NEW YORK STATE
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission to Consider Demand Response Initiatives  PSC Case No. 09-E-0115

REPLY TO COMMENTS OUTSIDE THE SCOPE OF THE PROCEEDING

I. Introduction

On November 17, 2012 Consolidated Edison Company of New York, Inc. (“Con Edison or the “Company”) filed proposed tariffs requesting limited modifications to its demand response (“DR”) programs.1 Also on November 17, the Company filed its Petition of Consolidated Edison Company of New York for Approval of Changes to Demand Response Programs (“Petition”) supporting the proposed tariffs and also requesting limited modifications to non-tariffed portions of the DR programs.2

On December 21, 2011, the New York State Public Service Commission (“Commission”) issued a notice of proposed rulemaking regarding Demand Response Programs (“NOPR”). SAPA No.: 09-E-0115SP9 (December 21, 2011). Reflecting the limited scope of the Company’s

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1 Case 09-E-0115, Proceeding on Motion of the Commission to Consider Demand Response Initiatives, Letter from Christine Colletti to Secretary Brilling, November 17, 2011 (“Filing Letter”).
2 Case 09-E-0115, Proceeding on Motion of the Commission to Consider Demand Response Initiatives, Petition of Consolidated Edison Company of New York for Approval of Changes to Demand Response Programs, November 17, 2011 (“Petition”).
proposed modifications to the DR programs, the NOPR limits the issues to be considered in the rulemaking proceeding as follows:

The Commission is considering a petition filed by Consolidated Edison Company of New York, Inc. (Con Edison) for approval of changes to demand response programs to improve the design of its Commercial System Relief Program ("CSRP" or "Rider S"), Distribution Load Relief Program ("DLRP" or "Rider U"), Direct Load Control Program ("DLC" or "Rider L") and retire the Critical Peak Rebate Program ("CPRP" or "Rider T"). This petition also provides supplemental support for revised tariffs Rider S, Rider U and Rider L. In addition, this petition proposes changes to improve the economic and operational potential of the non-tariffed Network Relief Program ("NRP") and the Residential Smart Appliance Program ("RSAP"). The Commission may adopt in whole or in part, modify or reject Con Edison’s proposal. NOPR, p. 24.

Various parties filed comments in response to the NOPR generally supporting the Company’s proposed changes, with the exception of its request to clarify that Rider S and Rider U are intended to be demand-side programs by explicitly prohibiting customers with accounts served under Service Classification ("SC") No. 11 – Buy-back Service at the same location from participating under the two riders. Various parties objected to the Company’s proposed clarification. All of the Company’s proposed changes are ripe for Commission decision. The Company requests that the Commission act upon these issues as soon as possible so that the Company can begin signing up DR customers for the 2012 Summer Period.3

As set forth below, certain comments include proposals that are beyond the scope of the changes proposed by the Company and noticed in the NOPR, not sufficiently developed for consideration at this time and proposed so late in this proceeding that, assuming for the sake of argument they have merit, could not be implemented prior to the Summer 2012 Period. Con

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3 In addition, Energy Curtailment Specialists, Inc. ("ECS") suggests modifying the Customer Base Line ("CBL") methodology to only eliminate event days from the CBL calculation for DR programs in which the customer participates. ECS Comments, pp. 7-9. The proposal is straightforward, relates to a minor change to the Rider U CBL methodology proposed by the Company (Filing Letter, p. 3) and warrants consideration by the Commission.
Edison requests that the Commission defer any consideration of those issues to a future proceeding in which they have been properly noticed for comment.

II. **Energy Curtailment Specialists, Inc.’s Proposed “Penalty Structure” Is Beyond the Scope of Con Edison’s Proposals and the NOPR and Should Not Be Considered as Part of this Rulemaking Proceeding**

Energy Curtailment Specialists, Inc. (“ECS”) describes what it considers to be serious problems with Con Edison’s delivery of data to DR providers and requests that “the Commission look to implement a penalty structure with the purpose of ensuring provision of data by ConEd to DR providers in a timely manner”\(^4\) with the penalty payable to the DR provider.\(^5\) ECS states that it “is of the opinion that the Commission is the entity best suited to design a fair and efficient framework and implement it into ConEd’s demand response programs.”\(^6\)

ECS provides no detail regarding the amount of time Con Edison should have to respond to data requests before a penalty would be applied, whether the time period should vary with the type of data request, the size of any financial penalty, how a penalty structure would be structured and various other issues which Con Edison has not yet begun to consider.

Since the Company’s proposed changes to the DR programs and the NOPR do not provide any notice that issues regarding the delivery of data to demand response providers will be considered, parties other than ECS could not have reasonably anticipated the need to address any data delivery problems and possible solutions for any problems that might exist.

Con Edison notes that one company, EnerNOC, filed its comments after ECS and took the opportunity to respond briefly to the ECS comments. EnerNOC states that it does not

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\(^{4}\) Initial Comments of Energy Curtailment Specialists, Inc., p. 3.  
\(^{5}\) *Id.*, p. 7.  
\(^{6}\) *Id.*, p. 6.
support penalizing the Company and suggests that ECS and other DR providers should bear the burden of any more rapid or dependable access to data they may require.7

Con Edison would like the opportunity to formulate and state its own perspective on the extent of any data delivery problems, who should be responsible for improving data delivery to the extent necessary and what, if any, regulatory response would be appropriate for any perceived problems.8 Other parties should have the same opportunity.

ECS has presented a brand-new, last-minute, vague proposal for a penalty mechanism and asked the Commission to fill in the blanks. Assuming there is some basis for consideration of the type of penalty mechanism proposed by ECS, such consideration would be premature at this time. Con Edison requests that the Commission defer any consideration of the ECS proposal to a future proceeding properly noticed for comment.

III. Proposals that Baseload Distributed Generation Be Paid for Continuing to Generate During Load Relief Periods Are Beyond the Scope of Con Edison’s Proposals and the NOPR and Should Not Be Considered as Part of this Rulemaking Proceeding

Consumer Power Advocates, Energy Concepts, Joint Supporters and Northeast Clean Heat and Power Initiatives (collectively “DG Advocates”) and Riverbay Corporation (“Riverbay”) all make essentially the same argument that the Customer Base Load methodology (“CBL”) should not be used for baseload distributed generation (“Baseload DG”), so that

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7 EnerNOC stated that “we do not support penalizing the Company for failing to provide meter data access to the subset of customers that participate in DR that is superior to that it provides non-DR customers.” EnerNOC elaborated that it “has invested tens of millions of dollars of its own capital installing metering and communications infrastructure to provide it and its providers with near-real time access to their load data” and that if “ECS or other aggregators believe that more rapid or dependable access to data from their DR providers (beyond or sooner than that provided to other similarly-situated customers) then they should make the same sorts of investments EnerNOC has, not receive preferential treatment relative to the Company’s non-participating customers.” EnerNOC Comments, p. 2.

8 Con Edison notes that it is dependent upon telecommunications providers to provide consistent and successful communications solutions for its meters, including response to and repair of any communications failures in a timely fashion.
Baseload DG can be paid for continuing to generate during load relief periods.\(^9\) DG Advocates argue that since they have no obligation to run at all times and they pay the RA SC-14 standby charge so they can be assured that their loads will be served if their distributed generation units do not operate, they should be paid when their units do run during load relief periods.\(^10\) DG Advocates argue that if the Commission determines that distributed generation units cannot participate in Rider U or Rider S, the Commission should recognize that in some hours Con Edison cannot meet its obligation to provide standby service and, therefore, should forgive the SC-14 contract demand charge for those customers on those networks needing load relief.\(^11\)

DG Advocates provide no details regarding how their proposal could actually be implemented. They do not address a variety of issues including: a substitute for the CBL methodology and how to treat fluctuations in generation from their distributed generation plants or fluctuations in load from their own facilities; how to determine in what hours Con Edison cannot meet its obligation to provide standby service, assuming there are any such hours; whether the proposed modification in the application of standby charges would require other changes in standby rates; whether the CBL proposal only applies to baseload plants and, if so, how baseload is defined; the financial and revenue allocation implications of the proposal and the extent to which distributed generation should be required to comply with various requirements imposed on other generating plants providing energy to Con Edison.

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\(^10\) Id. for references to individual DG Advocates’ comments.

\(^11\) Id.
The Petition, proposed tariff changes and NOPR do not provide any notice that issues regarding standby rate charges will be considered. The public, including Con Edison, therefore, could not reasonably anticipate the need to address in their comments possible alternatives to the current application of the CBL methodology, the applicability of standby charges to distributed generation in load relief areas; financial and revenue allocation impacts; and how to ensure that distributed generation is on a level playing field with other generation sources.

Similarly to ECS, DG Advocates and Riverbay have presented a brand-new, last-minute, vague proposal and asked the Commission to fill in the blanks. Incredibly, their proposal would revise the application of standby rates developed through lengthy Commission proceedings, without providing any opportunity for parties to analyze the implications of doing so. Assuming there is some basis for consideration of the type of change proposed by DG Advocates and Riverbay, such consideration would be premature at this time. Con Edison requests that the Commission defer any consideration of the proposal to a future proceeding properly noticed for comment.

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IV. Conclusion

For the reasons stated above, Con Edison requests that the Commission expeditiously approve the proposed changes to the Company’s DR programs set forth in its November 17, 2011 proposed tariffs and Petition. The ECS penalty proposal and the DG Advocates and Riverbay proposal that Baseload DG be paid for continuing to generate during load relief periods should both be deferred for future consideration.

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Respectfully submitted,

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

By its Attorney,

[Signature]

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