

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**Amendments to Gas Tariff
Interruptible and Off-Peak Firm Gas Service Criteria**

Submitted By:

**Consumer Power Advocates (CPA)
October 1, 2004**

PRELIMINARY STATEMENT

In accordance with the New York State Administrative Procedures Act, Consumer Power Advocates, representing large commercial, nonprofit institutions, and industrial energy consumers with facilities located within in the Consolidated Edison Company of New York, Inc. (“Con Edison”) service territory, hereby submits its comments in response to the July 30, 2004 Amendments to Gas Tariff – Interruptible and Off-Peak Firm Gas Service Criteria.

SUMMARY COMMENTS

The Consolidated Edison Company of New York, Inc. (the Company), seeking to address the problem that some of the Company’s interruptible and off-peak firm customers continue to utilize gas during interruption periods, has filed for stricter penalties and mandatory switching of service in the belief that such actions will be sufficient penalty to prevent future infractions and improve reliability to firm customers. Such actions are unduly stringent and unfair to customers experiencing legitimate operational issues and essentially subject all interruptible customers to greater penalties due to the actions of a few “bad apples”. CPA has repeatedly filed comments on this issue and remains steadfast in the position that the tariff currently carries sufficient penalties, should not be changed, and effectively penalizes all for the actions of the few. The vast majority of interruptible customers properly maintain their dual fuel plant for the simple reason that it is economically advantageous to do so. Despite proper maintenance, a switch from gas to oil is occasionally is not possible or, in and of itself, causes a plant to malfunction. The following plausible reasons sufficiently illustrate this point:

1. Plant Age – many dual fuel plants have been in service for many years. It is not uncommon for plants to be still in operation after 20 yrs or more.
2. Weather Related Issues – Oil delivery issues whereby trucks cannot physically reach their delivery destination, or physically can’t deliver because they are blocked by snow, ice or even plowed in parked cars. Inability to sufficiently heat oil for plant switch-over under extreme cold conditions.
3. A sudden large increase in load, caused by extreme weather change, or failure of a steam station outside of plant can cause plant malfunction
4. An air dryer for compressed air passes water into the control air system and freezes because of subfreezing temperature causes plant to malfunction
5. Outdated personnel and phone / communications data results in interruption notification being missed
6. Meter malfunctions and calibration issues improperly show usage
7. Power Issues –power outage or Uninterruptible Power Supply (UPS) failure
8. Miscellaneous - Contaminated fuel oil, operator error

The penalties proposed are unfair and place undue financial pressure on institutions already facing unprecedented energy cost increases. The proposal to transfer customers that commit two violations in a Winter Period to firm service has financial implications beyond those contemplated within the tariff. Under certain circumstances, this provision may not permit a

customer to return to interruptible or off peak firm service for nearly 2 years. Such a penalty would not only cause the customer to pay costlier firm transportation rates, it would effectively eliminate certain competitive fuel purchasing options potentially increasing fuel costs by millions of dollars.

The existing regulatory requirements are tough enough. Increasing the regulatory requirements for IT customers will only result in the probability that more consumers will rely on firm service, therefore increasing the probability of a "gas brownout". The proposed changes will add considerable financial and operational expense to the existing IT customer base. Under such conditions, many will then opt for firm service. IT customers are needed to reduce peak demand service in all LDCs service areas to continue to assure system reliability.

Increasing penalties for noncompliance will not solve the root cause of the problem. We believe a greater emphasis must be placed on educating consumers in regard to the terms and conditions that apply when interruptible service is provided by the utility. In addition, if an appropriate communication system is not put in place by the utility, insufficient notice could be a significant reason for noncompliance. Most all, the existing tariff allows Con Edison to penalize those who show a consistent pattern of noncompliance. Those few "bad apples" should be removed from the IT service classes and moved onto firm rates.

EDUCATION IS NECESSARY

When a consumer first selects a service classification, they have a discussion with their utility representative during which time the ability to utilize an alternate supply is verified. However, it must be noted that often facility representatives are not involved in the decision to choose what rate the facility will be on. It is usually a financial decision. Under these circumstances, it is both the LDCs and the consumer's obligation to understand the terms and conditions of the service purchased.

A need for continuous re-education also exists. The deal might have been struck years ago, people may have changed jobs or been reassigned, and personnel may be unaware of their obligation to the utility. Pre-season heating letters are sent out each year to consumers, but we question whether or not they reach the right hands. Normally, such letters are sent to billing addresses, which may not be appropriate to the operating personnel that must take the necessary action.

It is important for IT facilities to maintain safe and reliable operations in order not to jeopardize the safety and reliability of the gas distribution. However, CPA and other consumer organizations should not be the only institutions performing an educational role. There are two parties to this transaction, the buyer and the seller. The buyer cannot perform its obligations if they are not understood.

Again we recommend that, prior to the heating season, each interruptible customer attend a training session for IT customers offered by its LDC. The session should place emphasis on the need to maintain dual-fuel equipment, reasons for service interruptions, how quickly change over must occur, the notification system that will be used, the large penalties for unauthorized use during an interruption, and establishment of personnel contacts. **If a consumer does not attend a session, they may become ineligible for IT rates.** The training sessions for IT customers should be an ongoing commitment by the LDCs and could potentially become online tutorials, further increasing training availability and compliance.

This proposal eliminates the uninformed and, through annual training, addresses personnel changes. Consumer Power Advocates would be willing to assist LDCs with the development and implementation of this training. We understand that reliability of the gas distribution system of all LDC's is vital.

IT CAN ALL FALL APART IF COMMUNICATION IS WEAK

Even with adequate education, the process can fall apart if communication is weak. Our research has revealed that the following communication problems can, and do, result in customer penalties for noncompliance:

1. Notices to interrupt were faxed to administrative offices after hours.
2. Facility operations personnel were never contacted directly.
3. No notice was received (fax failed, contact numbers old).
4. Even when a changeover to gas occurred, a penalty for pilot ignition gas (to start burner for fuel oil) was levied.

We continue to stress that there are two parties in this transaction. Failure to perform can, and will, occur repeatedly if the LDC does not put a proper communication system in place. Such a system should consist of the following:

1. More than one mode of communication should be used (i.e. telephone, fax, email).
2. At least two personnel contacts should be required; the first contact should be a 24-hour number at a facility. The second serves as a backup. These contacts should be provided to the LDC prior to heating season and should be mandatory for IT rate eligibility.
3. LDCs should be required to test their notification system and take corrective action immediately when there are failures. Test results should be published.
4. If an LDC thinks there is a possibility of interruption, pre-positioning IT customers with a 24 hours notice would greatly increase the likelihood of compliance.
5. The LDC must account for how customers normally operate facilities during an interruption. Natural gas used to ignite burner fuel should not be assessed a penalty.

THERE WILL ALWAYS BE FAILURES

The new proposal eliminates the fifty percent reduction to the unauthorized use charge – a provision which recognizes the inevitability of operational failures. No matter how well a system is designed, there will inevitably be breakdowns in equipment or process. CPA has always advised members to immediately communicate with the LDC with regard to any problem which might impact compliance. The Con Edison tariff specifically addresses this by advising "if a customer is unable to switch from gas to its alternate fuel and if it notifies the Company of such a situation prior to or within one hour of the implementation of the curtailment, the customer will be billed at one half of the charge for unauthorized use during the first four hours of the curtailment. Thereafter, the Customer shall be billed at the full charge." This tariff provision encourages consumers to fix the problem, and provides the LDC with timely notice that the

customer is still on the system. The proposed three tiered penalty structure is *dramatically* increases the financial penalty for Unauthorized Use, yet there is no evidence that the increase will result in greater compliance.

THE PROPOSED RULES ARE UNNECESSARY

Within the proposed rules, the Commission hopes to avoid widespread noncompliance of interruption notifications and increase reliability for firm customers. However, it has not been demonstrated that the proposed rules are warranted and will deter noncompliance. As previously stated, current tariffs have severe penalties for noncompliance and when a consumer is in violation *they should be enforced*. As stated above, it is our belief that the stringent penalties and requirements do not attack the root causes of noncompliance

However, if the proposed rule is implemented, the very conditions the Commission is attempting to avoid will occur. More will opt for firm gas creating greater reliability concerns.

CONCLUSION

For the preceding reasons, Consumer Power Advocates urge the Commission to maintain existing requirements for interruptible transportation service with the following proposed modifications:

1. It is requested that the Commission reconsider the possible reasons why consumers are in noncompliance, and institute a consumer outreach program that will encourage compliance through the proper distribution of interruption notices.
2. We recommend the Commission adopt expanded educational and communication plans in order to address the root causes of noncompliance by IT customers within the LDC systems.

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Respectfully submitted,

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