Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of The Brooklyn Union Gas Company for Gas Service

CASE 93-G-0941; OPINION NO. 94-22

New York Public Service Commission

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October 18, 1994

CORE TERMS: settlement, customer, ratepayer, recommended, staff, reallocation, customer service, issuance, ratemaking, three-year, low-income, inflation, allowance, embedded, sharing, residential, deferred, ending, reply, eliminated, heating, annual, generic, margin, incremental, minimum-use, campaign, marginal, subsidy, reward

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PANEL: [*1]

COMMISSIONERS: Peter Bradford, Chairman; Lisa Rosenblum; Harold A. Jerry, Jr.; William D. Cotter; Raymond J. O'Connor

OPINION: OPINION AND ORDER APPROVING SETTLEMENT WITH MODIFICATIONS

(Issued and Effective October 18, 1994) [*2]

BY THE COMMISSION:

INTRODUCTION

On November 1, 1993, The Brooklyn Union Gas Company (Brooklyn Union or the company) filed tariff amendments designed to increase annual revenues by $ 26.8 million or 2.1% (4.4% on a net-of-gas-cost basis) for the rate year beginning October 1, 1994. n1 The filing also proposed a three-year rate plan, similar to the one under which the company is now operating, with rates in years two and three set on the basis of a formula. The revenue increases projected in the filing for years two and three were $ 24.7 million (1.9%) and $ 25.8 million (1.9%), respectively. n2

n1 The original suspension period was to expire on October 1, 1994, but to facilitate negotiations the company, on April 12, 1994, agreed to extend the suspension date to October 21, 1994.

n2 The total original three-year request was for $ 77.3 million and the total projected increases under the Settlement (discussed infra) are $ 34.1 million.

Public statement hearings, duly noticed, were held during the afternoon and evening of February 7 at the Brooklyn Borough Hall before Administrative Law Judge Jeffrey E. Stockholm. One member of the public and representatives of the [*3] New York City Weatherization Coalition, Inc. (Coalition) and the Cornell University Cooperative Extension (Cooperative Extension) made statements. n1 A second statement from a member of the public was accepted during the evidentiary hearings n2 and five letters were received from ratepayers. The public's statements and letters opposed the increase on general grounds, objected to any increase in the minimum charge, and pointed especially to the difficulties any increase would pose for low-income customers. The Coalition and Cooperative Extension representatives also expressed concern for low-income customers and suggested that more vigorous efforts by the company were required especially in weatherization and fiscal management training for such customers. n3

n1 The Cooperative Extension comments were provided by letter and were copied into the record. In addition, representatives from the Consumer Protection Board (CPB) and the Department of Law (DOL) also appeared and had prepared statements of position copied into the record. The latter parties actively participated in the case and their positions are detailed, infra.

n2 Tr. 488.

n3 These concerns were ultimately addressed by the elimination of any rate increase for the rate year, the establishment of a low-income discount rate, the creation of a low-income program for payment troubled heating customers including financial management training, and the adoption of a two-year pilot demand side management (DSM) program. [*4]

The active parties in the proceeding were the company, staff of the Department of Public Service (staff), the State Consumer Protection Board (CPB), the Department of Law (DOL), the Public Utility Law Project (PULP), the New York Oil Heating Association, Inc., the City of New York Department of Telecommunications and Energy (New York City), the State Department of Economic Development (DED), and the Coalition. Evidentiary hearings before Judge Stockholm were held on February 9-11, 1994 to cross-examine the company's filing and on April 12, 1994 to incorporate in the record the direct evidentiary filings of staff, CPB, PULP, and New York City.

On March 15, 1994 and in compliance with the Commission's Settlement Procedures and Guidelines, n1 all interested parties were notified of the commencement of settlement negotiations. Six settlement conferences were convened, which resulted in a three-year rate agreement among the company, staff, and PULP on all but one issue in the case. The remaining issue concerning the payment of royalties by Brooklyn Union subsidiaries could not be completely resolved, and the parties requested the assistance of the Administrative Law Judge. Summary [*5] arguments on this issue were submitted seeking the Judge's preliminary analysis and recommendation. That analysis was presented to the parties orally on May 12, 1994, and, following further negotiations, an agreement on this remaining issue was reached. The final Settlement n2 resolving all issues in the proposed three-year rate plan was executed May 20, 1994, by staff, Brooklyn Union, PULP, DED, and New York City. n3

n1 Cases 90-M-0255 et al., Settlement Procedures and Guidelines, Opinion No. 92-2 (issued March 24, 1992).

n2 Exhibit 135.

n3 By correspondence dated June 9, 1994, staff noted that the issues raised in Case 93-G-1087, Petition of The Brooklyn Union Gas Company to Allocate Tax Refund Proceeds, were also resolved in the Settlement. Accordingly, the company voluntarily withdrew its Case 93-G-1087 petition under cover letter dated June 15, 1994.

Comments in support of the Settlement were filed by the company, staff, and PULP, and comments opposing were received from CPB. DOL filed comments recommending modifications. The company and staff filed reply comments. A legislative-type hearing n4 was held on June 7 where the parties were questioned in detail [*6] regarding their comments and the terms of the Settlement. n1 Following the hearing, CPB was afforded the opportunity to file additional written arguments responding to a number of technical issues raised in the company and staff reply comments; staff was requested to submit a document discussed but not readily available at the conference; and the company was asked to file additional information regarding the likely total bill impact of the Settlement. Based on the above, the parties agreed that briefs to the Judge were not required. The foregoing process resulted in 2,140 pages of transcript and 142 exhibits.

n4 The hearing offered the parties an opportunity to orally argue a number of issues raised by the Judge and to respond to new matters raised in the company and staff reply comments.

n1 Notices of the June 7 hearing, including an invitation for public comments on the Settlement, were published on May 31, 1994, in the Daily News and the Staten Island Advance. No comments were received.

On July 12, 1994, a recommended decision was issued, in which Judge

Stockholm found that the Settlement was in the public interest and should be accepted. The Judge concluded that the [*7] Settlement contained numerous provisions, (e.g., staff's aggressive cost control factor, the limit on base rate increases, the low-income discount rate, royalty payments, and an equity sharing mechanism), that would not likely be fully obtainable through litigation. Further, the Judge found that these provisions more than offset the allegedly "pro-company terms" and provisions "contrary to public policy" challenged by CPB and DOL. He therefore concluded that the Settlement fairly balanced the interests of ratepayers, stockholders, and the State. n2 Finally, the Judge recommended one modification to the Settlement that would limit the maximum total bill impact on minimum-use residential customers to 9% n3 in each of years two and three.

n2 This finding has been established as one of the basic tests to determine the acceptability of any settlement (Case 90-M-0255, et al., Settlement Procedures and Guidelines, Opinion No. 92-2).

n3 In year one there will be no change in base rates. Overall base rate changes in each of years two and three are currently estimated to be 1.2%. Actual base rate changes will be calculated according to the Settlement's terms.

CPB and DOL [*8] excepted to the recommended decision and opposed the adoption of the Settlement for the same reasons set forth in their comments to the Judge, and the company excepted to the recommended 9% bill impact limitations. Briefs replying to the exceptions were received from staff, Brooklyn Union, and CPB. n1

n1 In a letter dated August 8, PULP states its belief that a reply to exceptions is unnecessary because all the issues raised on exceptions were "adequately disposed of in the RD." It continues to support the adoption of the Settlement.

A summary of the Settlement will be followed by an analysis of the exceptions taken by CPB, DOL, and the company.

THE SETTLEMENT

The Settlement proposes a three-year rate plan with no increase in base rates in year one. n2 Base rate increases in years two and three would be limited to the rate of inflation n3 and would be calculated according to the formula set forth in the Settlement. Additional base rate increases for service classifications (S.C.) 1A n4 and 1B n5 would occur in years two and three to accomplish a revenue reallocation to the significantly deficient S.C. No. 1A. n6 Further, S.C. Nos. 1A, 1B, 2, 3, 4A and 4B would also be [*9] subject to additional base rate increases to recover the revenue deficiency caused by a reduced rate for low-income customers, explained below. Finally, customers could see their bills increase due to increased gas costs reflected in the Gas Adjustment Clause (GAC). The following chart compares the company's original request for base rate increases over the three-year period with the current estimates of the results under the Settlement, excluding gas costs:

	1995 n1	1996	1997
Original Request	$ 26.8M (2.1%)	$ 24.7M (1.8%)	$ 25.8M (1.8%)
Per Settlement			
Overall	0	$ 16.9M (1.2%)	$ 17.2M (1.2%)
		Bimonthly Typical Impact	
Cooking Only n2 (SC 1A)	0	$ 1.75 (6.1%)	$ 1.83 (6.6%)
Water Heating (SC 1A)	0	$ 2.75 (3.3%)	$ 2.84 (3.3%)
Space Heating (SC 1B)	0	$ 5.06 (2.1%)	$ 5.36 (2.2%)

n1 Rate year October 1 - September 30.

n2 Due to a reallocation of revenue responsibility in years two and three, these customers would see the highest percentage increases excluding gas costs.

n2 The final, updated revenue requirement for year one exceeds projected revenues by $ 1.316 million. Under the terms of the Settlement the company will recover this shortfall by amortizing a like amount of deferred credits.

n3 Any year-two and year-three revenue requirement increases in excess of inflation would be deferred to year three and the first rate year after the multi-year plan, respectively (Exhibit 135, p. 51).

n4 Class 1A ratepayers are residential gas cooking and/or hot water heating customers.

n5 Class 1B ratepayers are residential gas space heating customers.

n6 S.C. No. 1B minimum use charges would be raised in conjunction with the revenue reallocation to maintain the existing relationship between S.C. No. 1A and S.C. No. 1B minimum charges. [*10]

To ameliorate the impact of these increases on low-income ratepayers, the Settlement provides for a low-income reduced minimum charge for S.C. No. 1A ($ 15 bimonthly) and S.C. No. 1B ($ 20 bimonthly) n1 and includes an agreement to develop a low-income plan for payment-troubled heating customers for years two and three. The use of deferred credits n2 will also ameliorate the overall rate increases set forth above. The rate increases may be further tempered by the sharing provisions for higher-than-estimated margins from temperature controlled customers, off-system sales, and non-traditional transactions. n1 Finally, applying the ratepayers' share of excess earnings to amortize deferred debits (or accrue deferred credits) will help keep future rate increases lower than they otherwise would be following the end of this multi-year plan. On the other hand, bills for typical residential customers could be higher than those set forth above if inflation or gas costs exceed current forecasts or if sales decline.

n1 These charges will remain fixed over the three-year term of the plan.

n2 Exhibit 135, pp. 46-48.

n1 Non-traditional transactions include but are not limited to pipeline capacity release sales, other capacity brokering, rebundled off-system sales and other sales opportunities that may arise as a result of the evolving industry. [*11]

The first year's revenue requirement is based on an 11.0% return on equity, which includes 20 basis points to recover the company's costs of issuing equity in 1993. The second-and third-year allowed equity returns will be calculated by adjusting the previous year's return n2 for one-half of the change in 30-year treasury securities. n3

n2 The first year's base return of 10.8% will be the starting point for year two.

n3 This approach is very similar to the updating methodology recommended by the co-facilitators in the Generic Financing Proceeding (Case 91-M-0509, Financial Regulatory Policies for New York State Utilities, Recommended Decision [issued July 19, 1994]).

Other key elements of the Settlement include provisions that:

* establish a stringent cost control factor (i.e. productivity-type adjustment) for each year of the plan;

* authorize a natural gas vehicle (NGV) program that shares risks between the company and its customers;

* require a study of alternative methods to supply legal services to the company;

* provide $ 4.3 million of subsidiary royalty payments over the three-year plan; and

* allow the company to segment further its temperature controlled [*12] (TC) market to meet increasing competition, including a provision allowing a bulk sales rate for customers taking service at a number of different locations. n1

n1 The company's Brief on Exceptions (pp. 4-6) discusses the need to clarify the operation of the further segmentation of the TC market. According to staff, this clarification was discussed with the company, PULP, DED, and New York City and is fully acceptable.

Finally, the Settlement contains a number of incentive provisions designed to:

* encourage the company to maximize its earnings; n2

* reward the company if it improves its service n3 (the maximum reward is 25 basis points per year) and penalize it if it does not (the maximum penalty is 30 basis points per year); n4

* provide encouragement to continually reduce the levels of lost and unaccounted for gas; n5

* maximize sales and protect the ratepayers from uneconomic sales promotion expense; n1

* increase the margins from temperature controlled customers, off-system transactions, and capacity releases; n2 and

* continue the company's efforts to minimize property taxes.

n2 For each year of the Settlement, ratepayers will receive 25% of the first 100 basis points of earnings above the allowed return and 50% of any amounts above that; the company will retain the remainder.

n3 To earn the rewards, the company will have to improve its current level of customer service, which has improved during the term of the current three-year program (Tr. 2076-2077).

n4 The customer service incentive measures the company's performance in at least 98% of the company's 26 million annual customer interactions. According to staff, it is the most comprehensive such mechanism proposed to-date.

n5 This expense is set at the lower of the most recent 36-month average or the 36-month average for the period ending one year prior. Therefore, the company's expense allowance for this item can only decrease or remain at the year-one level. If the company's performance declines, the increased expenses will directly reduce the company's profits.

n1 Sales promotion expense levels were set based on the benefits from the expected sales level exceeding the expense. If the actual sales level is lower or higher, the allowance will be reduced or increased to maintain the same favorable cost-to-benefit ratio.

n2 The company receives 15% of TC sales margins above those included in the revenue requirement and 20% of sales margins from off-system sales and transportation service and capacity release credits above $ 1.8 million. [*13]

The Settlement also provides that the company will either implement a performance-based gas adjustment clause (GAC) or annually provide evidence that it procures and dispatches its gas supply in a " . . . best cost reliable manner." n3 n3 Exhibit 135, p. 45. The operation of GAC as well as a number of other issues raised by the implementation of FERC Order 636 are under investigation in Case 93-G-0932, and the company acknowledged that the agreement approved here would be subject to amendment based on the outcome of that investigation.

ISSUES RAISED ON EXCEPTIONS

On exceptions CPB argues that the Settlement should be rejected (or at least amended) because the rate impact on the company's 700,000 cooking-only customers of a revenue reallocation is unjustified, the 11% return on equity is excessive, the NGV provisions are inconsistent with the findings of past Commission orders, and the incentive provisions to reward the company for "statutory obligations" are unwarranted. It acknowledges that a number of individual Settlement provisions are "worthwhile," but disagrees with the Judge's finding that they justify the overall Settlement. According to CPB, "most of the [*14] favorable individual provisions would have been attained through litigation." n1 CPB's brief does not address the overall balance of the Settlement provisions nor does it explain why it disagrees with the balancing performed in the recommended decision.

n1 CPB's Brief on Exceptions, p. 4 (emphasis supplied).

DOL excepts to the recommended decision's conclusions that it is reasonable for the minimum service charge to S.C. No. 1A to increase by as much as 18% over three years, n2 that the service quality incentive is reasonable, and that the indirect costs of administering charitable donation campaigns are not prohibited by the Cahill n3 case. Like CPB, DOL does not discuss the overall balance of the ratepayer, stockholder, and State interests as reflected in the Settlement, and it focuses instead on individual provisions it would prefer to see eliminated.

n2 DOL's Brief on Exceptions, p. 2. The Judge's finding was based on total bill impacts, not on increases in the minimum charge, and set maximum bill increases at 9% in either of years two and three, including gas cost increases.

n3 Cahill v. Public Service Commission, 76 N.Y.2d 102 (1990), cert. den., 498 U.S. (1990). [*15]

Brooklyn Union excepts to the recommendation that a year-two and year-three cap of 9% be imposed on bill increases for S.C. No. 1A minimum-use customers. The company notes that some perverse results could be obtained from the operation of the cap as defined and proposes a redefined cap if any cap at all is deemed necessary.

Reply briefs on exceptions addressing the Brooklyn Union, CPB, and DOL arguments have been received from the company, staff, and CPB.

Overall Balance of the Settlement

Neither CPB nor DOL except to the Judge's finding that the Settlement reasonably balances the interests of the ratepayers, company stockholders, and the State. CPB impliedly argues that the Settlement is unbalanced because the worthwhile provisions (i.e., those favoring the ratepayers) could have been obtained in litigation while the "objectionable" provisions would not be accepted were the issues litigated. But while the recommended decision identified a number of provisions protecting the ratepayers' interests which would not likely be fully obtained in a litigated case, n1 CPB presents no arguments criticizing those findings. It offers only a conclusory statement that its balancing [*16] would reach a different result. The remaining exceptions raised by CPB, DOL, and the company are directed at individual provisions of the Settlement and are discussed below.

n1 R.D., pp. 75-79.

While no party provides an overall analysis contrary to the Judge's conclusion that the Settlement is fairly balanced, one provision in the Settlement is troubling. Base rate increases during the last two years of the agreement are limited to inflation, but, should the mechanism for calculating the year-two or year-three revenue requirement produce an increase above inflation, the company is permitted to defer the amount above inflation into the third year and/or the first year following the end of the rate plan. This deferral mechanism not only increases future revenue requirements; it might also reduce the company's incentive to control costs by allowing it to defer revenue requirements in excess of inflation for future recovery.

In light of these concerns we are approving the Settlement's deferral provision only because it appears unlikely that the revenue requirement would equal or exceed inflation. n1 In general, this type of provision, allowing revenue requirements to escalate [*17] beyond the term of the agreement without limitation, should be avoided. Rate stability and predictability both during the term of any multi-year plan and in the years following it are in everyone's interest, and, to the extent they can reasonably be avoided, open-ended deferrals should not be included in settlement plans.

n1 Because the mechanism for calculating revenue requirement limits the increase in more than 80% of the company's operation and maintenance expenses at 1.3% below inflation, an increase in the overall revenue requirement above inflation is not anticipated.

Revenue Reallocation

The most controversial provision in the Settlement is the revenue reallocation. Before the Judge, CPB challenged the increased allocation of revenue responsibility to S.C. No. 1A on the grounds that the increase was not cost-based and that, given the other provisions of the Settlement, it could increase residential customers' bills in an unacceptable manner. DOL raised similar concerns.

The Judge found that the reallocation was justified by the embedded and marginal cost studies in the record n2 and that a number of provisions in the Settlement tended to mitigate its impact. [*18] n3 Assuming the relative rate stability envisioned by the signatory parties, the recommended decision concluded that the revenue reallocation was reasonable.

n2 The return generated by S.C. No. 1A according to the embedded study was between 0.07% (company) and 1.0% (staff), and the marginal cost study showed that the class was not covering its own marginal costs.

n3 These mitigation factors include the use of deferred credits (0.8% to 0.9% per the company's Brief on Exceptions, p. 13, n. 29), sharing of temperature controlled (TC) sales above revenue requirement estimates ($ 3.0 million or 0.3% in the second and third years per the company's letter of June 14, 1994, pp. 2-3), the low-income rate, the low income payment-troubled heating customers program, and sharing of margins on off-system and non-traditional sales.

The Judge went on to note, however, that the assumed rate stability in turn depends on the accuracy of the assumptions regarding general inflation, the future cost of gas, and the gas sales projections. Should any or all of these estimates prove inaccurate, the impact of the agreement on the S.C. No. 1A customers could be unacceptable. Accordingly, the Judge [*19] recommended that the revenue allocation be approved only to the extent that S.C. No. 1A minimum-use customers' bill increases in years two and three not exceed 9%. If the total impact of all agreement provisions, including estimated increases in the cost of gas, results in such bills increasing by more than 9%, the reallocation should be reduced to the extent needed to keep the increase from exceeding 9%.

On exceptions, CPB points to the maximum permitted 9% bill increase for minimum-use S.C. No. 1A customers and argues that an increase three times inflation is patently unreasonable. DOL agrees that the potential maximum impact is unacceptable.

CPB also renews its challenge to the cost studies. It claims that the recommended decision failed to address its argument "that the division of residential ratepayers into heating and non-heating sub-classes is arbitrary and inconsistent with the treatment of other customer classes." n1 This approach, it claims, preordains "excessive charges for the most inelastic customers." n2 It also argues that when "a more reasonable method is used to allocate costs," i.e., the **RSUM** method, the combined residential return (i.e., for S.C. Nos. [*20] 1A and 1B) exceeds the company average return. CPB alleges that its **RSUM** method was rejected by the Judge without analysis and on the incorrect assumptions that the **RSUM** method has not been accepted by the Commission while the company's embedded studies have been. Further, CPB contends, the alleged errors in the company's embedded study were ignored by the Judge "merely because we [CPB] did not quantify the effect of the deficiencies we described." n1

n1 CPB's Brief on Exceptions, p. 7.

n2 Ibid., p. 8.

n1 Ibid., p. 9 (citation omitted).

CPB's challenge to the cost studies are rejected. First, as the company notes in its reply to exceptions, the only cost study in the record that supports CPB's position is one created by combining the residential heating and non-heating classes. While CPB claims that it is arbitrary to view these classes separately, staff and the company are correct that the division of the classes was approved in Opinion No. 90-29, n2 and CPB did not produce a record here that would justify a change in that precedent.

n2 Case 89-G-1050, The Brooklyn Union Gas Company - Rates, Opinion No. 90-29 (issued October 17, 1990).

CPB argues as [*21] well that it was wrong for the Judge to dismiss its challenge to the accuracy of the embedded cost study n3 simply because it did not quantify the impacts of the errors alleged. However, in its reply to CPB's exceptions, staff notes that the impacts of the errors CPB alleges would have a minimal impact on the embedded return for this class. Therefore, even accepting CPB's corrections, the embedded study still shows the S.C. No. 1A return to be significantly deficient. Furthermore, the type of embedded study provided by the company has been found generally reasonable, if subject to unavoidable judgmental variations, while the **RSUM** method advanced by CPB has not. n4 In sum, CPB's challenge to the cost studies lacks merit.

n3 CPB did not challenge the marginal cost study that, according to the company, shows that the marginal cost to serve the residential non-heating class is $ 149 million above the revenues received from that class.

n4 As the company notes, even the **RSUM** method shows the non-heating class to be deficient as long as it is not combined with the heating class.

The remaining issues are the impact on ratepayers, especially those subject to the revenue reallocation, [*22] and the existence of a "stable" rate atmosphere under which a reallocation would be appropriate. n1 The recommended decision found that increases in customers' bills that included the revenue reallocation and gas costs that rose by an average of more than 6% over the three-year term of the agreement would be unreasonable and would not constitute circumstances that could be characterized as stable. Under those circumstances, the Judge recommended an overall bill increase cap that could reduce or eliminate the revenue reallocation.

n1 We have previously held that to avoid unreasonable rate impacts, reallocations of revenue responsibility should occur, to the degree possible, during a period when rates are otherwise stable.

On exceptions, CPB questions the adequacy of the mitigation measures, noting that the low-income rate would be available only to a small fraction of the company's eligible S.C. No. 1A customers. DOL notes that there are more than 200,000 telephone lifeline customers in the company's service territory who, it assumes, would be eligible for the Brooklyn Union rate. DOL concludes that reaching only 27,000 customers with the low-income rate, as the pilot program [*23] would do, is inadequate.

In its reply to exceptions, staff demonstrates that there is likely very little correspondence between the telephone lifeline customers and the low-income customers eligible for the Brooklyn Union rate. It notes that many telephone lifeline customers live in large apartment buildings where gas costs are included in rent and that not all telephone customers are also Brooklyn Union customers. Staff concludes that the number of S.C. No. 1A customers eligible for the low-income rate could easily be less than 100,000 and that a pilot program covering 27,000 customers will mitigate the rate impact for a substantial portion of the eligible population.

The company, meanwhile, excepts to the Judge's bill cap for S.C. No. 1A customers. It warns that other, higher-gas-use residential customers could receive a bill increase greater than 9% if the cost of gas escalates at a significantly higher rate than now projected. Further, if inflation greatly exceeds current expectations, it is possible that the revenue contribution from the capped, minimum-use S.C. No. 1A customers' rates would actually decline as compared to the uncapped rates of other classes. This could [*24] increase, rather than decrease, the subsidy provided by more competitive services to S.C. No. 1A, a result directly contrary to the intent of the parties.

CPB and DOL raise valid concerns about impacts on ratepayers, but their arguments are based on the assumption that rates will increase by the maximum amount permitted rather than on the best estimates of the actual impact under the Settlement. Similarly, the company is properly concerned about the subsidies provided by the customer classes subject to increasing competitive pressure. But the company's observation that gas prices are volatile demonstrates that a three-year period of customer bill stability (i.e., including GAC charges) cannot be predicted now with certainty. Accordingly, some review of bill impacts during the term of the Agreement needs to be maintained.

The three-year annual average impacts of the Settlement on typical S.C. No. 1A (cooking only), S.C. No. 1A (cooking and water heating), and S.C. No. 1B (heating) customers based on current estimates and exclusive of gas costs, excess sales margin sharing, and the use of deferred credits, come to 4%, 2.2%, and 1.4%, respectively. n1 The total increases [*25] in annual bills in year three of the plan that result from these percentage increases are $ 21.48, $ 33.54, and $ 62.52, respectively. In light of the need to reduce the subsidies being provided to S.C. No. 1A n2 to permit the company to play on a more level field in its competitive markets, and the estimated ratepayer impacts, the revenue reallocation in the Settlement is reasonable.

n1 Brooklyn Union's Reply Comments, Appendix A, p. 1.

n2 According to staff and the company, the proposed revenue reallocation would increase the S.C. No. 1A return to approximately 2.5%.

Also reasonable, however, is the Judge's recommendation to limit the total revenue reallocation in the event that rates (including gas costs) increase for non-heating minimum-use customers by more than 9% for either of the last two years of the plan. In light of the uncertainties associated with forecasting inflation and gas costs over the next three years, such a provision is warranted to help protect the customers most affected by the reallocation if current estimates prove inaccurate. n1 CPB's, DOL's and the company's exceptions are therefore denied, and the Settlement is approved subject to the inclusion [*26] of a mechanism to reduce the revenue reallocation as described above.

n1 If it is not possible to limit the bill impact including estimated gas costs to 9% by reducing the revenue reallocation, then the entire reallocation should be postponed.

Return on Equity

CPB challenged the 11.0% first year return on equity (ROE). n2 It argued that the results of its own ROE calculation (i.e., 10.1%) should be adopted, that the generic ROE method should not be used, and that a recent return granted Niagara Mohawk supports its 10.1% position.

n2 CPB supports the mechanism for determining the year-two and year-three ROE.

The recommended decision noted that a range of returns could be considered reasonable; and, in a settlement, an ROE higher than one that would be found reasonable in a litigated case can be accepted:

But even if the settlement's equity cost allowance is higher than what might be allowed in isolation, it remains reasonable to accept it as an element of an overall settlement. One cannot expect a settlement in which ratepayers get everything and the company gets nothing; some elements of any settlement must be favorable to a utility, or else it would not sign. [*27] n1

n1 Cases 92-E-0108 et al., Niagara Mohawk Power Corporation - Electric, Gas and Street Lighting Rates, Opinion No. 93-3, mimeo p. 25.

The Judge concluded that the 10.8% base equity return n2 for the first year would be acceptable even if it were overstated by 70 basis points, as CPB claimed it was.

n2 CPB separately challenged the 20-basis-point first year allowance for 1993 equity issuance costs. The recommended decision found that the allowance was consistent with Commission precedents and should be permitted.

The Judge also rejected CPB's claim that 10.1% is the most reasonable return. That return, according to the recommended decision, does not allow the company to recover its reasonable test-year equity issuance costs, and is not consistent with recent returns granted by the Commission, updated for increases in interest rates. Finally, he regarded as correct but of little importance CPB's argument that the consensus method from the Generic Financing Proceeding should not be the basis for determining a reasonable return here. Staff did not use that method as the sole basis to justify the equity return, and the recommended decision did not rely on it in approving [*28] the Settlement.

On exceptions, CPB acknowledges a zone of reasonableness around any ROE proposal but does not believe that the range extends for 90 basis points above its 10.1% recommendation. n3 It also challenges the 20-basis-point rate year allowance for a past equity issuance, citing a 1990 opinion n4 that allegedly refused to provide such an allowance. Finally, CPB claims that the recommended decision erred in concluding that it ignored the recent rise in interest rates. CPB notes that it updated its calculations for the reduction in stock prices, but because of the offsetting impact of the SV factor, its calculation of the appropriate ROE remained the same.

n3 The base equity return for year one is actually 70 basis points above CPB's position.

n4 Cases 89-E-166 et al., Rochester Gas & Electric Corporation - Electric, Street Lighting, and Gas Rates, Opinion No. 90-17 (issued July 6, 1990).

CPB's exceptions on ROE add little to the arguments it made to the Judge, and the continuing rise in interest rates since its May 27 Comments Opposing Settlement lends further support for the conclusion that the CPB's recommended 10.1% return would not be considered reasonable [*29] if litigated in isolation. CPB's limited past success in litigating ROE belies its implicit claim here that its position would prevail on the merits, and, as the company notes, the recent National Fuel Gas decision approved a 10.7% return on equity while rejecting CPB's proposed 10.1%. n1 Even if that were not the case, the Judge's conclusion that the 10.8% return is acceptable in the context of a multi-year Settlement, would remain reasonable. CPB's exception to the first year base equity return is denied.

n1 Case 93-G-0756, National Fuel Gas Distribution Corporation -Rates, Opinion No. 94-16 (issued July 19, 1994).

Further, CPB's reliance on Opinion No. 90-17 to support its challenge to the 20-basis-point allowance for the company's 1993 equity issuance costs is misplaced. In that case, a single year rate proceeding was decided and the general rule was followed that floatation costs will not be provided if there are no planned equity issuances during the rate year. n2 Staff correctly notes that the facts here are significantly different, and the company points to a more recent precedent that allowed the recovery of floatation costs on facts analogous to those presented [*30] here. n3 Staff has consistently stated the facts in this case as follows:

The issuance expense allowance of 20 basis points in the first year of the agreement is designed to recognize costs that the company incurred in its 1993 equity issuance. Though this issuance was forecast in the last rate case, the issuance expenses were not allowed at that time because the forecasted issuance was too far in the future to have full confidence that it would be executed. These expenses were prudently incurred and the company should be allowed their recovery. n1

n2 Cases 89-E-166 et al., supra, Opinion No. 90-17, mimeo p. 16.

n3 Case 91-E-0863 et al., New York State Electric & Gas Corporation - Electric, Gas, and Street Lighting Rates, Opinion No. 92-21 (issued July 22, 1992).

n1 Exhibit 142, p. 6, n. 1. The uncertainty of the issuance in the last case was due to the fact that the issuance was scheduled for the third year of a three-year rate agreement.

CPB has not discussed these facts or the potential impact that adopting its position could have under similar circumstances in the future. If these costs were disallowed, a utility would have an incentive to tie its securities [*31] issuances to the ratemaking cycle rather than to the most favorable market conditions. Avoiding this incentive is the reason New York State Electric & Gas Corporation was allowed to recover issuance costs incurred before the beginning of its rate year. n2 CPB did not mention this more recent and appropriate precedent, and its exception to the issuance cost allowance is denied.

n2 Cases 91-E-0983 et al., supra, Opinion No. 92-21, mimeo p. 34.

Natural Gas Vehicle Program

CPB challenged the natural gas vehicle (NGV) provisions of the Settlement. It argued that none of the prerequisites to establishing such a program, as set forth in Opinion No. 93-24, n3 had been met and that the 85% ratepayer/15% company sharing of net program costs should be disallowed. n4

n3 Case 92-M-0451, Development of Natural Gas and Electric Vehicle Industries in New York, Opinion No. 93-24 (issued December 24, 1993).

n4 The recommended decision (p. 62) mistakenly reverses the sharing percentages.

The recommended decision found that CPB was wrong on the facts, and compared the Commission's requirements to the Settlement provisions in the following chart.

Prerequisite Condition	Settlement Provision
1. An NGV return equal to the system average in less than 10 years and a 10-year average return equal to the system average.	1. NGV 10-year average return is 29.07% and the annual NGV return equals system average in well under 10 years.
2. Small upfront subsidy compared to present value of the net income.	2. Present value of the net income is $ 5.6 million; total ratepayer subsidy over 3-year plan is limited to approximately $ 1.2 million.
3. NGV rates must recover incremental costs and provide a reasonable contribution, must account for competitive gasoline prices, and must include some rate flexibility.	3. NGV rates cover incremental costs, begin providing contribution in year three, are based on projected gasoline prices, and include flexibility.
4. Program must share costs and profits between ratepayers and shareholders or demonstrate why it is not necessary.	4. 85% of the costs and profits will be borne by ratepayers and 15% by shareholders.
5. Proposal must justify not capping revenue shortfalls at rate case estimates.	5. Shortfalls are capped at rate case estimates.
6. Program must be subject to review at the end of five years.	6. Program will be reviewed annually.

[*32]

The recommended decision concluded that the Settlement meets or exceeds all of the requirements of Opinion No. 93-24.

CPB also opposed the NGV provision because it claimed that the cost studies and ten-year projections were highly speculative. The Judge found that CPB was correct, but recommended that the program nevertheless be approved. He observed, first, that the annual review of the progress of the program ensured that there would be no long-term commitment to these projections. He also noted that while the forecasting risks are considerable, so are the potential rewards, and, given limited ratepayer exposure, the investment was reasonable.

On exceptions, CPB repeats its claim that the Settlement's NGV program does not comport with the Commission's requirements. It points to a 1992 rejection of a Brooklyn Union petition for rehearing, in which the Commission said that the NGV market risk should not be placed on firm customers, n1 and to excerpts from the opinion in the generic low emission vehicle proceeding n2 suggesting that firm customer subsidies to the NGV market should not occur unless there are substantial benefits to firm ratepayers that could not otherwise be [*33] obtained. CPB repeats its arguments that the company's cost studies are overly optimistic and that the potential benefits to ratepayers are therefore illusory. Further, it claims that the company's incremental studies are of little use, for they consider only gas costs, and that an embedded study should have been used. In any event, CPB claims, the company has failed to establish that these benefits could not be obtained either through the normal operation of the market or by the provision of subsidies solely by stockholders.

n1 Case 90-G-0981, The Brooklyn Union Gas Company - Rates, Opinion No. 91-21(A) (issued May 4, 1992).

n2 Case 92-M-0451, supra, Opinion No. 93-24.

In reply, staff and the company claim that CPB is attempting to relitigate the generic NGV proceeding, renewing here the arguments it raised there. Contrary to CPB's claim, alleges staff, the generic opinion established standards that would have to be met for an above-the-line NGV program to be approved. The company, citing Dr. Alfred E. Kahn's treatise The Economics of Regulation, asserts that the only appropriate way to assess the advisability of a new investment is with a marginal cost [*34] study, not an embedded study as CPB maintains. The company also refutes CPB's claim that it used only gas costs in its study, pointing to its Exhibit 19, which reflects incremental taxes, direct and indirect operating expenses, and depreciation. Both staff and the company conclude that CPB raises no new arguments on exceptions and that its position should be rejected.

Analysis of this issue should begin with the opinion relied on by CPB, which finds that a ratepayer subsidy for an NGV program imposes, in effect, a regressive surcharge on an essential commodity. n1 Were this the sole controlling pronouncement on the subject, the NGV provision of the Settlement would have to be rejected. However, in rejecting the NGV proposal, we added:

On the basis of developments subsequent to issuance of Opinion No. 92-2, such as the City's adoption of tax abatements, the State's adoption of California's low emission vehicle standards, and the recommendations concerning NGVs in the [1991] New York State Energy Plan, a generic proceeding to consider various NGV issues will soon be instituted. n2

n1 Case 90-G-0981, supra, Opinion No. 91-21(A).

n2 Ibid., p. 14 (footnote omitted). [*35]

Thus, we recognized that some change in the Opinion No. 91-21(A) approach to NGV development might be warranted on the basis of new developments.

Opinion No. 93-24 in the generic NGV proceeding establishes a comprehensive framework for NGV development that supersedes the Opinion No. 91-21(A) approach. Contrary to CPB's claim, we said that "[i]t may be reasonable, for example, to allow a utility to invest in an NGV infrastructure and include it in rate base under certain conditions." n3 The opinion proceeded to list five specific conditions that would have to be met before a program could be considered acceptable. CPB's challenges notwithstanding, n1 all five conditions have been met or exceeded, and an annual n2 review of the program has been included.

n3 Case 92-M-0451, supra, Opinion No. 93-24, p. 21.

n1 CPB challenges satisfaction of the first three conditions (it concedes on exceptions that the last two have been met) on the basis that an embedded cost study should have been performed. The company appears to be correct, however, that the appropriate analytical approach is a marginal one.

n2 Opinion No. 93-24 requires a review of the program after five years in which ". . . the utility will be required to demonstrate that its original projections remain valid, and, if not, why the investment should not be removed from rate base." (Case 92-M-0451, supra, Opinion No. 93-24, mimeo p. 22.) The Settlement, by incorporating an annual review, increases the level of protection provided to the ratepayers over that mandated in the NGV proceeding. [*36]

While the record supports a finding that all the conditions have been met, Opinion No. 93-24 also states that proposed programs will remain subject to case-by-case review. This suggests that a program may be unacceptable even if it meets all of the specified standards. The more general concerns about such programs were described as follows:

Moreover, we are concerned about subsidies for programs to reduce vehicular emissions from customers who cook or heat with natural gas, rather than from gasoline taxes or other transportation-related revenue sources, or from appropriate property or sales tax abatements. n3 n3 Case 90-G-0981, supra, Opinion No. 91-21, mimeo pp. 9-10.

These concerns [i.e., those in the previous quote] have not abated nor has our conviction that the ratemaking process should not be used as a means to confer commercial advantages unless there are substantial benefits that cannot be otherwise obtained. n4

n4 Case 92-M-0451, supra, Opinion No. 93-24, mimeo p. 19.

The generic NGV opinion concluded with the following:

Consistent with the basic conclusion that non-ratemaking societal benefits should be pursued through approaches other than the [*37] ratemaking process, we will consider lending support to such non-ratemaking incentives to the development of the NGV/EV market as are brought to our attention. n1

n1 Ibid., pp. 23-24.

In addition to the above, the draft 1994 State Energy Plan finds that the use of alternate fuels will reduce the near-total reliance of the transportation sector on petroleum products and will help to meet air pollutant emission targets. It also finds that the development of an alternative fuels refueling infrastructure is necessary if the use of alternate fuel vehicles is to flourish and that the development of that infrastructure will promote the retention and creation of jobs in New York.

Any conclusion to be drawn from all of the foregoing must be judgmental. The uncertain benefits of the NGV provision include potentially significant, non-ratemaking societal (e.g., environmental) benefits as well as potentially significant ratemaking benefits (i.e., NGV market contributions to fixed costs). And the uncertainty of the benefits, though of concern, appears to be balanced by the provisions which require an annual review of the long-term forecasts, limit ratepayer exposure during [*38] the term of the three-year plan to no more than $ 2.2 million (less than 0.1% of total revenues), place the risk of forecasting accuracy on the stockholders, and establish a profit and loss sharing mechanism. Without these risk mitigating provisions, it might well be found that ratepayers should not be subjected to such a speculative investment. But the clear definition of and limitation on ratepayer risks fundamentally changes the cost benefit analysis. The maximum rate impacts have been set at a very low level, while the potential societal and ratemaking benefits are large. This changes the investment from one too speculative to be borne by ratepayers to one that offers a reasonable balance of risks and benefits -- at least when considered in the context of an overall settlement. CPB's exception is denied.

Incentive Provisions

CPB and DOL next challenged the incentive provisions in the Settlement. n1 They argued that incentives should not be provided to encourage utility performance where the utility is already required to provide that performance, and that there is no evidence that past incentives have been cost-effective.

n1 DOL's challenge has been limited to the incentives provided to improve customer service. CPB's challenge appears limited to the "five" incentives contained in Section VI.B.2. of the Settlement (pp. 49-50), although it does not specifically identify them. [*39]

The Judge observed that traditional rate regulation by its nature provides incentives, both useful and perverse. He found that the Settlement's incentives were designed to operate in conjunction with its other ratemaking provisions to maximize the worthwhile incentives and counteract any perverse ones. The recommended decision found that the Settlement's incentives were preferable to the unadjusted inherent incentives provided by the traditional regulation that CPB and DOL appeared to prefer.

Nevertheless, the recommended decision agreed with CPB's concern, that the cost-effectiveness of ratemaking incentives have never been systematically examined. Noting that a staff investigation of this issue had been recently begun, the recommended decision concluded that this issue would be addressed in due course. The record in this case, according to the Judge, justified the adoption of the incentives on a qualitative and theoretical basis. And the Judge found no evidence that ratepayers would not benefit from these incentive provisions.

CPB excepts to the recommended decision's approval of five specific incentive mechanisms n1 and DOL excepts to the customer service incentive. CPB [*40] argues that the incentives are inconsistent with sound ratemaking principles and will impose unnecessary burdens on ratepayers. The burdens are unnecessary, according to CPB, because additional rewards should not be provided for what the company is already required to do under the existing regulatory compact. DOL takes a similar position limited to the customer service incentive, arguing that the ROE allowance under traditional ratemaking provides all the incentive necessary for customer service efforts. n2 DOL further argues that the customer service incentive should not be approved until a systematic justification for it has been established, and it notes the Judge's finding that such a justification does not yet exist.

n1 It appears that the incentive mechanisms opposed by CPB are those addressing lost and unaccounted for gas, customer service, sales promotion, margin sharing on TC, off system and capacity release sales, and property tax expense. Other than the customer service incentive, CPB does not specifically identify the incentives it opposes.

n2 DOL also claims that the Judge concluded ". . . that customers may reasonably expect to receive only minimal service if a utility is allowed only the traditional level of ROE." (DOL's Brief on Exceptions, p. 8.) The Judge actually concluded that there is no incentive under traditional ratemaking to provide customer service at any level higher than "safe and adequate." [*41]

CPB warns that discrete incentives will cause utilities to shift resources into the areas where the incentives are available, thereby requiring further incentives to cover the areas that will be neglected. It claims that, in practice, the utilities have been able to "game" the incentives to ensure consistent rewards and to avoid any penalties. The sharing of earnings plus the increasingly competitive marketplace will provide all the incentive needed to cut costs and improve service, according to CPB.

In reply, the company and staff note that the arguments raised by CPB and DOL on exceptions are virtually identical to those made to the Judge, and staff notes that CPB's arguments violate the Commission's rules. n1 Staff is correct. With the exception of a few cosmetic word changes, CPB's brief on exceptions from page 20, line 4 through the end of page 21 is identical to the comments provided in Exhibit 139, p. 14, line 11 to the end of page 16. Further, none of these passages in CPB's brief on exceptions contains any explanation of why the recommended decision was wrong in rejecting these arguments in the first instance. A simple repetition of CPB's arguments to the Judge, [*42] submitted in the guise of exceptions will not assist in the resolution of any issue.

n1 Staff cites to 16 NYCRR, Sec. 4.10(c)(2)(iv) which provides: "The argumentation [in a brief on exceptions] should not simply reiterate the party's position, but should explain why the party believes the recommended decision to be in error."

As for the substance of the issue, CPB and DOL continue to overlook a number of important considerations. First, a systematic review of the use of prior incentives has not been completed. Accordingly, there is no evidentiary basis for CPB's claim that the mechanisms have been successfully "gamed" by the utilities or that they have been biased in the utilities' favor. (Indeed, CPB on exceptions has dropped its claim that the mechanisms have never resulted in a penalty.) Similarly, there is no evidence to support CPB's prediction that the use of discrete incentives will force the creation of further such incentives, at least where the ratemaking package contains both a broad, earnings-based incentive and a comprehensive service incentive.

Second, CPB and DOL do not discuss the impact on the company's incentives that would result from the elimination [*43] of the customer service provision. n1 With no discrete incentive and detailed service goals, the company would be legally obligated to provide "safe and adequate" service pursuant to the so-called regulatory compact. A fairly broad range of service quality levels might meet this very general standard, and, considering the earnings-based incentive n2 that would remain, the company could prefer to maximize its profits at the expense of its service quality. Eliminating the service quality incentive from the Settlement, without making other significant changes, would not be in the public interest.

n1 Competition should provide incentives to improve customer service, as CPB correctly notes, but that incentive would operate only in the competitive arena and would not influence service to the company's customers in non-competitive markets.

n2 Neither CPB nor DOL object to this incentive mechanism.

Third, CPB does not discuss the merits of the remaining four incentives it opposes nor does it examine the incentives the company would have if those provisions were eliminated from the Settlement. The Judge noted that the lost-and-unaccounted-for gas incentive is by its nature a regulatory [*44] lag mechanism. Regulatory lag is the most traditional of ratemaking incentives, and CPB does not explain why it is inappropriate. The recommended decision concluded that the sales promotion expense incentive ensures that ratepayers will only pay for such expenses to the extent that they produce benefits in excess of the expense. If this mechanism were eliminated and traditional ratemaking were followed, ratepayers would contribute to the expense whether or not the promotional efforts turned out to be cost beneficial. Further, the margin sharing incentives ensure that ratepayers will receive a portion of the benefits from certain categories of sales regardless of the company's level of earnings. If the mechanism were eliminated, ratepayers would benefit from these sales only if the company were otherwise earning more than its allowed return on equity. Finally, the property tax incentive allows the company to keep a portion of any property tax savings it achieves by challenging its tax assessments. If it were eliminated, the utility would have no incentive to bring these challenges. Further, this incentive mechanism has been used by the Commission for so many years one might [*45] view it as a portion of the "traditional" regulatory framework that CPB explicitly prefers. CPB does not explain how any of these specific mechanisms would harm the ratepayers.

All the specified incentives in the Settlement appear to provide benefits to the ratepayers that would be lost if they were excised. Further, the incentives appear to be designed to produce benefits that exceed their cost. CPB's consistent opposition n1 to incentives is based on a selective view of the ratemaking model, and its allegations about the efficiency of previously approved mechanisms lacks any evidentiary support.

n1 CPB's Brief on Exceptions, p, 20. CPB has supported a customer service incentive program very similar in concept to the one proposed here (Case 92-W-0583, Jamaica Water Supply Company - Operation and Management Investigation, Opinion No. 94-6 [issued March 2, 1994].)

DOL's proposal that the customer service incentive be eliminated until the results of staff's systematic study are available is not unreasonable in itself. However, Brooklyn Union has operated under such a mechanism for the past three years, and, at least in some areas, its service has improved. Further, [*46] staff's experience suggests that customer service incentives do work, notwithstanding the absence of a systematic study. Under these circumstances, continuing a customer service incentive, making it more comprehensive (as the Settlement has done), and avoiding any unintended incentive for the company to maximize its profits at the expense of customer service (the possible effect of ending the customers service incentive) is the course most likely to best serve the public interest. CPB's and DOL's exceptions are denied.

Support for Charitable Contributions

DOL challenged the $ 193,000 revenue requirement allowance for indirect charitable contribution costs, contending that the ruling of the Administrative Law Judges in the New York Telephone proceeding requires that such costs be disallowed. There, the Judges stated:

If charitable contributions by utilities may not be charged to ratepayers, it follows logically that additional expenses incurred by utilities for the purpose of making those contributions should similarly be borne by shareholders. n1

n1 Cases 92-C-0665 et al., Investigation of Performance-Based Incentive Plans for New York Telephone Company Opinion No. 94-2 (issued January 28, 1994), Recommended Decision (issued December 2, 1993), mimeo p. 119 (emphasis added). [*47]

The recommended decision in this case rejected the DOL position as follows:

Accepting first the precedent of the [New York Telephone] ruling as made, the DOL position must fail. There is no evidence in this case that the company's administration of its charitable giving programs creates additional (i.e., incremental) costs. The evidence does contain an accounting allocation of employee salaries, but there is no evidence to suggest that the company's payroll costs would be any lower if the employees did not spend any time administering the campaigns. If there are no incremental costs in the company's payroll (and therefore no such costs in rates), the disallowance proposed by DOL would penalize the company for administering charitable giving programs by failing to include in rates the full cost of providing utility service. Such a disallowance would be contrary to sound public policy.

The Judge also recommended reconsideration of any precedent that the Commission may have intended to establish in New York Telephone regarding the incremental costs of charitable program administration. n1

n1 The recommended decision in the New York Telephone case was adopted without discussing this issue. Petitions for rehearing on this question remain pending. [*48]

On exceptions, DOL argues that the $ 193,000 revenue requirement allowance that supports the company's general charitable campaigns is barred by the New York Telephone precedent. It objects to the recommended decision's application of that precedent only under circumstances where it can be shown that additional costs are contained within the revenue requirement that would not exist if the charitable campaign efforts were eliminated. Concluding that the recommended decision "is founded on a misunderstanding of the facts [.]", n2 DOL argues:

If the administrative costs necessarily incidental to a charitable donations program were placed below the line, there would be a quantifiable reduction in rates paid by BUG's customers, even though neither the company's employee complement nor any individual employee's work would change. n3 n2 DOL's Brief on Exceptions, p, 12.

n3 Id.

DOL's observation is certainly correct, but it misses an important point. If the number of employees and the work required to provide utility service remain unchanged while a portion of the salaries and wages paid for such work are disallowed, the calculated revenue requirement will be less than [*49] the cost of providing service. If the DOL position were adopted generally, the full cost of providing service would be provided only to a utility that eliminated all administrative support for charitable giving campaigns. This is precisely the penalty for supporting general charitable giving referred to in the recommended decision. So long as ratepayers pay no more for utility service than they would pay if the utility had no charitable campaigns, then it cannot be said that ratepayers are being directly or indirectly required to support charities.

There is no need to address here DOL's remaining points regarding the distinction made by the Judge between the incremental cost of administrative support for charitable campaigns and the inclusion in rates of specific donations prohibited by Cahill. The facts here do not establish the existence of any incremental costs being charged to the ratepayers, and DOL's exception is denied on that basis.

MISCELLANEOUS ISSUES

Two other provisions of the Settlement and the need to take emergency action under the State Administrative Procedure Act need to be mentioned.

Section III. D.2.e. of the Settlement n1 allows the company to individually [*50] negotiate contracts in its TC markets with owners of one or more buildings having annual usage of at least 450,000 dekatherms. To the extent this provision conflicts with existing policies prohibiting conjunctional billing, the signatories request a waiver of the application of that policy.

n1 Exhibit 135, p. 17.

The provision will be approved, though its application could violate established policy. This approval, however, is strictly limited to the facts of this case and should not be construed as a precedent for any future request. This policy is being examined in the generic proceeding, and any precedential changes will be made in that case.

Section IV. C.2.1.(ii) of the Settlement, n2 allows the company to defer site investigation and remediation costs incurred after September 30, 1994, and to amortize them in the revenue requirement over a period of five years. This accounting treatment would be acceptable for expenses related to the company's Coney Island site itself, but it does not seem reasonable to treat in the same manner expenses associated with cleaning up any hazardous wastes that may have migrated from the site. While those expenses may ultimately be shown [*51] to be reasonable and prudent, a mechanism that will begin to amortize these costs in rates without a further review should not be approved. Accordingly, this provision of the Settlement is approved only as to those expenses related to the investigation and remediation of the Coney Island site itself. The company, is free to petition separately for the deferral of expenses associated with materials that have migrated off-site.

n2 Exhibit 135, p. 31.

Finally, this opinion and order is being adopted as an emergency action under State Administrative Procedure Act (SAPA) section 202(6). The original SAPA notice was used to allow a number of rate design changes, including a lifeline type rate, to be implemented on October 1, and it is not available for today's decision, which therefore requires a new SAPA notice. The action here taken directs the company to cancel the tariff leaves that would otherwise become effective as a matter of law on October 21, 1994. If this action were not taken, the rates paid by the company's customers would automatically increase above the level found just and reasonable, and the general welfare therefore requires that the action be taken on an emergency [*52] basis.

CONCLUSION

For the reasons discussed above, the Settlement is approved subject to the condition that the revenue reallocation to S.C. No. 1A will be reduced or eliminated if the estimated bill impact for minimum-use customers in that class for years two or three exceeds 9%.

The Commission orders:

1. To the extent it is consistent with the foregoing opinion, the recommended decision of Administrative Law Judge Jeffrey E. Stockholm is adopted as part of this opinion and order. Except as here granted, all exceptions to that recommended decision are denied.

2. The Settlement Agreement appearing as Exhibit 135 in this proceeding is approved. The Brooklyn Union Gas Company (the company) is directed to implement its terms, subject to the terms and conditions of this order. The company is directed to file on not less than one day's notice and on or before October 20, 1994, such further tariff changes as are necessary to effectuate the provisions of the approved Settlement, subject to the terms and conditions of this order. The company shall serve copies of its filings upon all parties to these proceedings. Any comments on the compliance filings must be received [*53] at the Commission's offices within ten days of service of the company's proposed amendments. The amendments specified in the compliance filing shall not become effective on a permanent basis until approved by the Commission and will be subject to refund if any showing is made that the revised rates are not in compliance with this order. The requirements of § 66(12) of the Public Service Law and 16 NYCRR 136.70 and 270.70 that newspaper publications be completed before the effective date of the amendments authorized in this ordering clause are waived, but the company is directed to file with the Commission, within six weeks after the effective date of those amendments, proof that notice to the

public of the changes proposed by the amendments and their effective date has been published once a week for four successive weeks in a newspaper having general circulation in each county containing an area affected by the amendments.

3. The company may file further amendments to its tariff, to take effect no earlier than October 1, 1995, and October 1, 1996, designed to recover the change in revenue requirement calculated as specified in the Settlement as approved. The tariff amendments [*54] shall not take effect until approved by the Commission.

4. The Order Extending Maximum Suspension Period and Authorizing Further Revisions to Become Effective On A Temporary Basis, issued in this proceeding on September 30, 1994, is incorporated as part of this opinion and order.

5. The company is directed to cancel, effective no later than October 20, 1994, on not less than one day's notice, the tariff amendments and supplements listed in Appendix B to this order.

6. The company is authorized to amortize $ 1,316,000 of deferred credits against the updated and final revenue requirement deficiency for the twelve month period ending September 30, 1995, as contained in Appendix A to this order.

7. The company is directed to file with the Director of the Office of Accounting and Finance, within 60 days following the year ending September 30, 1995, financial schedules that compare the projections used for setting rates, as shown in Appendix A of this order, with the actual results that are experienced. The comparison shall be presented in the same format and detail as shown in Appendix A. The company shall also provide, at the time it files its financial schedules with the Director, [*55] all work papers necessary to support adequately the data reported by the company.

8. The company shall apply deferral accounting to the following items in the manner described:

(a) Defer all Human Resources Information Systems (HRIS) Costs not to exceed $ 4,055,000; upon completion and placement of HRIS in service (contemplated to be January 1, 1997) the Total Cost of the HRIS Project shall be transferred to account 303, Miscellaneous Intangible Plant and amortized in accordance with the provisions of account 111.3, Accumulated Provision for Amortization of Other Gas Plant in Service.

(b) Amortize Site Investigation and Remediation Costs related to the Coney Island site not to exceed $ 4,146,321 and as determined in Case 93-G-0621 over a 5-year period commencing October 1, 1994.

(c) Amortize $ 12,476,000 of Operating and Disposition Costs Related to General Office Building at 195 Montague Street including all MetroTech Moving Costs over a 5-Year period commencing October 1, 1994.

(d) Amortize Mined Cavern Storage Costs of $ 4,682,000 over a 5-Year period commencing October 1, 1994.

(e) Amortize Deployment Costs not to exceed $ 2,328,000 over a 3-Year period commencing October [*56] 1, 1994 in accordance with Section III.C.10. of the Settlement Agreement described in Clause 2. above.

(f) Amortize Non-Reimbursable City/State Construction not to exceed $ 1,228,000 over a 2-Year period commencing October 1, 1994.

(g) Amortize Management Audit Costs not to exceed $ 500,000 over a 2-Year period commencing October 1, 1995.

The company shall amortize the Federal income tax effects related to all of the above amortization programs in accordance with the provisions of account 283, Accumulated Deferred Income Taxes - Other.

The company is authorized to use the following accounts, as appropriate, to defer the principal amounts and the related Federal income tax effects of all of the items included above: Account 186, Miscellaneous Deferred Debits; account 253, Other Deferred Credits, account 190, Accumulated Deferred Income Taxes; and account 283, Accumulated Deferred Income Taxes - Other. The amounts deferred for each of the above items shall be recorded in a separate subaccount and the company shall maintain proper and easily accessible supporting documentation for each entry made. The amortization of each item shall be in accordance with the terms of this Opinion [*57] and Order.

9. This opinion and order is adopted on an emergency basis pursuant to Section 202(6) of the State Administrative Procedure Act.

10. This proceeding is continued.

By the Commission

Appendix A

The Brooklyn Union Gas Company

Statement of Operating Income, Rate Base, and Rate of Return for Twelve Months Ending September 30, 1995

	$ (000)	
	As Adjisted By ALJ	**Commission Adjustments**
Operating Revenues		
Sale of Gas	$ 1,281,887	
Other Oper. Rev.	13,559	
Subsidiary Royalty	1,845	
Cume Rate Relief	0	0
	1,297,291	0

Operating Expenses		
Operation & Maintenance		
Gas Purch. & Prod.	590,118	
Labor	170,480	
Fringe Benefits: Pensions	16,910	
Health Ins.	17,526	(269)
Life Ins.	2,108	
Other	4,131	
Other Employee Rel. Exp.	2,879	
Materials & Supplies	12,328	
Invoices	33,764	
Rents	25,315	
Postage	4,945	
Telephone	3,354	
Electricity	1,707	
Legal, Acctg & Spec. Serv.	9,921	
Uncollectibles	18,360	
Public Liab. Ins.	10,695	
Other Insurance	699	
Regulatory Comm Exp.	3,608	
Fifth Ward Franch. Exp.	1,269	
Office Supplies & Exp.	5,517	
Clearing Accounts	11,377	
Research, Develop. & Demon.	7,367	
Sales Promotion	5,940	
Inform. & Inst. Adv.- Other	1,622	
Home Conserv. Plan	1,908	
Deployment	0	
Other	496	
Cost Control Factor	(9,100)	
True-Up Items/Inflation Adjustment	(959)	
Total Operation & Maint. Exp.	954,285	(269)
Depreciation	45,701	
Amortizations	1,729	
Taxes other than F.I.T.:		
Property	33,233	

Revenue	83,989	0
Other	17,935	
Total Operating Expenses	1,136,872	(269)
Operating Income before F.I.T.	160,419	269
Federal Income Tax	43,940	120
Utility Operating Income	$ 116,480	$ 149
Rate Base	$ 1,306,536	($ 38)
Rate of Return	8.92%	

[*58]

Rate ease	Rate Year 1995 As Adjusted	Prop-osed Incr-ease	Ending 9/30/95
Operating Revenues			
Sale of Gas	[1] $ 1,281,887		$ 1,281,887
Other Oper. Rev.	13,559		13,559
Subsidiary Royalty	1,845	0	1,845
Cume Rate Relief	0	1,316	1,316
	1,297,291	1,316	1,298,607
Operating Expenses			
Operation & Maintenance			
Gas Purch. & Prod.	590,118		590,118
Labor	170,480		170,480
Fringe Benefits: Pensions	16,910		16,910
Health Ins.	[2] 17,257		17,257
Life Ins.	2,108		2,108
Other	4,131		4,131
Other Employee Rel. Exp.	2,879		2,879
Materials & Supplies	12,328		12,328

Invoices	33,764		33,764
Rents	25,315		25,315
Postage	4,945		4,945
Telephone	3,354		3,354
Electricity	1,707		1,707
Legal,Acctg & Spec. Serv.	9,921		9,921
Uncollectibles	18,360	19	18,379
Public Liab. Ins.	10,695		10,695
Other Insurance	699		699
Regulatory Comm Exp.	3,608		3,608
Fifth Ward Franch. Exp.	1,269		1,269
Office Supplies & Exp.	5,517		5,517
Clearing Accounts	11,377		11,377
Research, Develop. & Demon.	7,367		7,367
Sales Promotion	[3] 5,940		5,940
Inform. & Inst. Adv.- Other	1,622		1,622
Home Conserv. Plan	1,908		1,908
Deployment	0		0
Other	496		496
Cost Control Factor	(9,100)		(9,100)
True-Up Items/Inflation Adjustment	(959)		(959)
Total Operation & Maint. Exp.	954,016	19	954,035
Depreciation	[4] 45,701		45,701
Amortizations	1,729		1,729
Taxes other than F.I.T.:	0		
Property	33,233		33,233
Revenue	[5] 83,989	86	84,075
Other	17,935		17,935
Total Operating Expenses	1,136,603	105	1,136,708
Operating Income before F.I.T.	160,688	1,211	161,899
Federal Income Tax	44,060	424	44,484
Utility Operating Income	$ 116,629	$ 787	$ 117,416

Rate Base	$ 1,306,498	$ 1,306,498
Rate of Return	8.927%	8.987%

[*59]

The Brooklyn Union Gas Company

Federal Income Tax Expense

Calculation of Interest Expense for Twelve Months Ending September 30, 1995

$ (000)

	As Adjusted ALJ	**Commission Adjustments**	**Rate Year 1995 AS Adjusted**	**Prop-osed Rate Incr-ease**	**Rate Year End-ing 9/30/95**
Rate Base	$ 1,306,536	($ 38)	$ 1,306,498		
IBCWIP	12,486	0	12,486		
Earnings Base	1,319,022	(38)	1,318,984		
Weighted Cost of Debt. *			3.492500%		
Interest Exp.			45,629		
Add Gain on Required Debt			0		
Total Interest Deduction	$ 45,703	($ 74)	$ 45,629		

*	Cost of Debt 9/30/95
Long Term Debt	3.4774%
Short Term Debt (T.C.I.'s)	-0.0446%
Tax Exempt Commercial Paper	0.0000%
Customer Deposits	0.0597%
Debt Component	3.4925%

Percentage

The Brooklyn Union Gas Company

Calculation of Federal Income Tax for Twelve Months Ending September 30, 1995

$ (000)

	As Adjusted By ALJ	**Rate Year Commission Adjustments**	**1995 As Adjusted**
Book Operating Income Before F.I.T.	$ 160,419	$ 269	$ 160,688
Interest Expense	(45,703)	74	[6] (45,629)
Adjustments That Increase			
(Decrease) Taxable Income			
Amortization of Prem./Expenses on Debt	0		0
Subsidiary True Up	0		0
SNG Writedown	0		0
Deferred Compensation	0		0
GHI True Up	0		0
Gain on Sale of Property	0		0
Late Payment Charge True Up	0		0
Reserve for Workman's Comp.	0		0
Reserve for Injuries and Damages	0		0
Rate Case Interest	0		0
Deferred Compensation	0		0
Non Cap Constr. & Contrib. in Aid	0		0
Non Ded. Meals and Entertainment	438		438
Defeasance	0		0
Vacation Pay	0		0
Excess Earnings	0		0
Inventory Capitalization	0		0
NCS Amortization	3,215		3,215
General Tax Deferral	0		0
Parts Protection Plan	0		0
Deployment	0		0
Weaver Amortization	0		0
General Wage Increase	0		0
Bad Debt Reserve	0		0
Sale of 195 Montague	2,495		2,495

Deployment Amortizations	388		388
Deferred Environmental	829		829
Mined Storage Cavern	936		936
RD&D	485		485
Sales Promotion	318		318
Lobbying Expenses	0		0
Club Dues	60		60
Amort. CNG Sales Promotion	370		370
Depreciation Tax	(68,819)		(68,819)
Depreciation Book	53,342		53,342
Cost of Removal	(1,750)		(1,750)
195 Montague	0		0
RD&D	0		0
HIECA Current	(3,433)		(3,433)
HIECA Amort	1,907		1,907
Relocation of Mains	0		0
MTA Deferred	(8,906		(8,906)
MTA Amort	8,409		8,409
ULEEP Expenses	0		0
Uncollectible Timing Difference	0		0
Deployment Deferral	(650)		(650)
ESP Deduction	(500)		(500)
Variable Rate Expenses	0		0
GAC Imbalance	0		0
Take or Pay Costs	0		0
Governor's Island	0		0
HRIS Expenses	(1,050)		(1,050)
Metrotech Expenses	0		0
Environmental Costs	0		0
ACRS Tax Loss	0		0
Rate Case Credits	0		0
CSC Expenses	(614)		(614)
CNG Conversion Kits	0		0
Other	(6,459	(6,459)	
Adjusted Taxable Income	95,727	343	96,070
Total Fed. Inc. Tax-Current	$ 33,505	$ 120	$ 33,625

[*60]

	Proposed Rate	**Rate Year Ending**

	Increase	9/30/95
Book Operating Income Before F.I.T.	$ 1,211	$ 161,899
Interest Expense		(45,629)
Adjustments That Increase		
(Decrease) Taxable Income		
Amortization of Prem./Expenses on Debt		0
Subsidiary True Up		0
SNG Writedown		0
Deferred Compensation		0
GHI True Up		0
Gain on Sale of Property		0
Late Payment Charge True Up		0
Reserve for Workman's Comp.		0
Reserve for Injuries and Damages		0
Rate Case Interest		0
Deferred Compensation		0
Non Cap Constr. & Contrib. in Aid		0
Non Ded. Meals and Entertainment		438
Defeasance		0
Vacation Pay		0
Excess Earnings		0
Inventory Capitalization		0
NCS Amortization		3,215
General Tax Deferral		0
Parts Protection Plan		0
Deployment		0
Weaver Amortization		0
General Wage Increase		0
Bad Debt Reserve		0
Sale of 195 Montague		2,495
Deployment Amortizations		388
Deferred Environmental		829
Mined Storage Cavern		936
RD&D		485
Sales Promotion		318
Lobbying Expenses		0
Club Dues		60
Amort. CNG Sales Promotion		370

Depreciation Tax		(68,819)
Depreciation Book		53,342
Cost of Removal		(1,750)
195 Montague		0
RD&D		0
HIECA Current		(3,433)
HIECA Amort		1,907
Relocation of Mains		0
MTA Deferred		(8,906)
MTA Amort		8,409
ULEEP Expenses		0
Uncollectible Timing Difference		0
Deployment Deferral		(650)
ESP Deduction		(500)
Variable Rate Expenses		0
GAC Imbalance		0
Take or Pay Costs		0
Governor's Island		0
HRIS Expenses		(1,050)
Metrotech Expenses		0
Environmental Costs		0
ACRS Tax Loss		0
Rate Case Credits		0
CSC Expenses		(614)
CNG Conversion Kits	0	0
Other		(6,459)
Adjusted Taxable Income	1,211	97,281
Total Fed. Inc. Tax-Current	$ 424	$ 34,048

[*61]

The Brooklyn Union Gas Company

Federal Income Taxes - Deferred for Twelve Months Ending September 30, 1995

[000)

	As Adjusted By ALJ	Commission Adjustments	Rate Year 1995 As Adjusted
Taxable Net Income	$ 95,727	$ 343	$ 96,070

Tax: at35%	33,505	120	33,625
Add: Adjustment ITC			0
Add: Prior Years Adjustments	0		0
FIT on Taxable Income	33,505	120	33,625
Gain on Reacq Bonds	(107)		(107)
GAC Imbalance	0		0
Late Payment Charge	0		0
CNG Conversion Kits	0		0
GHI True Up	0		0
General Wage Increase	0		0
Deferred Compensation	0		0
HRIS Expenses	368		368
Rate Case Interest	0		0
Deferred Compensation	0		0
Environmental Costs	(288)		(288)
Subsidiary True Up	0		0
Property Tax Reduction	0		0
Vacation Pay	0		0
ULEEP Expenses	0		0
ACRS Depreciation	9,978		9,978
Book Depreciation	0		0
Mortgage Reporting Tax	(7)		(7)
Cost of Removal Net	0		0
Contribution in Aid of Construction	0		0
RD&D	(167)		(167)
HIECA Expense	1,202		1,202
HIECA Amortization	(645)		(645)
MTA Tax Surcharge	174		174
NCS	(1,166)		(1,166)
General Taxes	0		0
Take or Pay Costs	0		0
Governor's Island	0		0
Uncollectible Timing	0		0
Capitalized Inventory	0		0
195 Montague St	0		0

Excess Earnings	0		0
SNG Plant Retirement	0		0
CSC Expenses	216		216
Deployment Amortization	(135)		(135)
Bad Debt Reserve	0		0
Deferred Credits	0		0
Variable Rate Expenses	0		0
Workmans Compensation	0		0
Metrotech Expenses	(876)		(876)
Weaver Amortization	0		0
Parts Protection Plan	0		0
Management Audit	88		88
Mined Storage Cavern	(328)		(328)
Sales Promotion	(111)		(111)
Subsidiary Investment	2,137		2,137
CNG Sales Promotion	(126)		(126)
Deployment Deferral	228		228
	10,435	0	10,435
Total Federal Income Tax Expense	$ 43,940	$ 120	$ 44,060

[*62]

	Proposed Rate Increase	**Rate Year Ending 9/30/95**
Taxable Net Income	$ 1,211	$ 97,281
Tax: at 35%	424	34,048
Add: Adjustment ITC		0
Add: Prior Years Adjustments		0
FIT on Taxable Income	424	34,048
Gain on Reacq Bonds		(107)
GAC Imbalance		0
Late Payment Charge		0
CNG Conversion Kits		0
GHI True Up		0
General Wage Increase		0

Deferred Compensation	0
HRIS Expenses	368
Rate Case Interest	0
Deferred Compensation	0
Environmental Costs	(288)
Subsidiary True Up	0
Property Tax Reduction	0
Vacation Pay	0
ULEEP Expenses	0
ACRS Depreciation	9,978
Book Depreciation	0
Mortgage Reporting Tax	(7)
Cost of Removal Net	0
Contribution in Aid of Construction	0
RD&D	(167)
HIECA Expense	1,202
HIECA Amortization	(645)
MTA Tax Surcharge	174
NCS	(1,166)
General Taxes	0
Take or Pay Costs	0
Governor's Island	0
Uncollectible Timing	0
Capitalized Inventory	0
195 Montague St	0
Excess Earnings	0
SNG Plant Retirement	0
CSC Expenses	216
Deployment Amortization	(135)
Bad Debt Reserve	0
Deferred Credits	0
Variable Rate Expenses	0
Workmans Compensation	0
Metrotech Expenses	(876)
Weaver Amortization	0
Parts Protection Plan	0
Management Audit	88
Mined Storage Cavern	(328)

Sales Promotion		(111)
Subsidiary Investment		2,137
CNG Sales Promotion		(126)
Deployment Deferral		228
	0	10,435
Total Federal Income Tax Expense	$ 424	$ 44,483

[*63]

The Brooklyn Union Gas Company

Capital Structure for Twelve Months Ending September 30, 1995

$ (000)

	PRINCIPAL	**RATIO**	**COST**	**COST RATE**	**WEIGHTED COST**
Long Term Debt	$ 648,500	49.167%	$ 45,866	7.07%	3.4774%
Short Term Debt (TCI'S)	(12,195)	-0.925%	(588)	4.82%	-0.0446%
Customer Deposits	21,299	1.615%	788	3.70%	0.0597%
Total Interest	657,604	49.857%	46,066		3.4925%
Preferred Stock	7,325	0.555%	526	7.18%	0.0399%
Common Equity	654,055	49.588%	71,946	11.00%	[30 5.4547%
Total Capitalization	$ 1,318,984	100.000%	$ 118,538		8.9871%

The Brooklyn Union Gas Company

Calculation of Average Rate Base for Twelve Months Ending September 30, 1995

$ (000)

	As Adjusted By ALJ	**Commission Adjustments**
Utility Plant-Gas:		
Gas Plant in Service	$ 1,614,257	
Gas Plant Held for Future Use	329	

Gas Stored Underground	858	
Total	1,615,444	0
Accum. Provision for Deprec.	(387,166)	
Net Plant	1,228,278	0
Additions to Rate Base:		
Sales Promotion True Up	104	
Non-Interest Bearing CWIP	11,876	
Deferred HIECA Expenses	3,150	
Unamortized MTA Tax	3,718	
M&S/Property Loss-SNG Plant	0	
Unamort Bal City/State Exp	1,586	
Unamort Bal Metrotech Moving	7,291	
Unamort Bal P/S & FMB Redemp.	21,084	
Deployment Expenditures	844	
Unamort Bal Deferred NCS	21,512	
Deferred Preferred Stock	0	
Deferred Management Audit	244	
Deferred Environmental	2,435	
Mine Storage Cavern	2,739	
Area Development	0	
HRIS	1,413	
CNG Sales Promotion	122	
Additions	78,118	0
Cash Working Capital	67,954	(38)
Materials and Supplies	74,068	
Prepayments	21,120	
Total Working Capital	163,142	(38)
Deductions:		
Accum Def FIT ADR/ACRS/Cost of Rem.	108,049	
Accum Def Invest Tax Credit	21,422	
Def. Federal Income Tax-Expl. Proj.	0	

Gain on Reacquired Debt	1,626	
Deferred NCS	0	
Excess Earnings Base/Capital	29,272	
GPIS-195 Montague St	0	
Deferred Non-Reimbursable CSC	597	
Weaver Expenditures	0	
Subsidiary Investment True-Up	2,036	
Total Deductions	163,002	0
Rate Base	$ 1,306,536	($ 38)

[*64]

	Rate Year 1995 As Adjusted	Proposed Rate Increase	Rate Year Ending 9/30/95
Utility Plant-Gas:			
Gas Plant in Service	[7] $ 1,614,257		
Gas Plant Held for Future Use	329		
Gas Stored Underground	858		
Total	1,615,444		
Accum. Provision for Deprec.	(387,166)		
Net Plant	1,228,278		
Additions to Rate Base:			
Sales Promotion True Up	104		
Non-Interest Bearing CWIP	11,876		
Deferred HIECA Expenses	3,150		
Unamortized MTA Tax	3,718		
M&S/Property Loss-SNG Plant	0		
Unamort Bal City/State Exp	1,586		
Unamort Bal Metrotech Moving	7,291		
Unamort Bal P/S & FMB Redemp.	21,084		
Deployment Expenditures	844		
Unamort Bal Deferred NCS	21,512		

Deferred Preferred Stock	0
Deferred Management Audit	244
Deferred Environmental	2,435
Mine Storage Cavern	2,739
Area Development	0
HRIS	1,413
CNG Sales Promotion	122
Additions	78,118
Cash Working Capital	[8] 67,916
Materials and Supplies	74,068
Prepayments	21,120
Total Working Capital	163,104
Deductions:	
Accum Def FIT ADR/ACRS/Cost of Rem.	108,049
Accum Def Invest Tax Credit	21,422
Def. Federal Income Tax-Expl. Proj.	0
Gain on Reacquired Debt	1,626
Deferred NCS	0
Excess Earnings Base/Capital	29,272
GPIS-195 Montague St	0
Deferred Non-Reimbursable CSC	597
Weaver Expenditures	0
Subsidiary Investment True-Up	2,036
	0
Total Deductions	163,002
Rate Base	$ 1,306,498

[*65]

The Brooklyn Union Gas Company

Computation of Recommended Additional Revenue Requirement for Twelve Months Ending September 30, 1995 $ (000)

Average Rate Base	$ 1,306,498
Rate Of Return	8.99%
Total Return Required	117,416
Earned Return	116,629

Deficiency in Required Return	787
Retention Factor*	59.82%
Authorized Revenue Increase	$ 1,316
Revenue Offset Tax Refunds	$ 1,316
Net Change in Revenue Requirement	

* Based upon the following:

	PROOF	Base Rates	Credits	Total
Sales Revenues	100.00%	1,316	0	$ 1,316
Less: Revenue Taxes	6.50%	86	0	86
Uncollectibles	1.47%	19	0	19
Subtotal	92.03%	1,211	0	1,211
Less: Federal Income Tax At 35.00%	32.21%	424	0	424
Retention Factor	59.82%	787	0	$ 787

The Brooklyn Union Gas Company

Computation of Cash Working Capital for Twelve Months Ending September 30, 1995 $ (000)

	As Adjusted By ALJ	**Commission Adjustments**	**Rate Year 1995 As Adjusted**	**Prop-osed Inc-ease**	**Rate Year Ending 9/30/95**
Operation and Maintenance Expenses	$ 954,285	($ 269)	$ 954,016	$ 19	$ 954,035
Deduct:					
Three Quarters of Gas Costs	425,070	0	425,070		425,070
Uncollectible Accruals	18,360	0	18,360	19	18,379
Depreciation Charged to O&M	4,913		4,913		4,913
Reserve for Public Liability	5,000		5,000		5,000
UFG True-Up	0		0		
HIECA	1,908		1,908		1,908
Cost of Gas Deferred	23,359		23,359		23,359

Total Deductions	478,610	0	478,610	19	478,629
Balance	475,675	(269)	475,406		
Cash Working Capital Allowance at 1/7	$ 67,954	($ 38)	$ 67,916		

[*66]

Cost Control Calculation

Operating Expenses	
Operation & Maintenance	
Gas Purch. & Prod.	590,118
Labor	170,480
Fringe Benefits: Pensions	16,910
Health Ins.	17,257
Life Ins.	2,108
Other	4,131
Other Employee Rel. Exp.	2,879
Materials & Supplies	12,328
Invoices	33,764
Rents	25,315
Postage	4,945
Telephone	3,354
Electricity	1,707
Legal, Acctg & Spec. Serv.	9,921
Uncollectibles	18,360
Public Liab. Ins.	10,695
Other Insurance	699
Regulatory Comm Exp.	3,608
Fifth Ward Franch. Exp.	1,269
Office Supplies & Exp.	5,517
Clearing Accounts	11,377
Research, Develop. & De	7,367
Sales Promotion	5,940
Inform. & Inst. Adv.- Other	1,622
Home Conserv. Plan	1,908
Deployment	0
Other	496
Cost Control Factor	0

True-Up Items/Inflation A	(959)
Total Operation & Maint. E	963,116
Exclude	
Gas Purch. & Prod.	590,118
Uncollectibles	18,360
Regulatory Comm Exp.	3,608
Research, Develop. & De	7,367
Sales Promotion	5,940
I & I	1622
Home Conserv. Plan	1,908
Other	496
CSC	4,909
Attorney Expenses	8,434
Excludible Items	642,762
Cost Control Base	320,354
Cost Control Percentage	[G] 2.11%
Cost Control Factor	6,744
Cost Control Settlement Items	
Cost Control Factor	6,744
Sales Promotion	2,000
Misc Settlement Adjustment	(250)
Distribution O&M	600
Total Settlement Adjustment	9,094

[*67]

BROOKLYN UNION GAS COMPANY

EXPLANATION OF COMMISSION ADJUSTMENTS

FOR THE RATE YEARS ENDING 1995 - 1997

$ (000)

Adj. No.	**Explanation**	**1995 Amount**
	Revenue Adjustments	
[1]	REVENUE IMPACT OF NATURAL GAS VEHICLES (NGV'S)	
	Reflects the removal of NGV;S -NET OF COST OF GAS	$ 0
	SUBSIDIARY ROYALTY	
	Reflects Staff settlement position	0

	TOTAL ADJUSTMENTS TO REVENUES	0
	Operating & Maintenance Adjustments	
	FRINGE BENEFITS	
[2]	Update to reflect latest known contacts rates	(269)
	To adjust Other expense to reflect inflation,	
		(269)
	TOTAL ADJUSTMENTS TO FRINGE BEBEFITS	
[3]	SALES PROMOTION ADVERTISING	
	To reflect removal of sales promotion for NGV'S	0
	TOTAL ADJUSTMENTS TO O & M EXPENSES	(269)
	Depreciation & Amortizations	
	DEPRECIATION	
[4]	To reflect removal of NGV'S	0
	Taxes Other Than Income Taxes	
[5]	REVENUE TAXES	
	To reflect revenue taxes associated to NGV revenues	0
	Federal Income Tax Adjustments	
	INTEREST DEDUCTION	
[6]	To adjust the company's calculation of Debt Expense to reflect removal of NGV'S	100
	Rate Base Adjustments	
	NET UTILITY PLANT	
[7]	To reflect removal of NGV'S	0
	WORKING CAPITAL-CASH	
[8]	Adjustment due to adjustments to O&M.	0
		$ 0

CAPITAL STRUCTURE

To reflect updates for TCI and short term debt rates from 4.01%. to 4.82%	0.81%
To reflect updates to long term debt rate	0.00%

[*68]