

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on March 18, 2003

COMMISSIONERS PRESENT:

William M. Flynn, Chairman
Thomas J. Dunleavy
James D. Bennett
Leonard A. Weiss
Neal N. Galvin

CASE 96-E-0897 - In the Matter of Consolidated Edison Company of New York, Inc.'s 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.

ORDER ESTABLISHING PHASE 6 OF
THE RETAIL ACCESS PROGRAM

(Issued and Effective March 19, 2003)

BY THE COMMISSION:

INTRODUCTION

On December 12, 2002, Consolidated Edison Company of New York, Inc. (Con Edison or the company) filed a proposal for implementation of Phase 6 of its retail access program, in effect from May 1, 2003 to April 30, 2004. The Order approving Phase 5 of the program¹ requires the company to propose bill credits for Phase 6 if none are established in the unbundling

¹ Case 96-E-0897, et al., Consolidated Edison Company, of New York, Inc., Order Approving Phase 5 Retail Access Program (issued April 29, 2002) (Phase 5 Order).

proceeding.² Con Edison proposes Phase 6 bill credits of 0.25 mill per kilowatt hour (kWh) for residential and 0.18 mill per kWh for commercial retail access customers and imposition of a surcharge on all of its customers to recover lost revenues.

Under Phase 5 of the program, Con Edison provides bill credits of two mills per kWh for non-demand billed and one mill per kWh for demand billed retail access customers. One mill per kWh for non-demand billed and 0.5 mill per kWh for demand billed customers are assumed to be costs that the company avoids because it does not perform various supply functions for customers in the retail access program. Con Edison is permitted to recover the remaining costs, upon a demonstration that the company could not avoid or reasonably mitigate them.

In this Order, we direct Con Edison to continue the Phase 5 bill credits through Phase 6 of its retail access program. The company is permitted to petition for recovery of Phase 6 costs it could not avoid or reasonably mitigate, subject to any standards for such cost recovery established in the unbundling proceeding.

PHASE 6 FILING

Con Edison proposes Phase 6 bill credits of 0.25 mill per kWh for residential and 0.18 mill per kWh for commercial retail access customers and a transition surcharge imposed upon all customers to recover lost revenues (lost revenue recovery mechanism). It submitted similar proposals in the unbundling proceeding. If its request is denied, the company proposes, in

² Case 00-M-0504, Proceeding on Motion of the Commission Regarding Provider of Last Resort Responsibilities, Order Instituting Proceeding (issued March 21, 2000) (unbundling proceeding).

the alternative, bill credits based upon its estimated short-run avoided costs associated with electric supply functions: 0.08 mill per kWh for residential and 0.1 mill per kWh for other retail access customers.

Pursuant to the State Administrative Procedure Act, a Notice of Proposed Agency Action was published in the State Register on January 8, 2003. Comments were filed by Con Edison, the City of New York (City), the New York State Consumer Protection Board (CPB), and Consumer Power Advocates (CPA). Several energy services companies (ESCOs) and ESCO associations filed comments. They are National Energy Marketers Association (NEM), Strategic Power Management (SPM), Small Customer Marketer Coalition (SCMC), New York Energy Service Providers Association (NESPA), and KeySpan Energy Services, Inc. (KES). On January 15, 2003 and February 6, 2003, several parties participated in negotiations to reach a joint consensus on the issues presented in Con Edison's Phase 6 proposal, without success.

SUMMARY OF COMMENTS

Con Edison contends that it was necessary in Phases 4 and 5 to assume certain levels of costs avoided for retail access customers because the process for identifying and estimating embedded costs was not complete. They argue that the company filed sufficient evidence of its embedded costs for supply functions in the unbundling proceeding, and that the evidence supports adoption of its proposals for Phase 6 of its retail access program. If its Phase 6 proposal is rejected and Phase 5 bill credits are maintained in Phase 6, Con Edison, supported by SPM and KES, requests authority to recover in full the costs associated with bill credits that it could not avoid

or reasonably mitigate. Further, Con Edison requests that we take the opportunity in Phase 6 to change our decision³ in the unbundling proceeding to take into consideration its earnings in making a determination on its recovery of lost revenues resulting from bill credits. Con Edison maintains that its financial strength is important in maintaining safe and adequate service, and that the Commission should not reduce its earnings and cash flow in proportion to its success in promoting retail access.

NEM, SCMC, NESPA, KES, CPB and CPA propose that the Commission continue Phase 5 bill credits during Phase 6 until it establishes bill credits for Con Edison in the unbundling proceeding. They assert that a decision is expected shortly in the unbundling proceeding, which may result in the establishment of new bill credits before Phase 6 is complete. They believe that changing the bill credits in May, and again when the unbundling case is decided, will result in customer confusion. They further argue that the significantly lower credits Con Edison proposes will severely undermine Con Edison's retail access program. NEM states that ESCOs would incur significant costs to conduct marketing campaigns to promote programs with different bill credits during Phase 6.

The City supports Con Edison's Phase 6 proposal for bill credits based upon short-run avoided costs, 0.08 mill per kWh for residential and 0.01 mill per kWh for other retail access customers. The City maintains that retail access participation by small volume customers is limited and that

³ Case 00-M-0504, Proceeding on Motion of the Commission Regarding Provider of Last Resort Responsibilities, Order on Rehearing and Clarification Petitions (issued May 30, 2002), p. 6.

participation by large volume customers primarily results from benefits obtained from the sales tax credit provided to ESCOs. Based upon that premise, it believes that lower credits in Phase 6 will have little impact on the retail market. The City believes that there is no reason to expect that continuation of Phase 5 bill credits in Phase 6 will foster the development of retail access. They contend that bill credits in past retail access phases resulted in subsidies that encouraged end users to sign short-term electric purchase agreements. To reduce the volatility of electric delivery costs, the City suggests that we encourage consumers and ESCOs to sign long-term purchase agreements and allow consumers to buy out or level their stranded cost charges. Further, the City suggests that Con Edison use money paid in bill credits to promote demand response programs for the summer, including co-funding, with the New York State Energy and Research Development Authority, installation of advanced metering and technologies that aid in short-term load curtailment.

Unbundling Proceeding

NEM, SCMC, NESPA, KES, and CPA except to Con Edison's submission in this Phase 6 proceeding of proposals based upon embedded cost information put forward in the unbundling proceeding. They note that several participants in both Phase 6 and the unbundling proceeding, including Department of Public Service Staff, filed testimony in the unbundling proceeding advocating higher bill credits. In addition, NEM and KES object to Con Edison's use of short-run avoided cost based bill credits, noting that the proper basis for establishing bill credits for Phase 6, as recognized in the unbundling proceeding, is embedded costs. NEM urges rejection of the company's proposal for lost revenue recovery because it involves a single

transition charge that is different than the two-tier recovery method under consideration in the unbundling proceeding.

Changes to Con Edison's Retail Access Program

SPM and SCMC propose that Con Edison purchase ESCO accounts receivable⁴ because, they claim, it is necessary for a successful retail access program, pointing to the example of the successful Orange and Rockland's retail access program. CPA believes that the Market Adjustment Clause (MAC) and the Market Supply Charge (MSC) do not provide sufficient information to allow retail access customers to compare Con Edison charges to ESCO prices. Further, CPA argues that fluctuations in the MAC and MSC⁵ hinder customers' ability to budget energy costs. CPA requests that Con Edison provide a monthly public accounting of MAC and MSC charges to parties in this proceeding.

DISCUSSION AND CONCLUSION

Con Edison's primary Phase 6 proposal would result in a reduction of over 80% in retail access bill credits. This change could impede the development of the company's retail access program. Further, bill credits based upon embedded costs studies are under consideration in the unbundling proceeding, with a decision expected within a few months. Adopting the bill credits proposed by the company, with the expectation of modifying them in a short time, may result in unnecessary

⁴ This issue falls outside the scope of the proposed agency action in this proceeding.

⁵ Con Edison estimates the MAC and MSC for a six-month period. As actual charges become available for each month, the company increases or decreases the MAC or MSC, if necessary, in the following month's bill.

customer confusion and impose unnecessary costs on the ESCOs and the company.

The bill credits and lost revenue recovery mechanism⁶ that Con Edison proposes are under consideration in the unbundling proceeding. We will consider these issues in the unbundling proceeding, with the benefit of a full record, including testing of proposals submitted by the company and other parties through cross-examination, evaluation of alternative recommendations, and the analysis and rationale presented in briefs. Accordingly, Con Edison is directed to provide bill credits of two mills per kWh for non-demand billed and one mill per kWh for demand billed retail access customers, available in Phase 5, during Phase 6 of the program.

Con Edison requests, if its Phase 6 proposal is rejected, permission to recover costs associated with Phase 6 bill credits, which it is not able to avoid or reasonably mitigate. Given the progress made in estimating embedded costs and developing bill credits in the unbundling proceeding, we will allow Con Edison to petition for recovery of these costs, subject to the standards adopted in the unbundling proceeding.

The City supports use of funds supporting retail access bill credits to pay for demand response programs. Con Edison is promoting the objectives of the City's proposals for demand response programs through other methods. The company offers several demand response programs in its service territory, including programs conducted in cooperation with the

⁶ The standards for lost revenue recovery are established in the orders issued in the unbundling proceeding. See, Case 00-M-0504, Proceeding on Motion of the Commission Regarding Provider of Last Resort, Order on Rehearing and Clarification Petitions (issued May 30, 2002).

New York Independent System Operator. Examples include Rider P - Purchases of Installed Capacity, Rider U - Voluntary Reduction Program, Rider V - Emergency Demand Response Program, and Rider W - Day-Ahead Demand Reduction Program. Con Edison also recently proposed modifications to Rider O - Curtailable Electric Service. In addition, Con Edison customers are paying a system benefits charge, which supports energy efficiency and load management programs to encourage increased demand response. These programs enhance the company's overall strategy to reduce demand.

CPA criticizes the accounting that Con Edison uses to recover its charges through the MAC and MSC. The MAC and MSC mechanisms were instituted about three years ago.⁷ Thus, it is timely to evaluate the accounting procedures used to flow charges through the MAC and MSC. Staff should work with the company and interested parties to examine the MSC and MAC procedures in light of the CPA and NYC concerns relating to volatility and timely reconciliation.

In the event that bill credits for Con Edison are not established in the unbundling proceeding by November 1, 2003, the company is directed to file, on or before December 1, 2003, a proposal for continuation of its retail access program for another year.

⁷ Case 96-E-0897, Consolidated Edison Company of New York, Inc., Approved as Recommended and So Ordered - Monthly Supply Charge and Monthly Adjustment Clause (issued April 13, 2000).

The Commission orders:

1. Consolidated Edison Company of New York, Inc. is directed to continue the Phase 5 retail access customer bill credits during Phase 6 of its retail access program.

2. Consolidated Edison Company of New York, Inc. is directed to file by April 1, 2003 a tariff, effective May 1, 2003, implementing the terms of this Order.

3. The requirement of Public Service Law § 66(12)(b) directing newspaper publication of the tariffs filed in compliance with this Order, is waived.

4. Consolidated Edison Company of New York, Inc. is required to submit a proposal by December 1, 2003, for continuation of its retail access program if bill credits are not determined in the unbundling proceeding for the company's service territory on or before November 1, 2003.

5. This proceeding is continued.

By the Commission,

(SIGNED)

JANET HAND DEIXLER
Secretary