

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

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CASE 00-M-0504 - Proceeding on Motion :
of the Commission Regarding Provider of :
Last Resort Responsibilities, the Role of :
Utilities in Competitive Energy Markets, :
and Fostering the Development of Retail :
Competitive Opportunities - Unbundling Track - :
Consolidated Edison Company of New York, Inc. :
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**TRIAL BRIEF OF
THE NATIONAL ENERGY MARKETERS ASSOCIATION**

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This Trial Brief is submitted by The National Energy Marketers Association (NEM) in the above-referenced proceeding, as provided for in the Procedural Ruling, dated July 23, 2002. NEM submits that Consolidated Edison (ConEd) failed to comply with Commission Orders requiring the filing of an embedded cost study and should be required to file a study in conformance with the recommendations of ESCO Coalition witness Hornby. NEM argues that ConEd's stranded cost recovery mechanisms do not comply with Commission Orders and should be modified to conform with Commission directives. NEM also supports the Trial Brief filed by the ESCO Coalition.

I. Clear Mandate to File Embedded Cost Studies Not Complied With by ConEd

The first paragraph of the Commission's guidelines for performance of studies in the instant case provides that, "[e]ach utility will perform embedded cost of service studies."¹ Despite the precedents of numerous Orders to the contrary, ConEd has filed a cost study in this proceeding that amounts to an avoided cost study, not an embedded cost study as was required. Implicit in the various cost allocations are ConEd's inappropriately included

¹ Case 00-M-0504, Order Directing Filing of Embedded Cost Studies, November 9, 2001, at page 11.

assumption of costs it will not be able to avoid when customers migrate,² resulting in improper allocations of costs to delivery. The filing of a study constrained by these assumptions is clearly in contravention of the Commission's Orders.

Even though the Commission did give the utilities some discretion in how the studies would be performed, that discretion must be informed by the overall nature of the study - which was to be an embedded cost study, not an avoided cost study. The Commission's guidelines for filing the embedded cost studies provide,

"each utility will have the discretion to perform the study using its own approach and will provide an explanation and justification of its assumptions and methods as described in this order. Thereafter, other parties will have the right to propose alternative assumptions and methods."³

However, the grant of discretion given to the utilities was not unfettered and does not equate to a foregone conclusion that whatever assumptions the utilities chose to use were appropriate or correct.

Also, as noted by Coalition Witness Hornby, "utilities have a strong direct financial incentive to minimize the level of costs functionalized to contestable services and to maximize the costs functionalized to monopoly services." (Hornby Testimony, page 8, lines 11-13). At a minimum, the cost reallocations of Coalition witness Hornby are necessary to rectify the inappropriate avoided cost assumptions that prevail throughout the study. However, NEM also notes that of the total revenue requirements for ConEd's electric and gas services of \$6 billion in 2000, ConEd only functionalized 2% to contestable services. (Hornby Testimony, page 5, lines 1-5). As this deficient functionalization makes clear, ConEd's streamlined

² The Commission gave guidance on this subject as long ago as the Customer Billing proceeding in which it stated, "[t]he utilities' arguments to the contrary, which stress the costs they continue to incur to bill their own customers, where they continue to bill customers, are irrelevant to the task of setting an economically efficient backout credit." Case 99-M-0631, Order Denying Petitions for Rehearing, September 1, 2000, page 5.

³ Page 12, Order Directing Filing of Embedded Cost Studies, November 9, 2001.

approach does not allow the parties to evaluate the fully allocated embedded costs of contestable services because a disproportionate share has been functionalized to delivery.

ConEd's study allocated 95% of uncollectibles, 79% of customer care costs and 97% of A&G costs to delivery service. (Hornby Testimony page 6, lines 7-9) . These allocations should be modified consistent with the recommendations of Coalition witness Hornby. Hornby discussed that despite the fact that delivery represents "approximately 40% of its total revenue requirements," ConEd has "effectively functionalized 95% of its uncollectibles to delivery." (Hornby Testimony at page 9, lines 3-5). Hornby explains that ConEd did not allocate its total embedded costs of uncollectibles, but rather, "allocated only those uncollectibles that it asserts would be avoided if customers migrate to other service providers." (Hornby Testimony, page 9, lines 6-8).

With respect to customer care, "Con Edison assigned and allocated the majority of the costs in Accounts 901, 903 and 905, \$104.4 million (75%) to its delivery service with only \$35 million (26%) going to contestable services. The Company assigned the entire amount of the operating expenses in Accounts 907 to 911 to delivery service." (Hornby Testimony, page 10, lines 20-23). Hornby explained,

"that Con Edison has effectively functionalized the vast majority of the costs in these accounts to its delivery service even though the direct costs of delivery service represent only 37% of the total direct costs of all services. . . . By assigning the vast majority of these costs to delivery it has failed to treat them as customer care. Instead the functionalization of those costs reflects an 'avoided cost' approach and is inconsistent with the goal of treating, and pricing, each unbundled function as a separate service or business unit. It implies that there is no relationship between the level of costs and the level of Company's revenue requirements." (Hornby Testimony, page 11, lines 1-9).

ConEd also functionalized over 97 percent of its A&G costs to delivery service. (Hornby Testimony, page 11, lines 22-23). For instance, ConEd, "functionalized Injuries and Damages

(Account 925), A&G Expenses (Account 930.1) and Miscellaneous Expenses (Account 930.2) directly to delivery." (Hornby Testimony, page 12, lines 1-2). Hornby noted that allocation of these accounts according to direct labor costs would be appropriate. (Hornby Testimony, page 12, lines 2-5). Hornby also noted that certain A&G costs, such as A&G Salaries, Outside Services, A&G Expenses, and Miscellaneous Expenses could be allocated according to revenues. (Hornby Testimony, page 12, lines 13-17).

Coalition Witness Hornby developed an alternative functionalization of costs to estimate rates for contestable services. This alternative functionalization draws on the response to Interrogatory SAB-2 and is modified to, "correct the problems with the functionalization of customer care and A&G costs." (Hornby Testimony, page 14, lines 12-14, and page 15, lines 3-13). NEM urges that these revisions to ConEd's study and proposed rates be adopted.

III. ConEd's Stranded Cost Recovery Mechanism Does Not Comply with the Requirements Set Forth by the Commission

ConEd's proposed stranded cost recovery mechanisms do not conform to the Commission Orders⁴ requiring a two-part method, whereby competitive service costs would not be applied to customers that migrate. The first part of the mechanism is to address the concern that, "a portion of the existing embedded rate supports the provision of provider of last resort service, many of the costs of which cannot be avoided. All customers benefit from that service, and all customers should contribute to recovery of its legitimate costs."⁵ The second part of the mechanism must provide that, "a portion of the revenue shortfalls should be recovered only from customers who remain on the utility service."⁶ The Commission explained that,

⁴ Case 00-M-0504, Order Establishing Parameters for Lost Revenue Recovery and Incremental Cost Studies, issued March 21, 2002, pages 23-25, and Order on Rehearing and Clarification Petitions, May 30, 2002, pages 5-7.

⁵ Page 24, Order Establishing Parameters for Lost Revenue Recovery and Incremental Cost Studies.

⁶ Page 24, Order Establishing Parameters for Lost Revenue Recovery and Incremental Cost Studies.

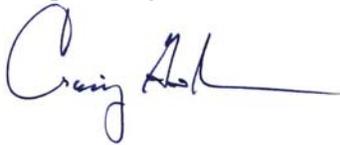
"customers who migrate to ESCOs must be able to avoid the utility's retail service costs. No market can develop if the ESCO customer must continue to pay the utility for retail service the utility no longer provides."⁷

In ConEd's filing it does not include a two-part method for recovery of lost revenues but rather includes a single "Transition Adjustment for Competitive Services" applicable to customers taking service from the utility or an ESCO. (ConEd's May 14, 2002 Filing Letters of Joel Charkow, page 2). ConEd simply ignores the directive of the Commission that a two-part mechanism be utilized. The Commission clearly stated that, "a portion of revenue shortfalls should be recovered only from customers who remain on the utility service,"⁸ and "[c]ustomers may avoid these rates by purchasing from an ESCO."⁹ ConEd must be required to follow these requirements.

IV. Conclusion

For the foregoing reasons, NEM urges that ConEd's embedded cost of service study and stranded cost recovery mechanism be modified consistent with the recommendations set forth herein.

Respectfully submitted,



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President,
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cc: Active Parties (via email)
ALJ Jeffrey Stockholm (via email and Express Mail)

⁷ Rev Recovery Order on Rehg. Page 5.

⁸ Page 24, Order Establishing Parameters for Lost Revenue Recovery and Incremental Cost Studies.

⁹ Page 24, note 25, Order Establishing Parameters for Lost Revenue Recovery and Incremental Cost Studies.