

BEFORE THE  
STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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In the Matter of

Case 07-S-0523

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

Electric Rates

September 7, 2007  
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Prepared Testimony of

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On behalf of

Consumer Power Advocates.

1 **Q. Please state your name and business address**

2 A. My name is John J. Dowling, and my business address is 15  
3 Walling Place, Avon-By-The-Sea, New Jersey 07717.

4

5 **Q. What is your educational background and experience?**

6 A. I received a Bachelor of Engineering degree in Mechanical  
7 Engineering from Polytechnic University, then known as the  
8 Polytechnic Institute of Brooklyn, in 1970. Upon graduation, I accepted

1 employment with the New York State Department of Public Service.  
2 My responsibilities have included all engineering analyses for major  
3 rate cases, as well as review of operating practices and construction  
4 programs

5

6 **Q. Have you previously testified before the New York State Public**  
7 **Service Commission?**

8 A. Yes. I have presented testimony in a variety of proceedings before  
9 this Commission, including Case 94-E-0994, Con Edison electric rates,  
10 as a Department of Public Service employee.

11

12 **Q. What is the purpose of this testimony?**

13 A. I will recommend an adjustment based on the Company's capital  
14 structure, discuss proposed changes to the MSC and MAC, comment  
15 on the RDM, propose increased customer access to the Retail Access  
16 information System, discuss the administration of demand response  
17 and energy efficiency programs, and finally propose to target high load  
18 density customers in demand response and energy efficiency  
19 programs.

20

21 **Q. Have you examined Con Edison's capital structure?**

22 A. I have observed that the company's proposed rate year capital  
23 structure includes significantly more equity than was used to determine  
24 rates in the recent gas case. Moreover the requested return on equity  
25 was significantly higher than that which was agreed to in the gas case.  
26 Adjusting the Company proposal to reflect the equity ratio and return on  
27 equity as developed for the Joint Proposal in Case 06-G-1332 (Gas  
28 Rates) would result in significant savings to consumers. According to  
29 the response to the City's interrogatory 207:

1

2 *Imputing the capital structure and cost rates from the Joint Proposal in*  
3 *the Company's current gas case would result in revenue*  
4 *requirement increases in this electric case of \$1,016,024,000 in Rate*  
5 *Year 1, \$313,626,000 in Rate Year 2 and \$363,759,000 in Rate Year 3*  
6 *based upon the Company's May 4, 2007 filing.*

7

8 That would result in a savings to consumers of \$696 Million over the  
9 term of a three year rate plan.

10

11 **Q. Is this sufficient?**

12 A. No. Con Edison's capital structure includes a higher fraction of  
13 equity than any other utility in New York State. It has provided no  
14 justification for that capital structure, nor has it explained why its  
15 financial situation is different from any other utility. Further reductions  
16 in the equity ratio would save more money for consumers. The  
17 Commission should impute reductions in the equity ratio, on a  
18 reasonable schedule, for every rate year until Con Edison's imputed  
19 equity ratio is equal to the statewide average for all combination gas  
20 and electric utilities.

21

22 **Q. Have you reviewed the changes to the MAC and MSC as**  
23 **proposed by the Company?**

24 A. Yes. In general we support these changes because they properly  
25 assign costs to delivery and supply functions. It goes without saying  
26 that supply related costs should not be included in delivery rates. To  
27 that end, the removal from the MAC of NYISO out of period charges is  
28 particularly important, as these charges are clearly supply related and  
29 their inclusion in the MAC is disruptive to the retail market.

1

2 **Q. Why is that?**

3 A. The NYISO rebills create an out of period and occasionally large  
4 charge to all energy suppliers. Alone among all other supplies, Con  
5 Edison has had the ability to recover this out of period charge through a  
6 charge to all customers, including the customers of competitive  
7 suppliers. Those competitive suppliers not only do not enjoy this  
8 extraordinary privilege to recover costs from customers who had no  
9 part in their creation, they must price their products against an  
10 unnecessarily underpriced competition from Con Edison. For the  
11 customers who avail themselves of Retail Access service, the situation  
12 is equally intolerable: they must pay part of the cost incurred by Con  
13 Edison's full service costs, while their competitive contracts necessarily  
14 include a premium to cover the possibility of large future rebilling by  
15 NYISO. This is an obvious miscount which must be corrected.

16

17 **Q. What other supply costs has the Company proposed to remove  
18 from the MAC?**

19 A. The Company has proposed to remove the cost of financial hedges  
20 for the MAC. This is another important improvement. Price hedges are  
21 supply related costs that should only be paid by those benefiting from  
22 that supply. In this case, that is Con Edison's full service customers.

23

24 **Q. What are "public policy contracts?"**

25 A. According to the Company's response to DPS Staff question 249:  
26 *As expressly defined on proposed tariff leaf 159 that was filed in this*  
27 *case, public policy contracts "include contracts that are entered into by*  
28 *the Company for electricity in support of public policy goals, such as*  
29 *system reliability, environmental considerations, fuel diversity, or*

1 *market power mitigation, consistent with the order of the Public Service*  
2 *Commission, dated August 25, 2004, in case 00-M-0504.” Current*  
3 *public policy contracts include contracts entered into by the Company*  
4 *with Astoria Energy and the capacity portion of the Entergy contract.*

5

6 **Q. Would you include costs associated with Company owned**  
7 **generation and supply contracts predating restructuring or the**  
8 **so-called "public policy" contracts as supply costs in the MSC ?**

9A. A. No. These costs are clearly supply related, and they have a  
10 hedging effect on the price of full service supply, but they are part of the  
11 legacy costs associated with restructuring. In the case of contracts  
12 which pre-date restructuring, including the SCS purchase of Indian  
13 Point 2, those costs are part of the so-called "stranded investment" that  
14 resulted from deregulation of the generation business. As such, they  
15 should be as recoverable under the terms of restructuring.  
16 Nevertheless, nearly ten years into restructuring, it is still unclear what  
17 those stranded costs may ultimately be.

18

19 **Q. What do you propose?**

20 A. We propose a full accounting for stranded costs as part of any multi-  
21 year rate plan in this proceeding. Presumably, at the end of that  
22 period, any residual stranded costs would be small. At that time the  
23 Commission could determine whether it is appropriate to close out the  
24 stranded cost issue, either by allowing recovery of the small residual  
25 costs, or any other means. At that time, any remaining company  
26 owned generation or supply contracts held by the Company would be  
27 subject to market prices only.

28

29 **RDM**

1 **Q. What is your view of the Revenue Decoupling Mechanism?**

2 A. We continue to oppose the implementation of RDM. RDM weakens  
3 ordinary business incentives, without providing sufficient benefits.  
4 While we support the goals of PLANYC, New York State's "15 by 15"  
5 program and other conservation initiatives, we believe that the short run  
6 revenue incentives of utilities have a negligible impact on those  
7 programs. A better way to insure that appropriate green investments  
8 will be made is to align rates more closely with costs. Once costs are  
9 apparent to customers, the Company's desire to maximize revenue is  
10 irrelevant. Indeed, to some extent the perverse incentive to maximize  
11 revenue is an artifact of rate adjustments and rate mechanisms that  
12 allow recovery of costs regardless cost causality. This is a well know  
13 problem with gas cost reconciliations, and exists in the current  
14 misconstrued MAC/MSR as discussed above. It may well be true of  
15 RDM as well.

16

17 **Q. What do you mean by that?**

18 A. In the past, various decoupling schemes have become untenable  
19 because of large deferred revenue balances caused by lower than  
20 expected sales. Subsequent recovery of the balances results in  
21 excessive bill distortions, particularly if the recovery occurs during a  
22 period of higher than expected sales. Nothing in this latest RDM leads  
23 us to expect better results than in the past, except that it excludes large  
24 volumes of sales to demand billed customers.

25

26 **Q. Has not the recent Commission policy recognized some these**  
27 **problems and responded to them?**

1 A. Yes. To the extent that current policy excludes customers who are  
2 subject to mandatory hourly pricing, the Commission has taken an  
3 important step to minimize the unfortunate effects of RDM.

4

5 **RAIS**

6 **Q. What is the more appropriate way to insure the efficiency of the**  
7 **electric system?**

8 A. We continue to believe that markets, appropriately designed, offer  
9 the best hope of achieving an efficient result. In order to do that,  
10 customers must have real information to act on. To that end, Con  
11 Edison should provide to customers the identical access to the Retail  
12 Access Information System (RAIS) as is now provided only to ESCOs.

13

14 **Q. Would that provide an unfair advantage to customers shopping**  
15 **for energy supply?**

16 A. No. Better knowledge of ones own load data will only help  
17 customers seeking to control costs. And this knowledge should be  
18 available to all customers, and in no way does that knowledge confer  
19 an “unfair advantage.” For example, load profiles are used by ESCOs  
20 to determine ICAP requirements, and as such have a direct impact on  
21 the cost of serving particular customers. These profiles, which have a  
22 direct impact on customers’ costs, are determined solely by Con Edison  
23 in a procedure in which customers are not privileged to participate. In  
24 terms of the information necessary to assess the cost of providing  
25 service to an individual customer, load profiles are no different than the  
26 interval data which the Company has always provided to interval  
27 metered customers. Allowing customer access to the same  
28 information, on the same basis as ESCOs, merely puts all customers  
29 on an equal footing with ESCO’s when they negotiate for competitive

1 services. This is essential to give customers the confidence to  
2 participate in developing markets.

3

4 **DR Incentives**

5 **Q. Have you examined the incentives proposed by the Company**  
6 **for Demand Response Programs?**

7 A. Yes. These incentives are not only unnecessary and excessive,  
8 they create improper subsidy of the Company's own programs,  
9 improperly assign the property rights of demand response participants  
10 to Con Edison, and may undermine the effectiveness of both demand  
11 response efforts and carbon control efforts.

12

13 **Q. Is it appropriate to provide an incentive for an administrative**  
14 **function, when the Company puts no funds at risk?**

15 A. No. A very large part of the Company's activity is administration of  
16 one thing or another. DR program administration is no different or  
17 more difficult than any other administrative function, unless one  
18 believes that DR is contrary to the Company's own business interest,  
19 which creates a concern that the Company has an incentive to  
20 undermine DR efforts.

21

22 **Q. Is this concern justified?**

23 A. No. Demand side management, properly understood, is in complete  
24 alignment with the business interests of the Company. DSM reduces  
25 supply side costs, which increases income and mitigates pressure to  
26 increase rates, in the short run and the long run. No doubt the  
27 Company believes that its efforts to achieve sufficient rate increases  
28 are only partly successful, so cost control is essential to its success.  
29 The perception that DSM reduces revenue more than costs is the result



1 of the misinterpretation of the ratemaking process, in which rates are  
2 determined by cost. That concern is largely addressed by the  
3 implementation of cost based rates and mandatory hourly pricing, and  
4 further addressed by RDM for those customer classes for which fully  
5 cost based rates are impractical.

6

7 **Q. In what ways does the incentive program proposed by Con**  
8 **Edison distort the Demand Response market?**

9 A. To understand that, it is important to understand how markets  
10 optimize value. The classical explanation is that any voluntary  
11 transaction or trade will only occur if both parties perceive that an  
12 increase in value will occur due to the transaction. This creates a  
13 surplus, or increase in total value, not only to the parties, but to the  
14 economy as well. In a voluntary negotiation, this surplus will be shared  
15 between the parties creating the transaction. The most efficient  
16 suppliers will generate the greatest surplus, and eventually dominate  
17 the market.

18

19 **Q. How does that apply here?**

20 A. That describes the basic incentives for customers and demand  
21 response providers to participate in the market. The incentive program  
22 as proposed disrupts that.

23

24 **Q. How so?**

25 A. Because Con Edison operates its own programs, the incentive  
26 program creates an additional value to Con Edison that is not available  
27 to other DR providers. In effect, Con Edison can offer more value to  
28 demand response participants because it enjoys a significant payment  
29 through its incentive plan.

1

2 **Q. Why is that bad for customers?**

3 A. Obviously, customers, participants and non-participants alike, must  
4 fund those payments. But the more important point is that, by skewing  
5 the competition among DR providers towards Con Edison, the most  
6 efficient providers are put at a disadvantage.

7

8 **Q. Does not the Company need an incentive to insure that DR  
9 succeeds?**

10 A. Not necessarily. If DR adds value, and we believe that it does, then  
11 the best way to maximize that value is to allow free actors to maximize  
12 that value in the market. Con Edison need only get out of the way of  
13 that process. That is the purpose of the RDM.

14

15 **Q. Why do you believe that the market solution is superior to  
16 administrative incentives paid to Con Edison?**

17 A. The market provides long term assurance that the value of DR  
18 programs will be realized. Administrative incentive programs are  
19 subject to "regulatory risk," or the risk that administrators will change  
20 the program in unfavorable ways, for unforeseen reasons. Those of us  
21 with memories longer than a few years recall that the strong emphasis  
22 on Demand Side Management disappeared in a matter of a few  
23 months. That was caused by a response to the perception among  
24 customers that DSM programs were more costly than valuable, and  
25 that revenue decoupling, as practiced at that time, unnecessarily  
26 distorted utility bills. Market based payments, based on real value as  
27 perceived by participants, are not subject to such concerns.

28

1 **Q. Do you have other concerns regarding Con Edison as**  
2 **administrator of DR programs?**

3 A. Con Edison would not only be the administrator, as the dominant  
4 actor in New York City energy markets it is necessarily a market  
5 participant. Moreover, it has access to all customer load data, and in  
6 particular it has access to the data related to the customers or potential  
7 customers of all ESCOs.

8

9 **Q. Con Edison must hold some of that data as confidential, and**  
10 **the unregulated affiliates are allowed only the same use of it as**  
11 **other DR providers. Do you believe that Con Edison will abuse**  
12 **that confidentiality?**

13 A. Certainly not, but it is not my opinion which is important on that point.  
14 The real question is whether competitive DR providers will enter a  
15 market in which a potentially dominant actor has access to all data,  
16 regardless of rules in place to protect them from misuse of that data.  
17 The fact that there are rules concerning the use of data proves that this  
18 is a concern, and just as in the case of RDM, the Commission should  
19 prefer to establish correct incentives rather than enforce rules. Con  
20 Edison should be neutral regarding the development of DR, or benefit  
21 from DR to the extent that it reduces the Company's own costs, and  
22 allow that market to develop based in the customers' own judgment of  
23 their interest. That implies that Con Edison should receive no  
24 additional incentive for its administration of DR programs.

25

26 **Q. What do you propose for the administration of the DR**  
27 **programs?**

28 A. We prefer NYSERDA as administrator, provided that sufficient staff  
29 resources are assigned to New York City and Westchester programs.

1 NYSERDA has proven to be the low cost provider of administrative  
2 services, has never requested additional incentives above the amounts  
3 needed for its own budget, and would cause less distortion on the  
4 market.

5

6 **Q. Do you have any particular concerns about any of the specific  
7 incentives proposed by the Company?**

8 A. Yes. Company Witness Craft proposed that Con Edison retain the  
9 benefit of any carbon emission reductions that may be available in  
10 future, as yet undeveloped, carbon markets. We oppose this for  
11 several reasons.

12

13 **Q. What are those reasons?**

14 A. First, whatever credits may be available due to carbon reductions  
15 are appropriately the property of the entity which actually reduces its  
16 carbon emissions. If the customer retains its carbon credits, that  
17 customer can choose to retire those credits, use them in other  
18 operations or sell them, but whatever choice the customer makes is his  
19 own, not the Company's. However the customer disposes of those  
20 credits, they are not available for Con Edison's use, unless Con Edison  
21 purchases them from the customer. From that perspective, the  
22 Company proposal is merely an attempt to confiscate customer  
23 property.

24

25 **Q. Why do you consider these anticipated credits property?**

26 A. The premise of cap-and-trade schemes is that the holders can trade  
27 those credits in a market. The right to sell, trade or dispose of property  
28 is a fundamental property right. Without that property right, a cap-and-  
29 trade scheme is unthinkable.

1

2 **Q. How will the taking of these credits affect the demand response**  
3 **market?**

4 A. If Con Edison is allowed to take these credits for its own benefit, it  
5 can only serve to suppress the total amount of demand response  
6 activity.

7

8 **Q. Why?**

9 A. By taking some of the value that may be available to ESCOs and  
10 customers, this proposal would make all demand reductions less  
11 valuable to participants. It goes without saying that those participants  
12 will be less likely to invest additional resources in projects if they expect  
13 less value in return.

14

15 **Q. Do you have other concerns with the Company's proposal?**

16 A. Yes. It is not now clear how carbon trading markets will be  
17 organized, and whether it is appropriate for a regulated utility to retire  
18 credits in any of those possible markets. For example, one proposal  
19 before Congress, as reported in the NY Times on July 11, 2007, would  
20 have the Federal government issue additional credits *without limit* for  
21 \$12 per ton of CO<sub>2</sub>. That would effectively put a price cap of \$12 on  
22 carbon credits. If public utilities retired any number of credits in that  
23 kind of market, the Federal government would necessarily replace them  
24 with an equal number of credits. In effect, customers would be paying  
25 Con Edison to retire credits that would be instantly replaced by the  
26 government, creating a multi-million dollar shell game. Even in a  
27 carbon market where credits were not price capped in that way, one  
28 wonders whether it is sound public policy to require utility customers to  
29 pay regulated companies to retire carbon credits, which presumably

1 were determined by the design of the trading program to be necessary  
2 to sustain the essential energy use of the entire economy. One need  
3 only ask what would happen if an elected official proposed to raise  
4 taxes to retire carbon credits which would be replaced by Federal law.  
5 Only the obscurities of the regulatory process make the Company  
6 proposal different.

7

8 **Q. Should Con Edison be prevented from retiring carbon credits?**

9 A. No. But if it wants to enjoy the good will of a grateful world  
10 community by retiring carbon credits, it should do so at its own  
11 expense.

12

13 **Q. If the Commission determines that DR programs are**  
14 **worthwhile, and that additional incentives should be available for**  
15 **them, how should those incentives be applied?**

16 A. If the Commission determines that additional incentives are in the  
17 public interest, those incentives should be paid directly to participating  
18 customers. To the extent advantages, such as carbon credits, are  
19 found in other markets, those should be retained by the participants.

20

21 **Q. What are the advantages of that?**

22 A. For one thing, payments to customers increase customer support for  
23 programs, rather than eroding customer support as a large payment  
24 from customers to Con Edison would do. For another, it applies the  
25 incentive to the participants who actually create the value, not to a third  
26 party administrator.

27

28 **Q. Why do you refer to Con Edison as a “third party?”**

1 A. Con Edison is not a party to the negotiation between DR providers  
2 and their customers, and it puts nothing at risk in those transactions  
3 (unless it acts as a DR provider itself).

4

5 **Q. If customer participants receive a payment, should DR  
6 providers receive a payment as well?**

7 A. That is not necessary. DR providers will know better than customers  
8 what those payments will be, and they will tailor their offerings to  
9 maximize those payments, and to maximize their share of the total  
10 increase in value created by the programs, all within the constraints of  
11 a more efficient market than the heavily distorted market that would  
12 result from Con Edison's proposal. Prudent customers will negotiate  
13 the best deal possible to capture the greatest share of that benefit for  
14 themselves. The market will determine what that appropriate share is.  
15 To that end, customer access to the RAIS system will provide  
16 customers the information they need to do their due diligence research  
17 before entering DR contracts, as discussed above.

18

19 **Demand Response and Energy Efficiency**

20 **Q. Do you have further recommendations regarding the demand  
21 response and energy efficiency programs (DR/EE)?**

22 A. Yes. The Company should develop DR/EE programs specifically  
23 targeting high load density customers. A high load density customer is  
24 any customer whose load divided by its total floor area served is  
25 greater than that of 85% of all customers in the sector.

26

27 **Q. Why target DR/EE efforts at customers with exceptionally high  
28 load density?**

1 A. Willy Sutton famously said the he robbed banks because that's  
2 where the money was. More load density implies the possibility of  
3 more reduction. Moreover, by concentrating on the customers within a  
4 sector where we expect the greatest return, DR/EE techniques should  
5 develop to the point where all of most members of that sector will be  
6 driven to follow or be risk being left behind.

7

8 **Q. What would such a program look like?**

9 A. The program should target specific types of businesses among the  
10 high load customers. Industrial users, biomedical research users,  
11 computer data centers, supermarkets and other users all are different  
12 and unique requirements. In many market sectors, customers place a  
13 very high value on reliability, or the comfort of their customers, or on  
14 continuous operation. Energy may represent a very small part of the  
15 cost of doing business as well. In that situation, it is very difficult to sell  
16 demand response services, even if the savings are large and verifiable.  
17 An effective program should be designed to offer increased financial  
18 incentives, provide a methodology to address operational concerns,  
19 and to verify carbon footprint reductions. It is my belief that if a  
20 program is designed in this matter it will be very successful.

21

22 **Q. Does this conclude our pre-filed testimony?**

23 A. Yes.

24