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

April 1, 2005

Hon. Jaclyn A. Brilling
Secretary
State of New York
Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

RE: Case Number 03-G-1671

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 its Schedule for Gas Service, PSC No. 9 – Gas ("Gas Tariff") that implement a Marketer assignment program, in compliance with the Commission's Order dated September 27, 2004 ("September 2004 Order") in the subject case.[1] The specific leaves being revised, which bear an effective date of August 1, 2005, are identified in Appendix A.[2]

Reasons for the Proposed Changes

The tariff changes proposed herein implement a Marketer assignment program, pursuant to which the Company would have the right to use or acquire pipeline capacity and/or capacity bundled with commodity ("bundled sales gas") relied on by Marketers to satisfy the Commission's primary point delivery requirement, in the event, inter alia, a Marketer defaults or voluntarily or involuntarily discontinues service permanently or temporarily for all or part of its

[1] Case 03-G-1671, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Gas Service*, Order Adopting the Terms of a Joint Proposal, issued and effective September 27, 2004.

[2] The Company has pending before the Commission in Case 05-G-0234 tariff leaves that would implement a proposed Winter Bundled Sales Service ("WBSS") program. If the WBSS tariff leaves are made effective prior to the date of the leaves proposed to implement the Marketer assignment program, the Company will take the necessary steps to conform the tariff leaves that will implement the Marketer assignment program to reflect the WBSS program.

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firm Customer requirements. The filing is made to comply with Appendix J "ESCO/Marketer Issues" of the Joint Proposal adopted by the Commission by its September 2004 Order.

Summary of Proposed Changes

Under the Company's Gas Tariff, a Marketer that serves firm gas Customers must contract for the volume of firm pipeline capacity necessary to meet the needs of its firm Customers.[3] The Marketer may meet this requirement by (i) subscribing for capacity under the Company's Capacity Release Service, (ii) acquiring capacity from an interstate pipeline company other than capacity released by the Company, (iii) purchasing gas at the Citygate from a third party supplier that has pipeline capacity, or (iv) a combination of the foregoing options. In order to ensure reliability of service to firm Customers, the pipeline capacity must be non-recallable firm transportation with primary delivery point capacity from the source of gas supply to the Citygate for each Winter Period.

To enhance reliability of service, capacity obtained by a Marketer under the Company's Capacity Release Service may be recalled by the Company, inter alia, whenever the Marketer fails to deliver the required volume of gas to Con Edison (*see* Leaf 313, Capacity Release Service, Section (I), Recalls of Capacity). This right of recall also provides the Company the opportunity to mitigate the volumes of capacity that the Company may otherwise retain to maintain reliability of service to all firm Customers.

Capacity obtained by a Marketer other than from the Company (either directly from a pipeline or as part of a bundled sales arrangement) must be non-recallable by the person from whom the Marketer obtained its rights. However, Con Edison currently has no right to use or acquire this capacity if, for example, the Marketer fails to deliver the required volume of gas to Con Edison's Citygate to meet the Marketer's firm Customers' requirements. The absence of such a right reduces opportunities for the Company to mitigate its capacity commitments and requires the Company to take other steps to maintain reliability.

Con Edison makes capacity commitments as are necessary to maintain reliability for all firm Customers on its system, including those served by Marketers. As Customers migrate to Marketers under Con Edison's retail access program, the Company may have the opportunity to reduce or restructure its capacity portfolio, for example, when Marketers elect to meet the needs of their Customers with pipeline capacity acquired other than from the Company. At the same time, the Company must be prepared in the event a Marketer(s) does not meet its delivery obligations.

The extent to which the Company can reduce its capacity portfolio depends upon a myriad of factors, including the expiration dates of existing contracts; projected growth; the availability of firm transportation with primary delivery point capacity to the Company's Citygates; whether the Company will be required to make capacity available to Marketers that had been using third party capacity to serve their firm Customers; and judgments as to whether,

[3] The volume of capacity for each Marketer is determined in accordance with the Company's Gas Tariff and depends, in part, on which balancing service the Marketer elects.

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when and the extent to which Customers served by Marketers may elect to switch back to the Company's full service tariff.

All else being equal, the Company should have a greater opportunity to reduce its capacity portfolio as Customers migrate if Marketers acquire long-term firm primary delivery point pipeline capacity and the Company has rights to use or acquire that capacity in the event of a Marketer's default, than if the Company must rely on other capacity to serve these Customers and maintain reliability.

The purpose of a Marketer assignment program is to replicate the capacity recall rights available to the Company under the Capacity Release Service for third party capacity and/or bundled sales gas relied on by Marketers to serve firm Customers.

The proposed program is similar to the program proposed by Orange and Rockland Utilities, Inc. ("O&R") on January 23, 2004 in Case No. 02-G-1553, and subsequently postponed through August 1, 2005 by letter dated August 9, 2004. As was indicated in that letter, Staff requested that the filing be postponed rather than be cancelled, as had been requested by O&R on July 29, 2004, to give the parties more time to agree upon the parameters of such a program. Representatives of Con Edison participated in discussions with Staff, Marketers and other interested parties regarding the structure of the O&R program. In seeking to develop its program, Con Edison was unable to resolve the same critical impediment that confronted O&R in seeking to replicate capacity recall rights for third party capacity – establishing the Company's contractual rights to such capacity in a manner that prevents the Marketer and/or the pipeline company from thereafter amending critical terms of the underlying capacity arrangement without Con Edison's prior knowledge and/or consent.

Con Edison has not yet been able to resolve that issue. Notwithstanding, pursuant to its commitment under its Gas Rate Plan, and because the premise of a Marketer assignment program has merit to the extent it may, someday, enable the Company to mitigate its capacity costs without compromising reliability, the Company is proposing to establish a Marketer assignment program in order to gain "real-world" experience in the recall of third party capacity and possibly resolve existing impediments. "Real-world" experience includes testing the actual exercise of such recall rights, the success of which is as critical, if not more critical, than having in place irrevocable contractual rights. For example, even assuming that the necessary contractual arrangements are in place, the program will only work to enhance reliability, and possibly mitigate costs, if the operating personnel of the pipelines and, where applicable, third party suppliers, are ready and willing to act solely on the direction of Con Edison on a critical winter day (notwithstanding the potential for contrary advice from a Marketer) to effectuate delivery of the necessary gas to the Company's Citygate.

Accordingly, although the Company sees no opportunity to restructure its capacity portfolio by reason of this program for the coming winter, or for succeeding winters (absent resolution of the contractual impediments and/or experience that otherwise demonstrates that it would be reasonable for the Company to rely on some portion of such capacity for reliability purposes), the operation of this program may create such opportunities in the long term.

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To effectuate this program, the proposed tariff amendments establish the following requirements. For a Marketer relying on bundled sales gas, there must be a written agreement among the Company, the Marketer, and the Marketer's third party supplier, that provides the Company an irrevocable right to effectuate an assignment of all or a portion of the Marketer's bundled Citygate supplies for all or a portion of the applicable Winter Period. For a Marketer relying on third party pipeline capacity, there must be either a three-party (among the Company, the Marketer and the pipeline) or two-party (between the Company and the Marketer) agency agreement that irrevocably designates the Company as Marketer's agent for purposes of initiating and effectuating a pre-arranged capacity release(s) to the Company of all or a portion of the Marketer's pipeline capacity. The three-party agreement would preclude any changes to the underlying pipeline contract for the applicable Winter Period absent the written consent of Con Edison. For the two-party agency arrangement, the Marketer must also demonstrate through an affidavit and/or supporting documentation that it has taken all of the available and necessary steps under the pipeline's tariff to designate the Company as Marketer's Agent for purposes of initiating and effectuating a pre-arranged capacity release(s) to the Company of all or a portion of its pipeline capacity during the applicable Winter Period.

The Company will amend its Gas Transportation Operating Procedures to include sample forms of such agreements.

As was proposed by O&R, all Marketers electing to meet their primary point obligations with third party pipeline capacity and/or bundled gas will be required to provide the Company such assignment rights in order to be eligible to serve firm Customers on the Company's system. Absent such a requirement, Marketers may elect not to participate (there being no immediate tangible benefit to the Marketer), which would significantly reduce the potential value of this experimental program. It would also create an inequitable situation among participating and non-participating Marketers.

As provided in Appendix J, the Company proposes that the tariff changes take effect on or before August 1, 2005, if this program is to be effective for the Winter Period commencing November 1, 2005, and if the tariff amendments are not made effective by that date, that the program be effective for the "first Winter Period following the August 1st on which the proposed tariff changes are in effect."

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 proposed tariff leaves. Enclosed is a proposed form of Notice of Proposed Rule Making for publication in the State Register pursuant to the State Administrative Procedure Act. Also, a copy of this filing will be sent via electronic mail to all parties in Case No. 03-G-1671, including gas Marketers qualified to serve firm transportation Customers in the Company's service territory.

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Sincerely,

Christine Colletti
Director
Rate Engineering Department

Enclosures

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PSC NO. 9 – GAS

Leaf 256
Revision 3
Superseding Revision 2

Leaf 264
Revision 5
Superseding Revision 3

Leaf 309
Revision 5
Superseding Revision 4

Leaf 310
Revision 5
Superseding Revision 4

Leaf 313.1
Revision 0
Superseding Revision

Leaf 313.2
Revision 0
Superseding Revision