

Before the New York State Public Service Commission

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

Reply Brief of Consumer Power Advocates

December 14, 2007

Consumer Power Advocates (CPA) submits this reply brief in support of its positions on the following issues, and in response to the argument of Consolidated Edison (“Con Ed” or “the Company”) in its initial brief.

Customers must be allowed access to RAIS on the same basis as ESCOs.

The Company opposes CPA’s proposal to allow customer access to RAIS, in part because it “already provides customers...**upon request** the information they are seeking through RAIS.” That statement is true, and it would remain equally true if the words “upon request” were changed to “on an untimely basis and in an inconvenient manner.” The Company has raised no issue concerning the propriety of sharing this information with customers, nor does it provide any support for the baseless claim that customer access is somehow impractical. Nevertheless, the Company remains recalcitrant in its opposition to providing access in a way that is most useful to consumers. This must be seen as what it is: an attempt to create an information disadvantage for consumers attempting to maximize their Retail Access opportunities. Tellingly, the Company states that “this system was designed for the Company and ESCOs, acting as trading partners.” This astounding statement implies a relationship between the Company and each ESCO that was never discussed at the time of restructuring, and a different role for Con Ed than that of a delivery provider. It was the naïve belief of CPA that Con Ed’s principal business relationship was with its own customers. Ironically, it is those customers who will not only become *de facto* partners with the implementation of RDM, they will be the partners who assume the lion’s share of the revenue risk, something that no ESCO has yet stepped up to offer. The Company’s concern for its new-found ESCO partners does not justify the use of its monopoly position to disadvantage consumers in the Retail Access marketplace.

The Company concern that some of the RAIS information should not be available to customers, just as it states that some of it is unavailable to ESCOs for security reasons, is a new issue which contradicts Company statements that all this information is available by request. Nevertheless, this issue can be easily addressed by the same type of restrictions that the Company applies to ESCOs. At the end of the day, CPA is merely requesting on-line access to one more Company data base, similar to the access provided to several other Company data bases. The Company has provided no information to show that the technical aspects of this access is any different than the access to other data bases, but it has agreed that this information is useful and that customers currently may receive it, albeit in a delayed and disjointed manner. The Company position boils down

to a policy of withholding timely and convenient access to information that is valuable to consumers, while sharing freely with suppliers. The CPA proposal should be adopted, and consumers should be allowed access to all the information on RAIS that is not determined to be subject to reasonable proprietary considerations.

An additional allocation of BIR power for non-profit institutions conducting biomedical research is appropriate.

In its initial Brief, the Company denied the need for further BIR allocations for non-profit biomedical research use, and in the process misrepresented the record in this case, as well as contradicted its own previous policy on the set aside for non-profit biomedical use. First, the Company states (IB 431) that “(CPA Witness) Ms. Luthin has not provided any data that would demonstrate the need for increasing the allocation...for new loads that may be eligible under current program criteria.” However, Exhibit 319 enumerates 7 such projects totaling over 1.3 million square feet of space. Until these projects are fully developed, it is impossible to determine their actual loads with certainty. Nevertheless, at the standard load density for research hospitals (15 kW per square foot, as filed in Case 02E0141 for the development of Rider Y of the Company’s electric service tariff), this amounts to over 20 MW of additional load for use by CPA members alone. CPA, of course, does not represent, nor is it aware of, all biomedical research projects in New York City.

Regardless of the Company’s claims, there are no other BIR programs appropriate for non-profit institutions. The New and Vacant Buildings Program, and the Comprehensive Program require that the applicant receive a comprehensive package of benefits from the City. This comprehensive package is defined on Leaf 136B, Rider J (A) (3)(b)(i) as “a separately-negotiated package of economic incentives...which would include substantial tax or similar incentives designed to maintain or increase employment levels...” The tariff is silent on what would be “similar” to a substantial tax incentive, particularly for a tax-exempt non-profit. The Commission recognized the need for separate qualifying criteria for non-profits when it created the set aside for non-profit biomedical research. The Company itself recognized this in its Comments on Reply Comments to Comments of the City of New York and the New York Energy Buyers Forum in Case 00-M-0095, *et al.* In that case, the Company objected to New York City’s proposal to allow the BIR benefit by for-profit contractor in space operated by non-profit institutions. The biomedical program is now the only BIR program that is fully subscribed, and the Company’s objection to increasing the amount available is simply an attempt to undermine the most successful part of the entire program.

The Company also renews its claim that CPA has proposed a change in criteria for BIR. This change is described as a change from “from economic development criteria to criteria based upon the number of jobs in the overall health and education economic sector.” (IB 432). The criteria for granting BIR benefits remains unchanged: the economic impact is a key element of all BIR applications. The only change proposed by CPA is an increase in the overall allocation for non-profit biomedical research loads. This increase is necessary to insure the continued viability of that sector in Con Ed’s

service territory, which in turn will support the economic growth that is the goal of the BIR program. Finally, CPA agrees with the Company that it may experience some income loss if BIR under Staff's RDM plan if sales increase. This, however, is an artifact of RDM, and provides no reason to reject environmentally sound economic growth initiatives.

Recovery of "stranded costs" must not continue indefinitely.

The Company rejects CPA's proposal to determine a firm close out date for the above market cost of legacy contracts. The Company states that "given the magnitude, volatility, and longevity of these legacy contract costs, the current mechanism remains the most appropriate method of cost recovery." (IB 424) It is precisely magnitude and volatility of those costs that are most troublesome to consumers. The Company also states that these costs may increase from \$355 million on 2003 to over \$2 billion. That represents an increase greater than that which is the subject of this case, which otherwise would have been the largest electric rate increase in New York history. Surely an increase of such magnitude warrants greater scrutiny and transparency than afforded by the monthly MAC filings.

Respectfully submitted,

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