Consumer Power Advocates

Columbia University
Continuum Health Partners
Fordham University
Memorial Sloan Kettering Cancer Center
Mount Sinai Medical Center
New York University
NYU Medical Center
St. Vincent Catholic Medical Centers

Luthin Associates, Inc.

Before the New York State Public Service Commission

Case 07-E-0523-Consolidated Edison-Electric Rates

Initial Brief of Consumer Power Advocates

November 30, 2007

Consumer Power Advocates (CPA) submits this brief in support of its positions in the above captioned case. The modifications proposed herein to Consolidated Edison's ("Con Ed" or the Company") original filing will mitigate the impact of what may be the largest rate increase ever approved in New York State. They will also enhance the incentives for energy efficiency, encourage economic development and provide support for the development of competitive retail markets.

We believe this to be the largest single retail electric rate increase ever requested in New York, if not in the entire United States. Even the reductions proposed by Staff fail to fully protect consumers from cost increases that significantly exceed the rate of inflation. Various provisions proposed by the Company would have the effect of providing unnecessary incentives, or of reallocating risks from the Company to its ratepayers, further burdening customers who are presently paying among the highest electric rates in the nation. Moreover, the Company has failed to propose reasonable increases in its Business Incentive Rate programs and in some cases even reduced that benefit. Finally, while energy efficiency programs are surely necessary, their cost will be an added burden to ratepayers if they are not designed to provide significant reductions on the electric system. Under these circumstances, with consumers suffering ever increasing supply costs driven by rising fuel prices, it is imperative that the Commission give the highest scrutiny to <u>every</u> item of the filing.

RDM should not apply to Mandatory Hourly Pricing (MHP) customers.

The Commission's Order and Opinion on RDM recognized that cost based and time of use pricing accomplishes the goal of providing correct incentives for energy efficiency:

With respect to various delivery rate design initiatives already underway, some parties support the continued movement toward time-differentiated rates and interval metering. As stated previously, we agree that these initiatives have merit.

With respect to the different customer classes and whether the rate design impacts are more prominent for certain classes than others, we recognize that more movement toward fully cost-based rates has been or can more easily be accommodated within the larger commercial and industrial classes, thereby largely breaking the link between utility sales and profits attributable to these customers. On the other hand, lost revenue and profits due to reduced sales can be significant for residential and small commercial classes. On the electric side, in large part due to the absence of demand meters for these smaller customers, a much more substantial portion of "fixed" distribution delivery costs, in general, continue to be recovered in volumetric charges. (Order in Case 03-E-0649, pg. 10)

Large volume customers currently served on mandatory hourly pricing (MHP) rate schedules have adequate incentive to conserve, and because this efficiency is priced at its actual cost, both through MHP and through distribution rates which include demand charges, there is no further need to tamper with ordinary market incentives. The Commission also recognized that large deferrals resulting from any RDM plan should be avoided. (Order in Case 03-E-0649, p.8). Excluding MHP customers from any RDM will help accomplish that.

If an RDM is implemented, it should be done in a way that minimizes bill volatility.

Both staff and the Company proposed revenue decoupling plans. Staff's plan has the advantage of simplicity but little else. Staff would set a single RDM target, and defer any revenue difference for subsequent recovery. This plan completely transfers several risks now born by the Company to customers. These risks include the risk that sales or customer growth will be less than forecast, that the weather will be unusually warm or cool, and the risk that conservation will be greater than forecast. By assigning these risks to customers, and by allowing recovery of the cost of those risks in subsequent periods, Staff's RDM plan adds to bill volatility without providing any offsetting customer benefit. Staff's plan does nothing to reduce bill volatility due to the variation in usage due to any factor, but adds to volatility deferring the revenue effect of those variations and collecting or refunding them in subsequent months. CPA's institutional membership is comprised of hospitals and universities. These institutions cannot simply pass increased costs to their customers: they need to adhere to forecasted energy budgets. <u>Increased volatility</u> is unacceptable.

The Company's RARIM plan has some marginally better provisions but the plan suffers different but equally serious defects. Notably, the Company would hold positive revenue deferrals for future disposition, but collect negative deferrals promptly. However, the RARIM proposal is marginally more acceptable to the extent that some of the risks remain with the Company.

Customer growth risk is taken by the company, reducing deferrals and out of period rate corrections. Staff posits that this creates an unacceptable "gaming" opportunity, whereby the Company would intentionally misclassify customers into higher revenue categories. This opportunity is far overstated. Any large number of such transfers would quickly be discovered, especially if some resulted in bill increases to individual customers. In any event, future sales forecasts would fully include those effects.

In the Company's proposal, the effect of weather risk is unchanged. The RARIM revenue targets would be weather adjusted, leaving both the customer and the Company with the same weather risk as now exists. In contrast, the Staff proposal would have the customer "double down" on weather risk, because he/she would have the same weather risk in the billing month, and would take the Company's weather related revenue change in subsequent months. The customers' bills become even more volatile than under the current, non-decoupled rate system. If it is determined that the Company should be insulated from its weather risk, the Con Ed gas RDM provides a better model. In that RDM, the monthly RDM targets are based on weather-normalized sales, and rates are adjusted in the current month to reflect the change in revenue due to weather. The Company is fully protected for weather risk, and the customers' bills are slightly less volatile because rates are reduced in periods when weather increases sales, and increased when weather causes decreased sales.

As with the determination of customer numbers, staff's concern that the Company will benefit from gaming opportunities related to weather normalization are overstated. If staff is concerned that the company would overstate the weather normalization, the amount of weather normalization included in rates could be reduced to 85% of the total. If staff thinks that the company could beat them by more than 15%, the amount could be reduced to 75%. Those scenarios keep at least some of the weather risk with the Company. Regardless, there is no reason to believe that the company would gain advantage by overstating the weather normalization.

Even with these advantages, RARIM still assigns the risk of forecast error to customers, which is unacceptable. Relative to the other risks described above, the "risk" of more than expected energy efficiency is small in any single year, and can be dealt with in each subsequent rate case.

RDM does nothing to change long term incentives, which remain to control costs in order to prevent new entry of alternative, disruptive technologies. At most, RDM brings that incentive into the one-year period, from the 2 to 4 year horizon.

The amount of load eligible for BIR discounts for Non-Profit Biomedical research should be increased.

According to CPA Witness Luthin the non-profit biomedical research sector is a major economic engine in NYC (CL testimony, exhs. 318-322). Ms. Luthin testified that "In 2005, health and educational services, the two major components of the non-profit sector, accounted for 678,000 jobs in New York City. This represents 19% of New York City's employment. Over the last five years, a period that saw a net loss of 124,000 jobs in New York City, this sector showed the largest growth, 59,000 jobs."

The need for a further allocation of power for the sector is justified both by the success of the current program and by the reality of non-profit research. While biomedical research projects compete nationally for funding, costs are higher in NYC than elsewhere (exhs.318, 321, 322). The Company's own rebuttal testimony proves that the non-profit biomedical program was the most successful of the BIR programs, with 95% of its allocation subscribed at the time of filing of rebuttal. (T.R. 310) Mount Sinai's Atran Berg building has received the last of the allocation effective with its November 2007 meter reading date, completely exhausting the 20 MW allocation. CPA members alone plan to add over one million square feet of research space by 2011 (exh. 319), most of it is high load density research space. Contrary to the Company testimony there are extremely limited BIR volumes available for these loads in NYC. These other categories have requirements that are typically not relevant to non-profit institutions, which is why this new category was created in the 2000 settlement of the company's electric rate case. Biomedical research can relocate anywhere in the world. Con Ed's assertion that these projects are not at risk from leaving the territory nor need to be enticed to come within its territory could not be more untrue. The industry is extremely competitive and reduction of operational expense is an extremely important element in attraction and retention of this type of customer.

A more reasonable approach to the BIR is to provide load volumes as proposed by CPA: assign volumes in approximate proportion to the size and importance of the economic sector. Equal allocation volumes by BIR sector would result in 77 MW of load in addition to the 20 MW of load initially assigned to the non-profit biomedical sector. The Company rebuttal that this method changes the new criteria is incorrect (T.R. 312). All the original criteria remain unchanged, but the amount of eligible load more closely matches the need.

Finally, the Company's rebuttal testimony that CPA's BIR proposal would cause a revenue loss to the Company as a result of Staff's RDM proposal is specious (T.R.314). It is axiomatic that the revenue decoupling will eliminate the potential for revenue growth: eliminating revenue growth is the essence of RDM. That effect should be considered in the development of RDM, but it is certainly no reason to abandon environmentally sound economic development programs. In the past, the company forecast did not account for economic development packages being offered to customers under the BIR. It is those customers that would have left the system, if the economic development package was not offered, but stayed at the discounted rate. The revenue associated with these customers was always considered incremental. The very fact that the Company is concerned about the cost of providing that service without enjoying the related revenues is the best evidence that the Company agrees with CPA that the biomedical BIR program will continue to be successful.

The Company's energy efficiency incentive should not be allowed.

The Company has proposed an ambitious energy efficiency program, and further proposed to add lucrative incentives for its own administration of those programs. These incentives are unnecessary, and in the case of Company Witness Craft's proposal to use ratepayer funds to retire future carbon credits, an unreasonable interference in other government programs.

The Company claim that cash incentives are necessary for it to competently administer efficiency programs has no basis. First, there is the example of NYSERDA which has proven capably able to administer similar programs without large cash incentives. Second, there is the example of Con Ed's own administration of all its other business functions, most which occur without specific cash incentives. Finally, there is RDM, which eliminates the short term disincentive to efficiency programs, without disturbing the long term efficiency incentive. In this context, adding cash incentives only create a windfall for the Company at ratepayer expense.

By far the worst aspect of the Company incentive plan is the proposal to use ratepayer funds to retire carbon credits. If ratepayers wish to retire carbon credits, they are certainly free to make that choice without Con Ed and the Commission enforcing that choice. Moreover, and leaving aside the fact that it is entirely unknown at this point what programs or authorities may create these credits, there is no reason to assume that any future carbon credits from any source would necessarily belong to the Company. Equally important, if any legislature or other public agency creates a particular number of carbon credits, that implies that the number of credits is the appropriate number to meet the policy goals of the program. If that is the case, it would be troubling if another public agency were to allow the use of ratepayer funds to reduce the amount of credits previously determined to be appropriate. Moreover, at least some current proposals include the possibility of an unlimited amount of fixed price credits. In that case, "retirement" of credits is a sham, and the Company proposal nothing more than a raid on ratepayer pocketbooks. CPA Witness Dowling was unrebutted on all these points, either by Company Witness Craft, who made the original proposal, or by Company Witness Zielinski who ignored these particular issues.

Customers should have access to the Retail Access Information System (RAIS).

The increased volatility in today's energy markets presents only fleeting opportunities for customers to take advantage and time their procurement decisions. Suppliers commonly state that their prices are valid for only an hour and at times even as short as 15 minutes during which period contracts would need to be executed. Readily accessible information available in one place is the key to effective negotiation. A customer cannot formulate procurement strategy or evaluate offers for the variety of products available without access to the information in RAIS. These modifications would promote both retail access and the reduction of system wide demand.

Readily accessible information available in one place is the key to timely procurement. Customers cannot formulate procurement strategy correctly without immediate access to data. Nor can a customer evaluate the components of a supplier's offer for fixed or shaped energy blocks and/or index structures unless they have access to the same information that ESCOs have on a timely basis. The current process for customers requires one to access different sources such as the Con Edison website, DMS system and CCG in order to retrieve billing data which is time consuming and cumbersome. Some customers have as much as 75 accounts. The customer would need to go into all three of Con Edison's systems to cut, paste and align all this information per account for analysis. This can take days to complete versus downloading the information from one system which is made available to the ESCOs providing the offer to the customer. This only serves to place the customer at a competitive disadvantage when negotiating with a supplier. (Currently, MHP accounts can only reside on either the Con Ed CCG or DMS system. For example, a customer will have to make a request to Con Edison for interval data on a MHP account on CCG. This is time consuming and delays procurement decisions and associated analytics.)

Customer's interested in switching to Retail Access typically have to provide ESCO's with account numbers at least 3 days prior to receiving bids from them. ESCO's have stated that they require at least 3 days to receive interval data for TOD accounts and other relevant account information such as stratum variables and ICAP tag information in order to price the portfolio. If customers had ready access to this information, they could provide the ESCO's with the information and receive bids within the same day to take advantage of changing market conditions.

Timely access to ICAP tag information allows customers to evaluate their demand response performance and analyze savings from reduced capacity tags. Knowledge of the customer ICAP tag allows the customer to ensure that the right amount of capacity is purchased based on the latest capacity tags set up for the customer's accounts. This information is not available to customers. CPA's response to question 11 (Appendix 1) from Con Ed illustrates other examples of data provided to ESCO's not available on its customers accessible systems, explains why data is necessary and how it is used by customers in a competitive marketplace.

The Company Rate Panel Witnesses agreed that all this information is available, not all of the data is provided to customers on its customer on-line data sources, and that this information was useful for pricing competitive supply offers (T.R. 883). The current process requires one to access different sources as illustrated above in order to retrieve all the data contained on the RAIS system. In addition, the current system does not provide customers access to stratum variables, meter read cycles, MUNI codes and ICAP tags. The current system will only identify the highest level of the service classification for which the customer is billed. If the customer is on rate 2 or 3 or a special Rider, this information is not available. CPA members are institutions that manage multiple accounts and are particularly disadvantaged by the need to bring together data from multiple sources for many accounts. It is frustrating that the company does not allow its major customers the same access to data that is provided to competitive suppliers.

The Company's position on this is confusing and contradictory. Under cross-examination, the Company stated that it is does not provide access to "rates," does it believe that it is appropriate to share that information (T.R. 884). Nevertheless, the Company did agree that all the information specifically referred to by CPA in the Company response to the CPA interrogatory (Ex. 52) is available by various means, including by the specific request of the customer. The Company further agreed that at least some of this information was useful for pricing competitive supply offers. The issue of access to "rates" is a new issue first raised on cross-examination. CPA was unaware that Con Ed has any rates which are not available to the public. Nevertheless, with this one exception, all the RAIS information is available to customers, but only from multiple sources and in some cases only by request. There is simply no reason to withhold convenient access to any data that is useful to customers, particularly if it is routinely provided to ESCOs in an efficient matter, as all of this is.

Convenient access will reduce the overhead cost of choosing Retail Access, provide more time for customers to analyze competitive offers, and give customers more confidence that their Retail Access choices are the right ones. All these things will support the goal of greater use of Retail Access opportunities. The Company should be required to provide access to customers on an equal basis with ESCOs.

The Commission should impute a reasonable capital structure including less equity.

In its most recent gas rate settlement, the Company agreed to an imputed capital structure which included goals to achieve a significantly lower equity ratio. That resulted in significant savings to consumers, and the Commission should require the same in this case.

Energy efficiency should include a program targeted to high load density customers.

CPA supports the development of rational efficiency programs. With more than half of current program funds allocated both on the economic need of the participants and on geographic concerns, it is vitally important that remaining funds be spent on those projects promising the greatest savings. To that end, CPA has proposed an efficiency program targeting the highest load density customers. The Commission should require that such a program be developed as part of the Company's overall efficiency program.

The cost of legacy contracts should be closed out and excluded from the MAC and MSC.

Electricity delivery rates continue to be extremely volatile, almost entirely because the so-called stranded investment or legacy supply contracts. This volatility interferes with customers' ability to budget delivery costs. This volatility is inherent in the development of the MAC, inasmuch as the legacy costs are defined as the costs in excess of volatile market prices. These costs are completely obscure and unpredictable to ratepayers. CPA believes it is time to close these costs out.

Conclusion.

For all of these reasons, the Commission should modify proposed changes as described above.

Respectfully submitted,

Catherine M. Luthin

Catherine M. Luthin
Executive Director
Consumer Power Advocates