Received: 7/25/2005

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
4 Irving Place
New York, NY 10003

July 25, 2005

Honorable Jaclyn A. Brilling
Secretary
State of New York
Public Service Commission
Three Empire State Plaza
Albany, New York 12223

Re: Capacity Release Service Extension

Dear Secretary Brilling:

Consolidated Edison Company of New York, Inc. ("Con Edison" or the "Company") is filing today with the Public Service Commission ("the Commission") amendments to the Company's Schedule for Gas Service, P.S.C. No. 9 – Gas (the "Gas Tariff").

The tariff leaves filed electronically today are proposed to become effective on November 1, 2005. Attachment A to this letter sets forth the tariff leaves that are being amended in this filing.

Purpose of Proposed Tariff Modifications

The purpose of this filing is to extend Capacity Release Service in order to continue to provide gas marketers serving firm customers participating in the Company's gas retail choice program ("Marketers") the opportunity to obtain upstream pipeline capacity from the Company to satisfy the Commission's firm primary delivery point requirement. The current Extended One-Year Capacity Release Service expires on October 31, 2005. The Company proposes to continue Capacity Release Service for an additional year (for the 12-month period commencing November 1, 2005 and ending October 31, 2006), with the modifications proposed herein.

Specifically, for the reasons discussed below, the Company is proposing to eliminate the current mechanism that provides for the Company to credit or surcharge customers the difference between the average cost of capacity released to Marketers (as agents for customers) and the

Received: 7/25/2005

Company's weighted average cost of capacity applicable to Capacity Release Service ("WACOC").

If, however, the Commission determines that a surcharge/credit mechanism should be continued, the Company discusses below modifications to the current mechanism that the Company believes would be necessary, reasonable and appropriate in light of recent developments. In addition, the Company recommends that any such mechanism be implemented on a temporary basis, subject to the Company and the Commission taking such steps as they collectively or individually deem necessary and/or appropriate to ensure that the modified program properly implements the Federal Energy Regulatory Commission's ("FERC") capacity release rules.

Reasons for Proposed Tariff Modifications

Historically, the Company has released capacity from its capacity portfolio to facilitate end user and Marketer participation in the competitive market. In accordance with Commission policy designed to maintain a level playing field, the capacity release program has been structured so that, on a burner-tip basis, Marketers (on behalf of customers) pay for capacity released by the Company on a basis comparable to the costs customers pay for capacity as full service customers.

Ideally, this policy would have been implemented by the Company's releasing to each customer a pro rata "slice" of all firm pipeline capacity in the Company's portfolio at maximum lawful prices. However, operational, administrative, competitive and/or reliability considerations resulted in the Company's releasing capacity on some but not all of its pipeline suppliers. The Commission's policy recognized these considerations. Accordingly, implementation of the Commission's policy has been a two-step process – releasing pipeline capacity on certain of the Company's pipeline suppliers, pursuant to pre-arranged deals, at maximum lawful prices, and crediting or surcharging (as applicable) customers an amount to bring the net cost of this capacity in line with the cost of capacity reflected in the Company's full service rates.[1]

Recently, the FERC examined Atlanta Gas Light Company's ("AGL") practice of crediting the difference between its discount rates and the maximum rates at which it released capacity to gas marketers to determine whether this practice circumvented the requirement for AGL to charge marketers the pipeline's maximum rate for pre-arranged deals. The FERC then directed AGL to clarify in its Statement of Operating Conditions that it is AGL's retail customers ("end-users"), and not Marketers, that receive credits for the difference between the maximum lawful prices at which AGL releases capacity and the rate charged AGL for such capacity as of the date of the release.[2] This prompted the Company to reexamine the Company's surcharge/credit mechanism because of its similarities to the AGL program.

---

[1] Due to billing issues and associated administrative impediments, the credit/surcharge to customers (i.e., end users) has been billed to the customer's Marketer as agent for the customer.

[2] Georgia Public Service Commission, Docket Nos. RP04-92-001and 002, Order Denying Rehearing In Part And Granting Rehearing In Part And Directing Compliance Filing, Issued January 24, 2005 ("January AGL Order"), at pp. 15-16.

Received: 7/25/2005

Following issuance of the January AGL Order, the Company conferred with Commission Staff, Marketers, and other interested persons, as to the continuing implementation of the Commission's capacity release policy and the details of future Capacity Release Service to be offered by the Company, including the surcharge/credit mechanism.[3] There were (and continue to be) differing opinions as to whether the structure of the Company's current surcharge/credit mechanism comports with the letter of FERC's capacity regulations, and/or what adjustments to the mechanism would be necessary and/or appropriate to ensure compliance with the FERC's capacity release regulations. After considering the FERC's recent ruling, administrative issues associated with changing the structure of the mechanism, and the financial and competitive impacts of retaining, modifying and/or eliminating the surcharge/credit mechanism, the Company believes it should be eliminated in its entirety.

First, the Company believes that continuation of this mechanism is no longer necessary to maintain a level playing field among Marketers and the Company's sales service and to promote retail choice in the Company's service territory. The Company is proposing to continue to offer Capacity Release Service to <u>all</u> Marketers participating in the Company's retail choice program that determine they do not have a viable alternative to the Company's released capacity at a price that will enable Marketers to continue to compete and encourage migration. For the 12-month period ending May 2005, the currently-effective Capacity Release Service Adjustment ("CRSA"), which is the difference between the weighted average cost of the capacity that the Company released to Marketers and the WACOC, was approximately $0.0455 per dekatherm. During that period, each monthly CRSA was a surcharge to Marketers. For the annual period commencing November 1, 2005, the Company anticipates that this historical relationship will continue to result in a surcharge, so no argument could be made that Marketers are disadvantaged, or retail choice discouraged, by eliminating this mechanism.

Second, assuming the same participation by Marketers in the Capacity Release Program for the coming program year (i.e., almost all Marketers participating), the Company projects that the annual surcharge to all Marketers would be less than $800,000 in the aggregate and the impact on customers' bills would be de minimis. For example, assuming typical customer usage, the impact of continuing the surcharge to a typical residential customer's retail access bill would be approximately 0.35 percent and 0.40 percent to a typical commercial customer's retail access bill. Conversely, elimination of the surcharge would impact typical residential and commercial customers' full service bills by approximately 0.065 percent.

Moreover, the impact on full service customers of eliminating the surcharge is no different than if the Company were to maintain the surcharge and Marketers nonetheless elect (i) to rely on third party city gate bundled supply, and/or (ii) to obtain capacity from other than the Company, to satisfy the Commission's firm primary point delivery requirement this winter. In that event, there would be no surcharge. The Company would release this capacity in the marketplace and firm sales customers would receive the benefits of such releases absent any surcharge (which is applicable only to releases made pursuant to Capacity Release Service). While this is not expected for this coming year, Marketers have not yet committed to the

[3] In addition, following issuance of the January Order, Commission Staff explored the New York Commission's capacity release policy with members of FERC Staff.

Received: 7/25/2005

Company's Capacity Release Service and this could be the result if Marketers, in whole or in part, decide to use alternatives to Capacity Release Service.

Nor is there any evidence to suggest that maintaining or eliminating a surcharge for the coming annual period will cause Marketers or customers to participate more or less in the Company's retail choice program or that elimination of the surcharge will impact price offers that participating Marketers will make to their customers. Considering that current gas prices have been (and are expected to remain) in the range of \$6.00 to \$8.00 per dekatherm, a \$0.05 change in the cost of firm pipeline capacity has less than a one percent impact on the <u>commodity</u> portion of a customer's bill.

In accordance with the Commission's retail access policies and rulings, the Company has maintained a capacity portfolio designed to meet the needs of its firm sales customers and requests by Marketers for capacity to meet the needs of migrating customers. In doing so, the Company has worked diligently with Commission Staff, Marketers, and other interested persons to make capacity available on pipelines in a manner that makes it viable for Marketers to arrange for the delivery of gas from liquid trading points to the Company's citygate delivery points on a competitive basis (e.g., Transcontinental Gas Pipe Line Corp.).[4] The anticipated differential between the cost of released capacity and the WACOC for the upcoming winter reflects, in part, continuity in the pipelines on which the Company has historically offered marketers Capacity Release Service and the relative percentages of such capacity, and the fact that the Company has already committed supply to the remaining capacity in its portfolio to meet the anticipated needs of its full service customers (as it would not have been reasonable to defer its supply plans pending resolution of the issues prompted by the January AGL Order). Moreover, assuming Capacity Release Service continues for annual periods commencing November 1, 2006 and beyond, the Company will work to further minimize the differential between the cost of capacity released to Marketers and the Company's WACOC.

Finally, maintaining a surcharge/credit mechanism, either in its current form or with modifications, would unnecessarily cast uncertainty on the Company's capacity release program to the extent other interested persons believe that such a mechanism is not in compliance with the FERC's capacity release program.

Accordingly, as reflected in the amended tariff leaves appended to this filing, the Company recommends that Capacity Release Service be continued without a surcharge credit mechanism. Corresponding revisions to the Company's Sales and Transportation Operating Procedures Manual ("Operating Procedures") incorporating the proposed tariff modifications will be submitted under separate cover.

---

[4] Commencing November 1, 2005, the Company plans to release capacity to interested Marketers in accordance with the following allocation guideline, with any adjustments resulting from monthly changes in the Marketers' firm pools occurring on Transco:

- Transco 75%
- Texas Eastern 25%

Received: 7/25/2005

Alternative Surcharge Credit Mechanism

Should the Commission reject the Company's proposal to eliminate the surcharge/credit mechanism, and orders the Company to continue to surcharge firm transportation customers for the difference between the average cost of released capacity and the WACOC, the Company encourages the Commission to direct the Company to modify the existing mechanism and to make a compliance filing to implement a new mechanism as described below.

- For the annual period commencing November 1, 2005, the Company would continue to release capacity to interested Marketers pursuant to pre-arranged deals at maximum lawful pipeline prices, except that the releases will be to Marketers as principal instead of as agent for customers.

- The existing credit/surcharge mechanism (referred to as the Capacity Release Service Adjustment) would be superseded by a new Capacity Release Service Adjustment (the "CRSA"), which would be calculated as the difference between the Company's WACOC and the weighted cost of Transco and Texas Eastern capacity released to Marketers. However instead of the Marketer receiving this adjustment as the customer's agent, the firm transportation customer will be directly credited or surcharged though the Monthly Rate Adjustment applicable to Service Classification No. 9 firm transportation customers ("MRA") (whether or not the customer's Marketer elects to take Capacity Release Service from the Company).

- The universal application of this charge to all retail choice customers would be reasonable because Capacity Release Service is available to all customers and Marketers on an equal basis. Whether or not a particular Marketer elects to take advantage of the availability of firm capacity from the Company, or elects a different alternative to satisfy the Commission's firm primary delivery point requirement, does not change the overall cost structure of this program. Such uniform treatment is consistent with the allocation of costs associated with other retail access-related programs that are available to all customers, but elected by only some customers.

- Moreover, during the proposed one-year extension of this program, the impact of the CRSA on the overall cost of gas is projected to be de minimis in the context of a typical customer's monthly bill for gas service (as discussed above), and, as a practical matter, the Company anticipates that virtually all Marketers serving firm customers will elect Capacity Release Service for their full requirements for the upcoming annual period that the extended Capacity Release Service will be in effect.[5]

- At the end of the twelve-month period, the Company would reconcile the projected WACOC adjustment with the calculated adjustment based upon actual released capacity and actual firm transportation therms over the twelve-month period. Any reconciling amounts would be included in the Monthly Rate Adjustment applicable to firm

[5] The Company is unable to craft and apply multiple CRSAs to customers depending upon the manner in which their Marketer has elected to acquire capacity in a timely and/or cost-efficient manner for the upcoming annual period.

Received: 7/25/2005

transportation customers in the second month following the end of the twelve month period, either as an adjustment to a new CRSA (assuming the Capacity Release Service continues beyond October 2006) or as a separate reconciling adjustment (if Capacity Release Service is not continued). The tariff provides the Company flexibility to apply the adjustment over more than one month if the impact on the MRA would be material.

The foregoing modifications would serve the purpose of maintaining the Commission's policy objectives for capacity release service more clearly in accordance with the FERC's interpretation of its capacity release regulations as recently announced in the January AGL Order. Notwithstanding, should the Commission decide to order continuation of a surcharge/credit mechanism in either its current form or a modified form, the Company encourages the Commission to implement such a mechanism on a temporary basis subject to the Commission and/or the Company taking the steps either or both deem necessary to satisfy any open issues regarding compliance of a such a mechanism with the FERC's capacity release regulations.

Proposed Schedule for Capacity Release Program

Marketers interested in participating in Capacity Release Service must make binding commitments no later than 5:00 p.m. EDT on Monday, August 22, 2005, for the quantity (in dekatherms) of the Company's capacity that they are requesting to utilize commencing November 1, 2005 (which quantity will thereafter be increased or decreased in accordance with the Company's SC No. 9 Tariff). These binding commitments and the Company's obligation to release capacity in response thereto are predicated on the Commission's approval of the Company's request for a one-year extension of the Capacity Release Service as described herein.

Notices

The Company will provide for public notice of the tariff changes proposed in this filing by means of newspaper publication once a week for four consecutive weeks prior to the effective date of the 2005-2006 Capacity Release Program. Enclosed is a proposed form of Notice of Proposed Rule Making for publication in the State Register pursuant to the State Administrative Procedure Act.

Very truly yours,

Christine Colletti
Director
Rate Engineering Department

Enclosure

Received: 7/25/2005

<u>P.S.C NO. 9 – GAS</u>

Leaf 255
Revision 8
Superseding Revision 7

Leaf 256
Revision 4
Superseding Revision 2

Leaf 303
Revision 6
Superseding Revision 5

Leaf 307.1
Revision 1
Superseding Original

Leaf 309
Revision 6
Superseding Revision 4

Leaf 310
Revision 6
Superseding Revision 4

Leaf 311
Revision 2
Superseding Revision 1

Leaf 312
Revision 2
Superseding Revision 1

Leaf 324
Revision 3
Superseding Revision 2

Leaf 361
Revision 5
Superseding Revision 4

Received: 7/25/2005

Leaf 383
Revision 5
Superseding Revision 4