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. ("Con Edison") service territory, hereby submits its Comments in opposition to the Notice of Proposed Rulemaking published in the February 27, 2002 New York State Register, I.D. No. PSC-09-02-00018-P, issued by the State of New York Public Service Commission ("Commission"), pertaining to the new Rider Y tariff proposed by Con Edison, in Case No. 02-E-0141.

SUMMARY OF CONSUMER POWER ADVOCATES' POSITION

CPA submits these Comments in opposition to Con Edison's proposed Rider Y tariff. Initially, the Commission should reject the adoption of the proposed Rider Y tariff because Con Edison has failed to provide adequate justification for the tariff changes or explained why its existing tariff, which includes deposit and security provisions, cannot effectively address the alleged problem. In fact, CPA contends that the provisions of Con Edison's existing tariff provide Con Edison with sufficient means for addressing the purported problems caused by high-load density customers. Rider Y is a dramatic remedy that has not been justified.

Moreover, Rider Y imposes significant burdens on existing and new customers looking to expand operations in the Con Edison service territory. These additional burdens are likely to stifle economic development and discourage economic growth in Con Edison's service territory at a time when New York City is desperately seeking to entice businesses to locate or expand in the City.

For the reasons more fully set forth below, CPA contends that the Commission should reject Con Edison's proposed Rider Y tariff in its entirety. In the alternative, Rider Y should be suspended until a technical conference or hearing is scheduled to address the merits of Rider Y.

POINT I

CON EDISON HAS FAILED TO PROVIDE ADEQUATE JUSTIFICATION IN SUPPORT OF THE ADOPTION OF RIDER Y

On February 4, 2002, Con Edison filed proposed changes to its tariff that would create a new service rider, Rider Y (Rates and Charges For High Load-Density Customers), applicable to its full service and Retail Access Customers in New York City and Westchester County. Based on undisclosed "recent experiences," Con Edison contends that there is a need to establish new tariff provisions applicable to customers who request electric service at their facilities at higher load-density levels than normally required for the type of facility the customer is occupying. (See Filing Letter at 1.) Con Edison also claims Rider Y is necessary because the costs of providing such high-load density service can require subsidization by other customers and cause revenue risks to Con Edison. (See Filing Letter at 2.)

Con Edison's filing does not provide adequate justification for Rider Y. As set forth in more detail below, proposed Rider Y is not customer-friendly and could hamper important economic development efforts in the City and Westchester County. In light of the potentially devastating impact of Rider Y, it should be fully justified before it is approved. The mere citation to undisclosed "recent experiences" is not adequate justification. At a minimum, Con Edison should have explained why it existing tariff is inadequate to protect its interests and those of its customers and why Rider Y is needed to fill that gap. In addition, Con Edison should have demonstrated that Rider Y is the most effective, and measured, response to the alleged problem by including a customer impact analysis.

The current Con Edison tariff states that Con Edison will provide, at the customer's expense, additional distribution facilities that are in excess of those normally provided by Con Edison to such a customer.[1] In addition, Con Edison is allowed to annually recover estimated tax and maintenance payments associated with the facilities.[2] Thus, Con Edison already has the tools necessary to seek payment for extraordinary investment. As noted above, Con Edison has not provided a sufficient explanation of why its existing tariff is inadequate to address the alleged problems resulting from providing service to high load-density customers.[3]

Having failed to provide adequate justification for such a controversial tariff change, Con Edison's Rider Y should be rejected in its entirety. In the alternative, the Commission should suspend Rider Y for further action. For example, the Commission should schedule a technical conference or hearing at which Con Edison would be required to provide justification for Rider Y and parties could provide additional input.

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[1] See Con Edison Tariff, Second Revised Leaf No. 28 (January 1, 1998).

[2] See id.

[3] Customers should not be responsible for protecting Con Edison for all manner of business risk. Con Edison has a responsibility to add loads to replace departing loads and does this in the normal course of business. Rider Y goes too far in protecting Con Edison.

POINT II

RIDER Y WILL STIFLE ECONOMIC DEVELOPMENT AND FRUSTRATE IMPORTANT FEDERAL, STATE AND CITY POLICY OBJECTIVES

The devastating economic impact of the September 11, 2001 attacks on the World Trade Centers is well-documented.[4] The commitment of federal, state and local officials to rejuvenating the New York City economy is just as well-documented. For example, President George W. Bush stated that ". . .I do think it's important for the country to know that a vibrant New York City is vital for our economy."[5] Similarly, Governor George E. Pataki, in his 2002 State of the State Address, acknowledged that, "The economic challenges we face today are by no means limited to lower Manhattan. The rest of the City and metropolitan area have also been dramatically affected and we will work to ensure that investment and growth reaches every corner of the city and metropolitan region."[6] Lastly, New York City Mayor Michael R. Bloomberg, in suggesting that a healthy New York City

[4] James T. Madore, *Collateral Damage: New York City Not Alone As Economic Ripple Effects of September 11 Besiege Other U.S. Cities*, Newsday, Dec. 23, 2001, at F8 (stating "the total damage tally [in New York City as a result of September 11] is astonishing:. . .the loss or damage of millions of square feet of office space, small businesses forced into bankruptcy and pink slips for tens of thousands of workers. A study for the New York City Partnership and Chamber pegged the job losses at 125,000 this year and $80 million in lost business and consumer activity through 2003. 'The City lost a year's worth of growth,' said James Parrott, chief economist at he Fiscal Policy Institute, 'You have to go back to the Depression to get an effect that pronounced.'"); see also Leslie Eaton, *Study Finds More Dire Financial Impact of 9/11*, The New York Times, Feb. 11, 2002, at B3.

[5] Adam Nagourney, *Bush, in New York, Affirms $20 Billion Aid Pledge*, New York Times, Feb. 7, 2002, at A1.

[6] Governor George E. Pataki, 2002 State of the State Address (January 9, 2002) (emphasis added) *available at* http://www.state.ny.us/sos2002text.html.

benefits the entire State of New York, noted that ". . .it is also both good politics and good policy to assist New York City in getting back to full economy as soon as possible."[7]

As set forth below, Rider Y will impose significant burdens on new and existing customers who might be interested in expanding operations in New York City. Thus, in a very real sense, Rider Y is at odds with important Federal and State policies directed toward the rejuvenation of the City. In light of this, Rider Y should be rejected.

A. Application of Rider Y to Customers

Pursuant to Con Edison's proposed tariff changes, Rider Y will apply to customers receiving service under S.C. 3, 4, 9 and 10 who request electric service at higher "load-density" levels than normally required for the type of premises at which service is being supplied.[8] As such, Con Edison proposes to define a customer's "load density" based on the peak kilowatt demand anticipated to be required at the customer's premise, not on the customer's actual usage.[9]

Importantly, Con Edison has provided no justification for its reliance on customers' projected usage, rather their actual usage, to determine which customers must take service under Rider Y. CPA contends that it would be more equitable for "load density" to be defined on an objective basis such as a customer's actual usage rather than Con Edison's speculation of a customer's potential usage. In addition, the test for whether Rider Y applies

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[7] Jioni Palmer, *Mayor Makes His Pitch For Funds*, Newsday, Jan. 29, 2002, at A4.

[8] See Con Edison Filing Letter, Proposed Original Leaf No. 158-Y (February 5, 2002).

[9] See id. at Proposed Original Leaf No. 158-Y-2.

is obscure and provides Con Edison with too much discretion.[10] For example, the definition of "Standard Load Density" will be as specified by the Company for the type of premises for which service is requested. It is unclear whether the engineering formula utilized by Con Edison reflects technological advances (e.g., increased electricity usage attributable to increased computer usage or advanced equipment) or the potentially dramatic differences in the facility investments by even "similarly-situated" customers. Thus, the formula may be based on outdated assumptions.[11] Similarly, Con Edison also failed to provide the methodology for determining how a customer's anticipated usage will be calculated.

In sum, CPA submits that Rider Y is defective because it grants Con Edison too much discretion in determining which customers will be forced to receive service under Rider Y.

B. Demand Charge Calculation

The current Con Edison tariff requires that most large customers pay a demand charge for delivery service based on the customer's maximum demand during the two highest contiguous fifteen minute intervals of the billing period. Thus, a customer presently only pays a demand charge based on its actual maximum demand. However, under Rider Y, Con Edison and the customer will agree to a predetermined Contract Demand that is not tied

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[10] Because Rider Y is ill-defined and affords Con Edison so much discretion, there is also a substantial risk of disparate and unfair treatment among similarly-situated Rider Y customers.

[11] Over the last several weeks, CPA consultants have made numerous requests to Con Edison representatives asking that Con Edison provide them with an explanation or methodology regarding how "Standard-Load Density" would be calculated under Rider Y. As of the date of these Comments, Con Edison has failed to respond to those requests.

to actual usage.[12] Because Rider Y proposes to use the Contract Demand to calculate demand charges (see below), the establishment of the Contract Demand is likely to be a controversial process in and of itself.

The new Rider requires that customers pay demand charges for delivery service based on a demand level that is the higher of the customer's Contract Demand and its actual maximum demand. Specifically, customers will pay a demand charge that is the higher of: (i) the customer's monthly actual maximum demand multiplied by the demand charges set forth in the applicable Service Classification; and (ii) the customer's Contract Demand multiplied by the demand charges set forth in the Rider, which are scaled back to reflect class load factors.[13] Clearly, the combination of the Contract Demand and the reduced demand charges may result in a Rider Y customer paying more than it would have under the existing tariff for service it did not use.

Despite the potential for adverse customer impacts, Con Edison has not provided sufficient justification for making such a dramatic change to its tariff. Accordingly, these changes should be rejected or, in the alternative, the Commission should compel Con Edison to justify introducing a Contract Demand charge and require that it submit an analyses on how these tariff changes will affect customers.

C. Customer Facility Cost Contribution and Security Payment

Con Edison also has proposed that high load-density customers taking service under Rider Y be required to make payments for the investments to Con Edison's distribution facilities that are needed in excess of the investments required for Con Edison to

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[12] See id. at Proposed Original Leaf No. 158 –Y, Y-1.

[13] See id. at Proposed Original Leaf No. 158-Y-4, Y-5 and Y-6.

provide standard delivery service to customers in similar facilities (e.g. warehouses, office buildings, etc.).[14] In addition, the provisions in Con Edison's proposed tariff also require high load-density customers to submit a security deposit to cover Con Edison's investment in the construction of the additional delivery facilities. The combined effect of the proposed changes is seemingly to provide Con Edison with a much greater ability to impose up-front costs and security requirements on new or expanding "high load-density" customers.

In particular, Con Edison proposes to implement an economic test to determine whether a non-refundable, up-front payment by the high load-density customer is necessary to cover Con Edison's investments in the construction of the additional delivery service facilities that Con Edison deems necessary[15] to serve the Rider Y customer's high load-density level. According to the proposed tariff changes, the test calculates the difference between: (i) the investment in additional delivery facilities required to provide the requested service to the high load-density customer; and (ii) the investment that would be required to provide delivery service to a standard load density customer at that facility ("Excess Facilities Amount").[16] The test then subtracts from the Excess Facilities Amount an amount equal to four times the estimated Pure Base Revenue[17] that would be obtained from the

[14] As noted earlier, the base line for comparison – the "Standard Density" calculation – is ill-defined and may be based on outdated data that will expand the applicability of the Rider to suit Con Edison's purposes.

[15] See id. at Proposed Original Leaf No. 185-Y-2. This underlined language suggests that the determination regarding the amount of additional delivery facilities that must be constructed will be in Con Edison's sole discretion, which is also objectionable.

[16] See id.

[17] See id. In general, pure base revenues are defined as the total sales revenue Con Edison receives from a customer, minus commodity-related revenues (i.e., the MSC and the

customer under the rates and charges of the appropriate Service Classification. The difference, if any, is the up-front, non-refundable payment the customer must make to Con Edison for the construction costs of the additional delivery facilities ("Customer Facility Cost Contribution").[18] In addition, a Rider Y customer also must pay an up-front, nonrefundable amount to Con Edison equal to the value of Con Edison's federal tax expenses attributable to the customer's payment of the Customer Facility Cost Contribution,[19] which conceivably could add an additional 40-50% to the customer's Contribution.

For instance, assuming *arguendo*, Con Edison deems that, in order to serve incremental load at a customer's facility, it is necessary to construct additional delivery facilities which result in an Excess Facilities Amount of $1,000,0000 and assume Con Edison's Pure Base Revenue multiplied by four is $400,000.[20] As CPA interprets the tariff filing, the customer would be required to pay Con Edison an up-front, nonrefundable payment of $600,000, plus the tax gross-up which could equal $250,000 to $300,000.[21] Thus, in this example, the customer's initial up-front, nonrefundable payment to Con Edison would be $850,000 to $900,000. This payment does not even include the amount that must be submitted to Con Edison as a security deposit, which is explained below.

MSC Adjustment) and any taxes or surcharges (i.e., SBC, MAC Adjustment, etc.) paid by the customer.

[18] See id. at Proposed Original Leaf No. 158-Y-3.

[19] See id.

[20] The numbers in the example are illustrative only and not tied to any factual information or estimate.

[21] Con Edison has provided no justification for imposing the tax gross-up, nor has it quantified the impact of the tax gross-up. This extra contribution is not part of the existing tariff.

In addition to the Customer Facility Cost Contribution, the customer also will be required to make a "security deposit" payment to Con Edison equal to the difference between the Excess Facilities Amount and the Customer Facility Cost Contribution.[22] In the above $1,000,000 example, the difference between the Excess Facilities Amount and the Customer Facility Cost Contribution is $400,000. Thus, the customer also would have to remit $400,000 to Con Edison in the form of a security deposit. These payments are required regardless of the stream of revenues that the customer will provide after service commences.

Con Edison also will maintain the right to periodically review and adjust the amount of the security payment to reflect the customer's demand charge payments and other circumstances.[23] Thus, in some instances, Con Edison will apparently be allowed to increase the amount of a customer's the security deposit.

These potentially tremendous up-front payments and security deposits required of Rider Y high-load density customers are more burdensome to customers than those required under the current tariff. As demonstrated in the example above, the up-front payment, combined with the security requirement, will likely impose a significant amount of costs on customers receiving service under Rider Y. Based on this level of cost and the dramatic change that Rider Y represents when compared to the existing tariff, it is imperative that Con Edison attempt to justify the basis for these tariff changes and analyze their impacts on customers before such tariff changes are considered for adoption by the Commission.

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[22] See id. at Proposed Original Leaf 158-Y-7.

[23] See id.

In addition, Rider Y, and in particular this provision, likely will discourage economic development and growth in the Con Edison service territory due to higher costs potentially facing high-load density customers. The New York City economy is already attempting to recover from the economic devastation and billions of dollars in losses it suffered as a result of the of the September 11 attacks. Thus, the City can ill-afford any further measures that could stymie the City's potential for economic growth and investment.

D. Mandatory Participation in Con Edison's Emergency Demand Response Program ("EDRP")

Under the current Con Edison tariff, a customer's participation in the company's EDRP is voluntary. However, Con Edison is proposing to make such participation mandatory for customers who meet the eligibility criteria of Con Edison's EDRP and are taking service under Rider Y.[24]

In Con Edison's proposed tariff changes, Con Edison has inserted language that will require a customer that takes service under Rider Y to participate in Con Edison's EDRP, provided that the customer has a contract demand greater than 1,000 kilowatts and the customer is otherwise eligible for service under the EDRP.

CPA is opposed to this mandatory EDRP participation requirement. Initially, although participation in Con Edison's EDRP is generally advantageous to a customer, this is not always the case. Some customers eligible to participate in the EDRP choose not to do so due to the costs that are involved in participating in the program. Occasionally, the payments available under the EDRP are not sufficient compensation or incentive for a customer to

[24] See id. at Proposed Superseding First Revised Leaf No. 158-S.

participate. Moreover, the customer simply may not be able to curtail load, either by reducing operations or using on-site generation, as required by the EDRP.

Finally, for Rider Y customers with on-site generators, the NYISO recently adopted a requirement that all generators participating in the EDRP must have one of the following emission permits: (i) a DEC Title V permit; (ii) a DEC State Facility permit; or (iii) a DEC Facility Registration. If Rider Y customers are forced to participate in Con Edison's EDRP, they will also be required to obtain an appropriate permit from the DEC, which adds yet another significant burden on Rider Y customers. Thus, the Commission also should reject this tariff change requiring that Rider Y customers participate in the EDRP.

CONCLUSION

Con Edison has failed to provide adequate justification for the adoption of its proposed Rider Y tariff. Moreover, Rider Y's onerous provisions likely will discourage growth and investment in Con Edison's service territory during period when New York City's economy has already been devastated. Accordingly, the Commission should reject the adoption of Rider Y in its entirety, or, in the alternative, the Commission should suspend Rider Y for further Commission action.

Dated : Albany, New York
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Respectfully submitted,

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