

Consumer Power Advocates

Continuum Health Partners
Fordham University
Luthin Associates, Inc.
Memorial Sloan Kettering Cancer Center

Montefiore Medical Center
Mount Sinai Medical Center
New York University
NYU Hospitals Center

Via e-mail: secretary@dps.state.ny.us

October 3, 2011

Hon. Jaclyn A. Brillling
Secretary
Public Service Commission
3 Empire Plaza
Albany, New York 12223

Re: **Case 09-S-0794, Steam Rate Plan, and Case 09-S-0029, Steam Peak Reduction Pilot Programs**

Dear Ms. Brillling,

Consumer Power Advocates (CPA) is an Active Party in the above captioned case, and wishes to comment on Con Ed's July 28 tariff filing in those cases. That filing implements the Customer Sited Supply (CSS) pilot program, and a Demand Response (DR) pilot program, as required by the Steam Peak Reduction Collaborative Report (SPRC Report or Report) , submitted on April 11, 2011. CPA participated in all SPRC discussions, and was the principal advocate for the CSS pilot.

The Company CSS filing (Rider G) includes two provisions which were not discussed in SPRC, and not included in the SPRC Report. These are 1) a limitation on the hourly amount of steam energy for which Con Ed will pay, and 2) a requirement that CSS participants pay a demand charge for the amount of energy sold to Con Ed. Taken together, these provisions have the effect of sabotaging the efforts of SPRC to develop a viable CSS program.

Con Ed should pay for all steam energy exports up to the maximum volume, subject to reasonable tolerances. The Company's filing allows it to pay for energy exports from CSS plants, but only up to the hourly Maximum Steam Export Quantity determined at the commencement of service. CPA shares the Company's apparent concern that excess and uncontrolled steam exports could cause operational problems and perhaps require sub-optimal operation of ERRP, to the detriment of steam consumers. However, that would require that the sum of all exports from all participants exceed Con Ed's dispatch order, an unlikely possibility given the low price provided for exports. Further, the Maximum Steam Export Quantity is necessarily an estimate of the capacity of the CSS plant, determined before the actual capability of the plant is known. At a minimum, plant operators should have the opportunity to reset the Maximum Steam Export Quantity some time after plant operations are well understood. The

Company recognized this in its comments with regard to the DR pilot program, which proposed to allow a one time opportunity to reset the Contract Load Reduction. Finally, reasonable tolerance applied to the hourly exports, as well as for load reductions under the DR pilot, will protect steam customers from excess exports, without punitive costs to participants. This is consistent with the treatment of natural gas imbalances in the retail access system.

We propose that the tolerance should initially be 15% of the Maximum Steam Export Quantity in the CSS pilot and the Contract Load Reduction in the DR pilot.

No customer charge or contract demand charge should apply to steam exports. To the extent that the Maximum Steam Export Quantity exceeds the steam sales demand, Con Ed would apply a contract demand charge to those exports. This exotic charge, which would require participants to pay for the privilege of selling energy to Con Ed at prices below their own incremental costs, and which would further require participants to pay gas delivery charges to Con Ed to do so, is completely unjustified. The price Con Ed pays for this energy includes only the *city-gate cost of gas*, used to generate the steam at a fixed heat rate, which the CSS plant may or may not be able to attain. Nor does this cost of gas include delivery *charges paid to Con Ed*. Con Ed's failure to recognize participant's costs *resulting from its own charges* is a particularly bitter pill.

Con Ed has made no showing that there are incremental demand or customer costs associated with the CSS pilot, beyond those connection costs for which the participants are otherwise responsible. The entire reasonable cost of operating the steam system is recoverable in sales rates, and it has asked for recovery of pilot program costs. During the entire course of SPRC, it has provided no studies or analyses to justify these charges, apparently preferring to rely on shock and awe to make the case.

By Interrogatory DPS1, Question 20 R, Staff asked the Company to “[e]xplain why a CSS participant would be required to pay a customer and contract demand charge?” The Company responded:

“It was suggested that a Customer be provided relief from the Contract Demand charge in the event the Customer stands ready to provide, but the Company declines to take, the Maximum Steam Export Quantity because of a low system load condition. One form of relief mentioned was a demand charge credit. After giving further consideration to this suggestion, the Company believes that this circumstance does not warrant relief from the otherwise applicable demand charge under the CSS Pilot Program.”

This response is no response at all. By changing the question from *why pay a charge?* to *why not provide relief under certain circumstances?* the Company makes an implicit assumption that the

charge is justified in the first place. Further, the Company has mischaracterized the stated positions of CPA and other parties. Our position is, and has been, that no export demand or customer charges are justifiable.

In a meeting in New York City on September 13, the Company pointed to this footnote in the SPRC Report (p.25):

Whether or not a CSS participant elects SC 4 service, the CSS Customer would be responsible for payment of all required delivery system rates and associated charges (*e.g.*, customer charge, contract demand charge and PSL 18-a assessment charges).

The obvious fact is that this footnote refers to “delivery system rates” and not export charges. It provides no justification for export charges. Nothing in the Report describes which particular costs are to be included or excluded from these charges, and there were no supporting documents or studies quantifying provided during the long course of discussions. This omission from the body of the Report is in contrast to the inclusion of a discussion of the circumstances which would require the Company to make capacity (demand) payments to the customer.

The case for export demand charges is logically flawed. The steam system is built to serve customers’ loads, and customers pay all the cost of providing service. Some of those costs are supply costs, and the Company recovers all incurred supply costs from customers. CSS participants are suppliers, and all costs related to that supply are correctly recoverable from sales customers. The Company’s filing provides for that recovery.

Even if one accepts the Company’s confusion of suppliers and consumers, the export demand charge is still not allowable. As applied to sales rates, demand charges afford consumers access to the distribution system all hours of the year. Customers who choose to receive service only at the utility’s discretion (*e.g.* interruptible gas service customers) universally pay no demand charges. Clearly, steam exports in the CSS pilot program occur only at the Company’s discretion, and as such must be exempt from demand charges.

The Company’s unresponsive answer to the above Staff interrogatory also concludes that the export demand charge is “lower than the contract demand charge under SC4.” To be clear, the export demand charge is applied to different billing determinant than the SC4 charge, and is always in addition to the SC4 charge. In no case does it reduce the customer’s actual bill.

It must be noted that none of the above provisions were included in the SPRC Report. CPA participated in all the SPRC negotiations and drafting meetings, at which the Company had

adequate opportunity to raise such issues. The fact that these first appear in the resulting tariff filing is an abuse of the collaborative process.

CPA urges the Commission to reject the tariff filing of July 28 and require Con Ed to file amendments addressing the defects described above.

Finally, on the evening of September 28, Con Ed distributed documents describing DR and CSS pilot program procedures. Due to the detailed and technical nature of these procedures, it is not possible to offer comments at this time. We urge the Commission to accept these procedures only after parties have had 30 days to analyze them and offer comments as necessary.

Thank you for the opportunity to offer these comments.

Very truly yours,

ss//Catherine M. Luthin

Executive Director

cc: All Active Parties