

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on April 13, 2005

COMMISSIONERS PRESENT:

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

CASE 04-E-0572 - 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 - Unbundling Phase.

ORDER ADOPTING UNBUNDLED RATES AND BACKOUT
CREDITS AND SPECIFYING TERMS FOR THE RECOVERY
OF REVENUES LOST AS A RESULT OF SUCH RATES AND CREDITS

(Issued and Effective April 15, 2005)

BY THE COMMISSION:

INTRODUCTION

This order concerns Consolidated Edison Company of New York, Inc.'s (Con Edison's or the Company's) electric unbundled rates, backout credits, and lost retail access revenue recovery mechanism.

PROCEDURAL HISTORY

In May 2002, in Case 00-M-0504, the Company filed proposed backout credits based on an embedded cost of service study it had prepared. These are credits customers could receive if they elected to purchase commodity from an Energy Service Company (ESCO). The Company simultaneously proposed a mechanism for recovering revenue shortfalls that result when competitive functions are performed by an entity other than it.

Following a full administrative hearing process, we issued our Unbundling Policy Statement.¹

Among other things, the Unbundling Policy Statement ordered Con Edison to file in this rate proceeding proposed tariffs for competitive rates for electric service, implementing substantive decisions that had been reached on a number of disputed issues. In that regard, the Unbundling Policy Statement started out (p. 6) from the proposition that there was broad agreement on many parts of Con Edison's cost study. Some issues were disputed, however, and as to them, the Unbundling Policy Statement:

1. Strongly encouraged the calculation of backout rates based on embedded cost of service study results, but with sufficient flexibility to consider the reasonable interest of consumers (p. 11).
2. Agreed with DPS Staff and others that credit and collection costs should be allocated 53 percent to delivery and 47 percent to commodity, in contrast to the proposal of Con Edison and others that 100 percent of such costs should be allocated to delivery (pp. 18-20).
3. Held that a total of \$9.1 million of information resources costs and related overheads should be allocated to commodity supply (p. 24).
4. Decided that uncollectible expense should be allocated based on revenue (p. 25).

¹ 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, Statement of Policy on Unbundling and Order Directing Tariff Filings (issued August 25, 2004).

5. Adopted DPS Staff's position concerning application of the earnings base/capitalization adjustment to all capital components and the use of the overall cost of capital to calculate electric supply working capital (pp. 26-27).
6. Directed Con Edison to allocate the costs of educational customer advertising and promotion based on revenues (pp. 30-31).

The Company was also ordered to propose a lost revenue recovery mechanism that would be consistent with general guidance provided in the Unbundling Policy Statement. In that regard, the Unbundling Policy Statement (p. 33) declined to require the implementation of any specific recovery mechanism. Rather, it explained how those mechanisms will generally work and set forth policy concerns that must be addressed by anyone proposing a recovery mechanism.

The Unbundling Policy Statement went on to say:

1. The terms and conditions in existing rate plans for lost revenue recovery should continue (p. 33).
2. Lost revenue recovery mechanisms should be addressed in conjunction with a major change in rates or the extension of a rate plan (p. 34).
3. True-ups between estimated and actual lost revenue would be permitted (p. 34).
4. As a general matter, a utility loses revenue due to migration in a rate year only to the extent migration results in the receipt of total revenues below those assumed in rates or, as an example, in earnings below the trigger level set forth in any earnings-sharing provision (pp. 34-35).
5. The considerations in items one through four of this list do not include a number of unrelated policy objectives that might be sought in the context of an overall rate proceeding (p. 35).

6. Balancing those unrelated policy objectives could result in changes to the above approaches that would be acceptable in the context of an overall rate package (p. 35).

In response, the Company made a filing in this case on October 12, 2004. A number of procedural schedules were adopted concerning the October filing. The initial schedule changed several times to afford interested parties a reasonable opportunity to negotiate concerning the issues raised by the October 2004 filing.

On December 10, 2004, Con Edison filed a notice of impending settlement negotiations. The required review of that notice was completed and reported on December 15, 2004.² Settlement negotiations took place on December 16 and 21, 2004 and on January 13 and 21, 2005. An additional consideration in the negotiations was how to implement related retail access provisions of the December 2, 2004 Joint Proposal (JP) (e.g., JP Section F(1)(a), which provisions are now part of our recently adopted three-year electric rate plan for Con Edison.³

Pursuant to the final procedural schedule adopted for this phase, the Company would revise and update the October 2004 filing on or before January 25, 2005, and any joint proposal on unbundling and related issues would be filed by not later than February 2, 2005. Comments to be submitted would focus either on the updated filing or the joint proposal. Initial comments were due on February 11, 2005 and reply comments were due on February 18, 2005.

The Company made its revised, updated filing on January 25, 2005 (the January 2005 filing). Among other things, the January 2005 filing supports proposed tariff leaves for its full-service and retail access delivery customers concerning:
(1) credits for customers who obtain competitive metering

² 16 NYCRR §3.9(a)(2).

³ Case 04-E-0572, Order Adopting Three-Year Rate Plan (issued March 24, 2005) pp. 41-50, and Appendix I, pp. 19-22.

services; (2) a "Transition Adjustment to Competitive Services" pursuant to which the Company would recover revenue losses associated with retail access; (3) the terms and conditions under which the Company would provide consolidated bills and payment processing services; and (4) competitive supply and competitive supply/collection related or "backout" credits.

The January 2005 filing also supported comparable tariff leaves for Economic Development Delivery Service (EDDS) and for delivery service to the New York Power Authority.

Finally, the January 2005 filing supported "sample" tariff leaves under which the proposed backout credits for Service Classifications (SCs) 1, 7, and 2 are presented in the form of unbundled rates that could be avoided in whole or in part by retail access customers.

As discussed in greater detail below, the terms of the proposed transition adjustment are the most controversial and there are objections as well to some of the competitive supply and competitive supply/collections related credits.

On or about January 31, 2005, according to Department of Public Service Staff (DPS Staff), negotiations terminated. Thus, a joint proposal was not filed. While the parties were not able to agree on some issues, much of the Company's January 2005 filing is unopposed and this is likely a product of the negotiation process.

Table 1 lists the parties that submitted comments on the January 2005 filing.

<u>TABLE 1</u>		
<u>Active Party</u>	<u>Initial Comments</u>	<u>Reply Comments</u>
Con Edison	X	X
DPS Staff	X	X
Mid-Atlantic Power Supply Association and Small Customer Marketer Coalition (the Association and Coalition)	X	X
New York Energy Consumers Council, Inc. (NYECC)	X	
Consumer Power Advocates (CPA)	X	
New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation (NYSEG and RG&E)	X	
Keyspan Energy Delivery New York and Keyspan Energy Delivery Long Island (Keyspan Delivery)	X	

For good cause shown, and without objection, interested parties were also afforded an opportunity to submit supplemental comments on proposed, sample tariff revisions set forth for the first time in Con Edison's reply comments. DPS Staff and CPA submitted additional pleadings on March 3 and 4, 2005, respectively.

BACKOUT CREDITS AND UNBUNDLED RATES FOR COMPETITIVE SUPPLY AND COMPETITIVE SUPPLY/COLLECTIONS

A key issue presented is whether the backout credits and unbundled rates set forth in the January 2005 filing are reasonable overall and comply with the specific requirements of the Unbundling Policy Statement.

For supply and supply/collections, the credits proposed by Con Edison are as follows:

<u>Classes</u>	<u>Supply</u>	<u>(mills/kWh) Supply/ Collection</u>	<u>Total</u>
SC 1 - Residential and Religious	1.5	2.2	3.7
SC 7 - Residential and Religious Heating	1.5	2.2	3.7
SC 2 - General Small Customers	1.1	1.6	2.7
Other SCs	.6	.4	1.0

These figures may be compared with existing backout credits of 2 mills/kWh for SCs 1 and 7, and 1 mill/kWh for all other SCs. However, for residential customers that purchase supply from ESCOs participating in the new purchase of receivables program and receiving consolidated bills from the Company, only the proposed supply backout credit of 1.5 mills/kWh would apply.

Con Edison has also designed supply and supply/collections unbundled rates for SCs 1, 7, and 2.⁴ Whether customers in such classes receive credits or avoid unbundled rates, the effect on the bottom line of their bills would be approximately the same.⁵ Neither the credits nor the unbundled rates would be stated on customers' bills until such time as unbundled bill formats are implemented for Con Edison.

Con Edison contends that its proposed credits comply with all of the specific requirements of the Unbundling Policy Statement.

DPS Staff supports the Company's proposals, pointing out that the backout credits and unbundled rates proposed in the January 2005 filing are based in part on the allocation of customer care costs on a 75 percent customer and 25 percent consumption basis.⁶ DPS Staff supports the latter proposal, asserting that if customer care costs were allocated based solely on the number of customers, it would warrant a 50 percent reduction in the credit for other SCs and might undermine retail competitive markets for medium and large commercial customers.

DPS Staff expresses some dissatisfaction with the Company's efforts at developing unbundled rates to replace

⁴ They are set forth in Appendix B of the January 2005 filing.

⁵ Backout credits are used to reduce a retail access customer's total delivery service bill. With unbundled rates, a customer pays delivery service bills based only on the elements of service taken from Con Edison and there is no need for a credit to be applied.

⁶ This is a matter that was not addressed in the Unbundling Policy Statement.

backout credits. It contends that fully unbundled rates are the ultimate goal and that more progress should have been made in this regard by now. Nevertheless, DPS Staff recommends approval of the Company's proposed supply and supply/collections unbundled rates for SCs 1, 7, and 2 and the proposed backout credit for other SCs.

The Association and the Coalition likewise support all of the Company's proposed unbundled rates for SCs 1, 7, and 2.⁷

Two active parties disagree with the January 2005 proposal to continue the 1 mill/kWh credit for other customers. According to NYECC, the Company's proposal to maintain the existing credit is superior to a decrease but is inadequate to promote the expansion of retail competitive opportunities. NYECC suggests that the current backout credits for other customer classes are effective only for full-service customers that are subject to sales taxes and that the applicable credit should be doubled to 2 mills/kWh.⁸

CPA, meanwhile, contends it is unreasonable to more than double the credits for some customers while making no change for customers who make up the vast majority of the existing retail load and that comprise more than one-half the load that continues to receive full service from Con Edison. This party suggests an increased backout credit is also

⁷ DPS Staff recommends that in its next general rate filing, the Company should be required to include fully unbundled rates for competitive services and to eliminate all backout credits, based on an embedded cost of service study for the then most recently completed calendar year. It also proposes that all charges that are related to both electric and gas service, such as for billing, should be made identical. NYSEG and RG&E ask that we specify that our decision here neither establishes binding precedent nor establishes any presumption that they would have to overcome in their own unbundling cases.

⁸ Large full-service customers can avoid sales taxes when served by an ESCO and gain an incremental advantage, while tax-exempt full-service customers do not enjoy that benefit incrementally when they take service from an ESCO.

warranted in light of our previously stated interest in increasing statewide uniformity. Further, CPA suggests it is completely illogical that Con Edison's backout credits for large customers are the lowest in the state, while its delivery rates for such customers are among the highest.

The Company, DPS Staff, and the Association and Coalition reply in opposition to NYECC and CPA. The Company and DPS Staff emphasize that the Company's proposal is consistent with the terms of the Unbundling Policy Statement and based on a rational allocation of customer care costs. In this respect, Con Edison and DPS Staff both see CPA as proposing that we abandon cost as the central consideration when backout credits or unbundled rates are set.⁹

The Association and Coalition reply that the primary driver of customer care costs is the number of customers rather than the level of usage and, thus, that there is nothing illogical about the proposals set forth in the January 2005 filing.

The Company argues that to the extent statewide uniformity was ever an objective, it was expressly abandoned in large part in the Unbundling Policy Statement (at p. 13). Moreover, any comparison of Con Edison's proposed cost-based backout credits with credits of other utilities would be meaningless, according to DPS Staff and the Association and Coalition, as such other credits have not been re-evaluated yet in light of recent embedded cost of service study results.

Other arguments offered in opposition to NYECC's and CPA's contentions are as follows:

1. There is no cost basis for NYECC's proposed 1 mill/kWh increase to the backout credit for other SCs.
2. CPA fails to propose a specific backout credit for other SCs.

⁹ NYSEG and RG&E likewise argue that backout credits should primarily be cost-based but with some weight given to other considerations when appropriate.

3. Larger credits for other SCs would result in an unwarranted windfall to such customers.
4. Larger credits are not needed for other SCs given the large percentage of them already taking retail access service.
5. Larger credits for other SCs will necessarily result in smaller credits for customers in SCs 1, 7, and 2.¹⁰

Con Edison's proposed unbundled rates for SCs 1, 7, and 2 and its proposed backout credits for competitive supply and competitive supply/collections for other SCs are reasonable and they are approved. Such rates and credits are based on costs calculated in accordance with specific decisions explained in our Unbundling Policy Statement and, in part, on the reasonable allocation of customer care costs among classes based 75 percent on the number of customers and 25 percent on kWh usage. NYECC and CPA do not even contest these bases much less establish that they are wrong. The first four of the other responsive arguments, listed immediately above, are also persuasive and we rely on them as well for our decision.

As to the miscellaneous issues between DPS Staff and the Company, we concur that the Company's next general rate filing should provide for unbundled electric rates in lieu of backout credits for other SCs. Our statement of Policy on Rate

¹⁰ In response to miscellaneous comments by DPS Staff, Con Edison states that it is not practical for it to make a rate case filing in April 2007 based on an embedded cost of service study for calendar year 2006. The Company also expresses interest in exploring uniformity of charges for its electric and gas services, but states that it is possible that billing and payment processing may be the only services for which identical charges would be appropriate. Responding to the miscellaneous arguments of NYSEG and RG&E, DPS Staff points out that the Commission is already on record in the Unbundling Policy Statement (p. 39) that the issues considered here for Con Edison would be examined on a utility by utility basis.

Design Issues¹¹ should also be implemented by Con Edison at that time. However, the timing of the new cost study will be left open, subject to the general requirement that it should be as current as reasonably possible at the time of the general rate filing. Consolidated Edison and DPS Staff share an interest in uniformity of charges, where warranted, and we need not take any action now in this regard. Turning to the miscellaneous arguments of NYSEG and RG&E, our decision is based on the facts and circumstances presented in this case and may or may not bear on what is appropriate for other utilities, depending on whether or not the circumstances are comparable.

COMPETITIVE BILLING AND METERING CREDITS

Under the January 2005 filing, the existing backout credits for billing and payment processing applicable to an electric or combined-service retail access customer receiving a single bill would be increased from \$.65 to \$.94 per billing cycle and a corresponding change would be made to the charge an ESCO pays when its customer receives a consolidated bill from the Company. The existing natural gas credit for billing and payment processing would remain at \$.65 per billing cycle.

Credits proposed for customers who obtain competitive metering services in the January 2005 filing are exactly the same as those proposed in the October 2004 filing. The total amount of monthly metering credits would vary depending on the type of metering equipment used.

The proposed credits are unopposed. However, DPS Staff notes that the Company requires that meter ownership, metering services, and meter data services generally must all be taken from a competitive provider in order for a customer to

¹¹ Case 00-M-0504, supra, Statement of Policy on Rate Design Issues (issued February 14, 2005).

take advantage of any of the credits for metering services. While the proposed metering credits appear reasonable and should be approved, DPS Staff continues, there is another on-going proceeding (Case 02-M-0514) concerning competitive metering for electric and gas service. DPS Staff suggests that any decision in this case now should be subject to modification based on the outcome of the other proceeding. The Company does not reply.

Con Edison's proposed credits for billing and metering are reasonable and unopposed and they are adopted, although, as noted above, these credits should be restated in the future as unbundled rates and redesigned to the extent warranted by our rate design policies. The metering credits are adopted subject to the caveat proposed by DPS Staff. That caveat appears reasonable on its face and there is no objection to it.

It is not clear, however, that metering credits will necessarily be considered in the other referenced proceeding. Subject to any change warranted in that other proceeding, we are aware of no reason at this time why the Company should be permitted to restrict the eligibility for metering credits to an all or nothing proposition. Its compliance filing should reflect this conclusion.

LOST REVENUE RECOVERY

Summary of Issues

There are four central issues with respect to the recovery of revenue losses that result from the previously discussed unbundled rates and backout credits. The first issue has to do with the general approach to be used to calculate lost revenue. The approach proposed by the Company in the January 2005 filing is the Attachment to this order. DPS Staff is generally supportive of this language, but was concerned about the definition for the term "Net POR Uncollectibles." That concern was addressed in the Company's reply comments, where Con Edison proposed to replace the term "Net POR Uncollectibles"

with the term "POR Uncollectibles," and to define the latter as follows:

"POR Uncollectibles" are equal to the uncollectible component of the POR discount rate multiplied by the supply charges billed for customers who receive Utility Consolidated Bills. The uncollectible component of the initial POR discount is 0.72 percent."¹²

The new term and proposed definition are both acceptable to DPS Staff. They are also reasonable to the extent they will ensure the Company will not be compensated twice for uncollectibles, once in the purchase of receivables discount and a second time in the lost revenue recovery mechanism. With the exception of the third and fourth issues below, there is no objection to the basic calculation method proposed by the Company.

The second issue involves the proper allocation of lost revenue recovery among Con Edison's customers and there is no dispute with respect to it. Consistent with our determination in the Unbundling Policy Statement, the first 50 percent of revenues lost because of backout credits and unbundled rates are proposed to be recovered 50 percent from full-service customers and the remaining 50 percent would be recovered from all customers.

The third issue is the subject of a dispute between the Company and DPS Staff. Both agree that estimates of lost revenue are reflected in the delivery service revenue requirements established for each rate year in the new three-year rate plan. As noted in the Attachment, the estimate of lost revenue ranges from \$14.176 million in the first rate year,¹³ to \$14.949 million in the second rate year, and to

¹² Con Edison's February 18 Comments, p. 9.

¹³ In its February 18 Comments, Con Edison advises that the "annual period" in the first rate year will actually be only 11 months, running from May 1, 2005 through March 31, 2006. The competitive service amounts reflected in delivery service rates for that period, it states, is \$13.174 million.

\$15.739 million in the third rate year.¹⁴ These two parties disagree, however, about what should happen in the event the level of actual lost revenue in any annual period is lower than the amount assumed for the purposes of calculating the delivery service revenue requirements.

DPS Staff's position is that there should be a full reconciliation in such circumstances. As of the time of its initial comments, DPS Staff was of the opinion that proposed tariff language set forth in the Attachment provided for such reconciliation and it said that reading the pertinent language in any other way "would be inconsistent with past Commission determinations with respect to cost recovery principles and result in an improper windfall to the Company."¹⁵

The Company replies that it did not and does not propose a true-up of actual lost revenues when they are lower than forecast levels and that it does not believe our guidelines require reconciliation in such circumstances. In order to eliminate any further misunderstanding in this regard, the Company proposes to revise some definitions in the Attachment, to make clear that it is not proposing a reconciliation of lost revenue when the actual level is less than the forecast.¹⁶

DPS Staff objects to the latter proposal, contending it would unjustly and unreasonably allow the Company to keep amounts in excess of actual revenues lost, and, thus, to enjoy an unwarranted windfall. DPS Staff also denies it misunderstands the tariff language set forth in the Attachment, suggesting that the revised language set forth in the Company's reply comments otherwise would not be necessary.¹⁷

¹⁴ The lost revenues built into the delivery service revenue requirements are based on existing retail access credits.

¹⁵ DPS Staff's February 11 Comments, p. 9, n. 18.

¹⁶ Con Edison's February 18 Comments, pp. 7 and 9 and sample tariff leaves in Appendix A of those comments.

¹⁷ DPS Staff's March 4 Comments, pp. 2-3.

The Company's general opposition to full reconciliation is also unreasonable, according to DPS Staff, as it could provide the Company with benefits greater than the maximum retail access incentive of \$12 million reflected in our new rate plan. Another DPS Staff contention is that a failure to require reconciliation in this instance would provide Con Edison an incentive to inhibit the development of retail access. DPS Staff goes on to argue that we have never stated or implied that utilities should be permitted to retain an amount in excess of actual lost revenues.

As noted above, CPA also filed supplemental comments on this issue. In pertinent part, these comments are consistent with DPS Staff's.

The fourth issue concerns whether the Company's actual revenue or earnings level should be a factor when determining whether or not the Company would be allowed to recover revenue lost as a result of unbundled rates and backout credits, to the extent such revenue losses are greater than the level assumed for purposes of setting the delivery service revenue requirements. According to the company, NYSEG and RG&E, and Keyspan Delivery, there are several reasons why revenue and earnings levels should be ignored for such purposes. The reasons are as follows:

1. Specific conclusions were not reached in the Unbundling Policy Statement about the proper mechanism to be employed for the recovery of lost revenue. The Unbundling Policy Statement did discuss that lost revenue recovery might be limited if a utility is earning above a sharing threshold or if revenue is above forecast levels. However, this was not mandated. Instead, the Unbundling Policy Statement, (p. 35) held that the lost revenue recovery mechanism must be determined in the context of a rate case, where other unrelated policy considerations might show that a limitation on lost revenue recovery would be unwarranted.
2. It would be reasonable to calculate lost revenue in this case without reference to earnings or revenue levels because any other outcome would be inconsistent with the balance of interests reflected in other key terms of the new three-year electric rate plan. Specifically, it is argued that rate plan provisions concerning earnings

sharing and limitations on deferrals in certain circumstances would be undermined if lost revenues recovery is dependent on actual earnings and revenue levels. Likewise, the argument goes, the Retail Access incentive of up to \$12 million over three years could be diluted if actual earnings and revenue levels are considered when deciding whether or not to permit lost revenue recovery.

3. A fundamental premise underlying the policy of fostering the development of competitive markets is that distribution utilities will not be harmed or, at worst, will be indifferent to retail access. However, imposition of a cap on lost revenue recovery would, for the first time, undermine the distribution utilities' interest in fostering retail access.
4. A denial of recovery of lost revenue based on factors extraneous to customer migration and avoided costs would also assertedly chip away at the utility's incentive to grow and to manage its business efficiently.

DPS Staff and CPA disagree with the utilities' first point, contending a lost revenue recovery mechanism should account for earnings or revenue levels. In this regard, DPS Staff emphasizes language in the Unbundling Policy Statement (pp. 34-35) to the effect that a utility loses revenues only to the extent total revenues are below those assumed in rates, or earnings are lower than the level of the earnings sharing trigger. In light of this language, DPS Staff argues, a revenue or earnings test should be imposed and the Company should be required to file revised tariff language, detailing a revenue or earnings test and taking into account other forms of net lost revenue recovery, such as one provided for demand management.¹⁸ CPA agrees such a cap should be required.

In response to the third utility argument listed above, DPS Staff disagrees with the contention that retail access programs would be undermined if lost revenue recovery depends in part on actual revenue or earnings levels. According

¹⁸ The aspect of this argument concerning lost revenue recovery for demand management is not explained by DPS Staff.

to DPS Staff, this claim is belied by Con Edison's acknowledgement that it does not anticipate substantial revenue losses above the approximately \$15 million built into the annual delivery service revenue requirements and the fact that the Company is eligible to receive a retail access incentive of up to \$12 million.

Finally, DPS Staff is critical of NYSEG and RG&E to the extent the latter ask that the decisions rendered here not be binding on them, while simultaneously arguing that utilities should be able to recover all lost revenue regardless of revenue or earnings levels. To the extent these companies are seeking general pronouncements, DPS Staff concludes, such a request is beyond the scope of this proceeding and should be rejected.

The Company responds to DPS Staff's initial comments, adding the following new points:

1. DPS Staff ignores the part of the Unbundling Policy Statement (p. 35, ¶2) that requires that each lost recovery mechanism be considered in the context of the rate case and fails to provide any evaluation of the Company's proposal in that context. Part of that context, the Company continues, includes a rate plan that requires aggressive retail access promotion and associated incentives, and an earnings sharing mechanism pursuant to which the Company will forgo 50 and 100 percent of its deferred costs when equity earnings are above, respectively, the 11.4 percent and 13.0 percent equity earnings sharing triggers.
2. Revenue levels are not necessarily an indication of the Company's financial health because that variable takes no account of whether costs increased at the same or a greater pace. It is important to recognize this in light of DPS Staff's proposals that (1) lost revenue be subject to full reconciliation when it is lower than the amount reflected when delivery service revenue requirements were set, and (2) lost revenue be subject to reconciliation subject to a cap when it is higher than the amount

reflected when delivery service revenue requirements were set.¹⁹

Discussion

The basic lost revenue mechanism set forth in the Attachment is reasonable, subject to incorporation of the new term "POR Uncollectibles" and the Company's proffered definition for that term, both of which are reasonable and acceptable to both the Company and DPS Staff. The basic lost revenue mechanism is adopted subject to two other conditions, however, including that the level of lost revenue implicit in the delivery service revenue requirements will be subject to (1) full reconciliation in the event lost revenues in a rate year are lower than forecast levels, and (2) full reconciliation in the event lost revenues in a rate year are higher than forecast levels, provided equity earnings in the latter circumstances are less than the 11.4 percent equity earnings sharing trigger set forth in the new three-year rate plan. The Company's compliance filing must be designed to incorporate the new POR Uncollectibles tariff language it agreed to and to reflect the latter two conditions.

Our decision to adopt the latter two conditions is based on the same reasoning. To begin, the Company and DPS Staff both expect lost revenue levels will be close to the levels assumed for purposes of determining the delivery service revenue requirements. In these case-specific circumstances, it is reasonable to expect that the reconciliation conditions will not have any material effects.

¹⁹ In its reply comments dated February 18, 2005, Con Edison offers further arguments in support of its position in ways that go beyond responding to DPS Staff's initial comments. Likewise, in its supplemental comments dated March 4, 2005, DPS Staff goes well beyond the propriety of the proposed sample tariff revisions set forth for the first time in Con Edison's reply comments. Such arguments are unfair, untimely, and inconsistent with the procedures applicable in this case. Accordingly, they are not summarized or considered here.

Second, the two conditions are consistent with the general views we expressed in the Unbundling Policy Statement (pp. 34-35) that a utility loses revenues due to migration during the course of a rate year only to the extent that results in the receipt of total revenues below those assumed in rates and that while we want to keep utilities whole during the transition to competition, a utility has been kept whole whenever it is earning above the earnings sharing threshold.²⁰

Con Edison and the other utilities contend that our general view should not apply here, based on the notion that this would upset the balance of interests reflected in the new rate plan. However, unbundling and lost revenue recovery mechanism issues simply were not negotiated in the context of the development of the new rate plan. In these circumstances, the better view is that the new rate plan makes no provision whatsoever for a lost revenue recovery mechanism. Accordingly, our decision on the lost revenue recovery mechanism should properly be made here on a clean slate.

Con Edison and the other utilities also argue to the effect that our general support for retail access comprises "an unrelated policy objective" that automatically warrants an exception to the general views expressed in the Unbundling Policy Statement. This is a strained argument that would, if adopted, undermine completely the general view expressed in the Unbundling Policy Statement. Accordingly, this argument is rejected outright.

Parties in rate cases will continue to have the ability to offer proposals under which deviations from our general view will be permitted. As this case shows, it is preferable that such proposals be offered at the time all other rate case issues are being decided.

²⁰ Likewise, if a utility received \$15 million for lost revenue in circumstances where only \$10 million were actually lost, it would be more than be made whole.

The Unbundling Policy Statement provides that either delivery service revenue or earnings levels should be considered for purposes of determining whether revenues in excess of the approximately \$15 million per year are lost because of retail access. Con Edison expresses concern that revenue levels alone are not a reasonable indication of its financial health. For this reason, and as the Unbundling Policy Statement envisions consideration of either revenue or earnings levels, the latter will be used in this case.

The final issue concerns the division of responsibility for migration-related revenue losses. The proposal that the first 50 percent be allocated to full service customers and that the remaining 50 percent be allocated to all customers, as previously noted, is fully consistent with the Unbundling Policy Statement and it is adopted.

The Commission orders:

1. Consolidated Edison Company of New York, Inc. shall, by not later than April 29, 2005, cancel the tariff leaves listed in the Appendix.
2. Consolidated Edison Company of New York, Inc. is directed to file on not less than two days' notice, to take effect on a temporary basis on May 1, 2005, such electric tariff changes as are necessary to effectuate the terms of this order.
3. Consolidated Edison Company of New York, Inc. shall contemporaneously serve copies of its filings on all active parties in this proceeding by first class mail or better service. Any comments on such compliance filing must be received within fourteen days of the filing and service. The amendments specified in the compliance filing will not become effective on a permanent basis unless and until it is approved by the Commission.
4. The requirements of Public Service Law §66(12)(b) that newspaper publication be completed before the effective date of the amendments are waived provided, however, that Consolidated Edison Company of New York Inc. shall file with the Commission Secretary, no later than six weeks following the

effective date of such filing, proof that a notice to the public of the changes proposed by the amendments and their effective date has been published once a week for four successive weeks in newspapers having general circulation in Consolidated Edison Company of New York, Inc.'s electric service territory.

5. Consolidated Edison Company of New York, Inc. shall file, in its next general rate proceeding, unbundled rates for all classes to replace remaining backout credits and to implement our Statement of Policy on Rate Design Issues. Such filing shall be based on the embedded cost of service study results for the most recent 12 months for which preparation of such a study is reasonably possible.

6. This proceeding is continued.

By the Commission

(SIGNED)

JACLYN A. BRILLING
Secretary

Consolidated Edison Company of New York
P.S.C. No. 9 - Electricity
Second Revised Leaf No. 168
Superseding First Revised Leaf No. 168

GENERAL INFORMATION - Continued

VII. Increase in Rates Relating to Taxes and Other Charges and Adjustments - Continued
(B) Other Charges and Adjustments - Continued

(4) Transition Adjustment for Competitive Services

Applicability

A Transition Adjustment will be applied, per kwhr, to the bills of Customers in each Service Classification of this Rate Schedule and the Retail Access Rate Schedule, including Customers served under Rider Q but excluding Customers served under Service Classification No. ("SC") 11. Customers served under SC 15-RA of the Retail Access Rate Schedule will not be subject to the Transition Adjustment under this Rate Schedule, but will instead be subject to the Transition Adjustment applicable to the EDDS Rate Schedule.

Definitions for Purposes of This Transition Adjustment Provision

"Avoided Costs" are the costs avoided by the Company when Competitive Services are provided by an entity other than the Company for Customers served under this Rate Schedule or the Retail Access Rate Schedule and are based on migration to Competitive Services above the average level for calendar year 2003.

"Competitive Services" are electric supply (including, where applicable, credit and collections and theft investigation), metering services, and billing (inclusive of payment processing).

"Competitive Services Credits" are the aggregate of credits on Customers' electricity bills from the application of (i) competitive supply-related credits under the Retail Access Rate Schedule, (ii) competitive supply collections-related credits under the Retail Access Rate Schedule, (iii) metering credits (described in General Information Section III-11(V)) under this Rate Schedule and the Retail Access Rate Schedule, and (iv) billing credits for Consolidated Bills, as described in the Retail Access Rate Schedule, less (v) billing service payments received from ESCOs for the provision of Company-issued Consolidated Bills.

"Competitive Services Lost Revenues," if any, are equal to (i) Competitive Services Credits less (ii) the competitive services amounts reflected in electric rates established in Case 04-E-0572 less (iii) Avoided Costs, if any, less (iv) Net POR Uncollectibles. The competitive services amounts reflected in electric rates (which were estimated on the basis of 2 mills for SCs 1-RA, 2-RA, and 7-RA, and 1 mill for other SCs) are as follows: \$14,176,000 for the rate year ending March 31, 2006; \$14,949,000 for the rate year ending March 31, 2007; and \$15,739,000 for the rate year ending March 31, 2008.

(General Information - Continued on Leaf No. 168-A)

Date of Issue: January 25, 2005

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4 Irving Place, New York, N.Y. 10003

General Information - Continued

VII. Increase in Rates Relating to Taxes and Other Charges and Adjustments - Continued (B) Other

Charges and Adjustments - Continued

(4) Transition Adjustment for Competitive Services - Continued

Definitions for Purposes of This Transition Adjustment Provision - Continued

"Net POR Uncollectibles," which may be positive or negative, are equal to (i) the uncollectible component in the discount rate applicable to ESCOs from whom the Company purchases receivables multiplied by (ii) the supply charges billed for Customers who receive Utility Consolidated Bills, less (iii) the cents/kWhr uncollectibles reflected in the competitive supply-related credits for all SCs multiplied by the number of kilowatthours billed under Utility Consolidated Bills for those SCs.

"POR" refers to the Company's purchase of receivables program, which is applicable to ESCOs' Customers receiving Utility Consolidated Bills.

Calculation of the Transition Adjustment

Competitive Services Lost Revenues will be estimated for each annual period in which the Transition Adjustment is to be in effect, adjusted for any reconciliation amounts determined in accordance with this provision. Half of the amount to be collected from Customers will be assigned to Customers served under this Rate Schedule (except for SC 11) plus Customers served under Special Provision C of SC 14-RA; the balance will be collected both from Customers served under this Rate Schedule and Customers served under the Retail Access Rate Schedule (except for SC 15-RA). The amounts to be collected from Customers under each Rate Schedule will be divided by the estimated total annual kilowatthour deliveries under the Rate Schedule to which the Transition Adjustment will be applied to determine the per-kwhr Transition Adjustment, expressed to the nearest 0.0001 cent per kwhr, applicable to that Rate Schedule. If the above calculation results in a Transition Adjustment less than 0.0001 cent per kwhr, the amount to be recovered from Customers will be deferred, with interest, for later recovery or refund through application to Customers' bills in a subsequently determined Transition Adjustment.

Actual Competitive Services Lost Revenues will be reconciled to the amount collected through the Transition Adjustment. Any net over- or under-collection of the Transition Adjustment amount will be deferred with interest and included in the calculation of the next annual Transition Adjustment; provided, however, that whenever the total deferred amount exceeds \$5 million, the Company may adjust the Transition Adjustment on not less than three days' prior notice.

The Transition Adjustment will apply to all electric service supplied on and after the effective date of a change in the Transition Adjustment. Where a bill includes periods before the effective date and after the effective date of a change in the Transition Adjustment, the Transition Adjustment applicable will be prorated based on the number of days of service rendered before the effective date and on and after the effective date related to the total number of days in the billing period.

(General Information - Continued on Leaf No. 168-B)

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Consolidated Edison Company
of New York, Inc.

P.S.C. No. 9 - Electricity
Original Leaf No. 168-B

General Information - Continued

VII. Increase in Rates Relating to Taxes and Other

Charges and Adjustments - Continued (B) Other Charges

and Adjustments - Continued

(4) Transition Adjustment for Competitive Services - Continued

Calculation of the Transition Adjustment - Continued

The Transition Adjustment will be calculated on an annual or more frequent basis, as provided herein. The Company will file a Statement of Transition Adjustment for Competitive Services ("Statement"), apart from this Rate Schedule, setting forth the per-kilowatthour adjustment to be put into effect for Customers served under this Rate Schedule (except for SC 11) and Special Provision C of SC 14-RA and the per-kilowatthour adjustment to be put into effect for Customers served under the Retail Access Rate Schedule (except for SC 15-RA and Special Provision C of SC 14-RA). The Company will file a Statement with the Public Service Commission on not less than one day's notice or as directed in a Commission Order approving back-out credits/rates and a lost revenue recovery mechanism in Case Nos. 04-E-0572 and 00-M-0504, for the first annual period for which the Adjustment is to be in effect. Unless otherwise directed by the Commission, the Company will file future Statements no less than three days prior to the start of each annual period that the Adjustment is to be in effect (and no less than three days prior to any change in the Adjustment as set forth herein).

(General Information - Continued on Leaf No. 169)

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Amendments to Schedule P.S.C. No. 9 - Electricity

Original Leaves Nos. 168-A, 168-B
First Revised Leaves Nos. 59-D, 59-H
Third Revised Leaf No. 168

Amendments to Schedule P.S.C. No. 2 - Retail Access

First Revised Leaf No. 8-B
Tenth Revised Leaf No. 13
Twelfth Revised Leaf No. 16

Amendments to EDDS No. 2

Fourth Revised Leaf No. 7-B
Fifth Revised Leaf No. 6-A

Amendments to PASNY No. 4

Original Leaf No. 10-C
Sixth Revised Leaf No. 7-A