

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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Proceeding on Motion of the Commission : Case 16-E-0060  
As to the Rates, Charges, Rules and :  
Regulations of Consolidated Edison :  
Company of New York for Electric Service :  
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**LIMITED OBJECTIONS OF  
RIVERBAY CORPORATION  
GREAT EASTERN ENERGY AND  
ENERGY SPECTRUM TO THE  
RELIABILITY CREDIT MEASUREMENT PERIOD  
FOR RATE YEARS TWO AND THREE  
SET FORTH IN THE JOINT PROPOSAL**

Dated: November 16, 2016

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## **PRELIMINARY STATEMENT**

Riverbay Corporation, commonly known as “Co-Op City”, Great Eastern Energy Corporation and Energy Spectrum, respectfully submit this post hearing memorandum in opposition to the extended measurement period for the proposed Reliability Credit for Electric Standby Rates for Rate Years 2 and 3.

As set forth in the Joint Proposal, after Rate Year 1 the measured hours would be increased by 54 percent, from 780 hours to 1204 hours. The proposed increase is not supported by any study, data or fact; negatively impacts customers; and is not in the public interest. As such, the extended measurement period for Rate Years 2 and 3 should be denied, and no change in the measurement period should be approved until appropriate studies are conducted, evaluated and approved.

## **THE LEGAL STANDARD**

Public Service Commission Order 92-2, adopted on March 24, 1992 in Cases 90-M-0225 and 92-M-0138, establishes Settlement Guidelines to evaluate whether a Joint Proposal, or any portion thereof, should be approved, modified or rejected. The Order requires the Commission to consider whether a Proposal is just, reasonable and in the public interest.

The criteria to be employed in making this determination are whether the proposal has won the support of ordinarily adversarial parties; whether the proposal comports with relevant public policies and legal requirements; whether the proposal falls within the likely range of litigated outcomes; whether the proposal fairly balances relevant interests; whether there is an adequate record to support the proposal; and whether the proposal is unopposed.

The proposed extended measurement period for Rate Years 2 and 3 fails nearly all of these tests. It is opposed; it is not supported by the record; the proponents have failed to meet their burden of proof by failing to submit any studies, reports, or data to support the proposed change; it does not fall within the likely range of outcomes of a fully litigated proceeding; it does not fairly balance competing interests; it is unnecessary; there is no documented public benefit from the change; it

injures good customers for no reason; it creates a financial incentive contrary to a legislatively established public interest; and it poses a potential conflict with a state wide law mandating all property owners with three (3) or more tenants to supply heat immediately following the expiration of the extended measurement period.

### **ARGUMENT**

Energy Spectrum, a demand response provider serving the New York metropolitan area, including the Con Edison electric service territory; Riverbay Corporation, commonly known as “Co-op City,” a Mitchell-Lama cooperative located in the Northeast Bronx providing affordable home ownership to nearly 57,000 individuals; and Great Eastern Energy a mid-size regional ESCO serving over 30,000 electric and gas customers in New York, New Jersey and New England; jointly submit this Memorandum in Limited Opposition to that portion of the September 19<sup>th</sup>, 2016 Joint Proposal which seeks to increase the measurement period for the electric Standby Rate Reliability Credit for Rate Years 2 and 3. The parties do not object to the implementation of a Reliability Credit, or to any other portion of the Joint Proposal.

The Reliability Credit included in the JP is a revised version of the current Performance Credit. The new credit uses a different, demand-based billing determinant, which we support, but extends the measurement period to include the entire months of June and September. The objectionable difference is that after Rate Year 1, the measurement period will be extended an additional 30 days, and the measured hours each day will be extended an additional two (2) hours per day. This increases the total number of measured hours from 780 to 1204, an increase of 54 percent. (Tr. 409, November 2).

This is a critical change, as described by Witness David Ahrens, because it would require large scale residential customers to maintain high power plant production during a required maintenance period in the late summer. Witness Ahrens testimony was unrebutted and the Company and Staff both declined to cross-examine Mr. Ahrens.

Witness Ahrens testified that Riverbay is a central heating and cooling customer with an ancillary 40 MW co-generation capability that is thermally driven. In September of every year Riverbay is required to

switch from central cooling to central heating to comply with State wide heating requirements set forth in Multiple Dwelling Law Section 79 as well as similar requirements set forth in NYC Administrative Code 27-2029. (Tr. 411). In addition, Riverbay is required by a newly enacted law, Local Law 77 of 2015, to power wash and clean its cooling tower to minimize legionella bacteria. (Tr. 411).

Cooling tower maintenance is performed during the annual changeover from cooling to heating. This process requires 8 to 15 days, depending upon maintenance requirements, and requires a complete shut down of Riverbay's two combustion gas turbines and its heat recovery steam generator for approximately 5 of those days. During this shut down period Riverbay is dependent upon Con Edison for electricity<sup>1</sup> (Tr. 410-411).

The legal requirement to supply heat and the legal requirement to power wash cooling towers are not unique to Riverbay.

Multiple Dwelling Law Section 79 is a state wide Legislative requirement, which applies to all buildings with three or more tenants. It has been the law since approximately 1959. It requires all property owners to supply heat between October 1<sup>st</sup> and April 15<sup>th</sup> whenever the temperature drops below a specified degree. It is not optional, and fulfills a fundamental public purpose to protect the public health, safety and welfare.

Local Law 77 of 2015 is new. It was enacted after a series of legionella outbreaks in the City of New York. According to published newspaper accounts, some of those outbreaks resulted in the death of one or more individuals. In response to this public health crisis both the City of New York and the New York State Department of Health enacted new laws mandating registration, inspection, and cleaning of all cooling towers in the City of New York.

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<sup>11</sup> As a central cooling facility, no individual air conditioning units are present or allowed at Riverbay, thereby substantially reducing electric demand dependent upon cooling degree days. In addition, Riverbay participates in Con Ed Demand Reduction programs; has established programs to reduce demand such as reduced laundry room hours and decreased lighting; and has installed energy efficient lighting fixtures. With the limited exception of the mandatory annual maintenance shut down period, Riverbay has exported electricity to the grid in accordance with Con Ed's system demand. In addition, Riverbay has installed a Black Start Generator. During Super Storm Sandy, Riverbay was one of the few communities in the City of New York able to generate electricity for all 57,000 residents, as well as Emergency Responders.

Under cross-examination, Staff testified that they did not consider the legal requirements of Multiple Dwelling Law 79 when they proposed an extension of the Reliability Credit measurement period from September 15<sup>th</sup> to September 30<sup>th</sup> of each year (Tr. 388-389). This is a fatal flaw.

The un-contradicted testimony of Witness Ahrens establishes that customers such as Riverbay require a minimum of 8 to 15 days to switch from cooling to heating.<sup>2</sup> Riverbay, and similarly situated customers, cannot comply with State law unless they start the change over days before the mandatory October 1<sup>st</sup> hearing period. If the extended measurement period for Rate Years 2 and 3 is implemented, Riverbay, and similarly situated customers, will be forced to choose between complying with long standing State law designed to protect the public health, safety and welfare, or an arbitrarily established measurement period. Establishment by an administrative agency of an extended measurement period that financially incentivizes landlords to not comply with mandatory heating requirements established by the State Legislature is contrary to the public interest.

In addition, the extended measurement period is arbitrary. There is no evidence or data of any kind in the record to support an increase in the number of measured days or hours. Con Edison admitted that it conducted no studies to support the change, and no studies of the impact, cost or benefit of the proposed change on its customers. (Tr.139, November 2). Under cross-examination, Staff testified that they did not consider the legal requirements of Multiple Dwelling Law 79, (Tr.388-389, November 2), and provided no studies to support the conclusion that the extended measurement period is needed.

After the Joint Proposal was submitted, Staff filed testimony attempting to show that the extended measurement period was based upon cooling degree days. It is not. Under cross-examination, Staff admitted that that it had no temperature data for the additional measured period between September 15<sup>th</sup> and September 30<sup>th</sup>. Staff also admitted that peak system demand, which is the determining factor driving system

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<sup>2</sup> The amount of time to complete the changeover may vary between central heating customers depending upon the size of their system, the age of their system, and how diligent customers are in performing annual maintenance and stockpiling known replacement parts. However, NO central heating customer can instantly switch from cooling to heating.

impact, occurs during July and August, not September. (Tr.386, November 2). Thus, there is no factual basis in the record to support the assumption that extending the measurement period to September 30<sup>th</sup> for Rate Years 2 and 3 is justified, necessary or in the public interest.

Further, no support for an extended measurement period is found in the guidance for setting Reliability Credits set forth in the Commission's Order Adopting a Ratemaking and Utility Revenue Model Policy Framework, issued May 19, 2016, in Case 14 14-M-0101 (the Track Two Order) . On cross-examination Con Edison admitted that the Track Two Order required Con Edison to conduct certain cost studies relating to Standby Credits; admitted that it had not conducted those studies; and admitted that there was no reason why they could not conduct and complete those studies before the beginning of Rate Year 2 (Tr. 139, Nov. 2nd). Staff also conceded that no such studies were performed . In fact, there are no facts or evidence of any kind in the administrative record to justify Staff's opinion that the measurement period for the Reliability Credit should be extended to September 30th in Rate Years 2 and 3.

In addition, the extended Measurement Period was proposed without any studies that take into account general accepted ratemaking principles, (see unrebutted testimony of Witness Ronald Lukas, at Tr. 424-426, November 2). Staff offered into evidence the NARUC Electric Utility Cost Allocation Manual which states on pages 96 - 98 that "customer class peak should be used to allocate distribution substations and primary feeders." This criteria was not employed or considered when Staff proposed an extension of the Reliability Credit measurement period. As demonstrated by the cooling degree data offered by Staff, customer class peak occurs in July, not September.

Staff's testimony also fails to address or consider the impact of the extended measurement period on customers. It does not explain who the existing customers are, or who the customers are that may be eligible for these credits in the future. As explained in the testimony of Witness Ahrens, "steam driven" customers such as Riverbay, would be adversely affected by the extended measurement period, either completely losing the ability to receive any Reliability Credit, or suffering a decrease in the amount received of approximately fifty (50%) percent.

Typically, the Commission requires bill impact studies to accompany rate design changes. Those impact studies show the financial impact of the proposed rate on customers, detail the estimated cost to customers and identify, at least by class, the number or type of customers whose bills would be increased, decreased, or which would remain the same. Here there are no such studies. The only testimony in the record is that which establishes “losers”. There is no testimony showing any “winners”, or any public benefit.

The unintended consequence of the extended measurement period will be an exclusion, or a significant financial cost, to large residential customers, including the largest supplier of affordable housing in New York State. Upon information and belief, the proposed increase will also negatively impact other large CHP customers such as hospitals and school dormitories. There is no justification in the record for this, nor any identified public benefit attributable to the extended measurement period.

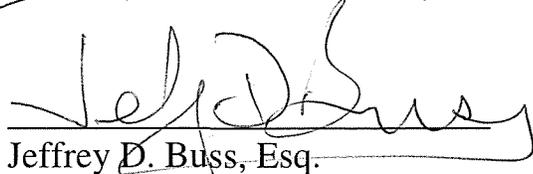
### CONCLUSION

The proposed increase in the Reliability Credit Measurement Period for Rate Years 2 and 3 should be denied. Extending the measurement period from September 15<sup>th</sup> to September 30<sup>th</sup> is not supported by any evidence in the administrative record; will negatively impact customers; is not in the public interest; and fails to comply with the Settlement Guidelines set forth in Commission Order 92-2.

Respectfully submitted,

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