



December 13, 2002

Janet Hand Deixler
Secretary
Public Service Commission
Agency Building 3
Empire State Plaza
Albany, NY 12223-1350

Re.: Case 99-S-1621: Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations Of Consolidated Edison Company of New York, Inc. for Steam Service – Petition for Clarification of Opinion 00-15, Issued December 1, 2000, filed by Consolidated Edison Company of New York, Inc.

Dear Secretary Deixler:

Consumer Power Advocates, (“CPA”), is an association of large non-profit commercial energy users with facilities in the Consolidated Edison Company of New York, Inc.’s service territory (“Con Edison”), submits this Letter in Support to the position expressed by the City of New York in the above referenced proceeding.

CPA is an organization founded in 2001. Its purpose is to reduce its member’s energy costs. Its members include major academic and medical institutions located in the City of New York and Westchester County.

The terms of the settlement agreement on the above referenced case, filed on June 20, 2000 and adopted by the New York Public Service Commission on December 1, 2000 called for a rate increase of \$16.6 million for the first rate year, ending September 30, 2001. In addition, this settlement agreement provided for no additional rate increases in years two to four of the four-year plan except for extraordinary circumstances. Other than for changes with minimal revenue impacts, the settlement allows Con Edison to file to change rates during the three-year “freeze” only if the Company’s economic viability or ability to maintain safe and adequate service became threatened or in the event of unforeseen circumstances that render rates unreasonable.

The members of CPA believe that Con Edison’s present tax claims are both premature and unjustified. Given a Settlement Agreement that runs through September 30, 2004, and which does not require customer refunds to be made before that date, a request for relief at this time is injudicious. Con Edison seeks to retain an expected tax refund of \$3.4 million (for half the annual period), and further requests that it be permitted to retain that amount rather than distributing 86% of the total refund (or \$2.92 million dollars for the six-month period) to Con Edison’s ratepayers, as is required under by the Settlement Agreement (paragraph 4a). The claim is unjustified, as the conditions of the Settlement Agreement were not predicated on any express rate of return. As such, this amount is clearly due back to the customers of Con Edison despite any anticipation on the part of the Petitioner that the rate of return may be higher.

The membership of CPA is also strongly opposed to the claim of Con Edison for relief based upon a lack of ample return on equity for the steam system and further expressly believes that Con Edison has not demonstrated a commitment to improving the steam system as is necessary to transform it into a viable enterprise.

As large institutional and commercial steam customers of Con Edison, the members of Consumer Power Advocates clearly recognize that the steam system is indeed in a state of decline. As such it is the expectation of CPA that Con Edison would implement a comprehensive plan to both retain and expand its steam customer base. To do so will increase the viability of steam as an alternate energy source, in turn alleviating an extreme shortage of electric generation capacity within and around New York City.

Many of our members currently utilize steam air-conditioning while other members are currently exploring its potential in order to control escalating costs associated with summertime cooling requirements. Any increase to steam rates afforded to Con Edison at this time, especially given the lack of exertion on the part of Con Edison to strengthen the steam business, will be extremely detrimental to our efforts to enhance the employment of steam air conditioning.

While strongly objecting to Con Edison's claim for relief due to steam system revenue shortfalls, we also object to the assertion of Con Edison to be eligible for rate relief due to the effects of a warmer than normal winter heating season (2001/02). Con Edison states that in year two of the settlement, an unseasonably warm winter resulted in 30% fewer heating degree-days than are normally experienced (Petition, p.3). The settlement and Order from the Commission visibly accounts for seasonal variations and notes, "the company must bear the net revenue effect of steam sales shortfalls due to warmer-than-normal November-April weather" (Commission Opinion No.00-15, p.4).

Con Edison, in their request for rate relief, provides support for this request in the form of claims that its line losses on the steam system rose 17.2% in year two and subsequently seeks to defer the variance penalty formula agreed to in the settlement agreement. The level of line loss is asserted to be beyond the control of Con Edison and primarily due to lower sales volume and related to the mild winter weather.

The membership of CPA does not accept Con Edison's assignment of the increase in line loss solely to the lower sales volume on the steam system. We request that the other contributing factors which most effect thermal losses within the piping including insulation integrity, surrounding soil thermal properties, moisture content of the insulation, and overall soil temperature be fully explored. It is the belief of the Consumer Power Advocates that the aforementioned contributors to increased line loss played a more significant role than thermal losses attributed to a decline resultant from reduced steam flow.

We further assert that Con Edison must demonstrate an ongoing willingness to sufficiently maintain and restore the steam system infrastructure and to make conscientious efforts toward marketing the steam system in an effort to retain and expand upon its steam customer base. CPA would respectfully ask the Commission to formally inquire as to the level of investment to date made by Con Edison to provide necessary upgrades to the steam system in an effort to prevent and reduce thermal loss, and to seek a level of commitment to do so in the future.

Although we are strongly opposed to any increase in steam rates attributable to either weather conditions or lower steam sales, the membership of Consumer Power Advocates does recognize the terrorist attack of September 11th on the World Trade Center constitutes an unanticipated event at the time of the Settlement Agreement. We do not oppose Con Edison's contention that the attack destroyed an estimated 5% of the steam customer base (Petition, p.3). As such, CPA therefore supports the position expressed by the City of New York to allow for a cost deferral or recovery request that is solely associated with the unavoidable and unanticipated loss of World Trade Center customers. Our only concerns in this regard relate to the indistinct nature of the deferral sought by Con Edison and if Con Edison has sought to recover losses brought about by the loss of World Trade from any federal funds made available for such purposes following September 11th. The members of Consumer Power Advocates would respectfully submit that Con Edison should be required to provide specificity on the costs it seeks to defer as well as disclose any claims for either federal funding or claims for insurance Con Edison may have filed to offset such losses.

The members of the Consumer Power Advocates respectfully file this letter in support of the position expressed by the City of New York in this proceeding. The relief sought by Con Edison is generally unjustifiable and counter to the Settlement Agreement. In addition and most importantly, the membership of CPA would stress to the Commission that prior to endowing any relief to the Petitioner, the Commission should provide assurances that Con Edison will demonstrate a clear and express commitment to preserve, enhance, and grow its steam system while marketing the steam system in such a way as to both retain current steam users and attract new customers. To do so is not only to the benefit of Consolidated Edison of New York Company, Inc. but also to the City - suffering from an extreme shortage of electric capacity.

Dated: December 13, 2002

Respectfully submitted,

Catherine Luthin
Principal
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cc: Richard Miller
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