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# Consumer Power Advocates

Columbia University  
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Memorial Sloan Kettering Cancer Center  
Mount Sinai Medical Center

New York University  
New York Presbyterian Hospital  
NYU Downtown Hospital  
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February 11, 2005

Hon. Jaclyn A. Brillig  
Secretary  
Public service Commission  
3 Empire State Plaza  
Albany, NY 12223

Re: 00-M-0504, Unbundling Track  
04-E-0572, Con Edison Electric Rates

Dear Ms. Brillig:

On behalf of Consumer Power Advocates (CPA), I am filing these comments on the recent tariff filing by Con Edison implementing revised back out credits for its Retail Access customers.

**The “Transition Adjustment” proposed by Con Edison should be modified to reflect settled Commission policy.**

The Commission’s August 25, 2004 order reiterated the Commission’s policy that the Company should neither over-recover or under-recover lost revenue. From the August 25 order:

Measuring whether and to what extent the utility experiences lost revenues has resulted in considerable controversy... As a general matter, our view is that a utility loses revenues due to migration during the course of a rate year only to the extent that migration results in the receipt of total revenues below those assumed in rates. Because those rates will include embedded levels of migration and lost revenues, plus a forecast of rate year levels, we expect true-ups to actual migration lost revenues to be small and they may well be offset by unpredicted revenue growth in other areas. Therefore, a mechanism for measuring lost revenues that is based on rate year assumptions and allows for offsets in the true-up calculation based on revenue growth would be an acceptable approach to designing a recovery mechanism. (p.34)

As currently written, the Company’s “Transition Mechanism” includes no provision for the use of revenue growth to offset “Lost Revenues.” The company should be required to deduct all net revenue above that forecast in each rate year from the gross amount if lost revenue is to be recovered. We expect this deduction to reduce the recoverable balances significantly, and in some years to result in refunds to ratepayers.

**Use of Cost of Service Principles to establish backout rates:**

While the Commission has determined that embedded cost of service principles should be used to determine appropriate backout credits, the Commission has also recognized that the results of such analysis must be modified when those results produce irrational results. In the August 25, 2004 order in the Unbundling case, the Commission explicitly accepted this recommendation of the ALJ:

An ECOS [embedded cost of service] study approach, reasonably based on cost-causation principles, but with sufficient flexibility to consider the reasonable interests of consumers, is the method that should be used in all ECOS studies. (RD, p. 27) (emphasis added)

The August 25 opinion also referred to the November 9, 2001 order:

In our Order Directing Filing of Embedded Cost Studies, a number of issues were resolved regarding the nature of the cost studies (e.g., embedded cost studies were required), and we directed that those studies be filed by March 15, 2002. In addition, we stated: "Gas and Electric retail markets are now open, and we believe it important to establish competitive service unbundled rates, calculated with some degree of statewide uniformity, as soon as possible to replace the variously calculated backout credits now in use. (emphasis added)

The August 25 Order also reiterated the findings of the March 29, 2001 Order:

. . . the [embedded cost] studies must not be so uniformly constrained that they cannot reflect the real and material differences among the utilities; but neither can they be so disparate that the elements or components of competitive service rates are significantly different from utility to utility.

In this context, CPA believes that reasonable adjustment to the cost allocation proposed by the Company is required to meet the Commission's policy goal of full development of competitive energy markets.

Under the current filing, back out credits for most customers would more than double, but credits for almost all current Retail Access loads would remain unchanged. Equally important, credits for all other than Residential or SC2 Small General Service customers would remain the same. While this "all other" class is few in numbers, it represents the vast majority of actual Retail Access loads, and those loads which remain on full service represent more than half the remaining load on Con Edison's system. By holding the backout credit at its current inadequate level, Con Edison is turning its back on the largest unserved market opportunity available.

As advisors to energy consumers, our experience is that only relatively minor savings can be achieved through competitive purchasing of electric energy. Often, requests for proposals to supply large non-time-of-day commercial loads attract no offers at all. The reasons for these market failures are varied and should be addressed, but growth in this sector demands higher backout credits as a first step.

The final and perhaps most important reason that backout credits for the large commercial class must increase is to create a degree of Statewide uniformity. As it now stands, and would remain under the Company's filing, Con Edison backout rates are the lowest in the State, while its delivery rates for large customers are the among the highest. This is an irrational result which inhibits the development of Statewide retail energy to the detriment of all the State's consumers. Larger regional markets will surely be more liquid and less volatile than small local markets, as the imbalances of each local market may frequently offset imbalances in other local markets. More equal backout rates among all utilities will encourage ESCOs to compete on a Statewide, rather than local basis, to the benefit of all consumers.

## **Conclusion**

For all the above reasons, CPA urges the Commission to obligate Con Edison to file revisions that require the consideration of revenue growth in the reconciliation of "lost revenue," and which increase the minimum backout credit for all non-residential, large volume customers.

Sincerely,

*/s/ Catherine M. Luthin*

Catherine M. Luthin  
Executive Director  
Consumer Power Advocates

cc: Service Lists Cases 04-E-0572 & 00-M-0504(by e-mail)  
Administrative Law Judge Gerald L. Lynch  
Administrative Law Judge Jeffrey E. Stockholm