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Hon. John C. Crary
Secretary
Department of Public Service
3 Empire State Plaza
Albany, New York 12223

Re: Case: 98-G-0122

Dear Secretary Crary:

Consolidated Edison Company of New York, Inc. hereby submits for filing in the referenced case an original and ten copies of its Comments Regarding Proposed Gas Transportation Tariff. Con Edison is serving copies of its comments on the Commission Staff and all parties to the referenced case.

If any questions arise in connection with this filing, please call me at (212) 460-4494.

Very truly yours,

Donald J. Stauber/bmc

Donald J. Stauber
Associate Counsel

Enclosure

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission to Review the Bypass Policy Relating to the Pricing of Gas Transportation for Electric Generation	:	Case 98-G-0122

COMMENTS OF
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
REGARDING PROPOSED GAS TRANSPORTATION TARIFF

In accordance with the Commission's September 24, 1998 Notice Soliciting Comments ("Notice"), Consolidated Edison Company of New York, Inc. ("Con Edison" or the "Company") submits these comments regarding the proposal of the Commission Staff that gas distribution companies ("LDCs") establish tariffs governing basic gas transportation service to be rendered to electric generators ("Standard Service"). Because this matter may affect the divestiture by utilities of their generating facilities, Con Edison requests that the Commission issue an order on an accelerated basis, but not later than December 1, 1998, finding that existing bypass policy will continue to apply to gas transportation for electric generation sold under utility divestiture plans and that such rates will not be subject to any discount sharing policy.

I. CON EDISON POSITION

Staff's Standard Service proposal represents an effort to facilitate the development of a competitive electric generation industry through the availability of gas transportation service that does not require prior negotiations between an electric generator and the LDC. Con Edison has actively supported the development of such a competitive electric industry and supports the establishment of Standard Service, subject to several conditions discussed in these comments.[1] The principal conditions are (1) that the rates for Standard Service must be set separately for each LDC, (2) that LDCs must be authorized to negotiate, with both affiliates and non-affiliates, non-tariff

[1] Con Edison's support represents a deviation from the position advocated in Con Edison's April 6, 1998 comments in this case. That change in position is the result of recent collaborative efforts in this case and is intended to facilitate the development of new generation facilities and Con Edison's divestiture of its existing generation facilities. If the Commission does not adopt the conditions and procedures proposed herein, Staff's Standard Service proposal must be rejected and this matter remanded to the parties for further development of a service proposal for electric generation customers. The reasons for such action are set forth in these comments and those which Con Edison filed in this proceeding on April 6, 1998.

rates and terms in response to potential bypass situations and to meet the needs of generators that require transportation service with terms and conditions different from Standard Service, and (3) that the Commission reject Staff's proposal that LDCs absorb 20 percent of any discounts from the standard rates.

Con Edison supports the concept and structure, but not the specific terms, of Staff's Standard Service proposal. Con Edison proposes that the Commission require each LDC to file a proposed tariff containing company-specific terms to implement that concept and structure, including a rate consisting of Staff's proposed components. The levels of the rate components and issues relating to rate design should be determined in conjunction with the proposed tariff filings on an LDC-specific basis.

Assuming that the foregoing conditions and procedure are adopted, the general structure of Staff's proposal requires only limited refinement in the following respects:

- the minimum negotiable rate should reflect marginal costs and other appropriate rate components;
- negotiations with LDC affiliates should be permitted;
- the trade secret status of negotiated contracts should be determined on a case-by-case basis;
- firm requirements of generation customers should be served under the Standard Service tariffs in accordance with terms established by the implementing tariffs; and
- the term of service should be negotiable but contractually binding on LDCs and customers alike.

Commission decisions on those tariffs will not likely be completed before bids are submitted in the companies' divestiture programs. Accordingly, in order to provide some certainty to potential bidders for those plants, Con Edison requests that the Commission issue an order on an accelerated basis but no later than December 1, 1998 that, in addition to requiring the Standard tariff filings, confirms the continued applicability of the bypass policy to electric generators, that such rates are not considered discounts to which a discount sharing policy (should one be adopted) would apply, and includes among the transportation arrangements that will be grandfathered, plants to be divested that the Commission has previously determined fall within its bypass policy for purposes of ratemaking. Con Edison will make its company-specific tariff filing on an expedited basis.

II. DISCUSSION

1. Standard Service Rates Must Be LDC-Specific.

Con Edison supports the availability of Standard Service and the general structure of Staff's proposal. It is consistent with actions taken by the Federal Energy Regulatory Commission which require pipelines offering negotiated rates to also establish recourse rates. As Staff proposes, this recourse gas transportation service for electric generators should be a non-firm service consistent with the dual-fuel capability of generators and the transportation capacity of each LDC. The rate should be specified in the tariff, should include components reflecting an LDC's marginal costs and a contribution to system costs, and could include a component for value added.[2] The rate design should provide a demand and a volumetric component. This rate formulation is novel, but reasonable in the context of an evolving competitive electric generation industry.

The recourse tariff must be established for individual LDC systems, rather than on a statewide basis. It is impractical to establish one set of rates and terms for service and expect that service to meet the varied needs of all of the State's LDCs and generation customers. Presetting a minimum contribution to system costs or setting a floor for the marginal cost component ignores the fact that the resultant rate may not produce a competitive service on one or more systems or may not be reflective of the actual level of marginal costs. LDCs differ with respect to the availability of local transportation

[2] Con Edison does not believe that a value-adder is a necessary component of the tariff service but is not opposed to the value adder proposed by Staff, which, as structured strikes the appropriate balance between value of service ratemaking and maintaining the competitiveness of an LDC's gas transportation service.

capacity, the ability to render service without interruption, the characteristics (size, load factor, efficiency, alternate fuel capability) and density of their generation customers. Given these variations, the standardization of rates and terms must be limited to an individual LDC's system.

The Standard Service tariffs must also not be automatically applicable to utility facilities when divested (Staff proposal, p. 3, footnote 5), where the basis for the existing transfer credit is a rate which the Commission has previously approved on a bypass basis. The Commission order establishing this proceeding[3] appropriately recognized that existing transfer credits "may no longer be appropriate." (Order, p. 4). The order identified that existing methods are generally based on either a share-the-savings mechanism or a bypass analysis. While a share-the-savings mechanism may no longer be appropriate in the changed environment, a rate based on bypass costs remains appropriate provided that a competitive alternative remains available to the generation owner. The Commission has approved bypass-based charges for Con Edison's local transportation of gas for electric generation facilities.[4] The Company should be

[3] Case 98-G-0122, Order Instituting Proceeding and Technical Conference, issued and effective January 30, 1998.

[4] Case 95-G-1037, Petition of Consolidated Edison Company of New York, Inc. for approval of proposed changes to the method of determining the interdepartmental transfer credit applicable to natural gas used in Consolidated Edison's generation of electricity, April 24, 1996.

permitted to offer those bypass-based charges (updated if and to the extent necessary and appropriate) to the new owners of its plants since the circumstances upon which the Commission's approval was predicated have not changed. Consequently, the potential for bypass persists and prevents the collection of charges in excess of the bypass-based rates. In addition, these arrangements should be considered grandfathered arrangements not subject to a "discount-sharing" policy, should the Commission institute one.

2. **Future Bypass Negotiations**

The Staff proposal is fatally flawed in that it seemingly would bar LDCs from negotiating non-tariff terms in response to potential bypass situations which are not governed by previously approved rates and terms discussed in the prior section:

> The current Bypass Policy from Case 90-G-0379 should remain in effect for other than electric generation. Gas services for electric generation should be considered separately.

(Notice, Attachment, p. 1).

A significant portion of generation customers will be motivated to bypass LDC services if the Standard Service is implemented without regard to customer-specific circumstances. Some customers will have low bypass costs by virtue of proximity or routing to interstate pipelines. Others may find bypass to be an attractive option because of their size or plant operating level. The Staff proposal does not eliminate the potential for bypass. Indeed, by imposing standardized terms on service to all generation customers and by prohibiting LDCs from negotiating non-tariff terms in response to potential-bypass situations, Staff would assure that bypasses occur.

The original rationale for the Bypass Policy remains applicable to generation customers:

> Regulatory policies should avoid unnecessarily impeding the LDCs' ability to compete in this market, for they may often be able to provide transportation service that will attract cogenerators and large industrial customers while still benefiting the general body of ratepayers. If utilities are afforded reasonable opportunities, the increased competition can yield economic benefits to the end-users, the ratepayers and the economy in general.

(Bypass Policy Statement, p. 9). Accordingly, Con Edison requests that the Commission clarify that the Bypass Policy remains applicable to electric generation customers.

3. <u>Rate Discounts</u>

The second fatal flaw in the Staff proposal is its imposition of a penalty and restrictions in connection with the negotiation of terms and rates. To the extent that the Staff would allow LDCs to negotiate rates, terms, and conditions with generation customers, Staff would require that LDCs absorb 20 percent of the cost of any rate discounts (Notice, p. 4). The negotiated rates could not be lower than the component for contribution to fixed costs (*i.e.*, 10 cents per dekatherm). LDCs would not be permitted to negotiate rates with their affiliates. Negotiated rates would have to be filed as tariff addenda, and negotiated contracts would have to be posted on the LDCs' electronic bulletin boards.

Staff's proposed conditions for and limitations on the negotiation of rates and terms are unreasonable, discriminatory, and contrary to prior Commission orders and the public interest. They must be rejected or modified as discussed below.

Staff's proposal that LDCs absorb a portion of the discounts extended to generation customers is economically irrational and contrary to past policy in the gas industry. The absorption requirement is an economic disincentive to the negotiation of rates. The disincentive will distort the gas services market.

Staff's proposal also does not appropriately distinguish a discount from a lower rate that reflects different terms and conditions of service. Providing the equivalent of Standard Service but at a lower rate, where the customer has no bypass alternative, might be considered a discount and the circumstances for granting such a discount suspect. However, a lower rate that reflects a lower quality of service is not a discount and should not be subject to any sharing.

The Staff proposal would deter LDCs from offering rates and terms that differ from Standard Service, even where such differing service could otherwise be rendered economically and be attractive to generation customers. It will also encourage uneconomic bypass of LDC services, thereby limiting the availability of services to generators and eliminating their contribution to system costs and increasing the cost burden borne by firm gas customers. Thus, the absorption requirement will disserve generation customers, firm gas customers, electric customers, and LDCs.

The proposed absorption requirement is unjustified as well as ill advised. The Commission has traditionally recognized that non-firm rates are based upon the value of service and established at some level above incremental costs reflecting the value of the service. Discounts are traditionally associated with firm rates, where a utility is proposing to provide service at less than the cost-based rate. The record in this case does not support a change in policy through the imposition of an absorption requirement. No party has demonstrated the need for an absorption requirement. Circumstances in the industry have not changed in any respect that would warrant a generic statewide policy change. Accordingly, the proposed absorption requirement must be rejected.

The proposed minimum rate also reflects a change in Commission policy. In the past, the Commission has imposed a minimum rate that included incremental costs and a reasonable contribution to system costs.[5] However, the Notice states that any negotiated rate may not be less than the 10-cent contribution to system costs (p.4). The Notice would seem to permit discounting of the full marginal-cost component of the Standard Service rate, but no discounting of the contribution to system costs. If the marginal-cost component exceeds the contribution component, the Notice proposal would allow an LDC to charge less than its marginal cost. Con Edison requests that the Commission clarify the proposal in this regard.

The Notice would bar an LDC from negotiating rates for gas transportation service rendered to any of its affiliates that engage in electric generation (p. 4). The prohibition is unjustified and unduly discriminatory. In fact, the Commission has recognized the need for, and approved, negotiated rates for the gas transportation service that Con Edison's gas department renders for Con Edison's electric generation activities.[6] Permitting an LDC to provide comparable treatment to an affiliate, subject to appropriate Commission review, is consistent with this policy. The change in the affiliate policy is unexplained. Neither the Notice nor the record in this case provides support for the change in policy.

Utilities have generally agreed that their affiliates will not seek to obtain any of the generating facilities being divested by the utilities. Therefore, negotiated rates are not an issue likely to arise in the immediate future. However, affiliates may play a critical role in the construction of new generation facilities to meet the needs of New York consumers. There is no need to prejudge the gas transportation arrangements that may be appropriate for such plants. If the situation arises, the LDC would have to demonstrate that any terms negotiated with its affiliate satisfy the statutory standards. Hence, Con Edison requests that the Commission reject the proposed ban on affiliate transactions and clarify that such transactions will be reviewed on a case-by-case basis after full disclosure of their circumstances and terms.

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[5] Case 90-G-0379, Proceeding on Motion of the Commission to Investigate the Impact of Bypass by Gas Cogeneration Projects, Clarification of Statement of Policy Regarding Bypass of Local Distribution Companies by Large Volume Users ("Bypass Policy Statement"), August 12, 1991, pp. 6-7.

Finally, the staff proposal that LDCs post on their EBBs the contracts for negotiated local transportation services is an unwarranted departure from current practice (Notice, p. 4). LDCs are required to file with the Commission contracts for negotiated services and addenda to their tariffs that summarize the primary terms of those contracts.[7] The addenda are fully available for public inspection, but the contracts may be protected as trade secret documents.[8] The Staff's proposed EBB posting requirement for negotiated contracts would eliminate any possibility of trade secret protection. The Staff has not justified its abandonment of the Commission's case-by-case review of trade secret protection of negotiated contracts.

4. **Firm Requirements**

Staff proposes that Standard Service would apply only to the dual-fuel requirements of generators. It would not apply to ignition, space-heating, or other firm requirements, which lack alternate fuel capability and which would be separately priced at rates applicable to those types of service (Notice, p. 3). Staff

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[6] Case 95-G-1037, Petition of Consolidated Edison Company of New York, Inc. for approval of proposed changes to the method of determining the interdepartmental transfer credit applicable to natural gas used in Con Edison's generation of electricity, April 4, 1996.
[7] Case 91-M-0927, Proceeding on Motion of the Commission as to the Administration of Utility Tariffs with Respect to Individually Negotiated contracts Between Customers and Utilities, Order Concerning Tariffs Authorizing Individually Negotiated Contracts, May 8, 1992.
[8] Id., pp. 4-5; see also Case 90-G-0379, Clarification of Statement of Policy Regarding Bypass of Local Distribution Companies by Large Volume Users, August 12, 1991, p. 9.

would separately price such firm requirements whether or not they are metered separately from Standard Service.

The Staff's proposal to charge firm service rates for even part of a generator's requirements must be considered in light of the potential for bypass. The assessment of firm rates for service to generators would render LDC rates uncompetitive for many customers. For example, pricing 5 percent of Con Edison's gas deliveries to generators would result in firm local transportation charges on the order of $25 million annually (in addition to interruptible charges), which amount would substantially exceed the total revenues that Con Edison currently realizes under its bypass-based rates for gas service to electric generators. Consequently, bypass economics foreclose the assessment of firm service rates to Con Edison's existing electric generators.

The Staff's proposal also presents an operational problem in that the firm usage of generating customers cannot be metered separately from their interruptible usage or estimated generically for all generators. Separate metering would require the installation of extensive and expensive metering equipment within the plants. The LDCs could not readily control such metering equipment. It would be rendered obsolete by plant upgrades and refurbishments, which are likely to be undertaken with respect to many of the plants that the utilities propose to divest. The alternative of estimating firm usage would be judgmental and controversial because of the variation and complexity of plant configurations and variations in operating levels.

Concerns such as these must be resolved in the context of each LDC's circumstances. Accordingly, the Staff's concern should be deferred and resolved in connection with the individual LDC filings.

5. **Term of Service**

Staff proposes that the standard term of service be five years and that longer terms would be available only at rates higher than the standard rate (Notice, p. 2; Attachment, p. 3).

The Staff proposal poses two concerns. First, the term of Standard Service must be binding on the customer as well as the LDC. The arrangement is contractual. The LDC is obligated to provide service and the customer is obligated to take and pay for service over the term. A corresponding contractual arrangement exists with respect to Con Edison's other limited-interruption service arrangements for which a term is established.

Second, the Staff proposal unduly constrains the Standard Service in that some customers may need terms shorter than five years because of their particular circumstances. LDCs should be permitted to meet that need. Moreover, it should not be presumed that all service for terms in excess of five years should be priced higher than the standard rate or that rates for shorter terms should be lower than the standard. If a customer requests a term that is longer or shorter than five years, the customer and the LDC should be free to negotiate a mutually acceptable rate that reflects their particular circumstances.

6. Applicability of Standard Service

The Notice states that Standard Service would apply to all dual-fuel electric generators over 50 MW (Notice, p. 3; Attachment, p. 1). Con Edison requests that the Commission clarify this applicability.

Standard Service should be deemed inapplicable to gas that an LDC transports for electric generators that are located outside of New York State. Many LDCs have authorizations from the Federal Energy Regulatory Commission ("FERC") to transport gas in interstate commerce at FERC approved rates. Con Edison was issued such an authorization in 1992.[9] On the other hand, gas transportation by an LDC for a generator located out of the

[9] Consolidated Edison Company of New York, Inc., Docket No. CP92-579-000 (November 25, 1992).

LDC's service territory but within New York State would be subject to the Standard Service.[10]

7. **Loss Allowance**

The Staff proposal would impose an allowance for losses equal to one-percent of a customer's gas consumption.

The imposition of such an in-kind allowance is inappropriate. The actual loss quantity for most generation customers is likely to be negligible. However, the matter should be considered in light of the circumstances on each LDC's system, including the potential that the loss allowance would have on potential bypass situations. Consequently, the Commission should not impose a generic loss allowance, but should defer the issue for consideration in connection with individual LDC tariff filings.

8. **Peaking and Balancing Services**

Staff suggests that peaking and balancing services be purchased in the competitive market (Notice, Attachment, Items D-

[10] Standard Service should also be deemed inapplicable to Con Edison's gas transportation service for its steam business. The charges for gas transportation for steam generation have been held to be just and reasonable, and the service is unrelated to the evolution of a competitive electric generation industry.

3 and D-4). The Company is somewhat confused by these recommendations in light of recent Commission pronouncements in Case 97-G-1380 to adopt Staff's recommendation that LDCs exit the merchant function. In light of those recommendations, the Company does not anticipate the need to purchase peaking services should it exit the merchant function. It also expects, consistent with the Commission's discussion of Staff's recommendation, to continue to provide balancing services to gas transportation customers. The Company intends to pursue those issues in the utility-specific proceedings that the Commission has indicated it will establish in that proceeding.

CONCLUSION

For the reasons discussed in these comments, Con Edison respectfully requests that the Commission (1) approve the concept and structure of Staff's Standard Service proposal, subject to the conditions and procedures proposed in these comments, and (2) direct the LDCs to file tariffs implementing that concept and structure. Con Edison requests that the Commission take such action on an accelerated basis but no later than December 1, 1998.

Respectfully submitted,

CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.

By: Donald J. Stauber /BMC
Donald J. Stauber
Associate Counsel

Submitted: October 26, 1998

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