

# Consumer Power Advocates

Columbia University Medical Center  
Fordham University  
Memorial Sloan Kettering Cancer Center  
NYU Langone Medical Center

Mount Sinai Health System  
New York Presbyterian Hospital  
New York University

December 3, 2018

## VIA ELECTRONIC FILING

Honorable Kathleen H. Burgess  
Secretary  
New York Public Service Commission  
Three Empire State Plaza  
Albany, New York 12223-1350

RE: Case 18-G-0565 – Matters Regarding Interruptible Gas Service

Dear Secretary Burgess,

Pursuant to the notice provided in the October 3, 2018 New York State Register [SAPA No. 18-G-0565SP1], the Consumer Power Advocates (CPA) hereby submits its comments in the above-captioned proceeding.

Consumer Power Advocates (CPA) is a coalition of not-for-profit commercial health care and educational customers in the Consolidated Edison (ConEd or the Company) service territory that advocates on behalf of consumer interests before the Commission, NYISO and elsewhere. CPA members burn significant quantities of natural gas for heating and/or combined heat and power (CHP.) Many, though not all, take service under the Company's Interruptible Transportation (IT) tariff, providing valuable flexibility to the Company and enhancing its ability to meet the needs of its Firm service customers on the coldest winter days.

As detailed in the various filings associated with its "Smart Solutions for Natural Gas Customers Program (the SmartSolutions Program,) the Company is facing a significant and increasing shortage of firm gas transportation capacity to its system<sup>1</sup>. CPA members' flexibility

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<sup>1</sup> Case 17-G-0606, Consolidated Edison – Gas Smart Solutions, Petition of Consolidated Edison Company of New York, Inc. for Approval of the Smart Solutions for Natural Gas Customers Program, September 29, 2017, et. Al.

in using IT service to meet their transportation needs reduces the need for firm transportation resources and is thus consistent with the goals laid out in the Program. CPA members' dual-fuel capability also enhances their own, as well as the Company's, resilience in the face of unexpected adverse impacts due to weather, infrastructure failures, or hostile attacks. These capabilities have been developed and are maintained at significant cost for these reasons, as well as because use of IT service, combined with dual-fuel capability is economically advantageous. In the case of CPA members, this allows for more monies to be invested in their core educational or health care missions.

### **Introduction**

On September 4, 2018, Consolidated Edison proposed changes to the penalty structure for its natural gas IT tariff that contains the potential for customers to not only lose access to IT services, but potentially lose access to all natural gas service. While some of the actions that may result in such an outcome are within the control of customers taking IT service, many are not. Indeed, those circumstances most likely to trigger the draconian consequences the Company would impose are in fact not within the control of customers, especially during extended gas interruptions. This outcome is neither fair to IT customers nor efficient for the system, as the result is likely to be fewer customers taking IT service, increasing the load on an already overburdened gas infrastructure. The instant tariff revisions proposed by the Company will, if implemented as proposed, decrease resiliency, threaten reliability, and drive IT customers onto firm service, exacerbating ConEd's difficulties. In short, they will achieve exactly the opposite of the results sought by the Company.

In brief summary, under the current tariff, IT customers are required to provide the Company with an affidavit no later than October 1 of each heating season attesting to its having secured alternate fuel supplies during interruptions. The proposed tariff changes that date to October 15. CPA supports this change.

Failure to submit the affidavit on time can currently result in customers being moved from IT to Firm service, imposing a significant financial impact. In addition, such customers would be precluded from returning to Interruptible Service for the remainder of the current Winter Period (November 1 – March 31) plus the next twelve succeeding months. CPA agrees that it is important that IT customers be prepared to meet their obligations and that a timely submitted affidavit that they have done so is appropriate, as are significant financial consequences for failing

to do so.

The Company has stated on multiple occasions in the SmartSolutions docket that it is facing significant and growing challenges with respect to maintaining sufficient pipeline capacity to serve its firm customers. Recent proposals such as the initiatives to increase gas energy efficiency, gas demand response, gas innovation, and non-pipe alternatives represent attempts to address this problem while traditional pipeline alternatives are pursued. CPA has been supportive of these innovative approaches.

It is against this background that ConEd is proposing to crack down on IT customers by increasing penalties and potentially forcing them off the gas system entirely. No longer will such customers face automatic transition to firm service. Availability of firm service is no longer guaranteed. In fact, there are indications that the Company may be close to having to impose a moratorium on connecting new firm service customers. CPA is aware of applications that remained pending for much longer than the usual 30 days.

Now, instead of being automatically transitioned from IT to Firm service, customers failing to timely submit their affidavit, or failing to interrupt when or for as long as ordered (whether due to circumstances within their control or not) will receive a “strike.” Under the new proposal, two strikes in any given winter period and they’re “out,” possibly literally. If customers either fail to apply for firm service, or apply but find that their needs cannot be accommodated, their service will be terminated altogether. They are eligible to re-apply for IT service no earlier than April 15 the following year, implying that they would either be forced to operate on back-up fuel for a year, or shut down entirely.

We understand that the Company faces serious gas supply constraints, but regardless, its proposal is clearly unacceptable and punitive for customers who are not responsible for the current situation. It is the Company that has failed, for reasons that remain unclear, to secure sufficient pipeline capacity while it was still available<sup>2</sup>.

Many of ConEd’s IT customers, including CPA members, are institutional and critical care facilities that rely on natural gas service. For these customers, complete shutdowns would be catastrophic and indeed life-threatening. It is neither prudent, nor in some cases even possible,

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<sup>2</sup> / The Company has not thus far demonstrated that its actions (or more likely, its inaction) in seeking to provide for adequate gas service to firm customers have been prudent. CPA expects that this issue will be considered in the context of the Company’s next general rate proceeding. The provision of safe, adequate service is every utility’s number one responsibility. Providing adequate service to some customers by denying any service to others is not an acceptable approach to meeting this responsibility.

for these facilities to rely solely on backup fuel for a year or more. In most cases, IT customers have adapted their infrastructure in such a way that it is no longer even possible for them to operate on fuel oil on a year-round basis without major capital investments. In addition, for many of the facilities, year-round operation on fuel oil would, in all probability, violate their federal and/or state operating permits for emissions. They would have to invest in emission control equipment which would be costly, and even were any required investments able to be undertaken, it is already too late to do so for 2019. In addition, based on conversations with CPA members, we believe that fuel oil providers lack the infrastructure to accommodate such increased demand on a year-round basis.

To the extent that there is any possibility that IT customers cannot be accommodated on firm service, the proposal must be modified to allow them to continue on IT service. It is important that IT customers comply with the requirements of the tariff, demonstrating access to backup fuel supplies and interrupting when required to do so. The appropriate consequences for not doing so where firm service is not available are financial penalties, not total denial of service.

It is possible for customers to do everything that they can and still not be able to obtain backup fuel supplies. We saw this during Superstorm Sandy, during the extended cold snap of 2018 and at other times as well. Many of these customers cannot and should not shut down in such circumstances and must resume service on natural gas. The idea that critical care facilities' gas service could be terminated altogether is simply unacceptable. We are confident that the Commission will agree.

### **Summary of Comments**

The Company's September 4, 2018 Proposal calls for several changes to its IT tariff, some of which CPA can support and others it strongly opposes. Specifically, the Company seeks to:

- Eliminate the provision that Interruptible Customers who do not return the affidavit by October 1 are not eligible for Interruptible Service. *CPA supports this change.*
- Add a provision that any Interruptible Customer who does not return the required affidavit by October 15 of each year will be assessed a violation or strike for the current Winter Period. *CPA does not necessarily oppose this change, depending upon the significance of earning a "strike," To the extent that a strike implies a potential denial of service, CPA opposes the assessment of strikes for any administrative shortfall. Where a strike implies something like a requirement to show a contract, a financial*

*penalty or requirement to install monitoring equipment, it may be reasonable (in those instances we believe it would be more useful to use a term other than “strike” to avoid confusion.)*

- Eliminate the requirement that an Interruptible Customer with two (2) violations will automatically be moved to firm service. Instead, the Customer will be assessed a monetary penalty based on the applicable monthly Interruptible Rate 1 Non-Residential tail block base delivery rate, commencing with the billing month in which the customer incurs the second violation, and continuing until the earlier of April 15 or when the Customer is no longer taking Interruptible Service. *CPA does not object to a reasonable monetary penalty for incurring multiple strikes, but does object to any change that eliminates the certainty of service altogether.*
- Add a provision that Interruptible customers who incur two violations and would have been automatically been moved to Firm Service by the Company may formally apply for Firm Service through the Company’s application process by April 15. Those customers who do not apply or who apply and are not accepted for Firm Service by the Company will have their gas service terminated. Interruptible Customers who cannot meet the Firm Service requirements or who the Company cannot accommodate on Firm Service will also have their gas service terminated. *CPA strongly opposes this provision. A system that can currently accommodate a customer on IT, should continue to be able to do so and must do so at some price.*
- Added a provision that terminated Customers who are not accepted for Firm Service, may re-apply for Interruptible Service after one year. CPA does not object to a reasonable limitation on the return to IT service, as this is currently a provision of the tariff. However, to the extent that, coupled with a denial of Firm service, this provision could result in the denial of all natural gas service, *CPA objects to retaining this provision. To the extent that the system absolutely cannot provide service (firm or IT) CPA believes that a distinction (and exemption) must be crafted to ensure that critical care and human needs customers can never be cut off entirely.*

On November 27, 2018, the Department held a technical conference to discuss the issues raised by the ConEd and National Grid interruptible (IT) and temperature-controlled (TC) tariffs. Presentations were made by these utilities, by the liquid fuel supply community, and CPA members Mount Sinai Health System and New York Hospital and University. From this meeting arose a number of additional suggestions:

- *CPA believes that the affidavit process can be augmented and improved through additional pre-heating season outreach, including in-person seminars. In addition, customers who fail to submit affidavits should be required to submit appropriate copies of their back-up fuel supply contracts. Those who do so, should not be assessed a strike, or should have an assessed strike rescinded.*
- *Entities with multiple facilities should be allowed to submit a single affidavit, rather than one per facility.*
- *Penalties should be proportionate to the degree of non-compliance, commensurate with the underlying purposes of the program and only imposed due to action (or inaction) on the customer's part. Multiple instances of non-compliance within a reasonably short period of time should be counted as a single event, especially where due to a common-mode failure. Penalties should not be imposed for force majeure events outside customers' control.*

### **IT Customers Should Meet Their Obligations**

CPA agrees with the Company that IT customers have an obligation both to make provisions to be interrupted and to discontinue natural gas usage when and as directed, in accordance with the terms of the tariff. Non-firm transportation service is provided at a significant discount to firm service and CPA members recognize that the benefit they receive imposes a commensurate obligation on them to perform. They also realize that their interruption, when required due to stressed system conditions, provides a reliability benefit that helps to ensure that firm service customers continue to receive the firm service that they require. Nevertheless, despite their best efforts, IT customers are sometimes unable to comply, often due to circumstances outside their control.

### **IT Customers Do Their Best To Ensure Compliance**

#### **Fuel Supply Arrangements**

CPA agrees with the Company that IT customers have an obligation both to make provisions to be interrupted and to discontinue natural gas usage when directed to do so, in accordance with the terms of the tariff. Under the current tariff, by October 1 of each year, IT customers must provide the Company with an affidavit indicating understanding of and commitment to comply with the requirements of the SC-9/SC-12 Interruptible Transportation

tariffs. In addition, customers affirm that they have made contractual arrangements for the delivery of sufficient back-up fuel to meet their peak needs for a ten-day period (or to shut down operations entirely for the same period<sup>3</sup>.) CPA members take this requirement seriously and assiduously seek to ensure that alternative back-up supplies are in place on site going into the heating season and that replacement supplies will be delivered when and as needed, consistent with the tariff requirements. Each year, Luthin Associates, works with the Company to ensure that CPA members are properly notified and submit their responses. We understand from these efforts that even relatively sophisticated customers can sometimes have difficulties in the face of operating their facilities. People do sometimes make mistakes despite their best efforts not to.

For the most part, especially for locations within New York City, space and permitting limitations simply do not allow large dual-fuel facilities to maintain anything like 10 days of back-up fuel on site. Instead, customers must contract with suppliers to deliver fuel on an as-needed basis for the duration of an interruption. Even the most diligent contracting with the most reputable and capable supplier cannot provide a 100% certainty that sufficient back-up fuel will be available for the entire duration of an interruption, especially one that takes place for an extended period of time and/or during exceptionally cold or otherwise adverse weather.

#### Affidavit-Related Issues

During the technical conference there was much discussion relating to the provision of affidavits. The affidavits can provide an indication that customers have made arrangements for alternative fuel supplies, but they do not guarantee it. A better indication would be a signed contract for supply/delivery of adequate back-up fuel. CPA believes that consideration should be given to requiring submission of actual contracts in the event the affidavit is not forthcoming.

In any event, customers with multiple sites should be allowed to submit one affidavit covering all sites. It is clear that one of the issues facing the Company is the fact that the people responsible for submitting the affidavit(s) are often not the same people responsible for acting on curtailment notices. Reducing the number of affidavits required, and addressing those issues through administrative staff, while focusing operation notices on operations staff could help to streamline, simplify and ultimately improve compliance.

It became clear during the technical conference that compliance with both operational and

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<sup>3</sup> / For purposes of CPA members, who include institutional health care and educational facilities, shutting down operations entirely is not a viable option.

administrative requirements was very different between National Grid and ConEd. National Grid cited a 95% compliance rate, while ConEd noted a markedly lower rate. Both companies have longstanding IT tariffs and both companies have required affidavits for years, yet one seems to have succeeded while the other has not, or at least not to the same degree. CPA recommends that the Commission attempt to discern what National Grid is doing right and possible opportunities to adopt those processes to the ConEd system.

### Operational Arrangements

With respect to operational compliance, that is interrupting natural gas usage when directed to do so by the Company, IT customers' operations staff are, if anything, even more diligent. These people are used to doing what needs to be done as quickly and efficiently as possible, given the often very complex (and sometimes conflicting) operational constraints imposed by their physical equipment. In all cases, the transition of a set of large boilers, pumps, valves and burners from one type of fuel to another (especially from a gaseous to a liquid fuel) is a complex process that requires extreme care if a disruption in service is to be avoided. Contrary with what some believe, it is not as simple a flipping a switch or pushing a button.

As environmental requirements have become more stringent, boiler control systems have become more complex and more interdependent. What was once a largely manual process is now much more automated and systems that were less sensitive to brief transients, requiring human intervention to respond to electric, fuel or steam system changes now respond much more rapidly,

Facility managers and staff have developed and tested operational protocols ahead of time that will allow the changeover from gas to oil to happen as quickly and smoothly as possible, given equipment limitations. Nevertheless, these systems' complexity sometimes means that even the best-laid plans are sometimes subject to vagaries that can call on all the skills facility operators have at their disposal. Even with the best operational expertise and maintenance, complex mechanical infrastructure does not always respond exactly as expected or does so much more rapidly than might sometimes be desired. All of these inherent uncertainties are magnified during extended periods outside of normal (e.g., gas) operation.

CPA members take their obligations very seriously and do what they can to prepare each season including pre-season maintenance, filling on-site storage tanks, even retaining outside consultants to help optimize their processes. Nevertheless, even the best laid plans cannot ensure 100% compliance.

## **Customers Can Never Ensure Perfect Compliance**

### Fuel Supply Issues

We are aware that there have been instances where IT customers may have failed to submit their required affidavits in a timely fashion. It is also our understanding that in virtually all cases, this was not the result of alternative fuel supplies not having been arranged for, but rather the result of simple bureaucratic oversights. In some cases, responsible individuals have changed and the correct people did not receive notifications. This could be due to the Company not maintaining up to date contact information, or internal customer misrouting.

We are not aware of any instance in which an IT customer has intentionally delayed submission of its affidavit, or where an affidavit has misrepresented the procurement of adequate back-up fuel supplies. In short, we believe that in all (or at least the vast majority) of cases, customers make sincere and diligent efforts to submit accurate affidavits in a timely fashion. Certainly, the Company has not alleged otherwise. Yet, notwithstanding such efforts, it does sometimes happen that affidavits are not submitted by the deadline<sup>4</sup>.

CPA believes that its members, as well as most other IT customers, do their best to meet the affidavit requirements. Yet we acknowledge that mistakes do happen and that while 100% compliance is a laudable goal to strive for, it is one that is unlikely to be met. We support the affidavit requirement and welcome the move of the due date from October 1 to October 15. However, given the significance of receiving a strike, we urge to Commission to consider whether imposing a strike is really appropriate. Our recommendation is that the Company work flexibly, as it has been, with customers who miss the deadline, and to limit the application of a strike to circumstances in which the customer fails to demonstrate a good-faith effort to arrange for back-up fuel supplies in a timely fashion.

A specific recommendation is that a strike incurred as a result of failure to timely submit an affidavit should be curable once the affidavit is provided and a copy of the associated fuel supply and delivery contract(s) made available to the utility (with sensitive pricing and usage information redacted.)

Fuel oil (the usual back-up for natural gas boilers and CHP plants) can be stored, but the

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<sup>4</sup> / For the most part, we believe that the Company has been reasonably flexible in permitting customers to cure such deficiencies. The Company has also made improvements in its customer outreach efforts to ensure that the right people are reminded of the need to submit affidavits.

nature of New York City is such that just as customers' ability to store fuel on site is limited, suppliers' local storage space is limited as well. During extended periods of high demand, suppliers' ability to meet their needs is dependent on the ability to move fuel in by barge. It is obvious that a supply chain that moves fuel oil supplies from major storage locations to facilities in such places as downtown Manhattan can be fully as complex as the systems that use that fuel.

It is a simple fact that the very situations that are likely to occasion the extended need for gas interruptions are the same that can interfere with the back-up fuel supply chain. Extended periods of severe cold can and have frozen ports and rivers, keeping barges from moving. Heavy snow and/or ice can block roads, potentially halting or delaying deliveries from local terminals to IT customers' facilities. If these delays become long enough, IT customers are faced with the choice between shutting down (and literally freezing) or resuming operations on natural gas despite an interruption directive. Faced with such a choice, hospitals would choose not to shut down. There is no point in punishing IT customers for circumstances, amounting to Acts of God, over which, despite their most prudent efforts, they have no control.

CPA believes that there need to be significant consequences for failure to interrupt even due to moderate supply chain disruptions so as to ensure that reasonable efforts are made to ensure that suppliers are exercising diligence in meeting their responsibilities. However, we do not support the issuance of a strike in situations where non-performance occurs despite reasonable best efforts having been made, such as during a hurricane, snow emergency, or extended cold snap. In short, there need to be allowances made for *force majeure* situations.

### Operational Issues

We have discussed, above, circumstances where a penalty would be inappropriate because back-up fuel cannot be delivered, or because a document was not submitted on time, but the underlying requirements have still been met. However, there are also operational circumstances that can force customers back onto natural gas notwithstanding their best efforts to the contrary.

Many boilers capable of being switched to a back-up fuel need to be switched during gas firing and are incapable of starting up on fuel oil. To the extent that these boilers are operating (on gas) when an interruption notice is received, this is not a problem. However, if the unit is operating on fuel oil and the unit is tripped off line, it is often necessary to restart on gas and then switch over to fuel oil. This requires a small, but not insignificant amount of gas. Under the current and proposed tariffs, this amount would result in a strike. While it is possible for the unit

to trip off due to issues within the plant and arguably under the customers' control, it is also possible for a boiler trip to occur due to issues on the Company's system<sup>5</sup>.

CPA recommends that the tariff provide for a modest allowance for natural gas use during an interruption for startup purposes. One percent of a facility's peak day use would still allow for 99% availability during an interruption while not unduly penalizing a facility for an issue that it may have no responsibility for. Given a sufficiently punitive strike cost (such as proposed by the Company) the likely alternative is likely to be leaving IT service, or to simply staying on gas during the remainder of an interruption once a strike has been assessed<sup>6</sup>.

Another issue that has not been adequately considered concerns the maintenance requirements imposed by extended operation on fuel oil. The burner tips in boilers that typically burn clean natural gas quickly begin to accumulate combustion by-products when switched to burn liquid fuels. Within hours of such operation, and then at regular intervals thereafter, the burner tips need to be removed and cleaned or they will cease to function. Where a facility has multiple boilers, the common practice is to shut one down for cleaning while the others continue operating. So long as there is sufficient excess capacity to meet the heating needs with one boiler out of service, all is well. But if all boilers need to be in service problems can arise. The situation can be complicated by the fact that continued boiler operation on fuel oil can require a minimum pressure of atomizing steam, steam that could be in short supply with a boiler out of service for burner cleaning. In any event, such operation is inherently more challenging and risky.

As noted above, CPA believes that IT customers should be able to burn up to 1% of their peak gas demand each month to cover such situations<sup>7</sup>. As also discussed, and as implemented for Orange and Rockland, one possibility would be to provide IT customers with the ability to

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<sup>5</sup> / For example, a short "blip" in utility electric service could cause boiler air supply fans to trip, which could in turn cause fuel feeds to trip, taking out the entire boiler. In a multi-boiler system, it is likely that the loss of one boiler would immediately cause the remaining boilers to ramp up to take up the slack, quite possibly pushing these units over capacity and triggering a loss of all boilers. With the rapid loss of atomizing steam pressure, it would no longer be possible to restart the entire facility on oil at all. Restarting on gas would then trigger a strike – due entirely to a glitch on the utility's system. It is not possible build in sufficient redundancy to prevent such situations next year, and likely not cost-effective to do so subsequently.

<sup>6</sup> / This is a more general operational issue. ConEd should want a customer to re-interrupt as quickly as possible, however a sufficiently onerous strike impact is likely to mean that customers will simply remain on gas until the current interruption is over, lest another trip occur and trigger a catastrophic second strike.

<sup>7</sup> / This would work as follows: If the 2017 monthly peak usage is 125,000 DTH, then in 2018 a facility could use 1% of 125,000 DTH each month there is 1 or more interruption. In January the facility would have a 1,250 DTH cushion, and then again in February, etc. No hourly/daily limits would apply.

purchase a predefined amount of firm gas, consistent with such needs, going into the season<sup>8</sup>.

It is possible that some may respond to these concerns by saying that there needs to be, in effect, a “zero tolerance” policy for operational issues that would result in a resumption of natural gas use, no matter how brief. In effect, this would force customers who would otherwise be effective IT resources 99% of the time, to instead take Firm service. Such a position is simply not helpful to achieving the Company’s and customers’ shared goals of providing reliable service in the face of adverse circumstances.

CPA believes that a more reasonable approach would be to allow for a small amount of gas use during an interruption.

### **Penalties Must Be Appropriate**

CPA puts forth the following principles relative to appropriate penalties/consequences for non-compliance:

1. The purpose of imposing penalties for non-compliance is to ensure compliance. Where a penalty does not serve this purpose, it is *per se* unreasonable.
2. Rational penalty design dictates that where different forms of non-compliance impose different costs or risks, the associated penalties should impose commensurately different consequences. Penalty regimes that fail to recognize this are likewise unreasonable.
3. In instances where an entity has no remaining ability to mitigate certain risks, a penalty imposed when such a risk materializes serves no purpose; it is simply punitive.
4. Penalties should, where possible directly incentivize actions with a direct nexus to the reason for non-compliance, possibly taking the form of specific actions, rather than imposed monetary penalties.
5. Where the risk of incurring a sufficiently severe penalty is such that it undermines the entire purpose of the associated program, either the penalty is too large, the risk too high or both.
6. Finally, where a penalty would, if imposed, jeopardize human life and safety to a more certain or greater extent than the associated non-compliance, it is unreasonable.

### **Administrative Shortfalls Should Not Have the Same Consequence as Operational Ones**

ConEd noted during the technical conference that there was little or no correlation between a customer’s failure to submit an affidavit and its ability to interrupt as and when

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<sup>8</sup> / See Orange and Rockland Utilities, Inc. PSC No. 4, Service Classification 8, Special Provision (E), Leaf 139.1, Effective 07/01/2017.

requested. Indeed, the Company cited this fact as the basis for its not assessing any administrative strikes in 2017. Because of this, it is not rational to assign the same consequences to two very different failures to perform. This is especially the case when the consequence proposed (a “strike”) can result in the complete denial of all gas service.

The existence of appropriate back-up fuel arrangements is certainly a strong indication that a facility is prepared to interrupt as required, but as noted above, it is not a guarantee. Conversely, it is possible that a facility that has not secured sufficiently robust back-up supplies may nevertheless be able to meet all operational interruption requirements.

Consequences and penalties should be commensurate with risks and damages. It is the operational performance of IT customers that can lead to reliability impacts and it is the failure to perform operationally that should be penalized most severely. The Company’s proposal would impose identical consequences (e.g., a “strike”) for failures that have vastly different consequences. Whether a “strike” or multiple “strikes” triggers a substantial monetary penalty, a move to firm service, or the possibility of service discontinuance, it should be much harder to incur and much easier to cure for an administrative failure than for an operational one.

#### Multiple Proximate or Related Incidents of Non-Performance Should Be Treated as One

During the technical conference, it was noted that National Grid treats two instances of non-performance that take place within a 48-hour period as a single incident. This makes sense, as often the cause of one failure to perform can lead to another for the same reason if called within a short time of the first. ConEd should adopt the same language. In the alternative, where a customer can show that the two failures can be attributed to the same root cause, and that the customer was exercising due diligence to address that cause, the second failure should be excused. Failure to do so would trigger a harsh penalty to no purpose.

#### Force Majeure Situations Must be Acknowledged

It is possible that equipment failure could result in a non-compliance strike. It is also possible, especially in the event of an extended cold snap and/or the failure of an uncommon or uncommonly large piece of equipment that the ability to interrupt could be hampered for days, weeks, or even months, possibly guaranteeing a “two strikes” situation. In such instances, if the part cannot be replaced any faster than the customer is already trying to replace it, the penalty serves no purpose. In such instances, upon a showing that reasonable efforts are being made to

correct the situation, future strikes should be forgiven.

Similarly, where a customer is forced back onto gas because on site supplies of back-up fuel have been depleted and cannot be replaced due to circumstances outside the customer's control, additional strikes should not be imposed as, once again, doing so would provide no further incentive and thus serve no legitimate purpose.

These are specific examples, but generally speaking the tariff must contain a *force majeure* type of clause under which a customer can apply for exemption from penalties, including strikes, upon a showing that despite prudent preventative measures having been taken, interruption could not be started or continued due to circumstances outside the customer's control, such application to be granted for good cause shown, and with recourse to the Commission if it is not.

#### Certain Customers Must Be Entirely Exempt Penalty-Related Service Disconnection

The Company's proposal envisions a penalty regime that could result in non-compliant IT customers being deprived of any gas service whatsoever, at any price, for at least a year. CPA believes that such an outcome is disproportionate for any customer, and that the appropriate penalty for incurring two or more strikes should be monetary (in the form of being switched to a higher rate) or operational/equipment changes, such as mandatory tank monitoring. However, if the Company's disconnection option is retained at all, there are certain types of customers that must be exempted. As we noted at the technical conference, there must be no possibility that institutional facilities with critical care responsibilities for the most vulnerable populations can have their gas service disconnected altogether. Hospitals and nursing homes cannot be expected either to burn oil 365 days per year, or to shut down entirely. Even if oil-only operation were possible, it would impose unreasonable health impacts on vulnerable resident populations.

Where such customers cannot maintain sufficient back-up fuel during extended interruptions, they would likely be forced to go back on natural gas. Under the Company's proposal, doing so twice would potentially deny them service altogether, yet they would do so anyway because the human consequences of not doing so would be unacceptable. In such cases, the draconian penalty serves no purpose as an operational incentive. Indeed, the risk that such a result could occur itself provides a strong incentive to apply for firm service immediately. These are both hallmarks of an unreasonable and illogical incentive regime.

CPA is proposing that critical human needs facilities be exempt from the "two strikes and

you're out" rule proposed by the Company. Instead, such facilities should either retain the existing "two strikes and you're switched" penalty, or, in the event firm service cannot be provided, remain IT customers but subject to a financial penalty, the magnitude of which is commensurate with the degree of non-performance<sup>9</sup>.

#### Alternative Penalties/Actions Should be Considered

Much of the attention and controversy at the technical conference centered around the Company's proposal to replace what are essentially financial penalties under the current tariff, specifically a forced move from IT to more expensive firm service, to a much more heavy-handed regime involving the imposition of similar penalties, retention for the remainder of the season of interruptibility responsibilities, and the possible complete interruption of service.

As noted above, the last of these, and the change apparently most intended to motivate improved compliance fails the test of reasonableness on a number of fronts. It is overly severe, too easily disconnected from mitigative actions that customers can take, and as a result all too likely to motivate a mass exodus from IT to firm service that would likely precipitate exactly the moratorium that customers already fear may be just around the corner.

What is needed is a set of alternatives that meet the requirements we laid out above, align the penalties with the program's purposes, impose penalties or require actions that address specific causative factors, incent or require actions whose costs are commensurate underlying risks, and above all represent the outcome of a collaborative process. Several alternatives have already been discussed above. Several more follow.

#### Approaches to Enhance Fuel Supply Adequacy

Much was discussed about the difficulties faced by the oil supply and delivery community in trying to serve interrupted gas customers in the face of often adverse weather conditions. There was one solution presented that would address this difficulty and make the back-up fuel supply chain more reliable; automatic tank monitoring. Subject to confirming that implementation is practical and that the associated costs are not unreasonable, CPA supports the recommendation that customers agree to install, at their own expense, automatic tank monitoring equipment

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<sup>9</sup> / It will be necessary to define the term "human needs" for purposes of the tariff. CPA requests that this take place through a collaborative process leading to Commission approval.

following the first operational strike.

#### Increasing Financial Penalties for Non-Performance

The Company has proposed to move IT customers to what amounts to the firm service rate after two strikes, in addition to the subsequent exclusion from IT (and possibly all) service starting April 15. Staff suggested at the technical conference an option that customers be moved to a higher non-compliance rate upon either the first or second operational failure to perform.

CPA supports a hybrid of the two whereby customers are permitted to remain on the IT rate regardless of the number of failures, but after the second operational failure, the company's proposed rate would take effect. Following a third strike and until the end of the heating season, Staff's suggested non-compliance rate would apply.

#### The Company Must Increase and Improve its Interactions with Customers

One of the impressions we were left with emerging from the technical conference is that National Grid appears to better understand and relate to its customers than ConEd. This improved relationship appears to be one reason, and perhaps the main reason, that Grid has seen so much better performance from customers, with both administrative and operational requirements. At least in part, this appears to be the result of better quality and quantity of customer interaction.

CPA has long maintained that the Company needs to continue to improve its customer relationships. Progress has been and continues to be made, but we believe that more improvement is required. In this context, CPA recommends that the Company should engage in more frequent interaction:

1. The best way to improve relationships is through personal interaction. To that end, the Company should hold a face-to-face meeting with all IT customers well before the heating season, at least a month before affidavits are due. Webinar capability should be provided but in-person participation should be strongly encouraged. The Company should even consider incentives of some sort to get busy people in the same room. The meeting should be announced at least a month before it is to take place and there should be weekly email follow-up thereafter. Customers' account reps should play a central role and bear some responsibility to ensure attendance. This will impose an additional burden on the Company and customers, but it is part of the work necessary for ConEd to improve its customer relationships.
2. Immediately following any operational failure to perform, the Company should reach out to each relevant customer and schedule an in-person meeting to discuss what happened and how a reoccurrence can be prevented. The goal should not be to assign blame (or to dodge it) and certainly not to move customers closer to

leaving IT service. The goal should be to help customers remain on IT and improve their performance, consistent with the tariff requirements.

### **Conclusion**

The challenges facing the Company with respect to meeting its gas supply needs are significant and growing. All parties have acknowledged that IT customers contribute significantly to helping the Company meet its goals. It is also clear that the system simply cannot accommodate a mass exodus from IT to firm service, and in fact that even a moderate shift could trigger a moratorium on new firm service connections. IT customers are part of the solution, albeit an imperfect part. Stakeholders need to arrive at a common solution that maintains and enhances the mutual benefits of robust IT service participation. CPA believes that this is possible, but that it will require significant movement by all parties. The Company's proposal will not work and will instead greatly worsen the problems it faces. We believe that the alternatives presented herein and discussed at the technical conference provide a path to success.

CPA appreciates the opportunity to provide its views to the Commission and respectfully recommends that they be adopted in any final order the Commission may issue.

Respectfully Submitted,

/s/

Aaron Breidenbaugh  
Director of Regulatory Affairs

cc: Active Parties