STATE OF NEW YORK

PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service.	Case 07-E-0523

REPLY BRIEF

OF THE

NEW YORK STATE CONSUMER PROTECTION BOARD

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Albany, New York

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In our Initial Brief ("IB"), the Consumer Protection Board ("CPB") demonstrated that Consolidated Edison Company of New York Inc.'s ("Con Edison" or "Company") proposed rate increase should be reduced by at least $600 million and that additional investigation is required of approximately $1.6 billion in capital spending and $200 million in environmental remediation costs that have been spent by Con Edison before it can be charged to ratepayers. Additionally, several changes are required to the Company's energy efficiency and revenue decoupling proposals.

The CPB has reviewed the IBs filed by the Company; Staff of the Department of Public Service ("DPS Staff"); jointly by the City of New York, the Metropolitan Transportation Authority and the Port Authority of New York and New Jersey ("NYC Government Customers"); the County of Westchester; the New York Power Authority ("NYPA"); the Natural Resources Defense Council and Pace Energy Project ("NRDC/Pace"); New York Energy Consumers Council, Inc. ("NYECC"); Utility Workers Union of America, AFL-CIO, Local 1-2 ("Local 1-2"); Retail Energy Supply Association ("RESA"); Consumer Power Advocates; Astoria Generation Company, L.P.; the Small Customer Marketer Coalition and a coalition of demand resource program providers referred to as Joint Supporters. The CPB anticipated and addressed most of the arguments in opposition to our recommendations, in our IB. None of the briefs submitted by these parties supports a different resolution of the issues we addressed. There are, however, several maters that require a brief response.[1]

We address nine issues in this brief: (1) Con Edison's proposed advanced metering initiative ("AMI"), (2) NYPA's recommendation to recover site investigation and remediation ("SIR") expenditures only from gas customers, (3) the absence of data to compare the cost and quality of Con Edison's internal workforce with outside contractor labor, (4) proposals by other parties regarding energy efficiency, (5) RESA's proposal concerning retail competition, (6) Con Edison's assertion that the Commission does not have the legal authority to impose financial penalties for failure to meet reliability and service performance objectives, (7) proposals by other parties regarding revenue allocation, (8) the Company's recommendation to increase the customer charge for residential customers, and (9) the discount applicable to low-income customers. The fact that the CPB does not respond to all of the positions presented in parties' IBs with which we have previously disagreed should not be construed as a change in

[1] Our IB is referred to herein as "CPB IB," Con Edison's as "CE IB," and other parties' as "DPS IB," "NYC IB," etc.

our position. Instead, this indicates that those arguments were adequately addressed in our IB.

AMI

We explained in our IB that the costs of Con Edison's recommendation to implement its AMI proposal throughout its service territory should be removed from revenue requirement projections used to establish rates, since that project is under consideration by the PSC in a separate case. The Company should be permitted, however, to recover the prudent costs of its AMI-related pilot programs. (CPB IB 7 – 12) DPS Staff made a similar recommendation in testimony (TR 3273-5), but did not address this issue in its IB.

Several parties oppose our proposal. NYC Government Customers states that it "could result in a delay in the installation of AMI metering" and as a result, the Commission in this case, should authorize Con Edison to begin to implement AMI and recover the costs from ratepayers. (NYC IB 92) Similarly, Con Edison states that it should be allowed to implement its AMI proposal in the rate year. (CE IB 82-4) We continue to disagree with these proposals. As fully explained in our IB, the Commission has established a separate docket to consider the AMI issue, including Con Edison's detailed proposal and the results of its pilot programs. Authorizing the Company to fully implement AMI and recover its costs from ratepayers before the Commission issues an order in that proceeding, would amount to prejudging the result of that PSC review, to the possible detriment of consumers. Concerns about any “delay” in AMI implementation should be directed to the Commission in its generic proceeding.

Moreover, Con Edison’s attempt to blur the lines between its AMI pilot programs and system-wide implantation of AMI, should not be countenanced. For example, the Company states in its IB that it proposes to implement three pre-deployment projects “during the rate year and thereafter deploy AMI throughout its service territory.” (CE IB 80) This suggests that system-wide deployment of AMI would not commence in the rate year, which begins April 1, 2008. Its witnesses testified, however, that the Company will begin system-wide deployment in 2007. (TR 768) The CPB fully supports the AMI pilot programs identified in the Company’s March 28, 2007 filing in the AMI proceeding, and recommends that Con Edison be permitted to recover the costs of those projects and any additional pilot programs approved by the PSC. However, ratepayers should not be required to fund system-wide AMI deployment before the PSC issues an order regarding Con Edison’s detailed proposal in its generic proceeding.

Site Investigation and Remediation Expenditures

Con Edison projects $170.9 million in SIR expenditures for the two-year period ending March 2009 and proposes to assign responsibility for this cost between its electric and gas divisions using the historic allocation factor, under which 78.7% of these costs are attributable to electric operations. The CPB explained that these costs should be further investigated as part of the next management audit of Con Edison's operations, to determine if the Company properly managed these projects to minimize costs to be funded by ratepayers. (CPB IB 43-7)

NYPA proposes that the Commission reject use of the historical allocator and recover 100% of SIR costs from gas customers. (NYPA IB 24) The CPB joins Con Edison (CE IB 316), NYC Government Customers (NYC IB 102-3) and others in opposing that recommendation. NYPA has not demonstrated that long-standing Commission policy to recover prudent SIR costs from both gas and electric customers should be changed. Moreover, NYPA's proposal would have an extremely large negative impact on gas customers, which are far fewer in number than electric customers. The resulting burden on gas customers could jeopardize the funding of remediation efforts. In addition, NYPA's proposal is procedurally deficient, since this proceeding considers Con Edison's electric rates, and not the charges for gas service. Accordingly, current PSC policy is reasonable in these circumstances.

<u>Contractor Labor</u>

Con Edison does not maintain data to facilitate a comparison of the cost and quality of its internal workforce to that of outside contractor labor. The CPB and Local 1-2 explained that this information is required to help determine whether the Company is operating its system efficiently. (CPB IB 16; Local 1-2 IB 14) DPS Staff also stated that it is concerned about the absence of such data. (DPS IB 170-1)

We recommend that the Commission take two actions as a result of the absence of this information. First, as explained thoroughly by the CPB, the Commission should scrutinize the Company's T&D capital expenditures during the term of the current rate plan to determine whether they were implemented in the most cost effective manner. (CPB IB 22-7) The result of that review should be presented to the parties for comment, preferably in a proceeding to consider Con Edison's electric delivery rates for the period beginning April 1, 2009. Second, the PSC should investigate the Company's policies and practices for determining when to use outside contractor labor. This review should be conducted as part of the management audit that we recommend.

Energy Efficiency

The CPB recommends that a collaborative proceeding regarding an interim demand side management ("DSM") program for Con Edison's electric operations, commence on a schedule that would permit PSC approval in March 2008. A separate collaborative proceeding to establish a long-term DSM program should commence after issuance of the PSC's Order in the generic energy efficiency proceeding, Case 07-M-0548. (CPB IB 92) DPS Staff (DPS IB 247-55) and NYSERDA (NYSERDA IB 6-10) made similar recommendations.

Con Ed asserts that this proposal is impractical since the Commission is not likely to act on the record of this proceeding before March 2008.[2] (CE IB

[2] The CPB recommends that the interim DSM program and the revenue decoupling mechanism ("RDM") be addressed in the same collaborative, to be completed by March 2008. Con Edison presented its concern about the timing of that collaborative in the section of its brief that addressed RDM issues.

466) We disagree. This recommendation could be adopted in recognition of the need to continue to have energy efficiency services available to Con Edison's customers. The Commission recently took the action we recommend here, in a rate case for National Fuel Gas Distribution Corporation, where it severed energy efficiency issues from the rate case to ensure that energy efficiency programs are made available to customers as soon as possible.[3]

NYC Government Customers supports the proposed collaborative for the interim DSM program but states that the Commission should establish targets for that program now, at "levels that would place the Company on a linear track to achieve its projected share of the savings" under the Governor's 15 by 15 policy. (NYC IB 74) That proposal does not recognize, however, that Con Edison's share of energy savings will not be determined until the PSC issues its decision in the generic proceeding, which is expected to be long after March 2008. That decision will address the extent to which energy savings should be achieved by NYSERDA, and by programs that do not require ratepayer subsidization, such as appliance standards and initiatives that remove informational and financial barriers to energy efficiency.

Many parties offer detailed proposals regarding the size of the permanent DSM program, its individual program elements and the size and structure of an incentive for Con Edison to provide energy efficiency services. These include recommendations that the Company's proposal is far too small (NRDC/Pace IB

[3] Case 07-G-0141, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of National Fuel Gas Distribution Corporation for Gas Service, Order Adopting Conservation Incentive Program, September 20, 2007, p. 1.

5-7) and that it is far too large (NYECC IB 17-24). All of these issues are being addressed in the PSC's generic energy efficiency proceeding, and should not be resolved in this proceeding.

Retail Competition

RESA recommends that Con Edison's current ESCO customer referral program be enhanced and expanded to apply to consumers who are designated as "new customers." It proposes that a collaborative proceeding be established to address "all technical and funding issues" relating to this proposal. (RESA IB 17)

The CPB supports this proposal, subject to the constraints that the program is funded solely by ESCOs and not ratepayers, and that it does not result in any assignment of customers to ESCOs. There is no public policy reason for utility customers to fund programs that will benefit only ESCOs, particularly because legal and economic barriers to retail energy competition have been removed and customers have had the opportunity to obtain energy from competitive entities for approximately a decade. Similarly, at this stage in the development of retail energy markets, consumers should not be assigned to an ESCO, unless they specifically request. Consumers who do not make an affirmative choice of a specific ESCO, should obtain service from the utility with its associated consumer protections, rather than be assigned a provider and a service plan that may not meet their needs.

Service Quality Incentives

Con Edison's current rate plan includes a reliability performance mechanism ("RPM") and a customer service performance mechanism ("CSPI") designed to ensure that the Company achieves reliability and service performance objectives. The Company recommends that these mechanisms be discontinued, and that no new measures be established. (CE IB 335) The CPB and DPS Staff recommend that these programs continue, with certain modifications. (CPB IB 100; DPS IB 228)

In its IB, the Company contends that the Commission does not have the legal authority to impose penalties of the nature contained in these mechanisms. Instead, it argues that these financial consequences can only result from negotiated agreements. (CE IB 335) The CPB disagrees. The standards included in these measures help to define safe and adequate service, which the Public Service Law requires utilities to provide. (PSL §65) The Commission can take action to help ensure that this level of service is provided, including by establishing financial incentives. Further, should Con Edison fail to meet these standards, the Commission could conclude that it has not complied with PSC orders, and commence an action under Public Service Law §25.

Revenue Allocation

To help determine how its proposed rate increase should be allocated among customer classes, Con Edison performed an embedded cost of service ("ECOS") study. The CPB generally agrees with the Company's revenue allocation recommendations, and we oppose certain proposals by NYPA, NYC Government Customers and DPS Staff.

As part of its study, the Company proposes to allocate low tension distribution demand costs to Service Classification ("SC") 1 – Residential & Religious Electric Service and SC 7 – Residential & Religious Space or Space and Water Heating Service, based on a weighting of Non-Coincident Peak Demands ("NCP") (75 percent) and Individual Customer Maximum Demands ("ICMD") (25 percent). This results in a relatively small SC 1 revenue deficiency of approximately $4.2 million. The Company's methodology of allocating the costs of the low tension system on both NCPs and ICMDs recognizes that both these factors play a role in the design of the secondary system.

NYPA opposes this proposal and instead recommends that all of the low tension distribution demand costs be allocated based on ICMD. (NYPA IB 38–40) NYPA's proposal would result in an SC 1 deficiency of approximately $79.5 million. NYC Government Customers proposes that ICMDs be weighted 40 percent. (NYC IB 42-3) These proposals would result in a substantial increase in cost to Con Edison's residential customers at the expense of customers who purchase electricity produced by NYPA.

The CPB supports the Company's position with regard to the allocation of low tension system costs to SC1 and SC 7. We agree with Con Edison that both NCPs and ICMDs are important in designing the low tension system. NYPA's proposal to allocate all low tension costs based on ICMDs should be rejected since it assumes that Con Edison's secondary network is designed to supply the sum of its individual customer loads. This implies that all customers would reach their maximum demand simultaneously, which is not realistic. The NYPA and NYC Government Customers' proposals ignore how the secondary system is designed and merely shift cost from NYPA and large commercial customers at the expense of residential customers.

To help resolve the issue of the allocation of low tension system costs to SC 1 and SC 7, DPS recommends that a new study be conducted. While we do not oppose a new study, in the interim, the Company's proposal should be adopted. Prior to Case No. 96-E-0897, Consolidated Edison allocated all of the low tension system costs based on NCP. Since then, it has allocated an increasing percentage of those costs based on ICMD. Before further increasing the weighting of ICMD, and shifting ten of millions of dollars of additional costs to residential customers, a proper study of this issue should be conducted.

Rate Design

We explained in our IB that Con Edison's proposal to increase the monthly customer charge for SC 1 and SC 7 service to $15.21, an increase of approximately 30%, should be rejected, since the current charge of $11.78 is very close to the estimated cost of $12.20 of serving SC 1 customers. (CPB IB 102-3) In its IB, Con Edison continues to support its original proposal, saying that it is required to bring the customer charge for both classes more in line with costs. (CE IB 399) That recommendation is inconsistent with cost studies and would thwart the State's energy efficiency goals.

According to the Company's ECOS, the customer costs for SC 1 and SC 7 are $12.20 and $17.37 respectively. (Exhibit 7, Table 6, p.2) We recognize that SC 7 customer costs are above the current charge and that the PSC currently requires SC 1 and SC 7 customers to pay the same customer charge. However, determination of the appropriate charge must consider the fact that there are 2.6 million SC 1 customers and only 16 thousand SC 7 customers. By focusing only on the SC 7 customer cost, the Company would overcharge 2.6 million SC 1 customers by $3.01 per month,[4] or a total of $94 million annually. The CPB's proposal, on the other hand, considers customer impacts and recognizes that since the calculation of cost of service is not an exact science, there is no need to set these charges precisely on the derived costs.

Moreover, increasing the customer charge reduces the proportion of revenue that is collected through usage charges, and encourages more electricity consumption. At a time when the State is attempting to achieve the Governor's important energy efficiency goals, this would be exactly the wrong incentive to provide consumers. Further, Con Edison's historical interest in increasing customer charges to promote revenue stability is completely unnecessary since a revenue decoupling mechanism will be developed in this proceeding.

If the Commission concludes that residential customer charges must be increased, they should be set no higher than $12.20, that is, the full customer cost for SC 1 based on the Company's own ECOS.

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[4] Calculated as the proposed charge SC 1 customer charge of $15.21 less the SC 1 cost of service of $12.20.

Low-income discount

Con Edison currently assesses a customer charge on eligible low-income customers of $6.50 per month, reflecting a discount of $4.25 per month from the rate applicable to SC 1 customers. The cost of this program, currently approximately $12.5 million annually, is funded by the general body of Con Edison's customers. The Company proposes to continue to provide a $4.25 per month discount, although coupled with its proposed SC 1 customer charge increase to $15.21, the customer charge applicable to low-income customers would increase from $6.50 to $10.96. (CE IB 161) DPS Staff proposes to freeze the customer charge applicable to eligible low-income customers at $6.50. Combined with its support of an increase in the SC 1 customer charge to $15.21, this would more than double the cost of this program to $24.9 million. (DPS IB 265) The Company asserts that it would be unreasonable to increase funding by that amount.

A significant rate increase in this proceeding is inevitable. In recognition of the disproportionate burden of energy costs on low-income families, increased funding for programs to assist low-income customers should be provided. Accordingly, we recommend that funding for such programs increase by no less than the percentage increase in electric delivery rates ordered in this proceeding. However, an increase in the discount on the customer charge is not necessary, since as explained above, there is no basis for increasing the SC 1 customer charge in this proceeding. By maintaining that charge at its current level as we recommend, the DPS Staff objective of freezing the $6.50 per month customer charge for low-income customers could be achieved at the current program cost of approximately $12.5 million. If our recommendation is adopted, the increased funding for low-income customers should be provided through discounts on the volumetric components of delivery rates or through additional funding for low-income energy efficiency programs.

CONCLUSION

The CPB recommends that the Commission adopt the positions that we advocate and explain herein and in our Initial Brief.

Respectfully submitted,

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