

VIA AIRBORNE EXPRESS

January 26, 2004

Ms. Jaclyn Brillig
Secretary
New York State Public Service Commission
Three Empire Plaza
Albany, NY 12228

Re: Case 96-E-0897 – Recovery of Retail Access Phase 5 Costs

Dear Secretary Brillig:

Please find attached Consumer Power Advocates' (CPA) comments on the above referenced case. CPA represents several major New York City non-profit institutions whose budgets will be directly impacted by the settlement proposed in the case.

Respectfully submitted,

Catherine M. Luthin
Principal, Luthin Associates, Inc.

ASC/eg
Enclosures
cc: file

Introduction

On September 26, 2003 the Consolidated Edison Company of New York filed a petition with the Commission regarding the recovery of Retail Access Phase 5 Costs. Consumer Power Advocates (CPA) has outlined our comments in opposition to this petition below.

Background

In its March 2003 Order establishing Phase 6 of the Retail Access Program, the Public Service Commission (PSC) directed Consolidated Edison Company of New York to continue the Retail Access credits approved for Phase 5 of its Retail Access program. In that order, the Commission concluded that Retail Access credits should remain at the same level as provided for in its Phase 4 Order (e.g. a reduction of 1 mil/kwh for demand billed customers and a reduction of 2 mils/kwh for non-demand billed customers). The Commission also directed the Company to file a proposal for Phase 7 of the program if Retail Access credits are not determined by November 2003 in Case 00-M-0504 -- Unbundling Track (the "Unbundling Proceeding"). To date, a Commission decision has not been reached in that proceeding.

In its September 26, 2003 petition with the Commission, Con Edison filed for the recovery of \$6.5 million in deferred Retail Access Phase 5 Costs representing "the reductions credited to retail access customers in excess of the amounts assumed avoided".¹

Specifically, the Company proposes to recover these costs by reducing the deferred credit balance for electric rate reductions for the period October 1, 2000 to December 31, 2000 which was set aside for the benefit of ratepayers under the 2000 Settlement Agreement in Case 00-M-0095.

¹ Consolidated Edison Company of New York, Inc. petition Re: Recovery of Retail Access Phase 5 Costs; Case 96-E-0897 (Retail Access)

As the basis for this recovery, the Company submitted an analysis demonstrating that call center volumes has increased despite the migration of customers to retail access during Phase 5. In addition, the Company states that rather than avoiding costs as a result of Retail Access migration, costs actually increased. The petition constitutes Con Edison's position that it was unable to avoid the entire amount of \$6.5 million that it was eligible to claim for recovery. The petition focuses on several specific cost centers (call center, meter reading operations and back office activities) and contends that Retail Access activities have actually caused the Company to incur additional costs, not avoid them.

Rationale

CPA has several concerns with the Company's petition for cost recovery and believes that this petition and its cost recovery methodology is premature given that a decision in the Unbundling case is pending. The backout credits and avoided costs recovery methodology proposed by Con Edison in the Unbundling proceeding has not been approved and is in opposition to the majority of informed parties. Considerable resources and debate have taken place regarding the determination of an appropriate cost allocation methodology and a decision is pending. CPA believes that a fully developed embedded cost of services allocation methodology must be developed rather than an ad hoc analysis of avoided costs Con Edison has offered in its petition. While we can infer from the use of the plural "analyses" that Con Edison conducted several operational reviews to substantiate its petition's conclusions, the Unbundling Case is the appropriate vehicle for the determination of appropriate cost recovery, if any.

In its petition, the Company states that the cost of procurement, uncollectibles and working capital exceed the Company's actual avoided costs and are considerably less than the amounts

assumed to be avoided. However, the fact remains that the Commission's guidelines for performance of studies provides that, "[e]ach utility will perform embedded cost of service studies?" Despite numerous Orders to the contrary, Con Edison filed a cost study that amounted to an avoided cost study, not an embedded cost study as was required³. Con Edison cannot be granted unlimited discretion in its cost study methodology as noted in ESCO Coalition witness Hornby's statement that "utilities have a strong direct financial incentive to minimize the level of costs functionalized to contestable services and to maximize the costs functionalized to monopoly services."⁴

The Company has calculated that the cost of supply-related functions should ultimately result in retail access credit reductions (0.25 mil/kwh for residential customers and 0.18 mil/kwh for non-residential customers). CPA believes that any proposal to substantially reduce current Retail Access credits would severely and negatively impact the development of retail access - particularly in light of current market conditions.

Comments and Recommendations

- Consumer Power Advocates (CPA) believes that until a decision is reached in the Unbundling Case that addresses all of the outstanding issues and inequities inherent to the case, the proposed \$6.5 million recovery is premature. Recovery of costs should be based upon a fully embedded cost of service study.

² Case 00-M-0504, Order Directing Filing of Embedded Cost Studies, November 9, 2001, at page 11.

³ Trial Brief of The National Marketers Association, October 29, 2002

⁴ (Hornby Testimony, page 8, lines 11-13).

- CPA urges the Commission to reject the petition for full recovery and contends that the call center analysis and supporting documentation provided in Case 00-M-0504 is grossly inadequate as a basis for cost recovery.
- CPA fully supports the National Energy Marketers recommendation filed in the Unbundling Proceeding Case 00-M-0504 regarding cost study methodology and agrees that “there are substantial positive competitive and consumer impacts (resulting from) fully allocated embedded cost-based unbundled rates”⁵

Conclusion

For the foregoing reasons, Consumer Power Advocates urges that Con Edison’s petition for full recovery of \$6.5 million be rejected because it is premature and based upon a cost of service study that is inconsistent with the Commissions guidelines for such studies.

Date:

Respectfully submitted,

Catherine M. Luthin

Principal, Luthin Associates, Inc.
On Behalf of:
Consumer Power Advocates

⁵ Reply Brief of The National Energy Marketers Association dated December 19,2002