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## **PRELIMINARY STATEMENT**

The Standby Customer Coalition, a coalition of consumers consisting of Spring Creek Towers, Trump Village and New York Presbyterian Hospital (“Standby Customer Coalition” or “Coalition”), by its attorneys, Couch White, LLP, hereby respectfully submits these Initial Comments in support of the majority of the Joint Proposal (“Joint Proposal”) that was filed by Staff of the New York State Public Service Commission (“Commission”) in the above-referenced proceedings on March 12, 2003. The Standby Customer Coalition executed the Joint Proposal subject to the limited exclusion explained herein.

## **BACKGROUND INFORMATION**

### **A. Description Of The Standby Customer Coalition**

Spring Creek Towers is the largest assisted rental-housing complex located in the United States. Currently, Spring Creek operates a 12 MW cogeneration facility that is isolated from the Con Edison system. Trump Village is a privately owned middle-income residential housing complex consisting of 880 units located in Brooklyn. Trump Village has recently installed three 800 kW units to provide electric service to its tenants. New York Presbyterian Hospital (“NYPH”) is one the most comprehensive university hospitals in the world, with leading specialists in every field of medicine. NYPH includes three renowned medical centers, Columbia Presbyterian Medical Center, New York Weill Cornell Medical Center, and New York Presbyterian Hospital-Westchester. NYPH also is affiliated with two Ivy League medical institutions, Columbia University College of Physicians & Surgeons and Weill Medical College of Cornell University. NYPH operates with emergency and backup

electric generation capabilities and has received funding from the New York State Energy Research and Development Authority (“NYSERDA”) to develop on-site generation (“OSG”) feasibility studies. Thus, the terms of the Joint Proposal will directly impact the Coalition members.

## **B. Relevant Procedural Background**

On January 10, 2000, the State of New York Public Service Commission (“Commission”) instituted Case 99-E-1470 (hereinafter, the “Generic Standby Proceeding”) “to review methods for setting standby rates on a generic basis ...”<sup>1</sup>

On October 26, 2001, the Commission issued Opinion No. 01-4 in the Generic Standby Proceeding.<sup>2</sup> In Opinion No. 01-4, the Commission established general guidelines for the design of standby service rates. The Commission also directed the State’s electric utilities, including Con Edison and Orange & Rockland Utilities, Inc. (“O&R”) (collectively, the “Utilities”), to file standby service tariffs in compliance with Opinion No. 01-4.<sup>3</sup>

On June 7, 2002, Con Edison filed proposed standby service rates and tariffs. On June 10, 2002, O&R filed proposed standby service rates and tariffs. Thereafter, the parties engaged in settlement negotiations in an effort to resolve differences. Certain parties, including the Standby Customer Coalition, the Utilities, Staff of the New York State Department of Public Service, and other interested parties, were able to achieve agreement

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<sup>1</sup> Case 99-E-1470, Proceeding on Motion of the Commission as to the Reasonableness of the Rates, Terms and Conditions for the Provision of Electric Standby Service, Order Instituting Proceeding, issued January 10, 2000, at 2.

<sup>2</sup> Case 99-E-1470, supra, Opinion No. 01-4, Opinion and Order Approving Guidelines for the Design of Standby Service Rates, issued October 26, 2001.

<sup>3</sup> Case 99-E-1470, supra, Opinion No. 01-4, at 28.

on many issues relevant to both proceedings. On March 12, 2003, a Joint Proposal, reflecting the settling parties' agreements with respect to standby service, was filed with the Commission.<sup>4</sup>

### **COMMENTS OF THE STANDBY CUSTOMER COALITION**

The Standby Customer Coalition executed the Joint Proposal and fully supports its adoption herein, subject to the exclusion noted on the Coalition's signature page. On its signature page, the Coalition reserved its right to contest – and hereby does contest – the Joint Proposal's failure to provide that a customer may obtain an individually-negotiated contract for standby service for partial load served by the customer's on-site generation.<sup>5</sup> Accordingly, the Commission should adopt the Joint Proposal as filed, except for the modification to Section 10 discussed herein. In particular, the Commission should adopt, without modification, Sections 3, 4, 6, and 7 of the Joint Proposal, and, except as noted below, Section 10. The Coalition would not have signed the Joint Proposal with out these sections, and any changes to them (other than the changes requested herein for Section 10) could change the Coalition's support.

#### **A. Sections 3 And 4 Protect Customers Who Have Invested In OSG**

As originally proposed, Con Edison's new standby rates represented dramatic increases for OSG customers by eliminating the "Special Provision A" exemption under

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<sup>4</sup> References to the Joint Proposal are to the page numbers shown in the bottom center of each page.

<sup>5</sup> See Joint Proposal, § 10, p. 8; Joint Proposal, Standby Customer Coalition Signature Page.

which all but one of Con Edison's existing OSG customers currently take standby service, thereby subjecting those customers to the new, proposed rate design.<sup>6</sup> Moreover, although the Joint Proposal incorporates a different allocation of costs between contract and as-used demand charges, the rate impacts resulting from the Joint Proposal still would make many existing and planned OSG projects uneconomic. Worse, due to the complexity of the proposed rate structure, it has been nearly impossible to determine the actual impacts on any one project.

Because of the adverse impacts that the new standby rates will have, Sections 3 and 4 are critical components of the Joint Proposal because they ease the transition from the current standby rates to the new rates.<sup>7</sup> Specifically, Section 3 provides for an eight year phase-in for qualified "existing customers," as that term is defined in Section 4. For the first four years, qualified existing customers will continue to pay for standby service at the otherwise applicable non-standby service rate. Over the last four years of the phase-in, the new standby rates will be phased-in pursuant to a schedule that calls for the affected customers' rates to be increased each year by 25 percent of the positive difference, if any, between the standby and non-standby rates. Importantly, at any time during the phase-in period, a customer may exercise a one-time option to transfer to the full standby rates.

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<sup>6</sup> For example, Con Edison's proposed standby service tariff called for all standby customers to be transferred to the new standby service beginning with the first bill issued on or after the effective date of the new SC 14-RA standby service tariff. Case 02-E-0781, supra, Transmittal Letter, p. 4 (June 7, 2002), emphasis added.

<sup>7</sup> The Standby Customer Coalition would have preferred a lifetime grandfathering of "existing customer" projects but, in the spirit of compromise, accepted the phase-in provided in the Joint Proposal.

Section 4 carefully defines the categories of “existing customers” who qualify for the phase-in. The characteristic that binds all four categories of customers listed in Section 4 is that they have made a substantial investment in OSG in reliance on the current standby tariff provisions. The settling parties agreed that exposing these customers to the immediate, dramatic rate increases that will result from the Joint Proposal would be unfair and, therefore, provided for the phase-in.

Sections 3 and 4 should be approved without change. These provisions were the subject of extensive negotiations and incorporate numerous concessions on the part of the settling parties. These provisions are designed to protect the OSG investments of many customers by providing for an extended phase-in. In addition, Section 3 provides an important, one-time option for those customers who determine later that the complicated new rates actually benefit them. Sections 3 and 4 protect the interests of customers who otherwise would be harmed unfairly by the new standby rates and, therefore, should be approved by the Commission.

**B. Sections 6 And 7 Provide Customers With Important Control Of Their Contract Demand Levels**

The Utilities’ proposed tariffs contained onerous provisions relating to the establishment and resetting of a customer’s contract demand. For example, Con Edison’s proposed standby tariff gave the utility final authority to establish a standby customer’s contract demand.<sup>8</sup> Moreover, despite the fact that the utility controlled the contract demand level, Con Edison’s proposed standby tariff would have imposed penalties on customers that

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<sup>8</sup> Case 02-E-0781, supra, proposed P.S.C. No. 2 – Retail Access, Third Revised Leaf No. 138, ¶ (C) (filed June 7, 2002).

exceeded the contract demand.<sup>9</sup> Further, the proposed penalties were excessively punitive in nature. For example, there was no “tolerance band” for minor errors in estimating the contract demand, nor was there an allowance or waiver of the first exceedence during the first year of OSG project operations.

The Joint Proposal provides that standby customers may opt to set their contract demand or accept a contract demand set by the utility.<sup>10</sup> Where an exceedence occurs, the customer’s contract demand will be ratcheted up, on a going forward basis, by the amount of the exceedence. If the customer sets its own contract demand, and subsequently exceeds that demand, penalties will apply that are more reasonable than what Con Edison proposed.<sup>11</sup> Moreover, during the first three years that the standby rates are effective, one exceedence in the first year of OSG operation, of less than 20% magnitude, will be excused from the penalty. Finally, a customer may revise its contract demand downward once every 12 months, and upward at any time.<sup>12</sup>

The Joint Proposal constitutes a reasonable and acceptable compromise of the contract demand issues. Sections 6 and 7 provide the customer with more control over the establishment and reset of its contract demand. They also provide more reasonable penalties

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<sup>9</sup> Id. at Fifth Revised Leaf No. 139, ¶ (D).

<sup>10</sup> Joint Proposal, §6, p. 4.

<sup>11</sup> Joint Proposal, §7, p. 4.

<sup>12</sup> Significantly, the Joint Proposal’s customer nomination of Contract Demand provisions are similar to provisions recently approved by the Commission in the Niagara Mohawk standby rates case. See Case 01-E-1847, In the Matter of the Compliance Filing of Niagara Mohawk Power Corporation in Response to Opinion No. 01-4 on Standby Service Rates, Order Approving Joint Proposal, p. 3.

that will punish “gaming” but not innocent mistakes. Accordingly, the Commission should approve without modification Sections 6 and 7 of the Joint Proposal.

**C. The Utilities Should Be Authorized To Negotiate Individually-Negotiated Standby Service Contracts**

The standby tariffs filed by the Utilities did not provide for flex rate standby service contracts. For example, Con Edison’s proposed standby service tariff called for all standby customers to be transferred to the new standby service beginning with the first bill issued on or after the effective date of the new SC 14-RA standby service tariff.<sup>13</sup> However, given the level of the new standby rates, there will be customers in the Utilities’ respective service territories that likely will find it more economical to isolate from the grid rather than pay the otherwise applicable tariff rates. Given this, it is in the best interest of the Utilities and their other customers for the Utilities to be authorized to offer flex rate standby contracts to prevent isolation.

The Joint Compromise provides that the Utilities may offer flex-rate contracts to standby customers that can demonstrate that it is more economical to isolate from the grid rather than pay the otherwise applicable standby rates.<sup>14</sup> Significantly, the Joint Proposal is modeled on the Commission’s recent decision in the Niagara Mohawk standby rates case that allows that utility to offer flex-rate standby service contracts in certain circumstances.<sup>15</sup> Similar to the Commission’s decision in the Niagara Mohawk case, the Joint Proposal calls

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<sup>13</sup> Case 02-E-0781, supra, Transmittal Letter, p. 4 (June 7, 2002), emphasis added.

<sup>14</sup> Joint Proposal, §10, pp. 8-9.

<sup>15</sup> Case 01-E-1847, supra, Order Clarifying Prior Order And Directing Tariff Modifications, p. 13.

for the Utilities' standby service contract rates to be computed by reducing the otherwise applicable standby tariff rate by the amount necessary to offset the economic benefits the customer would achieve by installing and operating on-site generation and isolating from the grid, provided that the affected utility achieves a reasonable contribution towards its fixed costs.<sup>16</sup>

Section 10 of the Joint Proposal also authorizes the Utilities to offer a flex rate standby service contract to customers who already have isolated from the system. As noted earlier, Spring Creek currently is isolated from the system, primarily because of the cost of Con Edison's standby rates. It only makes sense that, where Con Edison can negotiate a standby rate which "provides a reasonable contribution to the utility's recovery of its fixed costs," it should try to add that customer back to the fold. Not only will the addition of such a customer add to Con Edison's revenues, given the new wholesale market structures, this addition would provide important reliability and competitive benefits.

Therefore, subject to the exception discussed in the next sub-section of these Comments, the Standby Customer Coalition respectfully requests that the Commission accept the flex-rates standby service contract provisions described in Section 10 of the Joint Proposal.

**D. Individually-Negotiated Contracts For Partial- Load Requirements Standby Customers**

When it executed the Joint Proposal, the Standby Service Coalition reserved a limited exclusion on the issue of whether the Utilities should be required to offer a flex-rate

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<sup>16</sup> Importantly, the Joint Proposal provides a procedure whereby a customer can obtain the flex-rate standby service contract, and also a procedure for dispute resolution.

contract for standby service to customers with partial load served by on-site generation. The Standby Customer Coalition respectfully submits that the Commission should modify the first sentence of Section 10 of the Joint Proposal to read as follows:

The utility is authorized to offer individually negotiated agreements for standby service to customers that may install back-up generation *for all or part of their load* and disconnect *that load* from the utility system in lieu of taking tariffed standby service.<sup>17</sup>

Without the italicized additions, Section 10 could be read as not providing Con Edison with the ability to offer a flex rate standby service contract to a customer who is contemplating installing OSG for a part, but not all, of its load. Con Edison should not be limited in this manner. In the Con Edison service territory, the economics of OSG are marginal due to the high cost of construction in the City. Because of this, partial load OSG facilities often represent the best option for customers to reduce their energy (combined electric and steam) costs.

Inasmuch as partial load OSG is likely to become more prevalent in the Con Edison service territory, it makes no sense to preclude Con Edison from attempting to retain that load by offering a flex rate standby service contract. If a customer installs partial load OSG and isolates the load served by that OSG, Con Edison's revenues would suffer, and the system as a whole would lose important reliability and competitive benefits. Accordingly, Section 10 should be modified, as set forth above, to clarify that Con Edison is authorized to seek to retain these benefits.

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<sup>17</sup> The italicized language comprises the Coalition's proposed modification.

**CONCLUSION**

For the reasons set forth above, the Standby Customer Coalition respectfully requests that the Commission approve, without modification, the Joint Proposal as executed and filed, subject to the modification to Section 10 discussed herein.

Dated:           March 20, 2003  
                  Albany, New York

Respectfully submitted,

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