Before the New York State Public Service Commission

Case 08-E-0539-Consolidated Edison-Electric Rates

Initial Brief of Consumer Power Advocates

November 21, 2008

Consumer Power Advocates (CPA) submits this Initial Brief in Case 08-E-0539-Consolidated Edison-Electric Rates. Since this case was filed, financial markets have fallen into turmoil, and oil and other energy prices have fallen from historic highs in just a few months. These developments will likely soon precipitate a long and deep recession in the national and world economies. New York, with its high concentration of financial industry employment, may suffer this far more than other States and regions. In this uncertain environment, it is even more important that the Commission find the right balance between the consumers' interest in low energy prices, and the Company's need for financial stability. Moreover, the pessimistic expectations for economic performance during the term in which these rates will be in effect argue for greater emphasis on economic development wherever practical. To those ends, CPA makes the following arguments. For the convenience of the Parties, the original enumeration of the full outline of issues is preserved.

VIII COST OF CAPITAL

Staff has proposed to impute a reduced amount of equity investment in the Company's capital structure. In the past, CPA has supported this approach because it results in revenue requirement reductions for customers and without unreasonable risks to shareholders. In the current market environment interest costs are volatile and uncertain. For that reason alone, CPA believes that the prudent course is to allow Con Edison's high proportion of equity financing, which seemed excessive just a few months ago.

Electric utilities are among the most capital intensive firms. A rate of return less than that anticipated by ratings agencies would be disastrous, for the Company and for its customers as well. In the worst case, a downgrade of credit rating could require the Company to go to the more costly commercial paper market for short term credit. Compounding the problem, the meltdown of financial markets has already increased to the cost of money required to fulfill collateral requirements, just as volatility in the energy markets increases the amount of collateral required by counterparties.

Press reports describe an industry in distress. The Houston Chronicle recently reported (November. 8, 2008),: " Reliant Energy has stopped signing up or renewing contracts with large commercial customers and will shut down that part of its retail electric business or sell it outright, the company said Friday…

It also announced it would need to unwind a credit agreement with Merrill Lynch that had essentially let it borrow the bank's top credit rating when making power purchases. Reliant is replacing the agreement with $1 billion in more costly financing, including a $350 million investment from private equity firm First Reserve and a $650 million loan from Goldman Sachs." Such actions are unprecedented in the electric markets, and obviously Con Edison does not have the option of shutting down service or reducing the number of customers it serves.

For the first time ever, and as much as we hate to do it, CPA supports the capital structure proposed by the Company, and urges the Commission to consider the effect of a downgrade of the Con Edison's credit rating.

X REVENUE ALLOCATION/RATE DESIGN

D. BIR Proposal

CPA has proposes that the current BIR set aside for biomedical research conducted by non-profit institutions be increased to 77MW.

The company's current non-profit BIR set aside is the most successful part of the BIR program. The current program is capped at 20 MW, and is now fully subscribed. (TR 2938) The reason for this success is simple. Unlike the shrinking manufacturing sector, academic research and education are growing sectors of the economy which can thrive in New York City and Westchester. According to the NY Labor Department, (as reported by Crain's, attached) the City has lost 165,000 manufacturing jobs since 1990, and only 96,000 remain as of 1997. During the same period, education and health services, areas closely related to biomedical research by skill and by sponsoring institutions, have added 231,000 jobs. Nevertheless, biomedical research will enjoy even greater growth if unnecessary roadblocks to that growth are removed.

Energy has been identified as one area that contribute significantly to operating costs in New York, (TR 2946) and which may cause research funding to go elsewhere In the current economic environment, which includes the expectation of further job losses in all sectors and State budget cuts affecting the institutions that support biomedical research, it is even more important to maintain those programs that can be supported. The Healthcare Association of New York State estimates that the budget cuts for hospitals would reduce Medicaid revenue by $974 million over the next two years.[1]

Fortunately, New York has a BIR program designed to attract new economic activity, and the goals of that program perfectly align with the need of non-profit institutions to control energy costs in order to compete nationally to attract research funding. While the goals of both the non-profit set aside and the other BIR set asides are largely the same, identical qualifying criteria have disparate effects on the various sectors and on non-profit

[1] Health Care Association of New York State, Press Release of August 13, 2008, "EVERY HOSPITAL IN NEW YORK STATE SUFFERS UNDER GOVERNOR'S MID-YEAR BUDGET CUTS Slashing Medicaid Would Devastate N.Y. Hospitals By Nearly $1 Billion"

institutions in particular. Rules for the currently open BIR programs do not explicitly exclude non-profits, but they apply criteria that require tax abatements and other benefits that do not apply to non-profits. (TR 2937) Perhaps worse, these rules allow other agencies (notably New York City) to subvert the Commission's intent to provide BIR by withholding any "comprehensive package of benefits" as required by the tariff. This language is too vague to allow non-profits access to the BIR on the same basis as for-profit developers.

The Commission should remedy this by increasing the current non-profit BIR set aside to an amount equal to the potential share of biomedical research employment. That number is 77,000 MW as proposed by CPA.

F. Submetering

1. SC 8 and SC 12 Customers

Staff has proposed to require all SC8 and SC12 customers to sub-meter each separate apartment.

This proposal was made without adequate estimates of its effectiveness as an incentive to conserve, and without any regard to the possibility of excessive costs on particular building owners or tenants. (TR 3622)All the studies offered in support of this measure were referred to by describing the average results in terms of effectiveness in promoting efficiency, and none of these studies isolate or quantify the effect of sub-metering alone. There was no attempt to identify the types and numbers of buildings for which such a change would more costly than average, and there is no public program to provide financing for this type of metering change for SC8 and SC12 customers. (TR 3618) The Staff Panel recognized the need to provide waivers from this requirement, but provided no guidance as to what the process or criteria for such waivers should be. (TR 3626)

The Staff proposal should be rejected.

2. Dormitory Submetering

NYU operates dormitories consisting of multiple apartments, each with its own electric meter and separate account. Every account is maintained by NYU and billed at SC2 rates. This is incorrect for two reasons.

1. These are residential accounts, and should be billed at residential rates.
2. These buildings maintained by NYU as temporary housing and should be billed as a single account.

The policy of preferring individual accounts for each dwelling unit is based on the economic theory that residents, if faced with proper price signals, will rationally determine the optimum amount of energy efficiency measures to pursue. In the case of dormitories operated as housing for temporary residents, this assumption is not true. The incentive to conserve can only apply to the permanent operator of that building.(TR 3507) It is the University that must pay these bills at which will, and does, enjoy the

savings related to efficiency measures. It is not feasible to bill the temporary residents, nor would that provide the incentives the Commission desires even if it were feasible. Temporary residents will rationally conclude that it is less costly to pay higher bills for a few months than to invest in measures that will take years to provide net savings.
Single account billing is not only more just, large volume demand rates provide the proper price incentive to the University to invest in energy efficiency by more closely matching consumption to cost. In particular, the demand rates that would apply provide an incentive to manage peak loads.(TR3508)

The tariff should be amended to allow dormitories in which separate accounts are maintained a single entity to convert those accounts to a single account.

XI. OTHER ISSUES

E. Mandatory Hourly Pricing

1. Billing

Our experience with MHP applied to the relatively small number of large customers has been that an extension period of familiarization and reduction is necessary to implement MHP without unnecessary customer confusion.(TRR 3499) Shadow billing the MHP price for a period of one year is reasonable. This is similar to the approach used in implementing Steam demand rates.

Con Edison should be required to provide shadow bills to all new MHP customers for a period of one year before those MHP is implemented.

F. Retail Access Issues

2. Display of Full Service Supply Costs on Retail Access Bills

Display of the full service supply costs on retail access bills is simple method of increasing the transparency of the energy supply market. Understanding alternatives is essential to effective negotiation and market success, but Con Edison bills are particularly complex and difficult for consumers compute. (TR 3595) Requiring the Company to provide that information will allow consumers the opportunity to evaluate market offers and have the confidence to commit to competitive supply.

The Company's argument that monthly costs confuse consumers because of price volatility is specious. While Con Edison's monthly rates can be volatile, that is no reason to withhold information from consumers, and regardless, it is not possible to know the annual cost without first computing each monthly bill. While there is no doubt some burden on the Company in implementing this proposal, that burden should be measured against the burden on customers who must develop that alternate cost on their, or worse, accept less than favorable supply offers based on the incorrect evaluation of Con Edison's complex rates. Full supply costs are displayed on bills in other jurisdictions, including New Jersey, to the benefit of consumers.(TR 3594) (We will not here comment on the discomfiting possibility that New Jersey has developed a superior policy to New York.) The commission should not deny the benefit if added transparency to consumers that this proposal allows.

Con Edison should be required to display the full energy supply costs per its electric tariff on all bills, including retail access bills.

H. Contributions in Aid of Construction

Staff has proposed to require customers to make an up front payment for distribution facilities require to meet new loads. The sole justification for this seems to be that this will reduce costs for current customers. While that may be true, it does not create a more equitable collection of costs between current future customers, and it creates unnecessary disincentives to development that are particularly obnoxious during this period of uncertainty regarding the economy. All customers now pay rates adequate to recover the average cost of facilities, as determined by cost of services studies. Customers who require additional facilities are subject to advance payments or surcharges under various riders. Staff's proposal goes further, requiring all customers adding new loads to pay the cost of new facilities. This is inequitable because it treats new customers differently from existing customers, by requiring a payment that has never been required historically.

This proposal would require new customers to finance a significant investment in facilities that they do not own. This not only adds to the cost of new business formation, it adds a disproportionate measure of risk the new business because, unlike property owned by the customer, that cost can never be recovered by the subsequent sale of the asset in the event of a business failure. Nor is this simply a transfer of risk from Con Edison to the new customer. Regardless of the longevity of any particular customer, the Company retains the opportunity to use those facilities to serve loads in the future. (TR 3519)

Further, staff has not worked out the details of this proposal. The Company offered three objections, all of which CPA endorse. (TR 3520) Those concerns were:

1. This would create a barrier to economic development,

2. It would require an allocation between the cost of facilities required for a specific load and the cost resulting from building in excess capacity to allow for growth, and

3. It would not allow the Company to earn a return on those facilities, eventually leading to unacceptably low cash flow.

Witness Padula agreed that the Company's concerns regarding that this proposal should be considered, but offered no guidance as to how those concerns should be resolved. (TR 3521).

The Staff proposal to require an additional CAIC beyond what is currently required by the tariff must be rejected.

Respectfully submitted,

Catherine Luthin

Catherine M. Luthin
Executive Director
Consumer Power Advocates
17 Walling Place
Avon-By-The-Sea, NJ 07717

cc: Hon. Jaclyn Brilling by Fed Ex & E-mail
Gerald Lynch, Administrative Law Judge by Fed Ex & E-mail
Howard Jack, Administrative Law Judge by Fed Ex & E-mail
Marc Richter, Esq. by Fed Ex & E-mail
Active Parties by E-mail.