

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

|                                                           |          |                       |
|-----------------------------------------------------------|----------|-----------------------|
| <b>Proceeding on Motion of the Commission</b>             | <b>)</b> |                       |
| <b>as to the Rates, Charges, Rules and Regulations of</b> | <b>)</b> | <b>Case 19-E-0065</b> |
| <b>Consolidated Edison Company for Electric Service</b>   | <b>)</b> |                       |

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| <b>Proceeding on Motion of the Commission</b>             | <b>)</b> |                       |
| <b>as to the Rates, Charges, Rules and Regulations of</b> | <b>)</b> | <b>Case 19-G-0066</b> |
| <b>Consolidated Edison Company for Gas Service</b>        | <b>)</b> |                       |

**EXHIBIT OF ENVIRONMENTAL DEFENSE FUND**

**Exhibit \_\_ (EDF-1):**

**Con Edison Response to Comments on Petition for Approval of the Smart Solutions for  
Natural Gas Customers Program,  
*Petition of Consolidated Edison Company of New York, Inc. for Approval of the Smart  
Solutions for Natural Gas Customers Program, Case 17-G-0606 (Feb. 21, 2018)***

**BEFORE THE NEW YORK STATE  
PUBLIC SERVICE COMMISSION**

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|---------------------------------------------------|----------|-----------------------|
| <b>Petition of Consolidated Edison Company of</b> | <b>:</b> |                       |
| <b>New York, Inc. for Approval of the</b>         | <b>:</b> | <b>Case 17-G-0606</b> |
| <b>Smart Solutions for Natural Gas</b>            | <b>:</b> |                       |
| <b>Customers Program</b>                          | <b>:</b> |                       |

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**RESPONSE TO COMMENTS ON PETITION FOR APPROVAL OF THE SMART  
SOLUTIONS FOR NATURAL GAS CUSTOMERS PROGRAM**

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OF NEW YORK, INC.

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| <b>New York, Inc. for Approval of</b>             | <b>:</b> | <b>Case 17-G-0606</b> |
| <b>the Smart Solutions for Natural Gas</b>        | <b>:</b> |                       |
| <b>Customers Program</b>                          | <b>:</b> |                       |

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**RESPONSE TO COMMENTS ON PETITION FOR APPROVAL OF THE SMART  
SOLUTIONS FOR NATURAL GAS CUSTOMERS PROGRAM**

**I. Introduction**

On September 29, 2017, Consolidated Edison Company of New York, Inc. (“Con Edison” or the “Company”) filed its petition (“Petition”) with the New York State Public Service Commission (“Commission”) seeking approval of its Smart Solutions for Natural Gas Customers Program (“Program”), an innovative, integrated, multi-solution strategy to address increased peak day natural gas demand by firm customers and limited interstate pipeline capacity to meet that increased and increasing demand.<sup>1</sup> If the Program is approved, Con Edison will take full advantage of its extensive experience designing and implementing electric and gas energy efficiency and electric demand response programs. This includes developing projects to test potential new business models to deliver clean energy resources, and using non-traditional resources to offset or eliminate the need for traditional infrastructure projects.

Pursuant to a Notice of Proposed Rulemaking regarding the Petition published in the State Register on November 22, 2017, comments on the Petition were filed by the Acadia Center,

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<sup>1</sup> Case 17-G-0606, Petition of Consolidated Edison Company of New York, Inc. for Approval of the Smart Solutions for Natural Gas Customers Program (filed September 29, 2017).

*et al.* (“Public Interest Groups”), Advanced Energy Economy Institute, *et al.*, (“AEEI”), City of New York (“City”), Consumer Power Advocates (“CPA”), Environmental Defense Fund (“EDF”), New York Energy Consumers Council (“NYECC”), and Utility Intervention Unit (“UIU”).

The Company acknowledges and appreciates the parties’ support of its innovative business strategy. NYECC sees particular value in the proposed doubling of the Company’s existing gas energy efficiency programs as well as the proposed gas demand response program (NYECC, p. 2); AEEI urges the Commission to expeditiously approve the Program, commending the Company “for thinking creatively and investing extra effort into developing solutions that meet the needs of their customers while also striving to meet the state’s clean energy and REV-related goals” (AEEI, pp. 1-2);<sup>2</sup> and CPA concurs with the basic need for the Program and supports the underlying goals and proposed approaches. (CPA, p. 4)

The City conceptually supports the Company taking action to investigate and implement cost-effective measures to reduce its gas peak demand, appreciates the Company’s consideration of alternative options to entering into one or more precedent agreements for new pipeline capacity, supports the Company’s proposed efforts to rely on alternatives to natural gas that do not result in an increase in detrimental air emissions, and generally supports the proposed energy efficiency program expansion. (City, pp. 1-2) EDF states that if the Company ultimately relies upon its proposed non-pipeline alternative solutions, “its Petition will serve the public interest by satisfying the Commission’s core REV objectives on the gas side.” (EDF, p. 4) UIU “supports

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<sup>2</sup> AEEI (p. 3) also expresses concern about the potential scope of Con Edison’s request for the Commission to consider allowing ownership of assets located behind the utility meter. AEEI recommends that the Commission apply its policy on DER ownership, to the extent applicable to this program, as detailed in the REV Track 1 Order. The Company does not object to this proposal, as long as the exceptions enumerated in the REV Track 1 Order also apply. Case 14-M-0101, *Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision*, Order Adopting Regulatory Policy Framework and Implementation Plan (issued February 26, 2015) p. 70.

the Company's interest in exploring non-traditional solutions that have limited ratepayer impact and could lead to substantial quantifiable future savings.” (UIU, p. 3) Finally, the Public Interest Groups “strongly support the Company’s efforts to develop a suite of alternatives to traditional gas pipeline expansion.” (Public Interest Groups, p. 2)

The Company notes that most of these parties participated in a robust stakeholder process that the Company conducted as it prepared the Petition, including the recently concluded Gas Peak Demand Reduction Collaborative established by the gas rate plan,<sup>3</sup> and that the Program reflects input from these parties as a result of that process. For example, in response to the City’s request, the Company eliminated the use of oil as an alternative to natural gas for these programs.

While there is general support for the Company’s overall proposal, these same parties raise a number of issues, which the Company addresses below. Notwithstanding these issues, there should be no question regarding the merits of the overall proposal, including the potential to avoid or defer not only a natural gas pipeline, but to also potentially meet customers’ needs on a more effective basis than with Delivered Services.<sup>4</sup>

As set forth in the Petition, and discussed below, the Company requests Commission approval now of the: (1) Enhanced Gas Energy Efficiency Program (“Enhanced Gas EE Program”), including the associated budget;<sup>5</sup> (2) Market Solicitation for Non-Pipeline Solutions

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<sup>3</sup> 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*, Order Approving Electric and Gas Rate Plans (issued January 25, 2017), p. 93.

<sup>4</sup> This would be true even if customer demand for natural gas were not increasing, but, as discussed in the Petition, the customer demand for natural gas is forecasted to continue to increase.

<sup>5</sup> As described in the Petition, at 15, the Enhanced Gas Energy Efficiency Program doubles the existing gas efficiency funding available through the Energy Efficiency Transition Plan (“ETIP”). Additional details regarding the Enhanced Gas EE Program may be found in the Company’s implementation plan for this program, which was filed on February 21, 2018 (“EE Implementation Plan”).

(“NPS Market Solicitation”) program, subject to a compliance filing with a 15-day comment period, which would include budget approval of the Market Solicitation component, and would follow the Company’s preparation of a cost-beneficial portfolio, and consultation with Department of Public Service Staff (“Staff”) and other stakeholders;<sup>6</sup> (3) Gas Innovation Program, including the associated budget; (4) a tariff change that provides for the institution of a surcharge via the Monthly Rate Adjustment (“MRA”) if the Company incurs charges from cancellation or termination of a precedent agreement; and (5) budget flexibility to shift Smart Solutions funding from one program to another.<sup>7</sup> The Company will make a supplemental filing(s) in Spring 2018 associated with the Gas Demand Response Program, the details of which are still being developed. The Company’s supplemental filing(s) will provide the proposed program design for the Gas Demand Response Program as well as its recommended budget. As such, the Company is not requesting approval for the Gas Demand Response Program at this time and does not respond to comments regarding that program here.<sup>8</sup>

## **II. The Company Requests that the Commission Approve the Enhanced Gas EE Program**

The Company requests approval of the Enhanced Gas EE Program and its proposed budget so the Company can fully ramp up and implement the program leading into the 2018/2019 winter heating season. The Company has fully supported the program in the Petition and the EE Implementation Plan. In addition, the Company filed a copy of the Navigant

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<sup>6</sup> As discussed in more detail in these Reply Comments, the Company will propose a portfolio for approval only if it passes the BCA test, after it has consulted with Staff and stakeholders.

<sup>7</sup> The Company notes that no parties objected to the Company’s proposal for budget flexibility. (Petition, p. 36)

<sup>8</sup> The Company proposed that it be authorized to recover the costs of the non-traditional solutions through deferral as a regulatory asset and recovery over a ten-year period through the Monthly Rate Adjustment (“MRA”) until its next gas rate filing. (Petition, p. 34) No parties objected to the Company’s cost recovery proposal and the Company expects to file as a compliance filing tariff language for recovery of these costs if authorized to do so by the Commission in its order on the Company’s Petition.

Potential Study<sup>9</sup> to provide background for Staff, interested stakeholders, and the Commission on gas energy efficiency potential in the Con Edison gas service territory.

Various parties expressed concerns about what they perceived to be a lack of detail in the Petition regarding the Enhanced Gas EE Program. For example, UIU states the Company has failed to provide sufficient details supporting its proposals and recommends that the Commission postpone ruling on the Petition until more information is provided. (UIU, p. 5) The City also raises a number of concerns regarding the level of detail the Company provided regarding the Program. (City, pp. 3-10) The details requested by UIU and the City have now been provided in the EE Implementation Plan and the Navigant Potential Study. The level of detail in the Petition, supplemented by the EE Implementation Plan, is consistent with the level of detail provided for the Company's ETIP programs, Brooklyn Queens Demand Management Program ("BQDM" Program)<sup>10</sup> and the Indian Point Energy Center EE/DR/CHP Program ("Demand Management Program").<sup>11</sup>

The Company addresses below additional concerns raised in the comments.

A. The Enhanced Gas EE Program Is Cost Effective, Designed and Implemented to Deliver Services Efficiently, Appropriately Sized, and Includes the Types of Measures Requested by CPA.

Various parties question the cost effectiveness of the Enhanced Gas EE Program. UIU's comments ask that the Company rerun the BCA used for the initial gas energy efficiency program at the higher budget levels and expected participation levels reflected in the Enhanced

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<sup>9</sup> Case 17-G-0606, Navigant, Con Edison DER Potential Study Supplemental Report: Natural Gas Add-on Analysis (November 22, 2017) (filed February 21, 2018).

<sup>10</sup> See Case 14-E-0302, *Petition of Consolidated Edison Company of New York, Inc. for Approval of Brooklyn Queens Demand Management Program*, Order Establishing Brooklyn/Queens Demand Management Program (issued December 12, 2014).

<sup>11</sup> See Case 12-E-0503, *Proceeding on Motion of the Commission to Review Generation Retirement Contingency Plans*, Order Accepting IPEC Reliability Contingency Plans, Establishing Cost Allocation and Recovery, and Denying Requests for Rehearing (issued November 4, 2013).



Gas EE Program. (UIU, p. 8) The Public Interest Groups comment that program implementation must be subjected to stakeholder and contractor review prior to adoption and launch. (Public Interest Groups, p. 17) The Public Interest Groups also state that the Company must show that its energy efficiency goal is the most aggressive, cost-effective goal. (Public Interest Groups, p. 18).

CPA's comments express a concern that the Company is increasing budget allocations and anticipated savings to the residential sector. (CPA, pp. 4-5) CPA comments also express a concern that more innovative alternative approaches will be pursued at the expense of tried and true energy efficiency measures and delivery mechanisms (CPA, p. 3) and advocate that both capital-intensive measures (boiler improvements, economizer and make-up water heater installation or repair, burner replacement, and thermal blankets on pipes) and operational approaches (steam system audits and inspections, retro commissioning, and balancing of building heating zones) should be considered. (CPA, p. 3)

Regarding cost effectiveness of the Enhanced Gas EE Program, the Company has rerun the BCA on its gas EE programs, including its higher budgets and targets doubling the existing ETIP gas EE program. The Company's gas EE program, including the Enhanced Gas EE Program and its existing ETIP gas EE program, has passed the Company's existing BCA test and the Company will run its gas EE programs through the new BCA test after the Company has updated its BCA model. The Company does not expect that this will change the result, but will notify Staff if there are issues. The EE Implementation Plan also explains how the Company intends to strategically use the Marketing and Outreach Budget to promote the Enhanced Gas EE Program.

The Company designs EE programs and portfolios and refines them over time based on a number of considerations, including customer demand and adoption, market conditions, State policy goals, and stakeholder views, balanced by the need to expeditiously implement programs in order to achieve goals. The Public Interest Groups recommend subjecting program implementation to additional stakeholder and contractor review. Public Interest Group's recommendation is unnecessary and would simply delay achieving the Enhanced Gas EE Program benefits.<sup>12</sup> The Company is committed to remaining engaged and receptive to the views of the Company's many stakeholders, including in the period prior to adoption and launch. It has already demonstrated through its electric and gas efficiency programs that it can run successful efficiency programs. The Company will continue to manage programs as described above and apply its business operations and cost management practices so that programs are efficiently delivered to its customers.

The Company's proposal to double the gas energy efficiency goal from its existing ETIP in one year, as described in the Petition and further detailed in the EE Implementation Plan, is the most aggressive increase in program efficiency acquisition in the Company's history. The Company will explore increasing the goal even further in the coming years. The Company intends to use its learning from the Enhanced Gas EE program in 2018 as well as the recently completed Navigant Potential Study to guide its exploration of possible additional goal increases that would be both aggressive and achievable.

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<sup>12</sup> The Company's proposal for implementation of the Enhanced Gas EE Program is similar to the process used for the BQDM and Demand Management Program implementation plans. Neither were subject to SAPA or a formal comment process. The Company notes that program implementation for a majority of existing gas programs is currently performed by external implementation contractors working under multi-year contracts with Con Edison with clear understanding, in the market and among our customers, of the program parameters. For both the BQDM and Demand Management Programs, implementation plans were filed after the Commission authorized the program and the implementation plans were not subject to SAPA and a formal comment process.

Regarding CPA's concern that the proposed budget does not allocate enough funds to the commercial sector, the ratios of residential and multifamily program savings and budgets to overall program savings and budgets are almost identical to the current ETIP program. The Company uses advanced market research techniques to determine how best to target specific customer segments to support its energy efficiency and peak day demand reduction goals. Due to the doubling of the energy efficiency budget, the Company expects that commercial, residential and multi-family customers will all see increased opportunities to participate in gas energy efficiency initiatives.

Regarding CPA's concern about the specific measures that will be included in the Enhanced Gas EE Program, the EE Implementation Plan makes it clear that the Enhanced Gas EE Program does include "tried and true" measures and its Program Description section elaborates on various existing and new measures being added to the core gas energy efficiency measures. The Enhanced Gas EE Program will include both capital-intensive and operational measures. Specifically, steam-heating related measures are being planned or already underway in the Residential, Commercial and Industrial ("C&I") and Multifamily Programs. The Multifamily Program is now offering an incentive for customers to receive an engineering assessment of their steam boiler and distribution systems and to perform various retro-commissioning items, including master venting, orifice plates, and an advanced boiler cleaning and tune-up process. Separately, both the C&I and Multifamily Programs will continue to provide custom incentives to projects that involve custom-fitting insulation jackets on boilers and various types of pipe fittings. Considering both the standard program offerings and the

flexibility offered by the custom-install measure approach included in the program, all of the energy efficiency measures suggested by CPA would be eligible for EE program incentives.<sup>13</sup>

B. The Company Adjusted Its Existing Incentives to Cost-effectively Achieve Program Goals.

The City (pp. 3-4) and UIU (pp. 7-8) both question how Enhanced Gas EE Program incentives were developed. The Company designs, implements, and periodically refines its programs in order to achieve energy efficiency goals cost-effectively on a portfolio basis. The level of incentives offered to customers is a key design element the Company adjusts to both respond to and influence market conditions and outcomes. Specific incentives may be revised up or down to encourage market uptake, to adjust to market conditions, or to reduce unnecessarily high customer support for measures (if the existing incentive level is no longer economically necessary). The Company, which has ample experience administering programs, has and will institute incentives in a manner that results in a cost-effective program portfolio.

The Enhanced Gas EE Program incentive rate increases described in the EE Implementation Plan reflect the Company goal to leverage incentive levels cost-effectively to produce an increase in the number of customers participating in key efficiency measures that have both 1) growth potential that can be harnessed through increased incentives; and 2) the greatest impact on peak day demand reduction. The Company has experience with leveraging incentives in its electric EE programs, where it has adjusted incentives to balance increasing energy savings and achieve system peak reductions. The Company anticipates that increasing incentive rates will result in higher annual savings for the gas programs portfolio overall as well

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<sup>13</sup> CPA stated its support for beneficial electrification, such as steam-powered pumps. (*Id.*, p. 4) The Company recommends that projects pursuing fuel switching from natural gas to electricity be provided incentives under the NPS Market Solicitation, once approved and when appropriate, because the Enhanced Gas EE Program is designed to capture energy savings and peak reduction benefits for customers using natural gas.

as higher peak day demand reduction relative to the overall energy savings achieved previously, an important Program objective. In addition to incentive levels, the Company also adjusts customer outreach and education, market partner training and other program parameters to refine programs. Incentive rate adjustment can be one of the more effective options to drive results, especially relevant to the Enhanced Gas EE Program as the Company looks to peak day demand reduction as an additional goal beyond annual gas consumption savings.

**III. The Company Requests that the Commission Approve the Non-Pipeline Solutions Program and the Company's Proposal that the Proposed Budget Will Be a Compliance Filing Subject to Commission Approval**

The Company stated in its Petition that it would seek Commission approval for an NPS Market Solicitation program budget after receipt of proposals responding to the RFP and consultation with Staff and other stakeholders.<sup>14</sup> The Company will not proceed with the NPS Market Solicitation program without Commission approval of the Company's proposed budget, but seeks here approval of the program<sup>15</sup> subject to a compliance filing with a 15-day comment period for approval of the NPS Market Solicitation budget. As explained herein, the Company believes that this is the best approach for moving forward expeditiously with this program so that it can provide benefits for customers.

The Company issued its Request for Proposals ("RFP") - Non-Pipeline Solutions to Provide Peak Period Natural Gas System Relief – 2017 on December 15, 2017 and filed the RFP with the Commission on December 21, 2017.<sup>16</sup> Con Edison will review the responses to its Non-Pipeline RFP, which will be received on or before March 1, 2018. The Company will then

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<sup>14</sup> Petition, p. 26.

<sup>15</sup> The Company notes that this request is consistent with the Petition (at 37), which requested in the Conclusion section that the "Commission approve the Smart Solutions for Natural Gas Program."

<sup>16</sup> Case 17-G-0606, *Request for Proposals ("RFP") - Non-Pipeline Solutions to Provide Peak Period Natural Gas System Relief – 2017* (filed December 21, 2017).

assemble a portfolio of resources with a Benefit-Cost ratio greater than 1.0 that can meet customers' peak gas day needs (including forecasted growth). The Company will conduct additional outreach with stakeholders regarding its portfolio and BCA prior to filing its proposed budget with the Commission.

Commission approval of the Non-Pipeline Solutions program now, subject to a compliance filing, would allow the Company to move quickly to address the shortfall of pipeline capacity and reliance on delivered services, which would reduce the possibility of a moratorium on new gas service.<sup>17</sup> Aggressively pursuing non-pipeline solutions would also enable the Company to more quickly determine whether non-traditional approaches are capable of deferring the need for a new interstate pipeline. As demonstrated by the comments received, all of the Company's stakeholders support this program as long as it can be demonstrated to provide benefits to customers. As discussed above, the Company will consult with both Staff and stakeholders prior to determining that it should proceed with filing a proposed budget with the Commission and the Company will not pursue budget approval unless it can show that the portfolio passes the BCA test.<sup>18</sup> The Company submits that an additional full State Administrative Act procedure comment period and review is unnecessary after it has followed this procedure. The Company therefore requests the Commission provide for a compliance filing with a 15-day comment period to enable the Company to move forward expeditiously with its program.

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<sup>17</sup> Petition, p. 10.

<sup>18</sup> The Company is filing a draft BCA handbook with the Commission on February 21, 2018, following the framework established in the Commission's Track II order. The Commission did not approve the electric BCAs that the utilities filed pursuant to that order. The Company believes that the same approach should be used here.

**IV. The Company Requests that the Commission Approve Implementation of the Gas Innovation Program**

The Company requests that the Commission approve implementation of the Gas Innovation Program, and its proposed budget, as described in the Petition. The Company will work closely with Staff prior to and after the Company has provided additional details on the program, including during the solicitation and selection of Gas Innovation Program proposals submitted by third parties.

UIU commented that the Commission should defer approving the Gas Innovation Program budget until it has reviewed the solicitations accepted and the accompanying BCA, detailed budget and timeline. (UIU, pp. 9-10) Similarly, the Public Interest Groups commented that more detail is needed, including what other technologies and processes could benefit from such a research and development program. (Public Interest Groups, pp. 19-20)<sup>19</sup>

The Company designed the Gas Innovation Program to demonstrate the ability of innovative, new business models that, if successful, can be scaled to accelerate the penetration of proven clean thermal technologies such as geothermal heat pumps and air source heat pumps. A BCA is not necessary for a demonstration project, which is designed to test the scalability of deployment and will not necessarily be cost effective during the design and implementation of the project itself. The demonstration may show that using new business models to test technology deployment can ultimately be cost effective. The Company committed in the Petition to filing a detailed project implementation plan regarding the opportunities that it believes should advance to the design and implementation phase and to review its final budget and project plans

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<sup>19</sup> The Company is filing a program overview on February 21, 2018 in this proceeding providing additional details on the Gas Innovation program, including how the program aligns with and leverages existing NYSEDA clean thermal program opportunities

with stakeholders.<sup>20</sup> The Company should be authorized to proceed with the Gas Innovation Program as a necessary step toward making innovative technologies more broadly available in its service territory, subject to submitting a detailed implementation plan to Staff.

**V. Fees Incurred When a Pipeline Precedent Agreement Is Canceled or Terminated Are Properly Recoverable Through the Monthly Rate Adjustment**

EDF and the Public Interest Groups raise various objections to the Company's request that the Commission either (1) confirm that a cancellation or termination payment made pursuant to a pipeline transportation precedent agreement is a type of cost recoverable under the existing terms of the MRA or (2) authorize the Company to make a tariff change to establish cancellation/termination payments as a type of cost to which the MRA applies. EDF and the Public Interest Groups also make various statements and allegations that misconstrue the Company's proposal and/or raise issues that are outside the scope of this proceeding.

For the reasons explained below, the Commission should find that cancellation and termination fees should be fully recoverable if prudently incurred in the course of arranging gas pipeline capacity to meet the needs of the Company's gas customers and be treated for cost recovery purposes on a basis comparable to other gas-supply related costs.

**A. Cancellation and Termination Fees May Be Reasonable and Necessary Gas Supply-Related Costs in Contracting for New Pipeline**

The Petition demonstrates a concerted effort by Con Edison to search for preferred alternatives to new pipeline capacity to meet the needs of the Company's gas customers. Both EDF (p. 4) and the Public Interest Groups (p. 2) acknowledge this initiative is a positive step. Moreover, EDF states (p. 5) that "Con Ed understandably needs the flexibility to cancel the project if its need for such capacity is reduced or eliminated." The Public Interest Groups state

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<sup>20</sup> Petition, p. 23.



(pp. 15-16) pursuing such a cancellation right “is commendable.” Neither party argues that such a cancellation right should or would be cost-free.

Neither EDF nor the Public Interest Groups dispute that there is greater uncertainty today in developing and completing a new pipeline project. As the Company noted in the Petition (at 35), it has therefore become more likely that pipeline developers may seek to address this greater risk in a pipeline agreements. This could include the developer seeking provisions relating to project cancellation or permit denial. Accordingly, the Company is currently confronted with the reality that to obtain a pipeline developer’s commitment to pursue a future capacity expansion project, the Company may have to agree to some level of shipper financial responsibility. For example, the Company may have to agree to a sharing of costs if a project is terminated due to the pipeline’s inability to acquire required permits and/or certificates.<sup>21</sup>

Contrary to indications in EDF and Public Interest Groups comments, the Petition does not seek Commission pre-approval to incur such fees. To be sure, the goal of the Program effort is to avoid or defer an incremental pipeline. But, success is uncertain, and the Company needs to have the structure in place for all potential outcomes. Consequently, the Petition highlights a new contract provision that the Company may seek in light of the Program effort (*i.e.*, the right to cancel the contract if the pipeline capacity is no longer needed) and a new fee that the Company may not be able to avoid (*e.g.*, a payment designed for shippers to share in pipeline development costs in the event the pipeline cannot secure the required permits and certificates). The Petition accordingly seeks Commission acknowledgement that such costs, if incurred, will

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<sup>21</sup> EDF says (p. 5) that the Company’s proposal does not address whether a termination provision that shifts risk to shippers would result in the Federal Energy Regulatory Commission effectuating a commensurate reduction in ROE. The Company did not because such speculation should not affect the reasonableness of the Company’s request to recognize cancellation and termination fees as gas supply-related costs recoverable through the MRA.

be treated as gas supply-related costs, and recoverable on the same basis and through the same mechanism(s) as other gas supply-related costs, and subject to the same retrospective review as other gas supply-related costs.

The treatment of these fees as gas supply-related costs would be consistent with EDF's own view of pipeline precedent agreements, as presented by EDF to the Commission in its recent petition filed with the Commission.<sup>22</sup> EDF states therein that natural gas precedent agreements are "contracts for gas" that "set forth the commercial, financial, and operational terms for new pipeline build, committing the pipeline to build the project and the shipper to purchase the expansion capacity."<sup>23</sup> A cancellation or termination fee included in such a pipeline precedent agreement would be a commercial term of such agreement.

The Company further notes that denial of such cost recovery would be contrary to its goal, which EDF and Public Interest Groups support, of having the Company vigorously pursue the Program to eliminate the need for pipeline expansion or to find ways to meet its peak day demand more effectively than with Delivered Services. The Company may need to pursue pipeline projects and its non-traditional solutions in parallel. (*See* Petition, pp. 10-12) The denial of cost recovery would be a disincentive for the Company to pursue its efforts to eliminate the need for the pipeline project because the Company would be confronted with the prospect of unrecoverable project costs if its Program was successful.

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<sup>22</sup> Case 17-G-0610, *Petition for A Declaratory Ruling that Natural Gas Precedent Agreements and Transportation Agreements Are Subject to Review Under Public Service Law Section 110(4)* ("Declaratory Ruling Petition") (filed on October 2, 2017).

<sup>23</sup> Case 17-G-0610, Declaratory Ruling Petition, pp. 1-2.

B. Project-Specific Data Is Not Necessary to Consider the Company's Proposal.

EDF argues (p. 7) that the Company has not provided the Commission and interested parties with enough information to assess the Company's conceptual proposal and cites as critical pieces of information that the Petition should provide (1) the identity of the pipeline developer, (2) the total capacity of the project, and (3) the total cost of the project. The Public Interest Groups make a similar argument.

The Company disagrees that project-specific information is necessary for the Commission to consider its request to confirm the MRA as the vehicle for recovering cancellation or termination fees. The Commission's approval of the Company's request would not result in any change in customer bills unless the Company incurred such a fee. The Company would confer with Staff in advance of signing an agreement containing such a provision(s) (*see* Petition, p. 36), the Company would file the executed agreement with the Commission before any such fees are incurred, and recovery through the MRA preserves the Commission's review of any such fees recovered from customers. Accordingly, Commission approval of the Company's request would simply confirm that existing procedures applicable to gas supply-related costs also apply to the recovery of these potential fees. There is no reasonable basis for subjecting the Company's recovery of these fees to any different process.<sup>24</sup>

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<sup>24</sup> The Company notes that development costs that may underlie a cancellation or termination fee are one of many components that make up pipeline transportation charges and therefore have been recovered from customers as part of transportation charges that currently and historically flow through the MRA/Gas Cost Factor ("GCF") and their predecessor recovery mechanisms. And should the Company have some financial responsibility for development costs if a pipeline project is abandoned, the Public Service Law permits the Commission to authorize recovery of abandoned property in rates. For example, in *Abrams v. Public Service Commission*, 67 N.Y. 2d 205, the Court of Appeals held that the Commission has broad discretion to consider all relevant factors in setting just and reasonable rates, including authority to allow recovery of abandoned property under a prudence test rather than a "used and useful" test.

Moreover, there is no contract-specific information to share at this time.<sup>25</sup> The Company has not executed a precedent agreement, and therefore has not committed to any cancellation or termination fee.

Finally, while EDF requests that the Commission direct Con Edison to file a new precedent agreement once executed, there is no such need. As EDF is well aware, the Company has already committed to filing its precedent agreements with the Commission pursuant to the same rules and procedures applicable to filing pipeline transportation agreements.<sup>26</sup>

C. The Company's Request to Modify the MRA Is Properly Before the Commission.

The Commission should reject EDF's general claim of procedural infirmities and specific claim that a tariff change, if required, should not be made outside of a formal rate case (EDF, p. 6).

First, the Company's request was noticed in the State Register with full opportunity for public comment. Second, the Commission has considered tariff modifications to energy, gas and fuel adjustment mechanisms in proceedings separate and apart from a formal rate case.<sup>27</sup> Third, the Petition was transparent in acknowledging that a tariff modification may be necessary and requesting the Commission to direct the Company to make the appropriate compliance filing in such circumstance.<sup>28</sup>

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<sup>25</sup> The Company notes that it may seek trade secret protection for cost and potentially other contract information at the time it files a precedent agreement or transportation agreement.

<sup>26</sup> See June 19, 2017 Letter from EDF to Secretary Burgess in Case 93-G-0932 ("June 19<sup>th</sup> Letter"), in which EDF acknowledges Con Edison's commitment to file precedent agreements with the Commission on a going-forward basis.

<sup>27</sup> See, e.g., Memorandum Order, issued and effective October 24, 2003, in Cases 95-G-1037, 03-G-0759, and 03-S-0760, authorizing revisions to the method for pricing gas used in the Company's steam and steam-electric generating stations, among other issues.

<sup>28</sup> Petition, p. 35. Current Commission practice is to accept a party proposing tariff changes to the Commission without providing the specific language that will be shown on tariff leaves if the proposal is adopted by the Commission. See, for example, p. 72 of the Joint Proposal adopted by the Commission in Cases 16-G-0061, *et al.*, which describes proposed tariff changes to be reflected on tariff leaves to be prepared and filed with the Commission following an order adopting the Joint Proposal.

Notwithstanding, to facilitate resolution of this issue, the Company proposes the following tariff modifications to implement the Company's proposal:<sup>29</sup>

1. Amend Leaf 6 to add as an additional Special Adjustment to the Table of Contents

*26. Pipeline Precedent Agreement Charges ..... 183.6*

2. Amend Leaf 155 to add as an additional Monthly Rate Adjustment component: **(xviii)**

*Pipeline Precedent Agreement Charges*

3. Add new Leaf 183.6 stating as follows:

*26. Pipeline Precedent Agreement Charges*

*The Company will implement a surcharge for charges incurred by the Company under a pipeline precedent agreement filed with the Commission in the event of the cancellation or termination of such precedent agreement.*

## **VI. Other Issues Raised by the Commenters**

### **A. The Company Has Demonstrated a Need for Additional Gas Capacity.**

The Public Interest Groups state that the Company has failed to provide adequate evidence of "a forecasted growing shortfall of peak gas day pipeline capacity" or supporting data for the weather-adjusted firm peak demand gas forecasts themselves. (Public Interest Groups, p.

6) The Public Interest Groups also contend that approval of any program to address a gas shortage would be unsupported without evidence in the record showing a need for additional gas capacity.

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<sup>29</sup> The Company is proposing recovery through the MRA and not the Gas Cost Factor ("GCF") because if the Company incurs cancellation or termination fees, it will have been to secure new pipeline capacity for the benefit of *all* firm customers. The GCF is applicable only to firm full service customers and the MRA is applicable to both firm full service and firm transportation customers.

The Petition's forecasts are supported by the Company's Long-Range Forecast,<sup>30</sup> were filed in the Company's most recent gas rate case,<sup>31</sup> and were discussed in the recently concluded Gas Peak Demand Reduction Collaborative established by the gas rate plan, which addressed both peak demand and the Company's increased reliance on delivered services.<sup>32</sup>

The Public Interest Groups further contend the Company "fails to provide empirical data to support its proposition that the 'Enhanced Gas EE Program, the Gas DR Program, and the Gas Innovation Program may provide relief to meet approximately three percent of the Company's overall pipeline capacity needs by 2023,' resulting in an anticipated 'shortfall of approximately nine percent of peak day gas needs in 2023.'" (Public Interest Groups, p. 7) The Company provided its best estimates of the demand reductions it believes it can achieve through those programs. If Public Interest Groups are suggesting that the programs will provide greater reductions, they should have provided a basis for such a suggestion. If they are suggesting the programs will produce lower reductions, such a suggestion is inconsistent with their argument that the Company has not demonstrated a need for additional gas capacity.<sup>33</sup>

B. Implementing the Program Should Not Effect a Change in Current Commission Policies Applicable to Con Edison Gas Supply Contracting.

The Public Interest Groups and UIU each proposes that the Commission take action that would cause a material deviation in the manner in which the Company considers, the Staff

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<sup>30</sup> Gas Long Range Plan (March 2016), <https://www.coned.com/-/media/files/coned/documents/our-energy-future/our-energy-projects/gas-long-range-plan.pdf>.

<sup>31</sup> Case 16-G-0061, Direct Testimony of Company Witness Ivan Kimball (Gas Supply).

<sup>32</sup> Case 16-G-0061, Order Approving Electric and Gas Rate Plans, Appendix A, p. 93; Case 16-G-0061, Con Edison Gas Peak Demand Reduction Collaborative Report (filed December 22, 2017), pp. 3-5.

<sup>33</sup> The Public Interest Groups also contend that the Company should discuss how an electricity energy efficiency program can reduce gas requirements for power generation, thereby freeing up more gas. (Public Interest Groups, p. 8). The Public Interest Groups are incorrect that electric energy efficiency will reduce the need for gas capacity. As explained in the Petition, electric generators served by Con Edison do not take firm delivery service. As a result, the Company does not plan for electric generation use in its pipeline capacity portfolio.

reviews, and the Company implements its gas supply planning function. This includes, for example, directing the Company to halt further negotiations and execution of any precedent agreement<sup>34</sup> or setting a date to evaluate whether the Company should proceed with a pipeline expansion project.<sup>35</sup> And without making a specific proposal, EDF states (pp. 2-3) that long-standing Commission policies on natural gas planning and infrastructure expansion are out of sync with New York's climate goals.

There are currently various Commission gas supply planning processes that precede gas utilities reaching the contract filing stage. For example, each year, the Commission establishes a formal proceeding, the subject of which is Staff examination of gas utility supply plans; for 2017, the proceeding is Case 17-M-0280. On the Commission webpage for that proceeding is myriad redacted material filed by all of the State's gas utilities, including Con Edison, in response to Staff's inquiries regarding various gas supply matters, including expected portfolio changes over the next five years; supply diversity and price risk management; evolving market conditions; and impacts on customer bills. The Company also makes a formal presentation on gas supply matters through testimony submitted in gas rate cases, and did so most recently in Case 16-G-0061. These interactions are supplemented by additional and ongoing informal

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<sup>34</sup> The Public Interest Groups (p. 2) ask the Commission to "prioritize these non-pipeline solutions and require that they be fully characterized, developed, and implemented *before* the Commission issues a final decision on the Company's application for pipeline expansion." The Public Interest Groups then ask (p. 3) that "the Company be directed to halt further negotiations and execution of any precedent agreements or other pipeline capacity expansion activity until and unless it can demonstrate, through a comprehensive BCA analysis, that pipeline capacity expansion is the least-cost and optimal source of energy services when compared with all other resource options for meeting customer demands."

<sup>35</sup> UIU recommends (p. 4) that the Commission (1) establish a defined date to evaluate whether Con Edison should proceed with a pipeline expansion project "to ensure that ratepayer funds are used in the most cost-effective manner possible" and (2) set a small preliminary budget for the Company to initiate exploration of the pipeline expansion project and for the Company to alert the Commission when a certain amount of such budget (*e.g.*, 75 percent) is being used.

interactions, as necessary and appropriate, when circumstances change and/or new information becomes available.<sup>36</sup>

The Petition does not seek Commission approval for the Company to enter into a new pipeline contract, either as a general matter or with respect to any specific pipeline developer. Pending Commission action on the Petition, the Company must necessarily determine if and when to execute new contracts for pipeline capacity consistent with current Commission policies and practices. That said, the Program outlined in the Petition will necessarily inform the Company's decision-making.

Current Commission processes governing gas contracting by gas utilities, including Con Edison, have served customers well. The Company's efforts to avoid, reduce or defer the need for additional pipeline capacity do not warrant a change in the Commission's approach. As discussed above, the Company's gas contracting decisions remain subject to review by the Commission.

Finally, the Company disagrees with the Public Interest Groups (pp. 6-7) that there is no basis for Con Edison acquiring additional pipeline capacity because the Company has failed to provide adequate evidence of the projected growth in peak demand, the projected shortfall of peak day pipeline capacity in the Company's supply portfolio, the projected increase in the purchases of Delivered Services, or the unavailability of existing pipeline capacity into the Company's service territory to meet the projected shortfall. As indicated above, the Program is an outgrowth of the testimony submitted by the Company in its most recent gas rate proceeding (Case 16-G-0061) on both its forecast of gas demand forecast and gas supply matters. The full

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<sup>36</sup> As noted above, the Company committed in the Petition (p. 36) to make Staff aware of any cost-sharing provision before executing a precedent agreement containing such a provision pursuant to these ongoing interactions with Staff regarding gas supply matters.



consideration of this evidence in the rate proceedings led the parties in the case to recommend, and the Commission to agree, that a Gas Peak Demand Reduction Collaborative be undertaken to “examine the potential impact that delays of upstream interstate pipeline construction may have on meeting growing demand associated with oil-to-gas conversions and new business ....”<sup>37</sup> The projections reflected in the Petition (which are necessarily dynamic) are consistent with the findings as to forecasted gas demand and gas supply matters in the rate case and the Company’s Long-Range Forecast, as discussed above.

C. Commission Policies Do Not Require Public Disclosure of Potential Contract Terms or Contracting Parties During The Negotiation Stage.

The Commission should reject EDF’s assertion that “a utility’s duty of candor compels Con Ed to reveal any affiliate investment in the pipeline project” prior to the Company entering into a contract for pipeline services.<sup>38</sup> (EDF, p. 8)

In stark contrast to the lack of candor by Con Edison that EDF alleges in this proceeding, EDF has acknowledged<sup>39</sup> that Con Edison has voluntarily committed to filing its precedent agreements with the Commission on a going forward basis and also committed to disclose any affiliate relationship with a pipeline developer when it files such a precedent agreement.<sup>40</sup> The Company stands by this commitment. There is no “duty of candor” that requires the disclosure at an earlier point in time now sought by EDF.

As to EDF’s additional comments regarding utility contracts with affiliated developers and Con Edison’s contract with Mountain Valley Pipeline, the Company refers the Commission

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<sup>37</sup> See Case 16-G-0061, Order Approving Electric and Gas Rate Plans, Appendix A, p.109.

<sup>38</sup> The Public Interest Groups also argue (p. 4) that disclosing whether or not an affiliate is involved in the contemplated project is necessary for Commission consideration of the Company’s request.

<sup>39</sup> EDF June 19, 2017 letter filed in Case 93-G-0932.

<sup>40</sup> The Company notes that Commission rules do not currently require the filing of executed pipeline precedent agreements, a circumstance that EDF is seeking to change by its Declaratory Ruling Petition.

to the Joint Utilities response to the Declaratory Ruling Petition.<sup>41</sup> Indeed, the Commission should disregard the assertions regarding Con Edison's agreement with Mountain Valley Pipeline because they are outside the scope of this proceeding.<sup>42</sup>

D. The Company Requests that the Commission Reject the City's Recommendation that the Company's Proposed Incentive Be Rejected or Deferred.

The City proposes that the Commission reject or defer consideration of the Company's proposed incentive. The City asserts that: (1) the Company has not provided a specific justification or rationale for the 30 percent incentive level; (2) shareholder incentives are not justified if the Company's efforts are not successful; and (3) the Company's reliance on the Reforming the Energy Vision ("REV") proceeding is misplaced. The City states that a modest incentive, to be determined, could be justified if the Company demonstrates that the level of effort required to implement the non-pipeline solutions is "extraordinary" and the solutions will provide material benefits to customers. (City, pp. 3, 10-12) The Company responds herein to each of these assertions and maintains that its proposed incentives are justified.

First, the Company provided a rationale for its proposed 30 percent incentive – that amount is comparable to the amount the Commission has approved for a non-wires solution and represents an appropriate balance.<sup>43</sup>

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<sup>41</sup> Case No. 17-G-0610, Petition for a Declaratory Ruling that Natural Gas Precedent Agreements and Transportation Agreements Are Subject to Review Under Public Service Law, Section 110(4), Response of Joint Local Gas Distribution Companies to Petition for Declaratory Ruling (filed October 23, 2017).

<sup>42</sup> EDF filed comments with the Commission in Case 93-G-0932 requesting that the Commission prohibit Con Edison from including Mountain Valley Pipeline project costs in rates unless Con Edison can demonstrate the transaction is in the public interest. As stated in the Joint Utilities Response (at 5-6), should the Commission decide to open a proceeding to consider EDF's analysis, Con Edison will respond to these assertions in accordance with any schedule for comments established by the Commission and Con Edison's silence in these Reply Comments should not be construed as Con Edison accepting or agreeing with any such assertions.

<sup>43</sup> Petition, p. 34.

Second, regarding the City's point that Con Edison should not earn an incentive if it is unable to defer the traditional solutions, the Company should nevertheless earn an incentive for implemented solutions if there is an overall positive BCA for the other benefits of the program (e.g., reduced need for delivered services, carbon benefits) with or without the pipeline deferral.<sup>44</sup>

With respect to its argument that this program is not comparable to REV, the City first asserts that unlike REV, where utilities are required to revise their approach to making capital investments, the Program primarily involves actions to be performed by customers and/or third parties. (City, p. 11) This assertion is incorrect. Many REV opportunities involve actions being performed by customers and/or third parties with utilities to enable their customers to better manage their energy use in a system-beneficial manner cost-effectively. As to the City's assertion that none of the solutions included in the Program would diminish the Company's capital investments or otherwise affect its ability to recover its revenue requirement (City, p. 11), that is not a basis for denying incentives. The Commission should recognize that the Company is seeking to avoid the long-term cost impacts to customers that would result from a long term firm transportation service agreement. It is accordingly reasonable for the Company to earn incentives for achieving such an avoidance by pursuing programs outside of the Company's normal scope of business for the benefit of customers.

E. AEEI's Recommendation to Disclose Pricing Information Should Be Rejected in Order to Avoid Undermining the Competitive Bidding Process.

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<sup>44</sup> Con Edison appreciates AEEI's support for the Company's incentive proposal (AEEI, p. 4), but corrects here an apparent misunderstanding. Whenever Con Edison participates in a new pipeline expansion project, Con Edison earns a return only on new distribution and/or transmission facilities that the Company needs to build on its own system to receive increased deliveries of interstate pipeline gas for distribution to its customers. Accordingly, the only Company capital expenditures that Con Edison would defer or reduce in the event of a non-pipeline solution displacing an interstate pipeline project would be those attributable to its own delivery system. There are, however, other potential benefits to customers from the Company avoiding the need to enter into a pipeline contract or maintain or increase Delivered Services that warrant establishing an incentive mechanism.

AEEI's comments (p. 2) express concern that the Company's requests for information ("RFIs") provide insufficient pricing information. According to AEEI, potential third-party providers may be unwilling to incur the development costs for a new solution without some level of comfort that they could provide a product within a competitive price range. This, in turn, may dampen participation and decrease competition and potential benefits for customers. AEEI recommends that the Company work with the third-party community to develop some level or range of pricing information that it can disclose as part of its procurement process.

The Company is using a competitive solicitation in order to allow the Company to gain price discovery information that it can use to obtain cost effective solutions for its customers. Providing pricing information or guidance as recommended by AEEI would impede this price discovery from occurring. Specifically, any guidance the Company might provide on pricing – even a range of pricing – may be viewed as a floor or a ceiling by potential respondents. This could result in less expensive resources bidding higher than needed if they are below the low end of pricing guidance. If this were to occur, costs could be higher than needed, or higher cost resources with greater benefits might not be available to customers.

As the Company notes in the FAQs accompanying the Non-Pipeline RFP, Con Edison's reserve price and its potential avoided costs are commercially-sensitive information that will not be disclosed. Respondents are encouraged to evaluate their own costs and risks, and to provide their best bid so that the RFP process is truly competitive.

### **Conclusion**

For the reasons stated herein, the Company respectfully requests that the Commission approve the proposed: (1) Enhanced Gas EE Program; (2) Gas Innovation Program; and (3) NPS Market Solicitation program, subject to the proposed budget compliance filing described above;

and (4) budget flexibility between and within its programs. The Commission should also either (1) confirm that a cancellation or termination payment made pursuant to a pipeline transportation precedent agreement is a type of cost recoverable under the existing terms of the MRA or (2) authorize the Company to make a tariff change to establish cancellation/termination payments as a type of cost to which the MRA applies.

Dated: New York, New York  
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Respectfully submitted,

CONSOLIDATED EDISON COMPANY  
OF NEW YORK, INC.

By its Attorney



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