

**NEW YORK STATE PUBLIC
SERVICE COMMISSION**

Proceeding on Motion of the Commission to
Consider Demand Response Initiatives

PSC Case No. 09-E-0115

**COMMENTS OF THE RIVERBAY CORPORATION
IN RESPONSE TO THE PETITION OF
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
FOR APPROVAL OF CHANGES TO DEMAND RESPONSE PROGRAMS**

RIVERBAY CORPORATION

By its attorneys,

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INTRODUCTION

Riverbay Corporation (“Riverbay” or “Coop City”) respectfully submits these comments to the New York State Public Service Commission (“Commission”) in response to the Petition of the Consolidated Edison Company of New York, Inc. (“Con Edison”) for approval of certain changes to its Demand Response (“DR”) programs. As noted herein, Riverbay objects to those portions of Con Ed’s Petition which would exclude customers receiving service under Con Ed Service Classification 11 from participating in DR programs; objects to the proposed corresponding modifications to the tariff language of Riders S and U; requests that the tariff language be amended to expressly include SC-11 customers as permitted participants; and requests inclusion of all Distributed Generation assets in Environmental Justice Areas which are in compliance with applicable emission requirements to the extent that said assets displace or reduce overall system demand in Zone J.

Riverbay

Riverbay Corporation, commonly known as “Coop City”, is a residential cooperative located on 330 acres in the Baychester section of the Bronx. Riverbay is located entirely within a potential Environmental Justice Area as established by New York State Department of Environmental Conservation Commissioner Policy 29 on Environmental Justice and Permitting (CP-29)¹, [Ex A, DEC Map of Potential Environmental Justice Areas in North Central Bronx County].

Riverbay was formed pursuant to Article II of the Private Housing Finance Law, referred to as the “Mitchell-Lama” program, to provide affordable housing for middle income households. Riverbay consists of 15,372 residential units, 14,900 of which are residential apartments located in 35 high-rise towers and 472 of which are townhouses located in seven (7) separate clusters. Riverbay also contains three (3) separate shopping centers, 50 commercial offices located on the ground floor of the various high rise towers, 8 multi-story garages with 10,790 parking spaces, a forty megawatt (40MW) electric generating facility, and various recreational and community facilities. Riverbay has over 1,000 employees, including its own police force, and is home to approximately 60,000 individuals.

The Mitchell-Lama program creates affordable housing by providing low cost financing for land acquisition and construction, and by partial real property tax exemptions to assist completed projects. In cooperative projects such as Riverbay, residents are required to meet certain income standards for admission. Maximum income levels, which vary by household size and other factors, currently range from \$58,826 for a 1 bedroom unit to \$140,760 for a 3 bedroom unit. Residents purchase their housing units at below market prices and agree to forego any gain

¹ Potential EJ Areas are 2000 U.S. Census block groups of 250 to 500 households each that, in the 2000 Census, had populations where at least 51.1% of the population in an urban area reported themselves to be members of minority groups. All of Coop City is included in said description and is so identified on Exhibit A.

on their units when they move out in exchange for long term affordability.

Riverbay is financially self-sufficient, and derives nearly all of its operating revenue from monthly maintenance payments made by its shareholders. Over the last few years, Riverbay has struggled to balance the need to rebuild all of its garages, replace all of its windows, repair all of its roofs, balconies and facades, construct a co-generation facility, and otherwise complete major capital repairs necessitated by its age and by the inadequate initial construction work performed when the community was built nearly fifty (50) years ago. Riverbay's ability to increase monthly maintenance is severely limited by State law, the current economy, and the ability of its residents, the majority of whom are now elderly households on fixed incomes, to afford higher monthly maintenance. As such, Riverbay has met these needs by increasing its debt and by the implementation of systems designed to increase operational efficiency, including energy and water conservation.

Riverbay is governed by a volunteer board of directors, elected by its residents. Riverbay is an extraordinarily diverse community in terms of race, national origin, and religion. Riverbay is a naturally occurring retirement community, is located entirely within an Environmental Justice Area, and upon information and belief, houses the highest percentage of disabled residents of any residential community in New York City.

When it was originally constructed in the 1960's, Riverbay was designed with a central boiler system for the supply of heat, hot water and chilled water for cooling. The initial design also contemplated that Riverbay would have the capability to produce approximately 6 MW of electricity. A central power plant, together with the requisite feeders to connect Riverbay to the local grid, were designed and constructed. In response to significant political pressure, and in furtherance of the then dominant thinking that electric generation should be vested in a regulated public utility, Riverbay gave up the ability to generate its own electricity. In response to the

incentive created by a new electric service classification, Riverbay began receiving all of its electrical service under Con Ed SC-13, "Bulk Power – High Tension – Residential Apartment Complex".

For approximately 46 years, Con Edison was required to supply Riverbay's entire load, which has a peak demand of approximately 24 MW.

In 2004, Riverbay obtained a portion of the financing necessary to perform a number of capital repairs and improvements to its aging infrastructure. Among the projects undertaken by Riverbay were the replacement of 180,000 leaky and energy inefficient windows, the replacement of the aging central high pressure boiler, and the construction of a co-generation facility.

In March of 2011, Riverbay certified its cogeneration facility as a QF with the Federal Energy Regulatory Commission. The newly existing Cogeneration Plant is a nominal 40 MW combined cycle plant, consisting of two dual fuel Siemens SGT-400 Gas Turbines with a nominal rating of 12.9 MW; two once through steam generators; a dual fuel 150,000 pph Auxiliary Boiler; and a 15 MW steam turbine.

Each unit can operate alone or in conjunction with other units. The combination of one Combustion Turbine and the Steam turbine are required for supplying Coop City's load. All units are connected through a common electric system so that production can either match Coop City's load, thereby displacing the need for Con Ed to supply this power, or ramped up to produce more power than required by Coop City.

Coop City installed new switch gear and meters to enable the power plant to interconnect with Con Ed's local grid. The electric service interconnection is supplied by four 26.4 kV feeders that connect directly to Con Edison's Parkchester Substation.

During normal operation the plant supplies Coop City's entire residential and auxiliary load. Excess electrical power generated by Coop City's power plant may be exported to Con Ed's

grid via the 26.4kV utility high tension feeders. The maximum export capability is 30 MW, limited by conditions on the utility grid and by the Interconnection Agreement negotiated by Riverbay with Con Ed.

Riverbay and Con Ed worked together extensively during this process to negotiate the safe and reliable interconnection of the Riverbay facility with Con Ed's existing distribution system.

Discussion

In its February 17th, 2009 order initiating the Demand Response Proceeding, the Commission directed Con Edison to consider and propose cost effective measures to reduce system peaks in Zone J by reducing demand. Con Edison was further directed to consider the impact of DR proposals on air emissions in environmental justice areas.

Con Edison proposed a number of programs which focused on reducing demand. According to Con Edison, despite "various marketing efforts", enrollment in the initial DR programs was small and participant performance was disappointing. Con Edison then proposed various modifications which were adopted in part by the Commission in a January 20th, 2011 Order.

Con Edison is now proposing further changes to its Demand Response programs. In doing so, Con Edison notes its desire that DR programs be "cost effective and operationally effective", and that they take place in an environment which fosters "strong customer engagement". Further, Con Edison takes the position that DR programs should be designed as "a classic demand side solution" which reduces demand for electricity carried over Con Edison's distribution system. In doing so, it is Con Ed's position that DR programs should not be designed in a manner which provides incentives for customers to export power, or which places a burden on Con Ed's distribution infrastructure which the filing describes as "constrained". The current Petition is silent on the issue of Environmental Justice.

Impact on Riverbay

Riverbay respectfully objects to the proposed changes to the extent they propose a blanket elimination of SC 11 customers from program participation, and objects to the extent that the proposal would implement tariff changes to Riders U and S precluding Riverbay from receiving compensation under any DR programs.

Con Ed's Customer Base Load Methodology Should be Eliminated for Distributed Generation which reduces and replaces Demand on the System

Riverbay has invested significant dollars to construct a cogeneration facility capable of displacing, (subject to planned outages, maintenance, and certain time of day operational constraints imposed by Riverbay's thermal load), its entire 24 MW demand on the Con Ed System. This is a real benefit to the Con Ed system.

In addition, Riverbay has invested significant resources to construct and install switchgear and meters which allow Riverbay to interconnect to the Con Ed distribution system in a manner which does not place a burden on the existing utility distribution system.²

Further, Riverbay has completed installation of energy efficient windows in nearly 80% of the 180,000 windows slated for replacement, and completed the installation of energy efficient lighting systems in 8 multi-story garages which provide 10,790 parking spaces.

Prior to making these significant financial investments in self-sufficiency and reduced energy consumption, Riverbay was totally dependent on Con Ed for its power. That dependency was fostered in significant part by the creation of the special SC-13 service classification. Riverbay has now reduced that demand, to the unquestioned benefit of Con Ed. However, the use

² In addition to the approved interconnection, Riverbay notes that Con Edison has filed a "Wholesale Distribution Rate" tariff with FERC designed to compensate Con Ed for any export power sent over its system by Riverbay.

of a Customer Base Load methodology by Con Edison effectively ignores the benefit supplied to Con Ed's system by Riverbay's energy reduction measures. Accordingly, it is respectfully requested that the Commission consider modifications to Con Ed's DR program which would account for, and compensate Riverbay, for the benefit it provides to the system by removing its demand from the Con Ed system. It is respectfully argued that the financial recognition of this benefit by the Commission through expanded DR programs is in the best long term interests of Con Ed and its customers. Further, such recognition would, upon information and belief, significantly encourage distributed generation.

SC-11 Customers Should Not be Automatically Excluded From Participating in Rider U and Rider S DR Benefits

Riverbay also respectfully requests that Con Edison's proposed revisions to Riders U and S be rejected. Instead, the relevant tariffs should be modified to provide that SC-11 customers are expressly permitted to participate. At a minimum, a distinction should be drawn to recognize the benefit provided by an SC 11 customer's ability to reduce their need for imported power by generating sufficient power to meet their internal load, as opposed to generating an excess sufficient for export. As presently drafted, an SC-11 customer who generated sufficient power to displace its demand on the Con Ed system, but did not generate sufficient energy to export power, would not be entitled to any compensation for reducing its demand on the system. This is counterintuitive and fails to accomplish the purpose for which the DR programs are designed.

Similarly, concerns expressed by Con Edison that DR programs should not be an incentive to export power are misplaced in the situation of Riverbay. Fundamentally, Riverbay is not a merchant power plant, incentivized by the market price of electricity. Its load is thermal driven. Prior to Riverbay's construction of its co-generation facility, all of Riverbay's load needed to be supplied by Con Edison. That load was necessitated by daily residential living, not by market

driven forces or by the supply and demand requirements of an industrial customer sensitive to the vagaries of the market. That load needed to be supplied every day. That load is also constant. Coop City is not going away, nor is it likely to close. Riverbay's load is now, for the most part, supplied by Riverbay, not by Con Edison. Riverbay has the added benefit of being able to export power to the grid, providing a valuable asset to a constrained network at peak times. Those capabilities should be encouraged, not discouraged.

**Existing Rate Structures Do Not Adequately Compensate Riverbay
For the Significant Demand Reduction Benefit it Provides to Con Ed**

Riverbay was initially advised that the completion of its cogeneration facility precluded Riverbay from continuing to receive electric service under SC-13. Riverbay was advised that it would need to switch to SC-14RA, and that it would need to pay a minimum "Contract Demand" in order to ensure that Con Ed was adequately compensated for stand by power requirements. Subsequently, Riverbay was advised that it could only export power, and only be compensated for the energy value of that export, if it elected to receive service pursuant to SC-11. However, Riverbay is still required to state and pay for a minimum "Contract Demand" under SC-14RA. Since Riverbay pays for stand by power from Con Ed, it is only fair that Con Ed compensate Riverbay for the "stand by" benefit provided to the system by Riverbay's demand side load reduction, facilitated by the existence of Riverbay's cogeneration facility. Further, it would be blatantly unfair, and contrary to sound energy policy, to preclude Riverbay from receiving any demand reduction benefit for the system load which it replaces by internal generation, solely because Riverbay has the capacity to produce export power.

The proposed modifications to the Rider U and Rider S tariff would only exacerbate this situation. The proposed modifications would totally exclude Riverbay from participating in those programs, despite the lack of any factual record to support such a drastic measure.

Rider U events are called when part(s) of the Con Ed system are approaching Condition Yellow or Voltage Reduction of at least 5%. Upon information and belief, networks typically fail as feeders become overloaded and each feeder's failure increases the load on the remaining feeders. However, Riverbay's Interconnection is supported by four (4) feeders, which is more than sufficient to support any load imposed upon them. Further, the reliability, safety, load and usage of those feeders has been considered and approved as sufficient by Con Ed when it negotiated its Interconnection Agreement with Riverbay. Con Ed's present proposal would exclude Riverbay from participating in Rider U, without supplying any specific data to support the exclusion of the Riverbay resource. Therefore, Riverbay respectfully requests that that Con Edison not exclude Riverbay from participation under Rider U.

Rider S events are called when the day-ahead forecasted load level is at least 96 percent of the forecasted summer system-wide peak. There is considerable value to adding additional power to the grid under such conditions, and Riverbay generally has the capacity to meet this demand and to reduce its need for power during these periods. As noted, the reliability and sufficiency of Riverbay's interconnection to the system has been extensively negotiated and approved as part of the existing Interconnection Agreement. Con Edison has provided no factual basis in its Petition to exclude the Riverbay cogeneration resource. Accordingly, Rider S should not be modified in a fashion which excludes Riverbay from participation.

Environmental Justice Concerns

Since Riverbay is located within an Environmental Justice Area, and its generating asset is in compliance with air emission standards, special consideration should be given to its ability to displace other, higher emission facilities in meeting EJ area demand and load requirements. The present proposal has the opposite impact.

Further, Con Edison's present Petition does not supply any data or information to document what consideration Con Edison has given to environmental justice standards when it formulated the present application. Since the Riverbay Cogeneration facility experiences fewer cold starts than idle peaking plants, it tends to have lower emissions. In addition, the predominant fuel relied upon by Riverbay to meet its load is natural gas, which generates lower emissions than many of the oil fired, or peaking power plants that would otherwise be required to meet system load demands. In addition, natural gas tends to produce fewer small particulate matter emissions than number 6 fuel oil, which is a special concern to many residents of the adjacent South Bronx. The type of turbines utilized by Riverbay complies with all DEC emission requirements. Further, the use of surplus steam to generate electricity, rather than natural gas or fuel oil, is clearly an environmental benefit to the entire community. As such, Riverbay respectfully requests that it be entitled to participate in all relevant DR programs.

CONCLUSION

Riverbay Corporation respectfully requests that the Commission deny modifications to Con Edison's Demand Response programs to the extent that Con Ed's Petition would exclude customers receiving service under Con Ed Service Classification 11 from participating in DR programs; objects to the proposed corresponding modifications to the tariff language of Riders S and U; requests that Con Ed's tariff be amended to expressly permit participation by SC-11 customers; and requests inclusion of all Distributed Generation assets in Environmental Justice Areas which are in compliance with applicable emission requirements to the extent that said assets displace or reduce overall system demand in Zone J.

Dated: Yonkers, NY
February 6, 2012

Respectfully submitted,

RIVERBAY CORPORATION

By **Smith Buss Jacobs, LLP**



Jeffrey D. Buss, Esq.

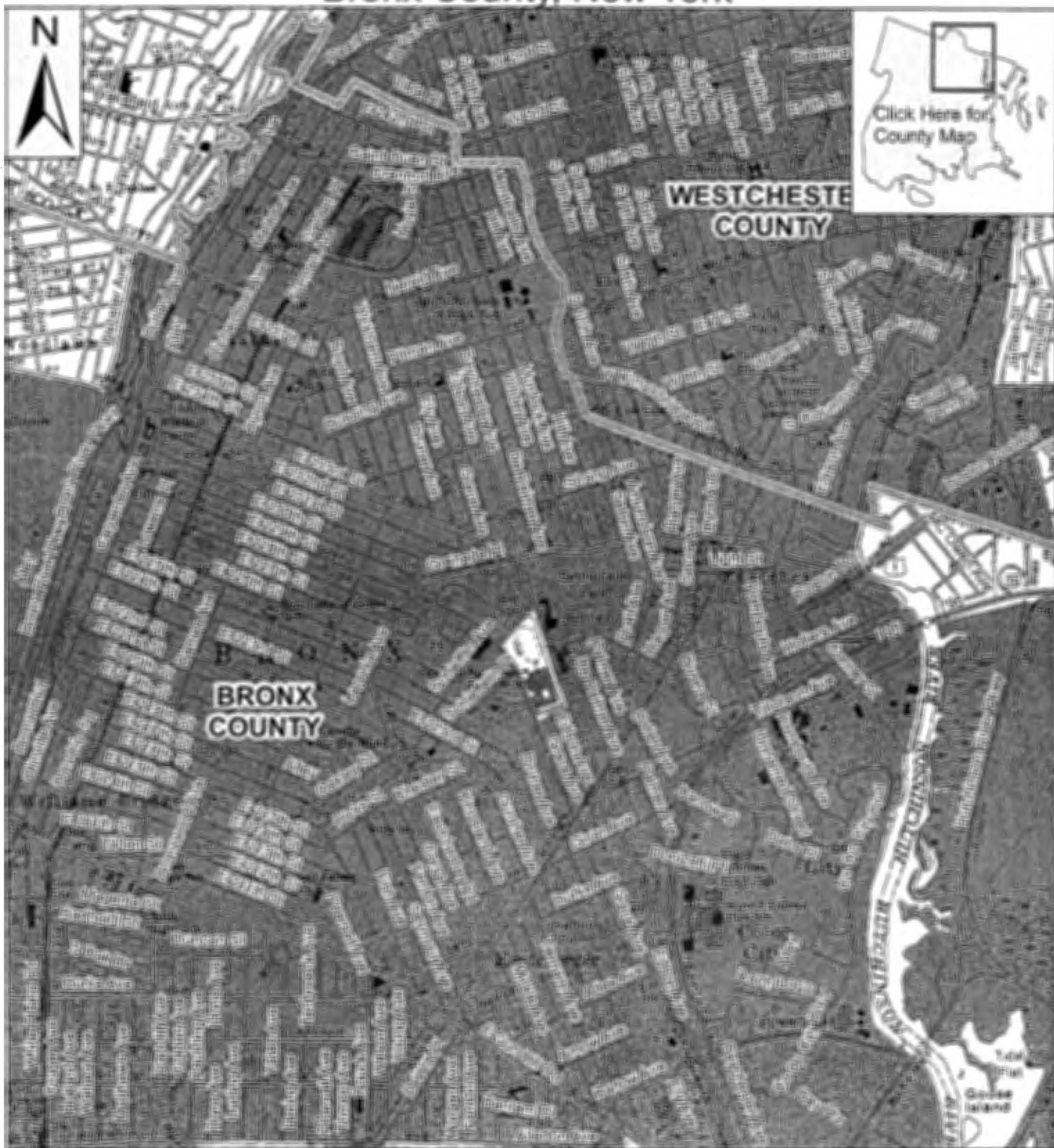
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Potential Environmental Justice Areas in North Central Bronx County, New York





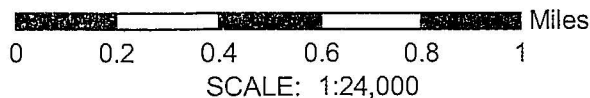
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Data Source for Potential Environmental Justice Areas:
U.S. Census Bureau, 2000 U.S. Census

Legend

-  County Boundary
-  Potential EJ Area



For questions about this map contact:
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