

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

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*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.*

Case 03-G-1671

*Proceeding on Motion of the Commission as to  
the Rates, Charges, Rules and Regulations of  
Consolidated Edison Company of New York,  
Inc. for Steam Service.*

Case 03-G-1672

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**COMMENTS OF THE PUBLIC UTILITY LAW PROJECT  
OF NEW YORK, INC. ON THE JOINT PROPOSAL  
SUBMITTED ON MAY 28, 2004**

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**PRELIMINARY STATEMENT**

The Public Utility Law Project of New York, Inc. ("PULP") is a not-for-profit corporation organized pursuant to the New York State Not-For-Profit Corporation Law. PULP is a public interest law firm which for over two decades has represented the interests of low and fixed income consumers in energy matters relating to the obtaining and maintaining of gas, electric and telecommunications services.

On or about November 21, 2003 Consolidated Edison of New York, Inc. ("Con Edison" or "Company") filed petitions with the Public Service Commission ("PSC" or "Commission") which sought to increase gas rates by approximately \$105.7 million (around 9.5%) and to increase steam rates by roughly \$140.3 million (around 13.8%). On or about December 17, 2003, the Commission issued orders instituting these proceedings to investigate and make recommendations regarding the propriety of the rates, charges, rules and regulations contained in the Company's applications and the affects the proposals might have on the rights and interests of the public. The PSC, as part of these orders, also suspended the implementation and operation of the proposals pending the decisions on the proposed

changes. Subsequently, after the parties had begun discovery and the Commission had established rate case schedules and initial procedures<sup>1</sup>, Con Edison, by letter dated March 18, 2004, announcing the commencement of impending settlement negotiations in these proceedings pursuant to Volume 16, section 3.9 of the New York Code Rules and Regulations. Interested parties met and discussed the settlement of Con Edison's gas and steam proposals at more than 7 all party conferences and numerous breakout group meetings at which issues affecting less than all parties were considered. All parties were invited to participate in both all party conferences and the smaller, breakout sessions.

After intensive negotiations over 2 months, a critical number of participants agreed to, signed<sup>2</sup> and submitted to the Commission for adoption an agreement that is just and reasonable, in the public interest, and within the broad parameters of possible evidentiary hearing outcomes. PULP is a signatory party to this Joint Proposal and submits these comments in support of that settlement.

### **THE JOINT PROPOSAL**

The Joint Proposal ("JP"), developed over two months of negotiating sessions with numerous

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<sup>1</sup> Case 03-G-1671 and Case 03-S-1672: Ruling Establishing Rate Case Schedules and Initial Procedures, issued January 29, 2004

<sup>2</sup> Signatory parties include: Consolidated Edison Company of New York, Inc., Department of Public Service Staff, the City of New York, Consumer Power Advocates, New York Energy Buyers Forum, Owners' Committee on Electric Rates, Inc., Amerada Hess Corporation, Small Customer Marketer Coalition, Pace Law School Energy Project, Natural Resources Defense Council, Association for Energy Affordability, Inc. Public Utility Law Project of New York, Inc., and North American Energy, Inc.

and diverse parties, was submitted to the Commission for its consideration and possible adoption on May 28, 2004 and resolves all issues raised in Cases 03-G-1671 and 03-S-1672. It represents compromises on many significant issues and reflects concessions and adjustments to positions by almost all parties. It is an agreement, as we shall see, in which individual and faction agenda were modified for the public interest.

The JP proposes a three-year term (October 1, 2004 to September 30, 2007 for gas rates and, a two-year term (October 1, 2004 to September 30, 2006) for steam rates. It also recognizes a need to increase Con Edison's gas and steam rates in order to assist the Company to meet its commitment to provide safe and adequate gas. To this end, the JP offers 2 choices: A) which would increase base rates by \$28.7 million in Year One, \$18.4 million in year Two, and \$18.3 million in Year Three; and B) which would increase bas rates by \$46.8 million in Year One and freeze rates at that level for the remaining years of the Rate Plan.

The parties also agreed that safe and adequate steam service requires rate increases. Therefore, the signatory parties recommend a first year increase of \$49.6 million and a second year increase of \$27.4 million. The base rate increase provided in the Steam Rate Plan will be allocated to the different service classifications and recovered within each class through a redesign of rates. In order to facilitate this agreement the company agreed to take a one-time charge to pre-tax earnings of \$6.2 million.

The Proposal also includes various steam rate design proposals. During the term of the Steam Rate Plan, the company will install demand meters and conduct dummy demand billing for most if not all of the SC2 and SC 3 customers who use more than 14,000 Mlbs per year. Additionally, the company agrees to modify its proposed new Rider E tariff to permit customers

taking such service to receive a credit for any unused fuel if the customer used less than the agreed upon volume of steam, and to aggregate steam purchases for multiple buildings.

The company's rates for both the Gas and Steam Rate Plans have been set based on the cost of service. If the return on equity (ROE) in any rate year exceeds 11.75%, earnings above the threshold are shared 50% / 50% between customers and shareholders. The Proposal also sets out the manner and requirements by which the company will calculate annually its ROE.

The Proposal recommends that the company be permitted to reconcile, for both steam and gas, costs exceeding the amount allowed in rates for costs associated with property taxes, interference other than company labor, plant additions, pensions and OPEBs, environmental remediation, and pipeline integrity.<sup>3</sup>

Deferral balances will be subject to interest and reduced by accruals, insurance recoveries, associated reserves and deferred taxes. The Company is also permitted to defer and recover from or credit to gas customers, any costs associated with a federally mandated pipeline integrity program that exceed the annual amount of \$1 million provided in rates relating to payments the Company will make to KeySpan for such costs under the New York Facilities Agreement. The company's ability to defer expenses is limited by its earnings and, if the ROE is above 11.75% but below 15%, it is capped at 50% of its eligible expenses. If the ROE exceeds 15%, the company cannot defer otherwise eligible expenses.

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<sup>3</sup> The company is also permitted to defer WTC capital costs, subject to offsets for cost recovery from governmental agencies and insurance carriers.

The Proposal's gas retail access includes the purchase of accounts receivable of energy service companies/marketers (ESCO) at a discount designed to recover program and uncollectible costs, continuation of the competitive retail choice credits at 24.0 cents per Dth, and a shareholder migration incentive of \$40 or \$50 per customer, depending on the number of migrating customers and subject to certain conditions. In addition, the Proposal establishes a retail marketing program, retail choice promotion, Market Match and Market Expo Programs, continues the ESCO satisfaction and competition awareness surveys, makes provision for an ESCO ombudsman, continues and expands competition outreach and education, and makes provision for an assignment program of ESCO pipeline capacity.

It also provides for a gas energy efficiency study and gas energy efficiency programs with funding set at \$200,000 and \$5 million, respectively. The programs would be administered by the New York State Energy Research and Development Authority (NYSERDA) or Con Edison, with input from an advisory group comprised of representatives from state and local government, environmental and consumer groups, and other parties. The expenditure of funds for these measures is subject to prior Commission approval.

The company's current customer satisfaction incentive is continued for the term of the Gas Rate Plan. Gas safety incentives are also continued, but with higher revenue adjustments for failure to achieve specified target levels.

The Proposal contains a steam economic development plan (Plan) that would be administered by the company, in coordination with a Steam Business Development Task Force, whose membership is comprised of representatives from state and local governments, consumer groups, and other parties. The Plan includes modification for greater flexibility in attracting and retaining steam customers, for extending service lines and steam mains and for reinforcements

necessary to connect customers to the company's steam system, and to examine ways to further grow the steam business. Additionally, the company will, in coordination with specific local and state agencies, develop energy infrastructure master plans for areas of New York City and Westchester County undergoing extensive redevelopment.

The Proposal also contains standard provisions regarding the use of the document, separability of the Proposal's provisions, effect of Commission approval of the Proposal, and ability of parties to participate in other proceedings. Ten appendices are attached to the Proposal that provide greater details of, and formulae for calculations related to, certain terms and conditions.

### **ARGUMENT**

#### **THE JOINT PROPOSAL IS IN THE PUBLIC INTEREST AND SHOULD BE ADOPTED**

Over the course of two months numerous parties with extremely diverse concerns and agendas met with the Company and Staff with a goal of reaching a settlement in these two cases commenced by Con Edison in December, 2003. Parties rethought positions, modified demands and, most importantly, compromised in order to overcome road blocks to a resolution. PULP believes that, when evaluated in its entirety, the Joint Proposal represents a settlement of the gas and steam filings of the Company that are in the public interest. For the reasons set forth below, PULP urges the Commission to adopt the Joint Proposal ("JP").

In 1992, the PSC modified the established Procedural Guidelines for Settlement, effective April 15, 1992. The new guidelines provide that the analysis of a proposed settlement to the Commission

“shall be limited to the issue of whether or not the proposed settlement is in the public interest.”<sup>4</sup> The standards to be applied in determining whether a settlement is in the public interest are also set forth in the guidelines and, in relevant part, read:

- a. ...strive for a balance among (1) protection of the ratepayers, (2) fairness to investors, and (3) the long term viability of the utility; should be consistent with sound environmental, social, and economic policies of the Agency and the State; and should produce results that were within the range of reasonable results that would likely have arisen from a Commission decision in a litigated proceeding. [and]
- b. In judging a settlement, the Commission shall give weight to the fact that settlement reflects the agreement by normally adversarial parties.<sup>5</sup>

Thus, any analysis of the JP must be undertaken with a view towards determining whether it is in the public interest. PULP has performed this review. Consistently, the JP provides programs and plans developed by the parties that look to balance the needs of the Company with protection for customers while consciously safeguarding the environment, social, economic and public policies of the Commission and the State. As we shall see, PULP has concluded that it meets this test and should be adopted by the Commission.

Con Edison’s initial filing proposed increasing its delivery rates to its firm sales and firm transportation customers by approximately 9.8% in order to produce total revenue increase of about \$107.5 million. The parties recognized the need for an increase in the Company’s rate but sought to ameliorate the negative impact of this large increase. The signatory parties agree that the JP

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accomplishes both goals by phasing in the increase over a three year term rather than imposing the increase in a single rate year. This compromise benefits ratepayers by minimizing rate increases, the Company by providing necessary operating funds, and shareholders by maintaining the financial stability of the Company for an extended period of time.

Similar discussions took place with regard to the need to increase steam rates in order to provide safe and adequate service. As with the gas compromise, the term of the settlement was extended (to two rather than three years) and the increase sought by the Company phased in over that period of time. Again, the impact of the increase ameliorated and all stakeholders benefitted from the compromise.

The JP also introduces a number of programs designed to assist ratepayers as they deal with increasing gas prices and increased gas usage. As set forth below, these programs provide PULP with additional reasons to support the JP.

For instance, the JP creates, for the first time, a comprehensive low income reduced charge program. This program establishes a 25% monthly discount for eligible and qualified ratepayers on the volumetric charges on gas usage between 3 therms and 90 therms.<sup>6</sup> Thus, some low income customers are further sheltered from bill impact shock from possible increases in the cost of gas as a commodity and, in the event of abnormally cold heating seasons, provides some protection for those low income customers heating with gas. The JP also provides, in the event that the demand for the discount is less

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<sup>6</sup> The program, unfortunately, is limited to a three year total cost of \$4.8 million or an annual average of \$1.6 million. This means that all eligible low income gas rate payers will not qualify for the reduction. To qualify for the program the ratepayer must be receiving benefits pursuant to one of the following governmental assistance programs: Supplemental Security Income, Temporary Assistance to Needy Person, Safety Net Assistance, Medicaid, Food Stamps, or Home Energy Assistance Program.

than or greater than anticipated by the program, that, in consultation with the active parties, the Company may make adjustments to the Program in order to balance the need with the ability to respond. In a situation such as this, it is the JP's provision that permits the Company to act only after consultation with and input from active parties that, in light of the programs, enable PULP to support this settlement.<sup>7</sup>

The JP also includes a three year \$5 million Gas Energy Efficiency Program. This program provides that 50% of the funding will be utilized for low income gas efficiency, 25% on other residential gas efficiency, including single family and multi-family buildings, and 25% on commercial gas efficiency. As the price of gas continues to rise with little or no relief in sight, it is imperative for public utilities, which since the enactment of New York State's amendments to the Home Energy Fair Practices Act, clearly include gas marketers, to implement programs which enable customers to use less gas. Thus, by virtue of reduced usage, the gas bill can be reduced or at least maintained at a reasonably affordable level. This program represents the next step in Con Edison's recognition that costs of saving energy are less than the costs of supplying energy. As we observe the apparently unrelenting increasing charges for natural gas, it only make sense to challenge those costs on as many fronts as possible.

An additional component of the gas efficiency program calls for a study, costing \$200,000, that will examine the potential for achieving cost effective gas efficiency in the con Edison service territory. PULP believes that such a survey will conclude that the best opportunities to gas efficiency savings will

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<sup>7</sup> It is important to note that similar requirements either prior to Company action or Company application to the Commission were essential to PULP's determination to support the JP. Congruent conditions are found in the Gas Energy Assistance Program, and the Retail Access Program - both programs which directly impinge on residential customers. Other Company actions are predicated on consultation with Staff.

be concentrated in low income areas. We expect that this will result in additional prospects for low income customers to soften the effects of increasing gas costs.

Finally, as a member of the Public Interest Intervenors group, PULP supports the JP for the positive steps taken by the settlement to resolve disagreements and differences by crafting agreements among the parties that are in the public interest. There is no better example of this tendency than the compromises reached regarding many of the issues surrounding steam rates in general, and the East River Repowering Project in particular. Keeping the public interest in the fore front, the JP addresses these concerns by balancing the Company's demands against the needs of consumers and by ensuring that benefits (\$36 million in fuel cost savings, for example) to the Company's Steam Department are mitigated by comparable value for consumers (base rate reductions). By establishing equity in the Steam business, the JP insures that electric and gas customers will not be unnecessary burdened with in appropriately assessed costs and expenses and, vice versa, steam customers will not face extreme cost increases and perhaps be forced to switch to gas (or electric) service with the attendant impact such unforeseen demands would cause.

PULP, having concluded that the JP is clearly in the public interest, is also convinced that the terms of the JP are "within the range of reasonable results that would likely have arisen from a Commission decision in a litigated proceeding." This analysis is based on a number of factors not the least of which is the wide range of normally adversarial parties who signed the JP and support its adoption by the Commission. Representatives of consumers, low income consumers, commercial and industrial consumers, and the City of New York have joined the Company and Staff of the Department of Public Service in urging the Commission to adopt the JP. This plurality agreement clearly falls within

the parameters of an outcome of a litigated matter before the Commission. It contains provisions which allow the Company the increases necessary to remain fiscally sound and to thrive but not to overburden its ratepayers by using a three year settlement, disbursing the rate increases over those three years and mitigating the worst consequences of the impact such hikes might have on the ability of ratepayers to afford gas or steam service with a low income plan and energy efficiency. In addition, the JP contains provisions which delineate the circumstances which the Company may unilaterally act, within limits, to respond to circumstances (low income rate reduction enrollment) and the circumstances under which the Company may petition to the Commission for relief from the terms of the JP (Factor of Adjustment Ratio for line losses to be used in the monthly Gas Cost Factor). It is obvious to PULP that the signatory parties intended to design a proposal that is within the parameters of a Commission generated determination subsequent to an evidentiary hearing and included mechanisms to insure that, ultimately, the Commission is the final arbiter of any disagreement or dispute.

### **CONCLUSION**

For the reasons set forth above, the Public Utility Law Project believes that the JP completely satisfies the guidelines established by the Commission for determining whether a negotiated settlement is in the public interest and respectfully requests that the Joint Petition in the above referenced proceedings be adopted.

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