

August 9, 2021

VIA ELECTRONIC FILING

Hon. Michelle L. Phillips
Secretary to the Commission
New York State Public Service
Commission
Empire State Plaza
Agency Building 3
Albany, NY 12223-1350

Re: Case 19-E-0065 – 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 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

Dear Secretary Phillips:

The City of New York (“City”) submits these comments in response to the *Petition for Approval to Establish an Alternative Recovery Mechanism* (“Petition”) filed by Consolidated Edison Company of New York, Inc. (“Con Edison” or “Company”) with the Public Service Commission (“Commission”) on April 27, 2021 in the above-referenced proceeding. As discussed in further detail herein, the City opposes Con Edison’s request to establish a new mechanism through which it can recover late fees associated with unbilled late payments and respectfully requests that the Commission deny the Petition.

In the Petition, Con Edison requests that the Commission establish an “alternative recovery mechanism” (a surcharge or surcredit) through which it can recover approximately \$53 million in unbilled late payments and other related fees that accrued between March 2020 and December 2020 as a result of the New York State PAUSE Order (“PAUSE Order”).¹ Con Edison argues that its rate plan allows for such recovery of the unbilled late payments under the “Legislative,

¹ N.Y. Executive Order 202.6 (issued March 18, 2020); Petition at 2.

Regulatory and Related Actions” provision because these fees are attributable to a state order.² It also asserts that the recovery would be rate neutral to customers because the deferral “assumes that all customers have been provided the benefit of these anticipated fees and that the Company has recovered less than forecasted against its existing costs to provide service and will recover the difference in its next rate plan.”³ Con Edison’s arguments are incorrect and its request for relief is improper. Indeed, the Company is functionally seeking permission to reopen its rate plan to raise rates based on a single factor viewed in isolation.

First, Con Edison’s request for recovery of these fees is premature. The PAUSE Order merely suspended the collection of late fees. To date, there has been no order denying utilities the ability to seek recovery of these late fees later, and it remains unclear how recovery of these fees will be treated in the future. Moreover, to the extent Con Edison is permitted to recover these fees, it is inappropriate for the Company to attempt to pass them along to its entire customer base.⁴ Until the Commission makes a determination on whether these fees can be recovered, Con Edison’s request is untimely.

Second, assuming that Con Edison is not only permitted to recover these fees, but also that the Commission determines that it is appropriate for the Company to recover the fees from its entire customer base, Con Edison’s interpretation of the Joint Proposal’s provision with respect to treatment of deferrals resulting from legislative, regulatory, and related actions is unsupported by the plain language of the Joint Proposal. Section Q(2)(b) provides, in relevant part,

If at any time any [...] law, rule, regulation, order, or other requirement [...] of the federal, State, or local government [...] results in a change in Con Edison’s annual electric or gas costs or expenses not anticipated in the forecasts and assumptions on which the rates in this Proposal are based in an annual amount, calculated and applied separately for electric and gas, equating to ten (10) basis points of return on common equity or more [...] Con Edison will defer on its books of account the full

² Case 19-E-0065, *et al.*, 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, Order Adopting Joint Proposal, Appendix A at 120-121 (“JP Order”).

³ Petition at 3. Notably, the Petition does not include any analysis to support this claim of rate neutrality. Moreover, page 4 of the Petition, Con Edison mentions that it may need to defer the fees associated with Rate Years 2 and 3. There is no way to ascertain the potential associated rate impacts for this expanded request at this time.

⁴ The Petition also fails to establish the actual amount of late payment fees that the Company has been unable to recover to date. The Company should only be permitted to defer those late payment fees that it has been unable to recover. It is unclear from Appendix A how much Con Edison has actually been able to recover, and the Petition does not provide sufficient explanation for the financial information included that appendix.

change in expense, with any such deferrals as credits or debits to be reflected in the next base rate case or in a manner to be determined by the Commission.”

Section Q(2)(b) only permits Con Edison to defer those unexpected expenses associated with regulatory and legislative changes for review by the Commission in its next rate proceeding or in another manner in the future. It does not permit Con Edison to recover those expenses mid-rate plan.

Third, Con Edison’s argument that it cannot wait until the next rate case to recover these fees (assuming that the Commission allows such recovery) due to a conflict between its accounting methods is belied by its past practice.⁵ There are many instances in which Con Edison has not sought recovery of deferred costs within a two-year period. For example, the Company waited far longer than two years to seek recovery of the deferred costs associated with the attack on the World Trade Centers on September 11, 2001. Con Edison has not distinguished this matter from any other in which the Commission approved deferrals but not immediate recovery of the deferrals.

Fourth, as a signatory party to the Joint Proposal, Con Edison agreed to the deferral mechanisms contained therein, including Section Q(2)(b). The Petition does not provide any justification for why this deferral mechanism, which Con Edison agreed to less than two years ago, is no longer appropriate, beyond a statement declaring its potential forfeiture of these fees as an “unreasonable financial outcome.”⁶ However, a discrepancy between regulatory and GAAP accounting is an insufficient, and, to the City’s knowledge, unprecedented, basis on which to request to reopen a rate plan and increase costs to customers.

Fifth, the Petition fails to acknowledge that the Joint Proposal contains multiple provisions that protect Con Edison from the same financial hardships experienced by its customers due to the COVID-19 pandemic. Con Edison’s revenue decoupling mechanism (“RDM”) allows the Company to receive reimbursement for discrepancies between its sales projection revenues and what has actually been collected.⁷ Through the RDM, Con Edison will receive full reimbursement of any lost sales revenues attributable to the significant decrease in demand as a result of the pandemic. Given this very substantial financial protection for the Company’s shareholders – which has resulted in bill increases of tens of thousands of dollars or more per month for some

⁵ *Id.*

⁶ According to Con Edison, to record the deferral from Rate Year 1 (2020) on its Generally Accepted Accounting Principles (“GAAP”) financial statements, it would need to recover the deferral by year end 2022.⁶ However, under the rate plan, it will be unable to begin recovery until 2023 at the earliest. Therefore, under the current language of the Joint Proposal, Con Edison would not be able to recover these unbilled fees, resulting in this “unreasonable” outcome. *Id.* at 4.

⁷ JP Order, *supra*, at 22-23; Appendix A at 9.

customers⁸ – it would not be just and reasonable to establish an additional surcharge and further increase customers’ bills to provide the extraordinary and unwarranted recovery sought by the Petition. The COVID-19 pandemic is taking an unprecedented toll on New Yorkers medically and financially. Although the economy appears to be rebounding somewhat, New York City is still facing significantly higher unemployment rates than the rest of the State. In June 2021, the unemployment rate in the New York City metropolitan area was 10.1%.⁹ Although this is significantly lower than New York City’s June 2020 unemployment rate (18.1%), it is nearly double the next closest rate, which is 5.7% in the Buffalo-Niagara area.¹⁰

Despite ongoing vaccination efforts and some economic improvement,¹¹ the fact remains that hundreds of thousands of New Yorkers are still struggling to pay for utilities and other necessities as a result of the events of the last 18 months. For example, according to its second quarter 2021 Low Income Program Report, Con Edison sent termination notices to 213,000 low income customers who collectively owe the Company approximately \$351 million.¹² Any increases to rates at this stage will only exacerbate the already untenable situations in which many New Yorkers find themselves.

Despite the significant economic downturn that resulted from COVID-19, Con Edison continues to receive an 8.8% return on equity.¹³ Moreover, based on the Company’s recent Earnings Adjustment Mechanism filings, it earned approximately \$40.93 million in positive revenue adjustments in 2020. These factors, when coupled with the RDM collections, have allowed the Company and its shareholders to avoid some of the financial ramifications of the pandemic, while many of its customers have endured significant hardships. Given the current state of the economy, the Commission must carefully consider utility requests that may have a negative financial impact on customers. Indeed, the Commission must balance shareholder and customer

⁸ For example, Con Edison’s most recent RDM for Service Class (“SC”) 9 is 1.21 cents per kilowatt hour (“kWh”). If an SC9 customer uses 1 million kWh of electricity per month, the customer will need to pay approximately \$12,100 per month pursuant to the RDM. Con Edison, Schedule for Electricity Service, PSC No. 10 – Electricity, at Statement 28.

⁹ N.Y.S. Dept. of Labor, *June 2021 Area Unemployment Rates* (issued July 20, 2021), available at <https://dol.ny.gov/system/files/documents/2021/07/state-labor-department-releases-preliminary-june-2021-area-unemployment-rates.pdf>.

¹⁰ *Id.*

¹¹ *See, e.g.*, U.S. Bureau of Labor Statistics, *Employment Situation Summary* (issued Aug. 6, 2021), available at (<https://www.bls.gov/news.release/empstat.nr0.htm>) (in July 2021, 943,000 jobs were opened and the national unemployment rate declined by 0.5 percentage point to 5.4%.)

¹² Case 19-E-0065, *et al.*, *supra*, Con Edison Electric and Gas Low Income Program Report, (filed July 30, 2021).

¹³ JP Order, *supra*, at 23.

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interests when considering requests such as the one posed by Con Edison. In this instance, it is clear that a balancing of the equities favors, and indeed justifies, denying the Petition.

For the reasons set forth herein, the City respectfully requests that the Commission deny Con Edison's Petition.

Respectfully,

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