

BEFORE THE
STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of
Case 04-E-0572
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
Electric Rates
September 2004

Prepared Testimony on behalf of Consumer Power Advocates

by

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- 1 Q. Please state your name and business address.
- 2 A. My name is John J. Dowling, and my business address is 15 Walling
- 3 Place, Avon-By-The-Sea, New Jersey 07717.
- 4 Q. What is your educational background and experience?
- 5 A. I received a Bachelor of Engineering degree in Mechanical
- 6 Engineering from Polytechnic University, then known as the
- 7 Polytechnic Institute of Brooklyn, in 1970. Upon graduation, I

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

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

7 A. Yes. I have presented testimony in a variety of proceedings before the
8 Commission.

9 Q. What is the purpose this your testimony?

10 A. My purpose is to discuss the increases to depreciation expense as
11 proposed by the Company, to discuss various aspects of rate design,
12 including MAC volatility, revenue allocation and the appropriateness
13 of the company's proposal to apply Service Classification 14-Retail
14 Access Standby Service rates to certain customers using hybrid
15 chillers, and offer a definition of the term "premise" for determination
16 of responsibility for new service facilities. Elsewhere in this case, I
17 will also present a joint proposal by Consumer Power Advocates and
18 the Pace Energy Project to support the development of Energy
19 Efficient Combined Heat and Power.

20

1 **Overall Effect of the Company's Proposal**

2 Q. What are your members' concerns in this case?

3 A. Along with the specific aspects I will discuss later, our members are
4 concerned with the size of the rate increase requested by Con Edison.
5 If the three year proposal presented by Con Edison were adopted
6 without modification, the total increase in cost to consumers would be
7 \$2.1 Billion over three years, exclusive of items subject to true-up,
8 cost inflation greater than 4%, or the possibility of a new filing in the
9 event of poor financial performance by the Company.

10 Q. How are your members affected?

11 A. Our members all consume large amounts of energy, but their
12 opportunities to control cost or seek alternative energy sources are
13 constrained by regulatory and/or institutional barriers. Regulatory
14 barriers include environmental requirements, including air quality,
15 noise and traffic concerns, and distribution rate requirements discussed
16 below. Institutional barriers include limited cash flow, budget
17 constraints and operating requirements. These barriers combine to
18 create a burden on services provided by these institutions. As our
19 member institutions must remain focused on their primary missions,

1 these burdens must be passed on to the community, either through
2 higher service costs or, worse, through reduction of services.

3

4 **Depreciation Expense**

5 Q. Have you previously testified about depreciation issues before the
6 Public Service Commission?

7 A. Yes. I have testified on various issues, including the determination of
8 average service lives, treatment of cost of removal, determination of
9 the adequacy of reserves and alternate depreciation methods. Most
10 recently, I testified as to the average service lives, net salvage factors
11 in case 94-E-0334, Con Edison's last electric rates case.

12 Q. Have you reviewed the testimony and exhibits of Company Witness
13 Hutchinson in this case?

14 A. Yes

15 Q. What are your conclusions?

16 A. The company proposes to reverse many of the determinations accepted
17 by the Commission in the case noted above. Specifically, it proposes
18 to decrease the maximum Average Service Life (ASL) of
19 Transmission and Distribution facilities from 70 years to 50 years. It
20 further proposes to apply so-called "economic depreciation" to that

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1 plant. These changes increase depreciation expense by \$20 million
2 and \$30 million, respectively.

3 Q. Who performed that study?

4 A. That study was performed by Department of Public Service staff,
5 under my supervision.

6 Q. Are the changes to ASLs justified by actuarial studies?

7 A. No. All of the changes proposed by the Company are to reduce ASLs.
8 All of the accounts for which the studies indicate that the ASLs have
9 increased were ignored. By Company Witness Hutcheson's own
10 testimony, at least 16 accounts have experienced increased useful lives
11 in the recent past.

12 Q. What is the relevance of the depreciation factors used by other
13 utilities?

14 A. The fact that other companies may use shorter lives is not evidence
15 that Con Edison's lives are too long. There are several factors that
16 could account for that difference. Con Edison has an unusually large
17 proportion of underground facilities, which are less subject to wind or
18 ice damage. In addition, the management policies of the company can
19 have an effect on the determination of whether to replace or repair
20 facilities. Finally, accounting practices have some effect: each utility

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1 is free to define retirement units, and this definition will determine
2 whether particular replacements are counted as repairs or retirements
3 with replacement. The fact that the Commission has not approved
4 arbitrary upper limits on ASLs is more instructive in this case.

5 Q. Do you support the use of “economic depreciation” in this case?

6 A. No. There is no reason to believe that any part of the Company’s core
7 delivery business is at any greater risk now than it has been in the past,
8 or that Con Edison’s business is more risky than other electric
9 distribution business.

10 Q. Has the Commission previously approved the use of “economic
11 depreciation” for electric plant in the past?

12 A. Not to my knowledge.

13 Q. Has the Commission approved accelerated depreciation for any other
14 types of plant?

15 A. The Commission has approved some accelerated depreciation for
16 certain gas plant built to serve specific interruptible customers. I
17 would not characterize this as “economic depreciation” it merely
18 recognizes that certain plant is dedicated to customers that may use
19 large volumes at least for a short time, but avoids the risk that
20 expensive plant will be left stranded. That is not the case for

1 distribution facilities built to serve a City with a long established,
2 diverse economic base concentrated in a small geographic area.

3

4 **MAC Volatility**

5 Q. Why is the volatility of the Monthly Adjustment Charge (MAC) a
6 concern to consumers?

7 A. The volatility of MAC charges are a concern to customers because this
8 volatility disrupts budgets and is impossible to manage through market
9 measures. Customers whose primary concern is cost control and
10 budget certainty will go to the market for fixed price energy contracts
11 of annual or longer terms, but this price certainty is undone by the
12 extreme monthly volatility of the MAC. This monthly volatility is
13 actually far greater than the annual volatility, which suggests that the
14 monthly volatility can be damped out or averaged in some way.

15 Q. Why is the market unable to create instruments to deal with the
16 volatility of the MAC?

17 Q. MAC volatility is a regulatory risk, as opposed to a market risk.
18 Regulatory risk is perceived, correctly or not, as a risk of arbitrary
19 action by government authority. Energy price risk, on the other hand,
20 is shared throughout a large and diversified market. This diversified

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1 market allows traders to arbitrage price differences, effectively trading
2 the price risk among willing parties. No such arbitrage of the risk of
3 government action is possible.

4 Q. How would these factors be considered?

5 A. Ideally, customers would know the value of the MAC many months in
6 advance. This would allow them to develop realistic energy budgets
7 and operating plans. An annual determination of the MAC, managed
8 to minimize annual changes, would provide much of the same
9 certainty.

10 Q. What about the Company's cash flow?

11 A. That is an important consideration, but from a public policy
12 perspective it is no more important than the cash flows of major health
13 care and academic institutions, or of Con Edison's customers
14 generally. Customers' bill impacts are just the opposite of Con
15 Edison's cash flow in the case of the MAC, and should be considered
16 to be at least as important.

17 Q. Should the costs of producing services generally be assigned to the
18 period in which those services are consumed?

19 A. Yes.

20 Q. How does that apply in this case?

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1 A. The opportunity to assign those costs to the correct time period was
2 forgone long ago. Nevertheless, if those out-of-period costs are to be
3 recovered in rates, then the most important factor should be the impact
4 on customers. In the case of the MAC, the volatility, as well as the
5 total amount of charge, has a negative impact on customers.

6 Q. What is this negative impact?

7 A. The negative impact is the additional risk of higher prices, which
8 cannot be diversified through market mechanisms. Particularly for our
9 members, who typically cannot adjust operating requirements or
10 develop new revenue sources in the short run, this potential risk diverts
11 resources from other essential functions.

12 Q. What do you propose for the MAC?

13 A. We propose that the Commission determine MAC rates annually. The
14 components of the MAC would remain as they are now, but recovery
15 would occur at a fixed rate. Annual adjusts would consider customer
16 bill impacts as well as the Company's need for recovery.

17

18 **Revenue Allocation**

19 Q. Have you reviewed the Company's proposed revenue allocation?

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- 1 A. Yes. The Company proposes to allocate the proposed increase based
2 on class revenues adjusted to partially reflect the results of the
3 Embedded Cost of Service Study (ECOS). CPS supports the goal of
4 equalizing rate of return among the various customer categories. While
5 this method attempts to accomplish that important goal, it does not go
6 far enough toward full inter-class equity.
- 7 Q. Why not?
- 8 A. The Company equalizes class rate of return only partially because it
9 uses unequal class returns. Each class return is arbitrarily set at either
10 10% above or 10% below the Company average return. This penalizes
11 classes which have suffered excessive rates in the past, while
12 perpetuating the subsidy of those customers who will continue to enjoy
13 non-compensatory rates.
- 14 Q. What do you propose?
- 15 A. I propose, as a first step in revenue allocation, to adjust the revenue of
16 each category by the full revenue deficiency found by the ECOS study.
17 This will set the rate of return for each class the exact average rate of
18 return, rather than to different rates of return depending on whether a
19 particular class is above or below that average. This first step should

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1 be taken even if the Commission ultimately determines that no rate
2 increase is warranted at this time.

3 Q. Are you aware that it has been the practice in New York to establish a
4 10% tolerance band around the rate of return results found in ECOS?

5 A. Yes, I am. That practice recognizes that there is some unavoidable
6 uncertainty in any study. However, once it is determined with some
7 certainty that a significant disparity exists, that disparity should be
8 fully eliminated. Class revenue requirements, at equal rates of return,
9 are the best estimates that we have, and that should be the standard for
10 revenue allocation.

11 Q. Has the Commission ever accepted the principle that, once a disparity
12 is determined with some confidence, its effects should be fully
13 accounted for?

14 A. Yes. It has long been the policy of the Commission, in determining
15 natural gas rates, to adjust for the effect of weather differences only if
16 those differences exceed the 95% confidence limits of the temperature
17 data. Within those limits, the Commission makes no adjustment for
18 the effect of weather on revenue, but outside those limits, the
19 Commission policy is to adjust actual sales and revenue to the sales
20 and revenue expected if the temperature were exactly average for the

1 test year. This is exactly analogous to what I proposed to do for
2 revenue allocation here.

3

4 **Standby Rates for Steam Chillers**

5 Q. Why do you oppose the use of SC14RA Standby rates for customers
6 using steam or gas powered chillers in conjunction with electric
7 chillers?

8 A. The Company has failed to analyze the impact on affected customers,
9 has arguably violated the Commission's policy that standby rates be
10 revenue neutral, and has denied these customers the protection of due
11 process.

12 Q. Is the bill impact of this change is acceptable?

13 A. No. The Company has not analyzed the impact on electric revenue or
14 peak demand, on its own steam system revenue and load, or on the use
15 of customer owned steam systems. The record in the Standby Rates
16 case suggests there will be bill increases for most customers, and very
17 large increases for some.

18 Q. Is the impact on the City's energy infrastructure acceptable?

19 A. That is unclear, but the Company's failure to analyze these factors may
20 lead to perverse and unintended consequences to the system.

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1 Q. Please explain.

2 A. If the use of SC14RA rates increases customer costs by sufficient
3 amounts; many customers may abandon their steam or gas chillers.
4 These will only increase electric demand, reduce fuel diversity and, in
5 the worst case, degrade electric reliability.

6 Q. Is the Company's proposal consistent with the goals of NYSERDA
7 and the Company's own Demand Response Programs (DRP) to reduce
8 peak demand?

9 A. No, NYSERDA's PON 835, Peak Load Reduction Program, under the
10 section, load curtailment shifting, will pay for reduced demand either
11 in response to an electric capacity shortfall, or defined price signal.
12 Use of emergency generation to reduce peak demand by most large
13 Con Ed customers is limited due to current permit restrictions.
14 Therefore, many large consumers of the company primarily participate
15 in DRP programs by switching to the alternate fuel during peak
16 periods. This proposal could severely undermine the company's
17 current DRP participation levels

18 Q. Are there societal and/or reliability benefits from customers who
19 operate hybrid plants?

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1 A. Customers who operate hybrid plants support the system in several
2 important ways. First, these customers provide revenue to Con
3 Edison's steam system. The steam system is a critical part of New
4 York City's infrastructure, providing critical service in an area in
5 which alternatives are either prohibitively costly or completely
6 unavailable. Regardless of whether these customers use Con Edison's
7 steam service, their use of alternate fuels increases the systems fuel
8 diversity, an important consideration in mitigating the City's exposure
9 to fuel price volatility. Finally, these customers help mitigate
10 electricity energy prices at all hours when they chose to power their
11 systems by alternate fuels. All electric customers benefit from these
12 effects.

13 Q. How was the Service Classification 14 Retail Access service
14 developed?

15 A. Standby Service was the subject of a negotiated settlement among the
16 department staff, Con Edison and various interested parties, Consumer
17 Power Advocates among them. Both the rates and the applicability
18 criteria were subjects of that negotiation.

19 Q. What was the result of that negotiation with regard to the applicability
20 of SC 14?

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- 1 A. As a result of that negotiation, many customers were protected from
2 the effects of the new rates. Existing customers who operate
3 qualifying facilities, and customers with such facilities in the planning
4 stage, are protected from those rates for up to eight years. Customers
5 whose standby load is less than 15% of their total load are exempt.
6 None of these benefits are included in the Company's proposal here,
7 although many operators of hybrid chillers may be in exactly the same
8 situation regarding the cost of the applying the new service
9 classification to their loads. None of those important protections are
10 included in the Company's proposal, although they would certainly
11 apply if these customers were included in the original case.
- 12 Q. How were the SC14 rates developed?
- 13 A. By Commission policy, the rates developed were intended to be
14 revenue neutral to the company, based on analysis of those affected
15 customers. The actual allocation of revenue among the ten billing
16 determinants was a subject of negotiation.
- 17 Q. What is meant by "revenue neutral?"
- 18 A. That term means that the total revenue of the group of Standby
19 customers will be equal to their revenue at the previously applicable
20 rates. If the hybrid chiller operators had been included in the original

1 case, the total revenue amount for the development of the SC14 rates
2 would have been different, as would the values of the various billing
3 determinants. The resulting rates may have been very different from
4 the rates which the Company would now apply.

5 Q. During those negotiations, did any party propose to extend the
6 applicability of those rates to hybrid chiller customers?

7 A. No. To do so now would deny due process to our members and all
8 those customers who operate hybrid chiller plants.

9

10 **Definition of a Premise**

11 Q. Why is the definition of a premise an issue?

12 A. The current tariff includes no explicit definition. Typically, a service
13 premise is limited to a single block and lot as recorded on the City's
14 tax map, but this might not always be the case. It is an important issue
15 because the service premise determines where the Company must
16 extend facilities and what the customer's responsibility for the cost of
17 those facilities. The lack of an explicit definition results in confusion
18 and misunderstanding between Con Edison and its customers
19 regarding excess facilities charges. Correction of this confusion
20 requires a clear definition.

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1 Q. What do you propose as a definition?

2 A. I propose that, for purposes of determining the customer responsibility
3 for new service facilities, a premise be defined in the tariff as a block
4 and lot as described on tax maps.

5

6 Q. Does this complete your pre-filed testimony on these topics?

7 A. Yes, it does. I have pre-filed testimony on a joint proposal of
8 Consumer Power Advocates and the Pace Energy Project on Energy
9 Efficient Combined Heat and Power elsewhere in this case.