

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

- X
- Case 00-M-0095 – Joint Petition of Consolidated Edison, Inc. and Northeast Utilities for Approval of a Certificate of Merger, with All Assets Being Owned by a Single Holding Company. :
 - Case 96-E-0897 - In the Matter of Consolidated Edison Company of New York, Inc.'s for Plans for (1) Electric Rate/Restructuring Pursuant to Opinion No. 96-12; and (2) the Formation of a Holding Company Pursuant to PSL, Sections 70, 108 and 110, and Certain Related Transactions. :
 - Case 99-E-1020 - Petition of Consolidated Edison Company of New York, Inc. for Permission to Defer Certain Capacity Costs Associated with the Divestiture of Power Plants, filed in C. 9187. :
 - Case 00-E-1208 - Proceeding on Motion of the Commission in the Matter of Consolidated Edison Company of New York, Inc.'s Plans for Electric Rate Restructuring With Respect to Service Provided in Westchester County. :
 - Case 00-E-1461 - Petition of the New York State Attorney General to Examine the Electric Rates and Charges of the Consolidated Edison Company of New York, Inc. :
 - Case 99-M-0631 - In the Matter of Customer Billing Arrangements :
- X

**STATEMENT OF
THE NATIONAL ENERGY MARKETERS ASSOCIATION**

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**STATEMENT OF
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This statement is submitted by The National Energy Marketers Association (NEM) in all of the above-referenced proceedings. Pursuant to the Commission's Order of November 30, 2000, a collaborative process for Phase Four of Consolidated Edison's (ConEd's) retail access program was initiated.¹ In its Order,

¹ Case 96-E-0897 et al., Opinion No. 00-14, Opinion and Order Adopting Terms of Settlement, Subject to Modifications, issued and effective November 30, 2000.

the Commission defined the scope of the Phase Four collaborative process such that, "[a]ll potential issues related to the retail access program (including the degree to which delivery rates should be unbundled) remain open for discussion and for the parties to attempt to reach a consensus."² Furthermore, the Commission specifically stated with respect to the collaborative process for Phase Four that, "we are not passing on the merits of the initial proposals CENY has offered."³ To ensure that "[a]ll potential issues related to the retail access program (including the degree to which delivery rates should be unbundled)" were, in fact, properly considered in the Phase 4 collaborative process and did not "fall between the cracks" due to the multiple proceedings being conducted in parallel, NEM and other Marketers⁴ filed a motion with the Commission. In its Notice⁵ addressing the Motion, the Commission granted an extension of time for completion and discussion by the parties of the analysis by an independent consultant of ConEd's long run avoided costs (LRAC Study) and a Retail Access Proposal ("Proposal") sponsored by the Marketer Coalition. The documents were developed by an independent expert with experience in identifying these costs and in reliance on (1) the Commission's numerous Orders on this subject, (2) ConEd's FERC One form and (3) the material provided to us by the company. Both documents were provided to the Staff and parties and discussed. The Study identifies and quantifies the minimum proper computation of LRACs associated with ConEd's exit from the merchant function.⁶

² Id. at 29.

³ Id.

⁴ In addition to NEM, the Marketer Coalition included AES New Energy, Amerada Hess Corporation, Keyspan Energy, 1st Rochdale, and the Small Customer Marketer Coalition.

⁵ Case 96-E-0897, Notice Extending Deadline, issued and effective February 20, 2001.

⁶ It should be noted that arguments regarding short run avoided costs, POLR and whether and/or to what extent a utility will or would like to avoid costs are irrelevant to the computation of LRAC as provided by the Commission in a series of Orders. See Case 99-M-0631, Order Denying Petitions for Rehearing, issued and effective September 1, 2000, page 2, affirming methodology set forth previously in the proceeding, Order Providing for Customer Choice of Billing Entity, issued and effective March 22, 2000; Case 94-E-0952, Order Providing for Competitive Metering, issued and effective June 16, 1999. NEM also hereby incorporates by reference its analysis of the NYPSC's enabling legislation that empowers the commission to require a utility to exit the merchant function by a date certain.

Given the fact that this proceeding is not a full "bottom's up" analysis, the identification and quantification of LRACs associated with ConEd's exit from the merchant function as provided herein was performed in conformance with the Commission's policy, recently set forth in its Orders in the billing proceeding as follows:

We will require that the credits be based on long run avoided costs (LRACs) for the billing functions described herein and the associated customer care functions that would be avoided if ESCOs do the billing, and they may be differentiated by customer class if supported by the LRACs. If determination of such LRAC estimates cannot be accomplished within the time periods provided by this order, proxy amounts, using the same methodology as above, but based on embedded cost of service studies instead of LRACs, can be presented and used, subject to provision of the LRAC estimates in a reasonable time thereafter. *Further, the LRACs should be derived based on an assumption that the utilities exit the retail billing function for all customers, or, alternatively, based on the incremental cost for the total billing function if it were being established today. In either case, the calculation should include the cost of all support functions associated with billing to serve the full complement of customers.*⁷ (emphasis added)

Consistent with the Commission's direction, the LRAC analysis and Retail Access Proposal identified the minimum costs on a yearly basis that would be avoided if ConEd were to fully exit the merchant and related functions as envisioned by the NYPSC. Indeed, the Study conservatively identified approximately \$130 million that ConEd could avoid incurring each year by exiting the merchant function. Moreover, the Retail Access Proposal provided a way in which to both minimize the \$130 million per year in LRAC and to minimize any resulting stranded costs as well.

NEM cannot overstate the costs and the risks (price, financial and political) that are being imposed on the marketplace and onto NY consumers by the multiple,

⁷ Case 99-M-0631, Order Denying Petitions for Rehearing, issued and effective September 1, 2000, page 2, affirming methodology set forth previously in the proceeding, Order Providing for Customer Choice of Billing Entity, issued and effective March 22, 2000.

concurrent "piecemeal" resolutions to the fundamental issues surrounding the exit of utilities from the merchant function and the separation of natural monopoly functions from functions that can clearly be outsourced and provided on a competitive basis. The longer it takes and the more and more bifurcated the restructuring issues, the higher the costs that NY consumers will be forced to pay for energy. We urge the Commission to use the LRACs developed in this proceeding as a minimum starting point to provide ratepayers in the ConEd service territory sufficient funds to shop for alternative, competitively priced energy and related products, services, information and technology.⁸

The proposed settlement fails to comply with the Commission's instructions in ConEd Phase 4 to consider "[a]ll potential issues related to the retail access program (including the degree to which delivery rates should be unbundled)." NEM submits that it is virtually impossible to construct a successful retail access program and to provide consumers with the true long run avoid costs associated with ConEd's exit from the merchant function without either a complete "bottom's up" approach to back-out credits, or at a minimum, to provide consumers with a "shopping credit" that utilizes either the fully embedded or the long run avoided costs for all functions related to ConEd's exit from the merchant function that were identified, quantified and developed for this proceeding.

NEM and the other marketers in this collaborative have identified, at a minimum, approximately \$130 million per year in additional costs that will be incurred in every year that ConEd fails to exit the merchant function. The settlement presented to the Commission that essentially maintains the status quo should, but fails to, incorporate these costs.

⁸ NEM would like to stress that the proper LRAC analysis and Retail Access Plan is a minimum quantification of a true LRAC analysis that starts with a zero rate base and looks literally at every cost that is reasonable for a "wires only" distribution service company, and then subtracts that number from the current fully bundled sales rate to quantify the proper "shopping credit" that consumers are entitled to receive.

Failure to provide consumers shopping credits that equal the long run avoided costs associated with ConEd's exit from the merchant function deprives consumers of a minimum of \$130 million per year in credits to shop for alternate supplies and related services at the very moment in time when these credits may be needed the most.

Additionally, the structure of the agreement incents ConEd to delay exiting the merchant function in a manner that maximizes the ultimate costs on NY consumers of the transition to a competitive retail marketplace. If it takes ConEd ten years to avoid the range of costs that are associated with its merchant function, the total amount that consumers will ultimately pay could exceed a billion dollars. The Retail Access Proposal attempted to mitigate this total cost to NY consumers consistent with the Commission's policy on LRAC and both Staff and ConEd's desire to minimize stranded costs. NEM urges the Commission to increase the settlement to more fully reflect the \$130 million per year in LRAC identified in this proceeding.

Conclusion

In conclusion, NEM submits that the negotiated settlement is basically a "stand-still" agreement for six months that may help a small number of NEM members to maintain an existing customer base and attempt to survive what may be a difficult summer in New York. NEM has a number of serious concerns about the substance, structure and process related to this negotiated, "piece meal" settlement. NEM appreciates the Commission's extension of time to find and commission an independent expert to identify and quantify the minimum amount of costs that ConEd can and should properly avoid when it fully exits the merchant function. However, the proposed settlement does not comport with multiple Orders issued by this Commission and does not fully advance the best interests of New York consumers who may very well need more than the \$130 million in LRAC to permit meaningful price competition to offset potential price increases

forecasted for this summer. Without a full and proper breakdown of all costs that comprise ConEd's fully bundled rates, funds in addition to the \$130 million identified in this proceeding that could and should properly be useable to provide consumer back-out credits will always "slip between the cracks" due in part to the various financial, regulatory and utility accounting methods and terminology in use. Consequently, NEM urges the Commission to increase the proposed back out credit. Additionally, NEM urges the Commission to immediately open up a fully consolidated proceeding to quantify a full "bottoms-up" analysis of ConEd's natural monopoly functions and therein determine the full amount of funds that consumers should receive to shop for energy and related products, services, information and technology. This will permit competitive suppliers to make long term investments and at the same time set the minimum level of costs that the utility should strive to eliminate in the shortest possible time. We believe this approach will save consumers and the New York economy the maximum amount of unnecessary economic dislocations.

Respectfully submitted,

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