

Demand Response & Energy Consulting, LLC

September 21, 2009

Jaclyn A. Brillling, Secretary
New York State Department of Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: **Proceeding on Motion of the Commission to Consider Demand Response Initiatives, Case No. 09-E-0115**

Dear Secretary Brillling:

Attached please find Energy Curtailment Specialists, Inc.'s comments, pursuant to the New York State Public Service Commission's ("PSC") request for comments published in the New York Register, NYS Register/July 8, 2009, page 20, I.D. No. PSC-27-09-00016-P, and Notice Soliciting Comments dated August 26, 2009, regarding Consolidated Edison's filing in the above captioned proceeding. In addition, one copy will be sent via Fedex.

Sincerely,

/s/ B. Marie Pieniazek

B. Marie Pieniazek

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BEFORE THE
STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission)
To Consider Demand Response Initiatives) **Case 09-E-0115**

Initial Comments of Energy Curtailment Specialists, Inc.

Pursuant to the New York State Public Service Commission’s (“Commission”) request for comments published in the New York Register, NYS Register/July 8, 2009, page 20 I.D. No. PSC-27-09-00016-P, and Notice Soliciting Comments dated August 26, 2009¹, Energy Curtailment Specialists, Inc. (“ECS”) respectfully submits our comments regarding the filing made by Consolidated Edison Company of New York, Inc. (“ConEd”) in the above captioned proceedings.

I. COMMUNICATIONS

All communications, correspondence, and documents related to this proceeding should be directed to the following individuals:

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II. INTRODUCTION

ECS is one of the nation’s largest full service demand response and energy management companies, and a leading demand response provider for commercial,

¹ Proceeding on Motion of the Commission to Consider Demand Response Initiatives, Notice Soliciting Comments, dated August 26, 2009;
<http://documents.dps.state.ny.us/public/Common/ViewDoc.aspx?DocRefId={24C40188-5DE1-4940-8EFF-B486D1A8AC8B}>

industrial, and institutional customers. Upon belief, ECS has more than half of all the Megawatts (“MW”) participating in the New York Independent System Operator’s (“NYISO”) Special Case Resource (“SCR”) Installed Capacity demand response program, and is the largest single supplier of In-City (Zone J) demand response. ECS’ market share is even higher when considering only resources that are participating through demand response providers or aggregators, as opposed to those bidding directly as a capacity resource vis-à-vis NYISO.

ECS would like to thank the Commission for their support to enhance and further develop demand response program within ConEd’s service territory, NYISO Zone J, over the past several years. ECS respectfully submits the following comments regarding ConEd’s proposed Demand Response Initiatives. ECS’ comments will focus on ConEd’s proposed Commercial System Relief Program (“CSR”) and the Network Relief Program (“NRP”).

III. COMMERCIAL SYSTEM RELIEF PROGRAM (CSR)

A. Trigger Mechanism and Advance Notification

ConEd proposes to trigger the CSR when ConEd’s Zone J load reaches 92.5% of the day ahead load forecast. While ECS supports this clear trigger mechanism, which will provide not only Aggregators but participants with transparency, it should be noted that ConEd has not indicated how they will communicate this information to participants and/or Aggregators. The Commission should direct ConEd to provide the annual Zone J load forecast, as well as the daily Zone J load information. This can be easily accomplished by providing this information on ConEd’s website. A prime example is the NYISO website, as the actual load is posted on the front page of the website. ConEd could provide the load forecast to Aggregators/Customers prior to the start of the

program year, and then post the hourly load, in Zone J, on their website. Even with a transparent trigger, the trigger will be of little use if this critical information is not provided.

B. Capacity Pricing

ConEd has proposed to establish a \$12.00 kW monthly price for distributed generation and a \$14.00 kW month price level for “pure” load curtailment. ConEd indicated, in their filing, that the NYISO Summer 2009 Strip Auction price was used to set the reservation payment. During the collaborative meetings it was suggested that ConEd index the pricing by utilizing the past Summer Strip, Monthly, and Spot market auctions. Additionally, ConEd has not taken other market factors into account, such as the retirement of the Charles Poletti plant. The closing of the Poletti facility will substantially increase NYISO Capacity prices for Zone J starting in February 2010.²

ECS submits that should pricing not be substantially increased over the NYISO current market pricing ConEd will have little to no participation within the CSR. ConEd is proposing, for their CSR, a longer call window, more frequent calls, and a substantial increase in the number of hours than the NYISO SCR program. When looking at ConEd’s CSR, compared to the NYISO SCR program, without a substantial increase in the revenue stream participants will opt to participate in the NYISO program rather than the CSR. Several factors will push customers to participate in the SCR program, which is outlined below under Call Window, CBL, and the Penalty sections.

C. Call Window, Frequency of Calls, and Hours of Participation

² Cessation of Operations-825 (nominal) MW Generator Unit at the Charles A. Poletti Site, Queens County, New York, dated August 5, 2009, http://www.nyiso.com/public/webdocs/services/planning/planned_gen_retirements/20090805124110269.pdf

ConEd, in their June 1, 2009 filing, proposes to establish a call window between the hours of 11 am and 7 pm, based upon the fact that ConEd's peak extends beyond the 5 pm hour. Clearly, ConEd will be looking to the industrial and commercial sector of the market to reduce ConEd's system peak beyond the 5 pm timeframe. As recently recognized by the Ontario Power Authority, reducing the call window from 8 pm to 6 pm in their DR3 program, enhances the ability for commercial and industrial loads to fully participate in the DR3 program. Many commercial and industrial customers that might potentially participate in ConEd's CSRP do not operate their businesses beyond the 5 pm timeframe, therefore would be unable to participate in the CSRP, even though they can provide a significant amount of value until 5 pm.

ECS submits that ConEd should not look to commercial and industrial customers to reduce peaks that occur after the 5 pm window. ConEd's June 1, 2009 filing clearly indicates that 36% of the peak demand contribution comes from residential and multi-family residential customers.³ At the very least 36% of ConEd's peak, which occurs after the 5 pm window, is driven by the residential sector of the market. It is clear to ECS that ConEd needs to focus their efforts on fully developing a residential demand response program that will address the residential peaks that occur between 5pm and 7 pm.

During the collaborative meetings ConEd indicated their willingness to split the call window, allowing for three options of enrollment in the CSRP. The first would be an option to enroll in the 11 am to 7 pm window with full reservation payments, the second would be enrollment in a 1 pm to 5 pm window with one-half of the reservation payment, and third would be enrollment in a 5 pm to 9 pm window; again the participant would only receive one-half the reservation payment. There are two critical issues pertaining to

³ Case 09-E-0115, Proceeding on Motion of the Commission to Consider Demand Response Initiatives, Assessment of the Potential for Cost Effective Demand Response by Consolidated Edison Company of New York, Inc., June 1, 2009, page #15, Figure #2, CECONY Peak Demand Customer Type Contribution (Data Based on 2007 Load Study)

the split window enrollment option. The first pertains to concerns with ConEd's ability to evenly match enrollment in both the split enrollment windows. Therefore if ConEd does not receive exactly the same number of MWs enrolled in both the split windows then some customers will be left out of the program. The only option will be for these customers to enroll in the 11 am to 7 pm window. The second issue pertains to the participant receiving one-half the reservation payment. ECS sees no compelling reason why a participant would enroll in the split window CSRP. The participant could simply enroll in the NYISO SCR program and receive full reservation payments, where performance is based on a four hour call window, and receive more revenue through the NYISO SCR program, than would be available in the split window CSRP. Little will be accomplished, if nothing at all, by splitting the window into two call time periods. Again, the real issue here is that ConEd is looking for the commercial and industrial sector to assist in reducing peaks beyond the 5 pm timeframe that occur due to residential load.

To further address the duration of ConEd's proposed window, the current NYISO SCR program allows participant performance to be based on the best four consecutive hours within an event. Therefore if the NYISO calls the SCR program for six hours the participant's performance will be based on the best four consecutive hours within the called event. ConEd is proposing that the CSRP would have an option of 10 calls lasting 8 hours in duration. Although ConEd believes the call hours and duration will be less, there is still an option to call these events. However, the fact remains that ConEd is proposing a program that will expose participants to longer and more frequent calls, based on a CBL performance calculation, for little increase in revenue. ECS would state for the record they will fully advise their customers of these facts, advising customers

that the CSRP will expose them to more frequent and longer call periods, for little increase in revenue.

ECS implores the Commission to review the numerous studies which have shown that increased frequency and duration of calls on participants will lead to a less reliable resource as fatigue starts to set in. One only needs to look to the California market, Southern California Edison's Capacity Bidding Program in particular, for evidence of this. Several consecutive days of two hour event days has left to a program that now has very few, if any, participants.

D. CBL

ConEd has proposed to utilize the NYISO CBL method to measure and verify load reductions obtained through CSRP participants. The Commission should be cautious regarding the use of CBL and the weather adjustment associated with the CBL. While the weather adjustment is an important design, and critical when utilizing a CBL method, there is an opportunity for gaming associated with the NYISO CBL weather adjustment.

The NYISO's weather adjustment states; for participants who choose this election, a two-hour period beginning with the start of the hour that is four hours prior to the commencement of the event through the end of the hour three hours prior to the event will establish the adjustment factor to be applied to the Average Day CBL formula. With a day ahead advance notice, and a clear trigger mechanism (92.5% of ConEd's Zone J Peak Forecast) participants will have the ability to increase their load in day to take advantage of the weather adjustment. Although there is a twenty percent increase, or decrease, cap there is still an opportunity for gaming associated with this adjustment in place. The Commission should ensure that the weather adjustment does not become a

mechanism for artificially increasing load, on the day of a called event, which will lead to higher reservation payments for doing nothing.

Utilizing a baseline in line with NYISO's Average Peak Monthly Demand (APMD), we believe, would make the most sense. As the Commission may be aware, the NYISO recently reviewed the possibility of changing the APMD methodology to a different methodology, including possibly the CBL methodology. As the NYISO has made clear recently, the APMD will remain the basic construct of the measurement of performance in NYISO's capacity based program. The Commission should strongly consider bringing the Con Ed program measurements in line with the NYISO program and defer to the expertise that the NYISO has brought to bear in making their final determination.

E. Penalty and Derating of Participants

ConEd proposes a penalty that is two times the capacity reservation payment should participants underperform during an event. In addition, the participant will also be derated going forward for any remaining months within the summer or until the next event/test.

ECS strongly recommends that the Commission consider reducing the penalty, so that the CSRP lines up with the NYISO SCR 1 ½ times the capacity payment. There would be no reason for a participant to enroll in the CSRP program, which will not only derate the participant, but seeks to penalize the participant beyond what is expected in the NYISO SCR program. ECS is the largest demand response provider in the New York City location and expresses deep concern with this penalty structure, a concern that will by necessity be fully communicated to all our New York City customers. As is customary with other Aggregators, ECS generally assumes full risk of non-performance

of customers in the NYISO program. We will likely be unable to do so in this program given the high penalty, the CBL methodology and call windows which serve to punish a majority of our existing customers. In good faith ECS cannot promote such a program to our customers without fully disclosing the additional penalty risk, coupled with increased call hours, increased call durations, and little increase in revenue.

F. Limit Participation from Distributed Generation Resources

In ConEd's June 1, 2009 filing the company proposed a cap on distributed generation ("DG"). ConEd has proposed a cap of thirty percent for the CSRP demand response enrollment. However, through the collaborative meetings it became extremely clear that many of the DGs that operate in demand response programs have much higher emissions (which the new DR initiative seeks to limit) than the peaking units have under normal operations. As indicated, through e-mail from both the DEC and US Power Generating⁴, diesel fired distributed generation older than the vintage year 2000 emits 26.6 NOx (lb/MWh) and the Gowanus GTs, when operating on natural gas, emits 5.33 NOx (lb/MWh).

ECS requests that the Commission limit the use of diesel fired distributed generation to 20%, thereby lowering the cap from 30% to 20%, based on the above information. ECS would also support ConEd's proposal, as developed through the collaborative meetings, that DR achieved through the use of distributed generation, be based on model vintage year 2000 or newer. This will ensure that demand response is not operating dirty distributed generation in lieu of operating the peaking units, which have lower emissions when utilizing natural gas. ECS would ask that the Commission

⁴ E-mail from John Barnes, DEC on August 28, 2009, and response from Liam Baker, US Power Gen dated September 1, 2009, subject: DEC's Action items-August 27th Conference Call

lower the cap from 30% to 20% for diesel distributed generation and allow no cap on distributed generation which has a vintage year greater than or equal to the year 2000.

In addition, ECS also supports ConEd's proposal to provide "pure" load curtailment with a \$2/kW-month increase in reservation payments. The increased reservation payment will incentivize Aggregators to look for customers that can reduce load without the use of older and substantially dirty distributed generation.

IV. NETWORK RELIEF PROGRAM (NRP)

A. RFP Process

ConEd proposes the Commission allow the company to issue a Request for Proposals ("RFP") for MW relief in certain hours, over a number of years, that would defer T&D infrastructure for chosen networks. ConEd is proposing a program that will allow respondents to provide specific network projects that can assist the company in managing specific networks, based on either daytime or nighttime peaking needs.

ECS proposed an open enrollment Network Relief Program, based on daytime or nighttime peaking of the network, in their DLRP comments submitted to both the Commission and ConEd in February 2009.⁵ This proposal would allow all demand response Aggregators and participants to enroll in ConEd's NRP. The Network Relief Program can be designed to provide revenue to participants based on ConEd's predetermined need of each network. For Networks that experience peak demands during evening hours ConEd would provide revenue only to those participants that would be available during the predetermined hours, and the same would apply for ConEd Networks that peak during the daytime hours.

⁵ Tariff Filing of Consolidated Edison Company of New York, Inc. to Modify Rider U-Distribution Load Relief Program Case 08-E-0176 & 07-E-0392, February 23, 2009.

B. Benefits of Open NRP Program

ECS does not support an RFP process first and foremost because participants that are currently under contract with an Aggregator will be barred from participation should the participants Aggregator not be awarded MWs during the RFP selection process. Should ConEd seek to only select one or two Aggregators there will potentially be several hundred MWs barred from participating in the NRP. An RFP process could lead to the selection of an Aggregator, or Aggregators, that actually cannot deliver the resources to market.

ECS believes that through an open market program ConEd can maximize the number of participants, and MWs of enrollment. Additionally, an open market program will provide a level playfield for all participants and Aggregators, and will eliminate an unfair advantage that the winning Aggregator(s) might have over other Aggregators. One reason the NYISO SCR program has been so successful is that all Aggregators and participants operate under the same set of rules, and pricing to some degree. ECS believes an RFP process will be too restrictive and will create an unfair advantage in the marketplace. If ConEd is truly looking to maximum load relief within specific networks, the best way to accomplish this goal will be to open up the NRP to all Aggregators and customers, thereby maximizing the number of participating customers and Aggregators.

V. OTHER COMMENTS

A. DLRP Program

ConEd indicated in their June 1, 2009 filing that in the future the DLRP program should continue as a voluntary program for which participants will receive only energy payments during emergency based events. ConEd believes this change will allow the

company to have additional demand response resources that can respond for emergency situations. ECS does not support ConEd's position for the reasons stated below.

Prior to participants receiving revenue for their availability (starting in year 2007), the DLRP had very little participation. The program only expanded in growth after Aggregators were allowed to enroll participants, and said participants were able to receive an availability payment for their additional demand reduction exposure. Now after several years of refining the program ConEd now proposes, at some future date, to convert the program back to its once existing state. Should the Commission allow this to happen, in the future, the DLRP will once again have very little, or no, MWs enrolled in the program. How will this assist ConEd in having additional MWs available for emergency situations? Moreover, any resource that wants to respond in a voluntary fashion could simply participate in NYISO's voluntary program known as the Emergency Demand Response Program.

B. Billing Interval Meters

ConEd proposes that all participants will be required to have Billing Interval Meters (BIM's) installed, with associated communications, in order for parties to participate in their proposed new demand response programs. To date many ConEd customers, which participate in DLRP, have been transitioned to BIMs. ECS would like to express to both the Commission and ConEd its full support in requiring all customers, which choose to participate in ConEd's new demand response programs, to utilize a ConEd BIM provided ConEd addresses and clearly outlines issues such as (1.) cost of hardware and communications which are needed; (2.) timely installation of all requested meters, including a clear timeline starting from the Aggregators request, invoicing to Aggregators by ConEd, and installation by ConEd; and (3.) aggregators ability to access

data in real time. If ConEd addresses the three main issues above, this will provide a transparency with costs, installation, and access to data.

(1.) **Cost of Metering Hardware and Installation:** ECS firmly believes that additional costs associated with the installation of a ConEd BIM should not be borne by the customer or aggregators, as ConEd will reap substantial benefits associated with the advanced meter installation. Clearly aggregators and their customers should not have to incur costs to access the customer's energy usage data, in real-time or otherwise. To date many customers and virtually every aggregator has already incurred some, if not all, the costs associated with shadow meter installations needed to participate in the NYISO SCR program. It is unclear if NYSERDA will continue to fund for BIM installations under ConEd's new demand response initiative, therefore any costs not covered by NYSERDA should be borne by ConEd and not the Aggregator or the participant.

(2.) **Timely Installation:** ConEd proposes to require all participants to installed BIMs and communications in order to participate in ConEd's new proposed demand response programs. While ECS understands ConEd's desire to eliminate the use of shadow meters, ECS strongly recommends to the Commission that language be added now that will ensure timely installation of ConEd BIM's for Aggregators and their customers. Installation of meters must be completed within an adequate timeframe enabling customers and Aggregators to have timely enrollment in the program(s). The Commission

must direct ConEd to establish a clear timeline addressing the following issues:

- a. Number of days, or weeks, from Aggregator/Customer initial request for BIM installation to the time when ConEd will invoice Aggregator/Customer. During BIM installation, under Rider U, ECS experienced difficulty in some cases obtaining an invoice from ConEd for the BIMs. ConEd would not start installation work for BIMs until after the invoice was paid in full. However, it took several weeks to receive an invoice from ConEd, which caused meter installation delays. In order to expedite the process, ECS even offered to post a large deposit with ConEd that they could apply towards the meters. ConEd could not accommodate that request. The point is that the Commission cannot continue tying a deadline for installation to the payment of the invoice, as there is no control currently over how long it might take to actually invoice the aggregator. We cannot pay something we don't have an invoice for.
- b. Number of days, or weeks, once the Aggregator/Customer pays the ConEd invoice in full that ConEd will have to install BIMs. If ConEd does not adhere to the timeline the associated customers will receive program revenue even though the BIM is not installed.

(3.) **Providing Aggregators Access to Meter Data:** While ConEd is quick to present their case for a need to move towards all customers using ConEd BIM's, they have not necessarily been as prompt in providing Aggregators

access to metering data, for their customers whom participate in ConEd's current DLRP program. It is absolutely imperative for an Aggregator and, more importantly, the customer itself to have seamless access to the BIM data and this access should be at ConEd's cost. Aggregators play a critical role for their customers, in many cases providing near real-time energy usage through their ability to access this usage. Under current program rules, Aggregators can provide metering and/or equipment that provides customer energy usage data in real-time, and both the customer and the Aggregator has the ability to access the energy usage, thereby allowing for greater energy usage information and decisions in real-time. It is critical for Aggregators to have this ability during tests and/or events. Allowing access to critical curtailment data in real-time, which enable Aggregators to tap additional curtailment from their pool of customers, in near real-time, means a better and more reliable performance by the resource and the Aggregator. Without real-time energy usage information, Aggregators and their customers will have no way of knowing what additional steps need to be taken to ensure adequate performance during tests and/or events.

Aggregators that are used to quick turnarounds in installing shadow meters should have the same assurance if it is ConEd that is doing the installation. ECS **strongly** requests that the Commission not only impose strict turnaround times for ConEd to install the metering, but also provide some type of sanction should metering and invoicing timelines not be adhered to.

C. Marketing to ConEd Customers

ConEd proposes to develop marketing materials that will outline not only the CSRP but the NRP as well. This marketing effort will focus on program features, benefits, eligibility requirements, and financial incentives. ECS expresses and implores the Commission to consider the extreme confusion this will cause to end use customers. ConEd should not be allowed to market the CSRP without also advising customers of the current NYISO SCR program and comparing the benefits, risks, and financial incentives of both programs.

ECS firmly believes that end use customers must be fully educated on the program offerings that are available. Educating customers must include financial incentives for participation, call hour exposure, call duration information, comparison of program rules, and penalties. This education must go beyond just ConEd's offering but must also include wholesale market program offerings. If not, how will customers know that there are other available programs to choose from? Customers must have all the facts before they can make a clear determination of which program will best fit their business operations. It is ECS' belief that marketing of ConEd's demand response programs would be more efficiently handled by NYSERDA, who should be required to market all available programs, both the NYISO SCR program as well as new ConEd demand response programs.

VI. CONCLUSION

As ECS has expressed during the collaborative meetings the current proposed CSRP program will find much difficulty competing with the NYISO SCR program for several reasons as outlined in our comments. Based on the current proposed market design, and the modifications that ConEd is unwilling to make, ECS cannot recommend

participation in the CSRP to any of its current customer base. To recap, ECS believes participation in the CSRP will be limited based on the following facts:

- 1) Current pricing incentives when compared to the NYISO ICAP market do not justify the additional call hours, penalties, and call durations.
- 2) Program penalties are higher than current NYISO SCR penalties. NYISO utilizes 1 ½ times capacity price and ConEd is proposing 2 times the reservation payment as well as immediate de-rating, compared to de-rating which occurs in subsequent periods in NYISO program.
- 3) Performance and penalties are based on available call window from 11 am to 7 pm, which is beyond most C&I's normal operating hours. For any participant that does not operate beyond 5 pm (i.e. 1st shift manufacturing facilities; any large commercial buildings, etc) this will result in underperformance, and penalty, based on the CBL M&V methodology.
- 4) 10 events, lasting 8 hours in duration is double the called event hours, to date, that has been experienced by participants in the NYISO SCR program.

In conclusion, ECS respectfully submits:

- 1) The Commission should direct ConEd to provide, publicly, the annual Zone J load forecast, and daily Zone J load information.
- 2) Capacity pricing should be indexed utilizing the three NYISO auctions, Strip, Monthly, and Spot auction, and accordingly adjusted to meet current ICAP pricing versus what is anticipated over the coming years in light of the Poletti shutdown and other market conditions.

- 3) The Commission should direct ConEd to further develop their residential demand response programs. This will address ConEd's peaks that go beyond the 5 pm timeframe.
- 4) The Commission should reduce the call window to 11 am to 5 pm, which will reduce the number of call hours and duration of call events.
- 5) The Commission should direct ConEd to establish a verification method that will detect, and reduce gaming, associated with the CBL weather adjustment.
- 6) The Commission should reduce the penalty associated with ConEd's CSR program that will bring the penalty and de-rating in line with the NYISO SCR program.
- 7) The Commission should reduce the use of diesel fired distributed generation, for vintage years earlier than 2000, from 30% to 20%, and remove the cap on all distributed generation which utilizes vintage year 2000 and greater.
- 8) The Commission should eliminate the RFP process, and replace with an open market Network Relief program. This will allow all Aggregators/Customers to participate in a ConEd Network Relief program.
- 9) The Commission should direct ConEd to develop a complete and clear timeline for ConEd BIM installations. This timeline should fully reflect, and outline, the length of time from when the Aggregator/Customer seeks installation of the BIM from ConEd, to obtaining the invoicing from ConEd, through installation by ConEd once the invoice is paid by the Aggregator/Customer.
- 10) The Commission should order that the costs of all BIM meters, installation and meter communications be fully borne by Con Edison.

11) Ability to access data from ConEd BIMs in real-time is an issue that must be addressed. The Commission should direct ConEd to develop a method for Aggregators to access BIMs in real-time as soon as possible.

12) Marketing of new ConEd demand response programs should fall under NYSERDA's jurisdiction, thereby allowing NYSERDA to market all demand response programs, such as NYISO SCR program, to all C&I customers in ConEd's (Zone J) service territory.

ECS thanks the Commission staff for the opportunity to provide our comments.

Respectfully submitted,

/s/B. Marie Pieniazek

B. Marie Pieniazek

Authorized Agent for

Energy Curtailment Specialists, Inc.