporations" authorized to install pipes for the distribution of natural gas, and over all items of "gas plant" owned, leased, or operated by any gas corporation.[14] Under the Public Service Law, the scope of the Commission's regulatory authority is broad, empowering the Commission with both general supervisory jurisdiction and extensive specific authority over all gas corporations.[15] Without question, Con Edison is a "gas corporation" within the meaning of the statute[16] and gas service

Safety Panel testimony. Case 19-G-0066, 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. ("2019 Rate Plan"), Staff Pipeline Safety Panel Testimony filed May 24. 2019. See pages 85-87.

[14] N.Y. Pub. Serv. Law § 66.

[15] See N.Y. Pub. Serv. Law § 66 (establishing the Commission's powers to investigate and provide for audits and to regulate all aspects of gas corporation business for the protection of consumers and the public). See also N.Y. Public Service Law § 65 (establishing the Commission's express statutory authority to ensure safe and adequate service at just and reasonable rates).

[16] See N.Y. Pub. Serv. Law § 2(11) (defining "gas corporation" to include "every corporation, company, association, joint-stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating or managing any gas plant").

lines are items of "gas plant" as defined therein.[17] On this basis, the Commission has broad authority and jurisdiction to regulate all gas service lines owned and operated by gas corporations including Con Edison.

The location of the meter generally determines the endpoint of each gas service line and the extent of the Commission's regulatory jurisdiction. Where a meter is located outdoors (i.e., outside of a customer's building), the gas service line and corresponding Commission jurisdiction end at the exterior of the building foundation wall.[18] In contrast, where a meter is located indoors (i.e., inside a customer's building, generally but not always in the basement), the gas service line extends to the outlet of the indoor meter.[19] Thus, at customer locations with indoor gas meters, the Commission's gas service line jurisdiction and regulatory authority end at the outlet of the meter.

B. The Commission's Jurisdiction is Exclusive and Preempts Local Legislation of Gas Service Lines

Where state law indicates a purpose to occupy an entire field of regulation, local regulations are preempted regardless of whether their terms conflict with the provisions of a state statute or only duplicate them.[20] The intent to preempt need not be express. It is enough that the

[17] See N.Y. Pub. Serv Law § 2(10) (defining "gas plant" to include "all real estate, fixtures and personal property operated, owned, used or to be used for or in connection with or to facilitate the manufacture, conveying, transportation, distribution, sale or furnishing of gas (natural or manufactured or mixture of both) for light, heat or power…").

[18] See 16 N.Y.C.R.R. § 255.3(48) (defining "service line" as "piping, including associated metering and pressure reducing appurtenances, that transports gas below grade from a main or transmission line to the outlet of the customer meter or at the connection to the customer's piping, whichever is further downstream where a meter is located within the building; if a meter is located outside the building, the service line will be deemed to terminate at the outside of the building foundation wall.").

[19] Alternatively, the service line ends at the connection to the customer's piping, where such connection is downstream of the meter. See 16 N.Y.C.R.R. § 255.3(48).

[20] Matter of Ames v. Smoot, 98 A.D.2d 216, 218 (App. Div. 2nd Dep't 1983) (citing Consol. Edison Co. of N.Y., Inc. v. Town of Red Hook, 60 N.Y.2d 99 (1983); People v. DeJesus, 54 N.Y.2d 465 (1982); Robin v. Inc. Vill. of Hempstead, 30 N.Y.2d 347 (1972)).

Legislature has impliedly evinced its desire to do so.[21] A desire to preempt may be implied from a declaration of state policy by the Legislature[22] or from the fact that the Legislature has enacted a comprehensive and detailed regulatory scheme in a particular area.[23] Both of these criteria are met here.

First, as established in the Public Service Law, the Legislature's declared policy is that "every gas corporation…shall furnish and provide such service, instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable"[24] and that there be continued provision of gas service "without unreasonable qualifications or lengthy delays."[25] In furtherance of this policy, the Legislature has delegated to the Commission general supervisory authority over all aspects of the gas distribution system in New York State.[26] In this regard, the Commission prescribes, supervises, and enforces installation, operation, and safety standards for every gas corporation in the State.

Second, the extensive statutory and regulatory scheme enacted by the Legislature evinces its intent to preempt local jurisdiction over the gas distribution system. The Public Service Law prescribes and authorizes the detailed regulation of gas utilities and the entire statewide gas distribution system, and the regulations promulgated thereunder encompass every aspect of gas

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[21] Consol. Edison Co. of N.Y., Inc. v. Town of Red Hook, 60 N.Y.2d 99, 105 (1983) (citing People v. N.Y. Trap Rock Corp., 57 N.Y.2d 371, 378 (1982); Monroe-Livingston Sanitary Landfill v. Town of Caledonia, 51 N.Y.2d 679, 683 (1980); People v. Cook, 34 N.Y.2d 100, 109 (1974)).

[22] Robin v. Inc. Vill. of Hempstead, 30 N.Y.2d 347, 350-51 (1972).

[23] People v. DeJesus, 54 N.Y.2d 465, 469 (1982).

[24] N.Y. Pub. Serv. Law § 65.

[25] N.Y. Pub. Serv. Law § 30.

[26] N.Y. Pub. Serv. Law § 66.

distribution in New York.[27] Moreover, in its 1981 enactment of the Home Energy Fair Practices Act ("HEFPA"), the Legislature directed the Commission to take detailed measures to safeguard the delivery of gas to consumers.[28] These statutes show the Legislature's clear intent to concentrate and centralize all regulatory authority over the statewide gas distribution system in the Commission.

One of the primary legislative mandates imposed on the Commission is to ensure the safe delivery of natural gas to consumers.[29] To this end, the Commission has enacted extensive safety regulations that it has determined to be adequate for safety under conditions normally encountered in the gas industry.[30] Indeed, these regulations also expressly provide that if a special permit or deviation from the application of the rules is needed because of special facts, application must be made to the Commission.[31] Thus, municipalities cannot bypass Commission regulations on their own.

Even with respect to gas service lines – the components at issue here – the Commission's regulations set forth detailed and comprehensive requirements for when, how, and who shall perform the work including installation. Pursuant to the statutory authority granted to the Commission,[32] the regulations detail the materials to be used,[33] the qualifications of the

[27] N.Y. Pub. Serv. Law §§ 30-53, 65 and 66; 16 N.Y.C.R.R Parts 11, 225-233, and 255.

[28] N.Y. Pub. Serv. Law §§ 30-53.

[29] N.Y. Pub. Serv. Law §§ 30-53, 65 and 66.

[30] 16 N.Y.C.R.R. § 255.13(a).

[31] 16 N.Y.C.R.R. § 255.13(c).

[32] N.Y. Pub. Serv. Law §§ 30-53, 65 and 66.

[33] 16 N.Y.C.R.R. §§ 255. 51-255.69.

installers,[34] and the specific safety measures to be taken.[35] In addition, the Legislature has provided for penalty amounts that may be sought by the Commission for violations of this statewide gas safety code. In fact, Sections 25(3) and 25-a(4) of the Public Service Law establish quantified penalty amounts for each violation of the Commission's gas safety regulations. The Legislature's objective of providing safe and adequate service at just and reasonable rates is thus reflected in this exhaustive regulatory scheme designed to carefully balance the needs of consumers, the responsibility of gas corporations, the safety of the system, and the price of delivering gas.

Under the Public Service Law, the Commission has exclusive authority to determine under what terms and conditions gas service is offered by a regulated gas utility and whether those terms and conditions are safe, adequate, just, and reasonable. Where, as here, state policy is expressed to occupy a field to ensure uniform, safe, and adequate service to all, a municipality lacks authority to deal with the matter "unless it is specifically empowered to do so in terms clear and explicit."[36] No such authority exists here.

Thus, local municipalities may not legislate to address alleged safety concerns or for any other reason. Indeed, Section 71 of the Public Service Law evinces the Legislature's clear intent that local differences with state regulation be resolved, not by local legislation, but instead through Commission investigation. Under Section 71, a municipality may ask the Commission to investigate any complaint as to the quality or adequacy of gas service, a burden that would be unnecessary if municipalities could redress differences by merely enacting local laws.

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[34] 16 N.Y.C.R.R. § 255.604.

[35] 16 N.Y.C.R.R. Part 255.

[36] Consol. Edison Co. of N.Y., Inc. v. Town of Red Hook, 60 N.Y.2d 99, 107 (1983) (citing Robin v. Inc. Vill. Of Hempstead, 30 N.Y.2d 347, 350-51 (1972); Jewish Consumptives' Relief Soc'y v. Town of Woodbury, 230 A.D. 230, 234 (App. Div. 2nd Dep't 1930), aff'd 256 N.Y. 619 (1931)).

Here, the Legislature has provided for state regulation of every facet of the gas distribution system, including installation and safety of gas service lines. Taken in its entirety, therefore, the Public Service Law evinces a clear legislative intent to preempt the field of gas distribution. For these reasons, the Commission's exclusive authority preempts local legislation of gas service lines.[37]

C. The Commission's Exclusive Gas Service Line Jurisdiction Does Not Change While an Indoor Meter is in the Process of Being Relocated Outdoors Pursuant to a Commission-Approved Program

A meter relocation under the Relocation Program is a Commission-approved process that is complete only when Con Edison restores gas service after installing the outdoor meter and reconnecting the service line. Shutting off service, removing and relocating the meter, and restoring service including limited inside pipework are interrelated parts of one continuous action subject to Commission jurisdiction. It is unreasonable and impractical to parse a meter relocation into discrete jurisdictional steps that deprive the Commission of authority over the step most important to customers – the work required to restore their gas service.

As discussed above, the location of the meter generally determines the endpoint of each gas service line and the extent of the Commission's regulatory jurisdiction. At indoor meter locations, the Commission's gas service line jurisdiction ends at the outlet of the meter. If there is no meter, the Commission's service line jurisdiction ends at the connection to the customer's piping. In contrast, at outdoor meter locations, the Commission's service line jurisdiction ends at the exterior of the building foundation wall. The Commission addressed this important

[37] See Consol. Edison Co. of N.Y., Inc. v. City of New Rochelle, 532 N.Y.S.2d 521 (App. Div. 2d Dep't 1988) (recognizing that the Public Service law and its comprehensive regulatory scheme demonstrate the Legislature's intent to preempt further regulation in the area of gas service line installations).

jurisdictional relationship in its Gas Service Line Memorandum and Order, in which it explains that:

> The definition we adopt today extends the Commission's jurisdiction to inside gas piping up to an inside meter, even if the gas meter is installed on individual floors of a high-rise building, or up to customer piping if there is no meter.[38]

Thus, at indoor meter locations, the Commission has clearly asserted its regulatory jurisdiction over gas service lines up to the meter, wherever the meter is located (and where there is no meter, up to the connection to customer piping). In addition, pursuant to its regulatory jurisdiction, the Commission's regulations establish that each gas utility is "solely responsible for the inspection, testing, operation, maintenance, replacement and reconstruction of all…service lines, service connections and appurtenant facilities."[39] These regulatory requirements make it clear that only gas utilities are to perform work on gas service lines in New York.

Applying these requirements to the situations at issue is straightforward. Here, municipalities are asserting local jurisdiction over service line pipework at indoor meter locations where the meter is being moved outdoors. As explained above, the Commission has service line jurisdiction at these locations up to the outlet of the indoor meter. Most importantly, the pipework at issue here is <u>all before the outlet of the meter</u> – i.e., on piping within the Commission's service line jurisdiction, and for which Con Edison and all other gas utilities are "solely responsible" under the Commission's regulations, as explained above.

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[38] <u>See</u> Case 14-G-0357, In the Matter of Revising 16 NYCRR Gas Safety Regulations for Consistent Application of More Stringent Federal Gas Safety Standards in 49 CFR, pages 19-20.

[39] <u>See</u> 16 N.Y.C.R.R. § 230.6 (establishing that "[e]ach gas corporation **shall be solely responsible** for the inspection, testing, operation, **maintenance, replacement and reconstruction of all** mains, **service lines**, service connections and appurtenant facilities which it uses to supply gas to customers.") (emphasis added).

Service line jurisdiction does not change when or simply because an indoor meter is removed as part of the Commission-approved meter Relocation Program. If the location of the meter determines the endpoint of each gas service line (and the extent of the Commission's regulatory jurisdiction), then it necessarily follows that the Commission's jurisdiction remains unchanged until an indoor meter is fully relocated to its new outdoor location, with all work complete and gas service turned back on. Only at that point in time is there an active gas meter at the new outdoor location. There is, of course, no magical point in time before then when service line jurisdiction automatically switches from the Commission to a local municipality. Asserting this type of jurisdictional change at any time before then is arbitrary and conflicts with the Public Service Law.[40]

D. As Applied, the Municipal Ordinances are Inconsistent with the Public Service Law

The New York State Constitution and various enabling statutes grant municipalities the power to adopt local laws relating to their "property, affairs or government" provided that such laws are not inconsistent with the State Constitution or any general State law.[41] On this basis, local laws may be invalid where they are inconsistent with Articles 2 and 4 of the Public Service Law, which are general State laws relating to the provision of gas service.[42]

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[40] Moreover, before the outdoor meter is installed and activated, the indoor meter is either still in place or has been removed, in which case there is no meter at all and the Commission's service line jurisdiction extends up to the connection to customer piping, where the outlet of the indoor meter had been located. See Case 14-G-0357, supra n. 38 (confirming that the Commission's service line jurisdiction extends "to inside gas piping up to an inside meter, even if the gas meter is installed on individual floors of a high-rise building, **or up to customer piping if there is no meter**.") (emphasis added).

[41] N.Y. Constitution, Art. IX, § 2, sub. (c), par. (i); Municipal Home Rule Law, § 10, subd. 1, par. (i); Statute of Local Governments, § 10.

[42] Article 2 addresses residential gas utility service. See N.Y. Pub. Serv. Law §§ 30-53. Article 4 addresses gas and electric corporations and the regulation of gas and electricity prices. See N.Y. Pub. Serv. Law §§ 64-77.

Here, the municipalities at issue seek to impose requirements on Con Edison's regulated gas business that expressly conflict with Commission regulations, which govern all aspects of gas service line installation, including how such lines are to be installed and who is to perform the work. The municipalities at issue are seeking to impose different requirements. Specifically, the local laws at issue here are being applied during the meter relocation process to require that only licensed plumbers install a very limited segment of gas service line piping, instead of qualified utility workers who are authorized and required to perform service line installation under Commission regulations. This is an express conflict between State and local law.

These conflicting local laws impede and inhibit implementation of State policy in several important ways. First, they impede the Commission's objective of prescribing uniform standards for installation and safety of a statewide gas system. The Commission's investigative and enforcement procedures with respect to an extensive system covering every subdivision in the State are necessarily based on uniformity of standards that apply to all utilities and all gas service lines.

Second, each regulated utility is subject to varying regulations that impact its operations, efficiency, and costs. The Commission, pursuant to legislative directive, has already balanced the relevant concerns in directing utilities as to how, when, and to whom gas service should be provided. Safety, efficiency, and costs are issues that are and have been considered, balanced, and resolved by the Commission in its general supervisory capacity and through its ratemaking authority. Additional requirements, such as the local laws at issue here – purportedly requiring Con Edison to employ outside licensed plumbers for work that its qualified employees can perform – clearly have a direct impact on the Company's costs and rates. Moreover, this local requirement is unreasonable inasmuch as the municipalities at issue have no justifiable safety

rationale. In any case, the local laws at issue most certainly impact the Company's operations and ability to efficiently and cost effectively serve its customers.

Finally, the Legislature's policy requiring consumer needs to be addressed in a timely manner with minimal delay is impeded by the local laws at issue here. For example, the additional requirement that Con Edison obtain a municipal permit before working on a service line is untenable. Certain provisions of the Public Service Law are written to require efficient service to all customers, especially low income and elderly customers. Thus, utilities including Con Edison are under a statutory mandate to serve their customers. Municipalities may not erect roadblocks that inhibit or impede this obligation.

E. As Applied, the Municipal Ordinances Adversely Affect Customers and Do Not Result in Any Increase in Gas Safety

The local laws at issue are being applied in a manner that adversely affects customers in two ways. First, the local laws directly result in additional costs that individual customers or all rate payers will be forced to pay. Some individual customers may need to hire and pay a licensed plumber out of pocket to perform the service line pipework, described above.[43] These added costs can be substantial and will very likely influence many customers to decide against relocating their indoor meters.

It is already challenging, even without these additional costs, for utilities across the State to convince some customers to move their indoor meters outdoors. For example, in 2022, Con Edison moved 2,997 indoor meters outdoors, with 131 customers (approximately 4%) refusing to move their meters. This customer reluctance and refusal rate is greater in National Grid's Long

[43] This limited pipework can be performed at no additional cost by Con Edison's gas mechanics, who are highly trained and qualified pursuant to federal and state regulations. These mechanics work on the Company's gas distribution system including mains and service lines all day, every day, and are best suited to perform the service line pipework associated with Con Edison's Relocation Program.

Island service territory, where approximately 20% of customers refused to move their indoor meters outdoors in 2022.[44] This reluctance and refusal rate will only increase as customers are forced to incur the resulting additional costs.

Where the additional costs are incurred by Con Edison, instead of by individual customers, such costs will likely be passed on to all gas customers in rates. In addition, the local laws at issue will require Con Edison's employees to visit customer locations more times than they would otherwise need to,[45] negatively impacting efficiency and resulting in further additional costs that customers will have to bear. These costs, whether incurred by individual customers or all ratepayers, will impact customers while providing no added safety benefit.

Second, the local requirements at issue will extend the duration of meter relocation projects and result in customers being without gas service for longer periods of time. Under existing rules and regulations, utilities including Con Edison are not required to obtain local permits for work on gas service line piping within the Commission's jurisdiction.[46] As such, following completion of its work including relocation of the meter and all necessary service line

[44] See KeySpan Gas East Corporation d/b/a National Grid Annual Inside Meter Relocation Report for calendar year 2022 filed March 27, 2023 in Case 19-G-0310 – Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of KeySpan Gas East Corporation d/b/a National Grid for Gas Service, https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={E06E2487-0000-C61F-95D1-F9050CE81090}. Con Edison notes that the report also shows that the Brooklyn Union Gas Company d/b/a National Grid NY had an even higher (approximately 50%) refusal rate. The report has limited further data due to the number of meters left inside purportedly as a result of New York City Department of Buildings requirements.

[45] When performing a meter relocation using its trained gas mechanics, Con Edison often completes all work and restores gas service on the same day the work begins, requiring no additional visits to the customer location. However, when the local laws at issue are applied – requiring local permits to be obtained and licensed plumbers to perform some of the work – Con Edison employees are required to visit the location multiple times, on at least three (3) separate additional occasions, prolonging the overall duration of work and delaying restoration of service.

[46] Local laws established by municipalities across the state, however, require local a permit to be obtained in advance of work on customer gas piping. This requirement generally applies to gas pipework beyond the point of delivery, which is the outlet of the meter.

pipework, the Company will restore a customer's gas service, generally on the same day the work began.

Under the local laws at issue, however, several new steps are added, resulting in delayed service restoration. These additional steps include obtaining a permit from the local municipality, which can sometimes take multiple days. The added steps also include hiring, scheduling, and overseeing a licensed plumber, and passing both a pressure test and an inspection by the municipality. At times, licensed plumbers may not be immediately available to perform the work and, in those instances, will need to complete their work sometime after the Company has completed its work. When the licensed plumber is finally complete, all work will need to be inspected by the municipality and pass a pressure test. Lastly, a Con Edison employee will need to go to the location to turn gas service back on. This added sequencing will substantially delay restoration of gas service by at least several days to weeks or longer, especially in situations where the abovementioned pressure test does not pass.[47] These delays will adversely affect customers and will likely cause many customers to decline having their indoor meters moved outdoors. By creating incentives for customers to refuse meter relocations, there is a direct negative safety impact from the application of these local laws.

[47] Section 406.4.1 of the 2022 Fuel Gas Code of New York State, which applies to customer piping from the "point of delivery" (i.e., beyond the outlet of the meter) to the appliances, requires a pressure test to a minimum of 3 psig. Such elevated pressure testing can sometimes result in leaks on customer piping upstream of the area worked on. In these instances, the licensed plumber may need to perform additional pipework and repairs at further substantial cost and delay to the customer. Additionally, in advance of the elevated pressure testing, Section 406.4.7 of the New York City Fuel Gas Code requires a minimum of two days' prior notice to the New York City Department of Buildings, advising that the work is complete and ready for testing and inspection. This two-day minimum notice requirement also contributes to a longer restoration process, during which customers remain without gas service. This type of elevated pressure testing is not performed when jurisdictional service line piping is worked on by Con Edison. Pursuant to the Commission's Order in Case 15686, issued on December 27, 1979, the Company performs an integrity test at line pressure (approximately 1/4 psig) when service is restored, typically on the same day the meter relocation work begins.

III. Service of Petition

Pursuant to 16 NYCRR § 8.2(b), the Company is serving a copy of this petition on the Department of Public Service Staff, the New York City Department of Buildings, the New Rochelle Bureau of Buildings, the Yonkers Department of Housing and Buildings, and other affected parties including the Master Plumbers Council of the City of New York, the Plumbing Foundation of the City of New York, the Association of Contracting Plumbers of the City of New York, Inc., the Independent Master Plumbers of Westchester, the Hudson Valley Mechanical Contractors Association, the New York State Association of Plumbing, Heating and Cooling Contractors, the Westchester County Board of Plumbing Examiners, the Westchester County Department of Consumer Protection, the New York State Building Officials Conference Westchester County Chapter, and all gas corporations operating in New York State.

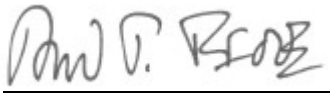
IV. Conclusion

For the reasons provided herein, the Company respectfully requests that the Commission issue a declaratory ruling pursuant to 16 NYCRR § 8.1 confirming that: (1) a meter relocation under the Relocation Program is complete when, and remains ongoing until, Con Edison has restored service after installing the outdoor meter and reconnecting the service line; and (2) during a meter relocation under the Relocation Program, the Commission retains exclusive jurisdiction over all work necessary and proper for Con Edison to complete the relocation, including all pipework needed to reconnect the service line and restore service after removal of the indoor meter.

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Respectfully submitted,

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