

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 25-E-0072 – 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 25-G-0073 – 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.

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

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INTRODUCTION

An evidentiary hearing on the Joint Proposal filed November 6, 2025 in these proceedings, was held on December 3, 2025. The hearing also provided an opportunity to address the reasonableness of the Joint Proposal by cross-examination of a panel of witnesses provided by Consolidated Edison Company of New York, Inc. (Con Edison or the Company), trial staff of the Department of Public Service (Staff) to support the Joint Proposal and to further develop the record to determine whether the Joint Proposal is in the public interest in accordance with the Settlement Guidelines of the Public Service Commission (Commission).¹ At the hearing, counsel representing UtiliSave, LLC (UtiliSave) and certain members of the Independent Intervenors (Mr. Ellenbogen and Mr. Menton) engaged in limited cross-examination of the panel of Staff and Con Edison witnesses.

At the close of the evidentiary hearing, Administrative Law Judges (ALJs) James A. Costello, Tara Kersey, and Nicolas Planty established a schedule for post-hearing briefs. The briefs are limited to addressing issues raised at the evidentiary hearing and in statements in opposition and are limited to ten pages. This post-evidentiary hearing brief addresses the following issues raised in statements opposing the Joint Proposal and at the evidentiary hearing during cross-examination.

First, according to the Statement in Opposition filed by the Independent Intervenors (here consisting of Mr. Ellenbogen, Mr. Menton, and Mr. Caiazza) and the lines of cross-examination at the evidentiary hearing, they oppose the Joint Proposal because “...it seeks to implement large rate increases for projects not necessary for or germane to reliability and safety of the electrical system and that are instead intended to support extraneous goals that are impossible and infeasible.” Their opposition is to funding projects that they claim will not and cannot be used to deliver the zero-emissions electricity the Climate Leadership and Community Protection Act (CLCPA) mandates and are thus wasteful.

Second, according to the Statement in Opposition filed by UtiliSave and based on the cross-examination it conducted at the evidentiary hearing, it claims that “bill transparency” requires that the Commission direct modifications to the Joint Proposal such that the Company

¹ Opinion No, 92-2, Opinion, Order and Resolution Adopting Settlement Procedures and Guidelines (issued March 24, 1992).

will provide customers access to and/or be able to request backup information used by the Company to render bills.

Finally, we will briefly address the statements in opposition of elected officials State Senator Robert Jackson and the joint statement of opposition by Assemblymember Chris Burdick, Assemblymember Dana Levenberg, Assemblymember MaryJane Shimsky, and Mr. Kenneth W. Jenkins, the Westchester County Executive.

ARGUMENT

I. The Independent Intervenors are incorrect that the Joint Proposal is unreasonable as it includes funding for CLCPA projects for which there is no electricity

According to the Independent Intervenors' statement in opposition, the Joint Proposal should be rejected as it seeks to implement "large" rate increases for projects not "necessary or germane" to reliability and safety, as they argue that there is not enough capacity to generate zero-emissions electricity in Con Edison's service territory, building and vehicle electrification will increase greenhouse gas (GHG) emissions because of the lack of sufficient zero-emissions energy, "relevant" State agencies have conceded that the CLCPA's goals (particularly the goal for 2030) are not achievable and will not be achieved during the term of the proposed rate plans, and customers should not have to shoulder spending to achieve what cannot be achieved.²

As an initial matter, these proceedings concern delivery revenue requirements and the electricity and gas supply (the commodity to be delivered) is not the subject of these proceedings. The sufficiency of the supply of electricity in the electric utility's service territory is a matter addressed by the New York Independent System Operator (NYISO). Department of Public Service closely monitors the NYISO's efforts in this regard. While the Commission does have some authority regarding the sufficiency of electricity in a utility service area, a delivery rate case is not the appropriate proceeding to raise these issues, as the ALJs stated in sustaining objections to the Independent Intervenors' cross examination, which sought answers regarding commodity issues.³

In these revenue requirement proceedings, the Commission's responsibility is to ensure that an electric utility's transmission and distribution (T&D) systems have sufficient capacity to

² Independent Intervenors Statement of Opposition to the Joint Proposal, pp. 5-7.

³ Tr. 226, Ln. 4 – Tr. 227, Ln. 4.

serve the customers current needs as well as projected, future needs. The Company's Electric Infrastructure and Operations Panel addressed the proposed capital (as well as Operations and Maintenance (O&M) spending) projects that the Company claimed it needed for both the rate year as well as needs forecasted in the out-years. The Staff Infrastructure and Operations Panel reviewed those projects and addressed in its testimony the need for the projects, costs, and whether projects would or should be slipped to other rate years.

During the evidentiary hearing, the two Independent Intervenors also sought to elicit from the Company and Staff panel of witnesses which projects would solely address the CLCPA, as they argue in their statement in opposition that its goals are not achievable.⁴ Thus, despite the fact that the CLCPA is law, they argue that efforts to meet its goals of decarbonization should be abandoned since there is not enough "clean" energy to forward the goals of the State and the CLCPA and there should not be funding in the Joint Proposal for CLCPA-related capital projects.

At the evidentiary hearing, the witnesses stated that the capital projects provided for under the Joint Proposal address several needs and issues simultaneously, and none were only needed to meet the goals of the CLCPA.⁵ Furthermore, the concerns raised by the Independent Intervenors in their statement in opposition are addressed in the Joint Proposal. The Independent Intervenors appear unaware that the Joint Proposal provides a net plant reconciliation for T&D, as well as municipal infrastructure support and Distributed System Implementation Plan (DSIP). For T&D, the downward-only net plant reconciliation mechanism will return to customers funds not expended on capital projects that turn out to be unnecessary or that run under budget. During the term of the proposed electric rate plan, the Company will defer for the benefit of customers the revenue requirement impact (*i.e.*, carrying costs, including depreciation), of the amount by which the Company's actual average net plant (not including removal costs) that is less than the amount included in the Average Electric Plant In Service Balances (not including removal costs), as set forth in Appendix 7.⁶

In addition to the terms of the Joint Proposal, the Commission has the authority to determine whether a utility's costs of service should be borne by customers or shareholders. If a

⁴ Tr. 67-68, Lns 20-3.

⁵ Tr. 254-255, Lns. 21-12.

⁶ Joint Proposal, Section D.1.a, pp. 17-18; Appendix 7

utility acts imprudently in carrying out its obligation to provide safe and adequate service, the Commission may determine that shareholders must bear the costs of imprudent actions due to poor planning or inefficient management.⁷ Thus, the Commission should reject the arguments of the Independent Intervenors because the Joint Proposal does not fund unneeded electric projects, does not contain T&D projects that are solely focused on meeting the goals of the CLCPA, and because customers are protected through the downward-only net plant reconciliation should one or more T&D projects not be needed during the rate plan, and because the Commission has the legal authority to perform a prudence review of the Company's spending and may determine that imprudent costs be borne by the utility's shareholders.

II. UtiliSave's proposals regarding bill transparency should be rejected

UtiliSave argued in its Statement in Opposition to Approval of Joint Proposal that the Joint Proposal is not in the public interest, and should be modified or rejected, because the bill transparency provision lacks "measures which would require the Company to provide valuable data to their customers. . . ."⁸ First, UtiliSave asserted that the Joint Proposal is inconsistent with regulatory, economic, and social policies of the Commission and State, referencing five bills proposed by members of the New York State Senate.⁹ Only one of the five bills, Senate Bill S9188, was signed into law.¹⁰ Senate Bill S9188, which was signed into law by Governor Kathy Hochul on September 25, 2024, effective as of November 24, 2024, which amended Section 66(12) of the Public Service Law (PSL) to add a new subdivision requiring that the Commission publish certain information prior to a major rate change by a public gas or electric utility.¹¹ Consistent with PSL §66(12)(l), memorandums containing the required information were

⁷ Matter of Long Island Lighting Co. v. Public Serv. Comm'n of State of N.Y., 134 A.D.2d 135 (3d Dept. 1987), p. 143, quoting PSC Opinion No. 79-1 (issued January 16, 1979). See also Public Service Law, §65 (1), §66(12), and §72.

⁸ UtiliSave Statement in Opposition to Approval of the Joint Proposal, p. 2.

⁹ UtiliSave Statement in Opposition to Approval of the Joint Proposal, pp. 4 – 10. See also, Tr. 124, Lns. 2 – 22 (UtiliSave also mentioned Senate Bill S6710 in its Testimony of Michael Steifman, Esq. for UtiliSave, LLC in Opposition to Approval of the Joint Proposal. Senate Bill 6710, approved and effective as of September 25, 2024, amended Section 25 of the Public Service Law to add a new subdivision 4-a, which prohibits false material statements in rate proceedings. UtiliSave did not allege in its Statement in Opposition that the Company or Staff made false statements).

¹⁰ UtiliSave Statement in Opposition to Approval of the Joint Proposal, pp. 4 –10 (as of December 10, 2025, Senate Bill S8128, Senate Bill S8530, and Senate Bill S7869 are still in committee with the Senate. Senate Bill S1194A was vetoed by Governor Kathy Hochul on December 5, 2025).

¹¹ NY LEGIS 333 (2024), 2024 Sess. Law News of N.Y. Ch. 333 (A. 9827).

published on the Department's website.¹² PSL §66(12)(l) does not create any further requirements with respect to a Joint Proposal. Therefore, UtiliSave's contention that the Joint Proposal is "not consistent with the State's policy in S9188[]" is not correct.¹³

Additionally, UtiliSave claimed that customers should be able to review all "underlying components" of a bill; and thus, the Company should be required to: itemize additional charges, factors, and components on customer bills; provide "billing data backup" upon request; provide all customers with access to DCAS; provide a breakdown of proposed charges to each supply and demand component that makes up a customer's bill because of the Joint Proposal; provide a breakdown of all charges that make up a customer's bill upon request, including formulas and raw data; and engage in additional notice requirements for rate and/or charge increases.¹⁴ In support of this argument, during the evidentiary hearing UtiliSave sought to elicit from the Company and Staff panel of witnesses information related to customer communications and bill transparency.¹⁵ The witnesses confirmed that the Company has previously engaged, designed, and implemented programs related to customer communication.¹⁶ The witnesses further agreed that bills should be understandable, consistent with the Public Service Law and its implementing regulations.¹⁷ Finally, the witnesses explained that the components of customers' bills that are not broken out on the bill are generally publicly available on the Company's and Department's websites, except that certain detailed, underlying information may be confidential or unavailable due to technical constraints.¹⁸ The Company should not be required to provide a laundry list of breakouts on customers' bills, especially when much of the information is already publicly accessible.

As explained in Staff's Statement in Support, the proposed bill transparency provision regarding property tax payments to the City of New York and Westchester County municipalities is reasonable and in the public interest because it provides transparency to customers regarding the amount on customer bills that are attributable to the Company's property taxes, which addresses the interests of parties who proposed property tax transparency in their direct

¹² See, Con Edison Electric Rate Case Filing Memo (<https://dps.ny.gov/con-edison-rate-case-filing-summary>); Con Edison Gas Rate Case Filing Memo (<https://dps.ny.gov/con-edison-gas-rate-case-filing-summary>).

¹³ UtiliSave Statement in Opposition to Approval of the Joint Proposal, p. 9.

¹⁴ UtiliSave Statement in Opposition to Approval of the Joint Proposal, pp. 11 – 12.

¹⁵ Tr. 144 – 188.

¹⁶ Tr. 147, Lns. 11 – 14.

¹⁷ Tr. 157 – 158, Lns. 15 – 3.

¹⁸ Tr. 171 – 187.

testimonies filed pursuant to the litigation schedule in these proceedings on May 30, 2025.¹⁹

Thus, UtiliSave's arguments and proposals regarding bill transparency should be rejected by the Commission.

III. Opposition of Elected Officials

Two statements in opposition were filed by elected officials, one by State Senator Robert Jackson, and the second, a joint statement in opposition filed by Assemblymember Chris Burdick, Assemblymember Dana Levenberg, Assemblymember MaryJane Shimsky, and Mr. Kenneth W. Jenkins, the Westchester County Executive. These statements in opposition request that the Commission modify or deny the Joint Proposal as they claim that, despite the significant reduction to the Company's initial request for revenue requirements relief, the 2.8 percent shaped annual increase for electric service and the 2 percent shaped increase for gas service is still too much for many of their constituents that are struggling to pay their electric and gas bills.

Both statements claim that the Joint Proposal's Return on Equity (ROE) of 9.4 percent is excessive under current market conditions, and Senator Jackson proposes 9 percent, while the Assemblymembers and Westchester County Executive claim that the ROE is unacceptable and provide a list of ROEs from rate cases filed between 2017 to 2025 that were approved by the Commission (or in the case of the 2025 rate cases, Department staff's prefiled testimony). Past ROEs and in other rate cases do not reflect current ROEs as derived using the Commissions Return on Equity Methodology²⁰ and should be rejected, while the 2025 rate cases cited by the elected officials are still pending before the Commission and may not reflect the final outcome on ROE in those proceedings.

The Assemblymembers' and County Executive's statement in opposition also note that the Joint Proposal does not address the Artificial Intelligence (AI) data centers, which they are concerned require Commission action to protect customers from increased electricity costs. Staff recommends that the Commission address this issue outside of this electric rate case since it is beyond the scope of the proceeding (which addresses delivery revenue requirements) and to do

¹⁹ Staff Statement in Support, p. 142.

²⁰ Case 91-M-0509, Proceeding on Motion of the Commission to Consider Financial Regulatory Policies for New York State Utilities.

so on a generic basis as these concerns and impacts will likely also affect the customers other electric utilities in the State.

CONCLUSION

As explained in Staff's Statement in Support, the Joint Proposal meets the requirements of the Commission's Settlement Guidelines and should be adopted by the Commission in its entirety. 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. In fact, as we stated in our Statement in Support and throughout our direct testimony, a primary concern of Staff in these proceedings was the significant incremental revenue increases the Company proposed, particularly considering the previous revenue requirements and rate increases determined in recent rate cases. The Company also has a significant arrears balance on its books, which demonstrates that customers are struggling to pay their electric and gas bills amidst generally rising costs due to inflation and broader economic pressures.

Staff's focus on affordability in these proceedings did not compromise the balancing of the Public Service Law's requirement that the Company provide safe and adequate service at just and reasonable rates. In fact, our focus on affordability is a part of our assessment of what revenue requirements and what resulting rates would be "just and reasonable." In areas where we found that safety and reliability issues related to the Company's T&D systems, the Joint Proposal provides adequate funding to the Company to enhance safety and reliability. The Joint Proposal also supports the goals of the CLCPA. The Joint Proposal focuses on affordability and balances the need for the Commission to ensure the Company's ability to provide safe and adequate service while also addressing State and Commission policies.

For all the above reasons, and those stated in Staff's Statement in Support and Reply to Opposition, 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/
Steven J. Kramer

/s/
Charles Coryer

/s/
Michelle Zaludek

Dated: December 12, 2025
Albany, New York