



# Public Utility Law Project

90 State Street Suite 601  
Albany, New York 12207-1715  
Website: [www.pulp.tc](http://www.pulp.tc)

Phone: (518) 449-3375  
Fax: (518) 449-1769  
E-Mail: [info@pulp.tc](mailto:info@pulp.tc)

August 25, 2004

Hon. Jaelyn Brilling, Secretary  
New York State Public Service Commission  
Three Empire Plaza  
Albany, NY 12223

Re: Case 03-G-1671, Consolidated Edison - Natural Gas Rates  
Case 03-S-1672, Consolidated Edison - Steam Rates.

Dear Secretary Brilling:

A Joint Proposal for resolving these rate proceedings, consisting of a multi-year agreement as to rates for natural gas and steam service of Consolidated Edison Company of New York, Inc. ("Con Edison"), was submitted to the Commission by a number of parties on May 28, 2004. As a signatory to the Joint Proposal, the Public Utility Law Project of New York, Inc. ("PULP") on June 10, 2004 submitted its statement to the Commission supporting the Joint Proposal. We continue to urge approval of the Joint Proposal.

Subsequent to submission of the Joint Proposal, the Commission on July 30, 2004 issued an order in Case 04-M-0159,<sup>1</sup> seeking comments on a Staff Proposal to require Con Edison and other electric utilities to inspect and maintain their electric system facilities for safety of the public. The Commission observed that

"Over the past 10 to 15 years, we and other regulatory commissions across the nation have moved from traditional one-year litigated rate cases to multi-year performance-based rate plans. The purpose of these plans is to allow for rate stability while allowing the utilities greater flexibility in managing their operations. Staff's investigation into this matter suggests that the utilities may not have been placing enough attention and emphasis on safety matters."<sup>2</sup>

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<sup>1</sup> Case 04-M-0159, *Proceeding on Motion of the Commission to Examine the Safety of Consolidated Edison Company of New York, Inc.'s Electric Transmission and Distribution Systems, Order On Staff Proposal* (Issued July 30, 2004).  
[http://www3.dps.state.ny.us/pscweb/WebFileRoom.nsf/ArticlesByCategory/407FF8D608C4B28585256EE1005D4202/\\$File/04m0159.ord.pdf?OpenElement](http://www3.dps.state.ny.us/pscweb/WebFileRoom.nsf/ArticlesByCategory/407FF8D608C4B28585256EE1005D4202/$File/04m0159.ord.pdf?OpenElement)

<sup>2</sup> *Id.* at 8.

One component of the Staff Proposal in Case 01-M-0159 is a performance mechanism designed to encourage electric utilities to satisfy Commission safety inspection, maintenance and repair requirements by reducing the utility's equity return by 50 to 100 basis points if certain minimum performance criteria are not satisfied. The maximum penalty for not attaining the Staff's proposed electric system performance criteria would be quite substantial.<sup>3</sup>

The Joint Proposal for steam rates now pending before the Commission does not contain any specific requirements or safety performance measure regarding steam service safety, inspection and maintenance.<sup>4</sup> Recent press reports of an individual injured in the streets by a hot steam manhole cover<sup>5</sup> suggests there may be a need to broaden the Commission's safety inspection and maintenance requirements to apply to all divisions and facilities of Con Edison, including facilities of the steam division.

The Staff Proposal in Case 04-M-0159 would expand that proceeding to include all other electric companies in the state, but does not address gas or steam utility safety issues. PULP is concerned that asymmetry in financial penalties for not attaining safety performance criteria could have the unintended effect of skewing resource allocations for safety inspection and maintenance of facilities of a combination utility such as Con Edison, which has electric, gas,

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<sup>3</sup> "A basis point is equivalent to one hundredth of a percentage point (0.01%). In the context of the Commission's proposal, if a utility's earned return on equity (ROE) is 10.5% and it fails to meet a 50-basis point target, funds would be set aside that would effectively decrease earned ROE to 10%. As an example, for a utility with a \$5 billion electric rate base and a 45% equity ratio, a 50-basis point ROE adjustment would result in an earning's reduction of about \$11 million." PSC Press Release, *NYPSC Seeks Comment on Staff Proposal for Annual Statewide Testing, Inspection of Electric Facilities, Sweeping Proposal Ties Utility Revenue Adjustments to Achieving Annual Targets*, July 28, 2004. [http://www3.dps.state.ny.us/pscweb/WebFileRoom.nsf/Web/64B33097DF100EE185256EDF005FF6EA/\\$File/pr04057.pdf?OpenElement](http://www3.dps.state.ny.us/pscweb/WebFileRoom.nsf/Web/64B33097DF100EE185256EDF005FF6EA/$File/pr04057.pdf?OpenElement)

<sup>4</sup> Provisions of the Joint Proposal relating to natural gas do contain performance mechanisms which address the backlog of unrepaired natural gas leaks at year end and the timeliness of Con Edison response to reports of natural gas leaks. The maximum penalty for non-attainment of any of the natural gas leak safety criteria is \$500,000. Joint Proposal, at 42-44.

<sup>5</sup> See *Con Ed 'Tattoo'*, N.Y. Post, Aug. 15, 2004 ("A 26-year-old skateboarder is scarred for life after she fell onto a red-hot Con Edison manhole cover - mere blocks from the scene of a tragic death earlier this year when a woman stepped onto an electrified Con Ed cover."); *Girl Gets Unwanted Manhole Tattoo*, WPVI TV, Philadelphia, Aug 18, 2004 [http://abclocal.go.com/wpvi/news/08222004\\_bb\\_branded.html](http://abclocal.go.com/wpvi/news/08222004_bb_branded.html) ("Liz Wallenburg was roller-blading on Manhattan's Lower East side when she fell onto the red-hot cover. It was part of a Con Edison steam line"); *Mandatory Safety Rules Are Proposed for Electric Utilities*, N.Y. Times, Aug. 21, 2004 ("Elizabeth Wallenberg of Brooklyn was branded when she fell onto a hot manhole cover last weekend. 'Something has to change,' she said.").

Hon. Jaclyn Brillling

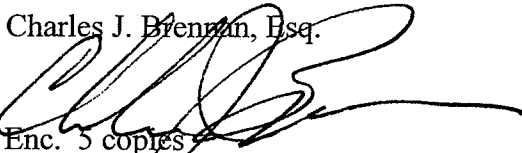
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and steam facilities. PULP will address further expansion of the scope of Case 04-M-0159 in comments in that case which are due October 2, 2004.

While continuing to urge the Commission to approve the Joint Proposal in the gas and steam rate case as submitted, PULP suggests that in acting on the Joint Proposal, the Commission clarify that any approval of the gas and steam rate agreement will not in any way preclude or limit Commission action or new Commission imposed safety requirements in the Con Edison gas and steam cases, in Case 01-M-0159, or in other proceedings commenced to ensure that utilities continue to meet their historic responsibilities to provide safe natural gas and steam service.

Very truly yours,

Charles J. Brennan, Esq.



Enc. 5 copies

cc: Consolidated Edison Company of New York, Inc.  
Administrative Law Judge William Bouteiller  
Service to all active parties via e-mail