STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of Consolidated Edison Company of New York, Inc.'s Plans for (1) Electric Rate/Restructuring Pursuant to Opinion No. 96-12; and (2) the Formation of a Holding Company Pursuant to PSL, Sections 70, 108 and 110, and Certain Related Transactions.

CASE 96-E-0897

COMMENTS OF CONSUMER POWER ADVOCATES (CPA) IN OPPOSITION TO CON EDISON'S PROPOSED CHANGES TO ITS RETAIL ACCESS IMPLEMENTATION PLAN AND OPERATING PROCEDURE

MARCH 28, 2002

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TABLE OF CONTENTS

Page

PRELIMINARY STATEMENT

Consumer Power Advocates (CPA), an association of non-profit commercial energy users in the Consolidated Edison Company of New York, Inc.'s service territory (Con Edison), submits these Comments in opposition to Con Edison's proposed February 1, 2002 filing to Secretary Deixler detailing the Company's proposed Retail Access Implementation Plan and Operating Procedures Filing to be effective May 1, 2002 ("the filing").

Con Edison's filing does little to encourage the growth of the competitive market. Whatever ESCO competition exists is primarily limited to large demand-metered users. Con Edison delivery rates remain tied to obsolete cost studies while lack of transparency in component pricing continues to create unworkable competition for ESCOs supplying bids to retail access customers. At present, full service rates remain the choice of supply for the vast majority of residential and small commercial customers.

Since the process began in 1998, the purpose of restructuring has ostensibly been to create a workably competitive marketplace amongst suppliers and to encourage utility customers to migrate to retail access. Progress has been disappointingly slow. One such incentive to increase retail migration is to provide customers with credits that correspond to the costs avoided by Con Edison when it exits the retail function. At present, these incentives are derived from estimates and the current filing calls for a bill reduction that has not been substantiated with a factual accounting. In addition, several provisions within the filing effectively increase the barriers to competition by making it harder for ESCOs and Retail Choice customers to transact. Longer notice periods, shorter data histories and higher fees inhibit the process and indicate a trend away from our agreed goal of creating a competitive marketplace. CPA opposes the filing because it fails to credibly establish cost-based retail access incentives and does not provide the price transparency necessary to promote a truly competitive marketplace.

SUMMARY OF POSITION

For the reasons set forth below, CPA recommends that the Commission:

1. **Establish a principle goal in the unbundling proceeding that price transparency is required to create workable competition,**
2. **Continue the retail access program as filed in Phase IV, with recommended modifications,**
3. **Eliminate any requirement that large-volume commercial ESCO sales contracts be assignable**

COMMENTS

I. Establish a principle goal in the unbundling proceeding that price transparency is required to create workable competition

Under present rate determinations, no price certainty is available to customers with regard to the distribution portion of their energy bill. Delivery rates are determined based on the legacy of embedded costs, which are in turn the result of investments made in the regulated past. Worse, the MAC computation, which increases the MAC charge by an amount equal to any decrease in market energy supply prices, captures the benefit of market efficiencies only for Con Edison. The benefit to customers of lower supply prices, and the corresponding margins available to ESCOs, are effectively squeezed out.

The clear solution to this problem is the full unbundling of Con Edison's supply and delivery rates. Only when these rates are established and clearly stated, will suppliers and customers alike know the cost implications of their purchasing decisions. For example, any analysis to determine the current state of market prices or the competitive nature of ESCO bids is extremely cumbersome due to lack of clarity on pricing components. Unlike a true competitive environment, where a price analysis would vet bids against current market conditions (or another ESCO bid), the only clear benchmark currently available is the Con Edison tariff rate. Unbundled, fixed delivery rates would also provide the impetus for new ESCOs to confidently enter the marketplace. Until then, retail access will be crippled by subsidies and distortions inherent in the current rate structure.

Some parties propose reinstating the Phase 4 up front-payments to customers choosing retail access. A truly competitive market has no place for subsidies and the funding for these subsidies has been exhausted. The proper way to encourage the development of competition is through fully unbundled, transparent delivery rates. Once the costs of each component are known, cost-based back-out credits can be established for each class of customer. Con Ed has stated that until unbundled rates are implemented, a total of 1 mill/kWh of the Retail Access Credit to non-demand billed customers and 0.5 mill/kWh of the Retail Access Credit to demand billed customers is assumed avoided, unless lower costs are adopted for the Supply-Electric function in the Unbundling Proceeding or a separate Con Edison unbundling (related) proceeding, in which case such lower costs shall be assumed avoided. CPA requests that any back-out costs ultimately adopted be passed through to either Con Edison or ratepayers on a reciprocal basis (credit or debit) with customers receiving any benefit ultimately derived from such cost re-evaluation if avoided costs are deemed higher or if costs established are lower to Con Edison.

II. CONTINUE THE RETAIL ACCESS PROGRAM AS FILED IN PHASE IV, WITH CERTAIN MODIFICATIONS

CPA supports retaining all aspects of the current Phase IV settlement, including the 2 mill Retail Access credit for small non-demand billed accounts and the 1 mill Retail Access credit for demand billed accounts, and the continuation of all other terms and conditions in the current tariff, including those provisions assessing fees and prescribing response deadlines for customer information requests. Without exception, all of the "housekeeping changes" proposed by Con Edison have the effect of imposing higher costs, creating greater delays and reducing access to information. For example, the vast majority of electric contracts offered by ESCOs contain usage "bandwidth" requirements that expose customers to penalties if their usage falls outside of historical patterns. In order to accurately gauge this risk, a minimum of two years historical data should be analyzed. Yet, the Company's filing reduces the historical data available to ESCOs at no charge from 24 to 12 months. In addition, the time period for ESCOs and customers to enroll, change, transfer or revert service has been increased from either 5 or 10 business days (depending on the type of customer) to a uniform 15 days. This timeframe clearly limits customer participation in the market and potentially erodes the already limited cost-saving opportunities available to customers who are currently taking advantage of Retail Access.

Finally, given the short timeframe Phase V is expected to be effective (~ 2 ½ months), an extension of Phase IV should not be burdensome to Con Edison and is essential to avoid further confusion in a marketplace that is still struggling to create competitive choice.

III. ELIMINATE ANY REQUIREMENT THAT COMMERCIAL ESCO SALES CONTRACTS BE ASSIGNABLE

The assignment of non-demand billed customersmust strike the right balance between the needs of ESCOs and consumers. The prompt assignment of small customers in the event of an ESCO default, or choice to withdraw from all or part of its market, can only serve to stabilize the total retail access market share, to the benefit of the development of competition. Concerns that customer choices would be limited by some arbitrary assignment to objectionable ESCOs are misplaced. It is requested that any Commission decision allow for sufficient notice to customers to choose alternate service arrangements, and provides for standardized business practices and service standards that will create a seamless transition for most assigned customers. Most importantly, any attempt to create a permanent obligation for an ESCO to continue service will result in an exit barrier that makes the entire Con Edison energy market less attractive to competitive suppliers.

One difference must be noted for large commercial customers. This class of customers must be exempt from mandatory assignment. These relatively small number of customers are already the most likely to avail themselves of competitive opportunities, and the least likely to return to full utility service unless the competitive market fails to provide the savings envisioned or proves too cumbersome. Most importantly, the majority of these customers purchase power under contracts that are specifically designed for their unique operating environments and also require that suppliers meet internal due diligence and credit requirements. The negotiation of these contracts is often a lengthy and meticulous process. Such complex agreements cannot be arbitrarily assigned without the customer's explicit consent.

CONCLUSION

For the reasons set forth herein, Consumer Power Advocates recommends that the Public Service Commission reject the Company's filing and direct Consolidated Edison to: (1) establish a principle goal in the unbundling proceeding that price transparency is required to create workable competition; (2) increase the retail access credit from 1mill to 2 mill for non-demand billed customers and from 0.5 mill to 1 mill for demand billed customers; (3) keep the Phase IV timeframes associated with data exchanged with ESCOs and change of service requests, and; (4) eliminate any requirement that large-volume commercial ESCO sales contracts be assignable.

Dated: March 21, 2005
Avon By-The-Sea, New Jersey

Respectfully submitted,

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