



STATE OF NEW YORK
EXECUTIVE DEPARTMENT
STATE CONSUMER PROTECTION BOARD

Eliot Spitzer
Governor

Mindy Bockstein
Chairperson and Executive Director

June 19, 2007

Jaclyn A. Brillling
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Case 06-G-1332: 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.

STATEMENT OF THE
NEW YORK STATE CONSUMER PROTECTION BOARD
REGARDING JOINT PROPOSAL

Dear Secretary Brillling:

On June 1, 2007, Consolidated Edison Company of New York, Inc. ("Con Edison" or "Company"), Staff of the New York State Department of Public Service ("DPS Staff") and other parties submitted a Joint Proposal ("JP") for consideration by the New York State Public Service Commission ("PSC" or "Commission"). The JP would resolve contested matters in this proceeding and establish a three-year rate plan for the Company's gas operations. The New York State Consumer Protection Board ("CPB") is not a signatory of that document. Nevertheless, the CPB submits this statement regarding the pro-consumer provisions of that proposal.

BACKGROUND

In November 2007, Con Edison requested permission to increase gas delivery rates by \$196.7 million, \$39.1 million and \$49.1 million effective October 1 of 2007-2009, respectively. The CPB, DPS Staff and other parties filed testimony in March 2007 opposing various aspects of the Company's filing. Among other things, that testimony demonstrated that Con Edison substantially overstated the amount by which gas delivery rates should increase. The CPB's testimony also showed that significant changes to the

Company's proposals were required to properly address public policy objectives regarding energy efficiency and retail competition.

The CPB participated actively in settlement discussions, focusing on the proposed rate increases, infrastructure expenditures, energy efficiency, revenue decoupling, policies regarding retail competition, revenue allocation, rate design, service quality and low income programs. The JP reflects many of our recommendations.

ANALYSIS OF JOINT PROPOSAL

The JP would establish a rate plan for Con Edison's gas operations for the three-year period beginning October 1, 2007. It includes several provisions that would benefit consumers.

I. Rate Issues

Under the JP, Con Edison's gas base delivery rates would increase to produce an additional \$67.4 million, \$32.7 million and \$42.7 million effective October 1, 2007, 2008 and 2009, respectively. The CPB does not support the gas delivery rate increases that would occur under the JP. However, it is noteworthy that during the three-year rate plan, customers would pay only 43% of the \$717 million requested by the Company.

The rate increases in the JP were derived after adopting most of the recommendations made in the CPB's litigated case. For example, these rate increases are premised on a return on equity, developed in conjunction with an aggressive sales forecast, which is reasonable in view of CPB's litigated position of 9.35% for a three-year rate plan. The plan also incorporates the majority of the CPB's proposals concerning pension and other post-employment benefit expenses, operations and maintenance program changes, and the capital expenditures budget. It also reflects a portion of our recommendations regarding injuries and damages expense and research and development costs. These CPB proposals may not have been adopted in a litigated proceeding.

II. Policy Changes

The JP is the first negotiated settlement for a major energy utility in New York State to reflect important new public policy initiatives. Those issues were not satisfactorily addressed in the Company's initial filing. By resolving these issues, the JP would result in consumer benefits that may not have been achieved in a litigated proceeding.

Gas Energy Efficiency

Under the JP, a long-term gas efficiency plan will be developed for Commission consideration. (JP, §F.1.b) The Commission approved an interim gas efficiency program for Con Edison for the 2007 – 2008 heating season, to ensure that a seamless,

uninterrupted and expanded program was available to consumers.¹ That program is expected to operate until September 30, 2008.

The JP would provide for an independent study of the appropriate level of funding for the long-term program, the need for changes to the interim gas efficiency program, and potential new program components. Parties would consider the results of that study, in their collaborative work to develop a long-term gas efficiency plan that addresses all relevant issues including program design, funding, incentives and administration. The recommended long-term program would be submitted by April 1, 2008 for consideration by the Commission.

These provisions are a considerable benefit of the JP that may not have been achieved through litigation. For example, in its direct case, the Company proposed that no additional funding be provided for gas efficiency programs after the current pilot programs expire on September 30, 2007. In building on the interim program, the JP would help ensure that Con Edison's customers obtain benefits from cost-effective conservation programs for years to come.

Revenue Decoupling

The JP includes a revenue decoupling mechanism ("RDM") for many customer groups, effective October 1, 2007. (JP, §B.8) As recommended by the CPB in testimony, the proposed RDM would not unduly shift risk to consumers and is not expected to result in significant bill impacts. It would generally remove the current utility disincentive to promote energy efficiency, thereby better aligning Con Edison's incentives with the public interest, and do so in a manner that does not disadvantage consumers.

If approved, Con Edison would be the first utility in New York State since the 1990's to operate with an RDM. This is a considerable benefit that may not have been achieved in a litigated proceeding, since in their direct testimony, Con Edison opposed, and DPS Staff took no position on, an RDM.

Retail Competition

In its direct testimony Con Edison proposed to maintain numerous programs under which customers subsidize the operations of competitive energy suppliers, including Market Match, Market Expo and outreach and education promoting retail competition. It also proposed to continue to earn an incentive for migrating customers to ESCOs. The CPB filed testimony explaining why these programs should be discontinued. The JP reflects a majority of our recommendations. If approved, there will be no migration incentive and the company would not be able to recover from customers, promotional costs related to retail competition. (JP, §F.5)

¹ 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 Gas Service, Order Establishing Gas Efficiency Program for 2007-08 Heating Season, May 16, 2007.

Expenditures on Infrastructure

The JP would provide Con Edison funds to substantially increase its capital expenditures on gas distribution plant, which is expected to help ensure safe and reliable service for consumers. (JP, Appendix H) Among other things, the Company would remove from service 120 miles of leak-prone gas main within three years. (JP, §F.7) The plan would also permit the Company to implement further capital improvements, up to specified levels, if necessary to provide safe and reliable service.

It also contains two important consumer protections. If the Company's actual capital expenditures are less than provided for in this rate plan, the difference would be deferred for the benefit of consumers. (JP, §D.3) In addition, Con Edison would submit annual reports summarizing its capital expenditures and explaining any significant differences between projected and actual spending on major projects. (*Id.*) This information will help the parties, and the public, understand one of the primary reasons for upward pressure on gas delivery rates, and help ensure that capital expenditures are required for the benefit of consumers.

III. Other Provisions

Rate Design

The minimum charges for residential customers would increase under the JP to \$15.38 for heating customers on October 1, 2007 and \$15.23 for non-heating customers gradually over the three-year plan. (JP, Appendix D, §4) These increases in the JP are far less than recommended by DPS Staff and the Company in testimony, in recognition of customer impacts, the counterproductive impact of minimum charge increases on the State's energy efficiency goals and the presence of an RDM which serves to decrease the volatility of Company earnings. The relatively small increases are a benefit of the JP that would likely not have been achieved in litigation.

Low-Income Program

Under the JP, Con Edison would continue to implement a low-income program for residential customers receiving benefits under governmental assistance programs. The program includes a rate reduction in the usage-based charges for all eligible residential customers, and a reduction in the minimum charge for residential gas heating customers. Overall, it provides approximately \$5 million of rate reductions over the course of the rate plan. (JP, Appendix D, §5) It would also provide low-income customers a discount of approximately 75% on the service reconnection fee. (JP, §F.10.iii)

The low-income provisions of the JP are a substantial improvement over those in the Company's current rate plan, under which approximately \$1.6 million of rate reductions are provided each year. These provisions are reasonable and would benefit low-income families and individuals who pay a relatively low proportion of their income on energy costs.

CONCLUSION

The Consumer Protection Board, while not a signatory of the Joint Proposal in this proceeding, encourages the Public Service Commission to consider the numerous consumer benefits outlined herein, that would result from this proposal.

Respectfully submitted,

A handwritten signature in cursive script that reads "Mindy Bockstein".

Mindy Bockstein, Chairperson and Executive Director
Douglas W. Elfner, Director of Utility Intervention
John M. Walters, Intervenor Attorney

cc: Active Parties