

# Consumer Power Advocates

Montefiore Medical Center  
Continuum Health Partners  
Fordham University  
Memorial Sloan Kettering Cancer Center

Mount Sinai Medical Center  
New York University  
NYU Medical Center  
Luthin Associates, Inc.

October 9, 2009

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

Re: Case 09-G-0568- Con Edison- Capacity Release

Dear Ms. Brillig,

Consumer Power Advocates wishes to be an active party in the above captioned case. CPA is a membership organization of energy users and customers of Consolidated Edison. Our members purchase large quantities of natural gas and participate in Con Edison's retail access program. Therefore, CPA has an interest in this case. CPA further requests to file these comments on an untimely basis.

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Con Edison currently releases firm pipeline capacity to ESCOs at that maximum lawful rate, and applies a Capacity release service Adjustment to adjust the cost of the released capacity to the weighted average cost of capacity (WACOC) for full service customer. Under the amendments proposed in this case, the Company would release capacity at the estimated WACOC, and true-up the difference between the estimated and actual WACOC. This change is proposed to be effective November 1, 2009.

CPA opposes the revisions both because of the effect on current contracts, and because of the process by which these changes will go into effect.

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Current contracts have been negotiated in good faith based on the capacity release rules currently in effect. Typically, these contracts have a term of at least one year or more. These contracts will be in effect through the upcoming winter period, and many will remain in effect through the following summer. Capacity pricing is an essential component of all firm contracts, and any change in pricing rules is a concern, and a potential cause for re-negotiation. In order to afford ESCOs and customers the opportunity to negotiate fair contracts based on new rules, and to allow current contracts to continue without the possibility of disruptive re-negotiation, the Commission should delay the effective date of the proposed changes until November 1, 2010.

Further, CPS is concerned by the process followed here. In contrast to ordinary rate cases, which take 11 months to settle, this change was first noticed in July, and may go into effect on November 1. This is simply too brief a period for consumers to understand the implications of the new rules, and to re-negotiate responsibly. At a minimum, the commission should commence a process by which Department Staff, ESCOs, and consumer representatives can express their concerns and develop capacity release pricing rules that are fair to all and that enjoy the full support of consumers.

Very truly yours,

*/ss/ Catherine M. Luthin*

Catherine M. Luthin.  
Executive Director

Cc: Sara Schoenwetter  
Christine Colletti