petition

NEM NATIONAL ENERGY MARKETERS ASSOCIATION

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March 28, 2001

Janet Hand Deixler
Secretary
New York Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

RE: Case 01-E-0359 - Petition of New York State Electric & Gas Corporation for Approval of its Electric Price Protection Plan

Dear Secretary Deixler:

In response to NYSEG's letter of March 22, 2001, NEM submits the following points:

1. NEM is very concerned about the ability of New York consumers to get reasonably priced energy supplies. Indeed a bottom's up review of NYSEG's rate structure would ensure that consumers do not pay monopoly prices for competitive services. NEM is concerned that NYSEG's Price Protection Plan will effectively ensure that there will be little or no price competition in its service territory for seven years.

2. By submitting its "Price Protection Plan," NYSEG has voluntarily subjected itself to the "bottoms-up" zero rate base review requested by NEM. NEM submits that Judge Stockholm has the authority to initiate such a complete review of NYSEG's distribution services and the authority to return to NYSEG customers all amounts currently in bundled rates attributable to non-monopoly functions so that NYSEG customers may shop for competitively priced supplies of energy and energy related products, services information and technology. If deficiencies, bottlenecks or other problems in NYSEG's distribution services are identified that would increase costs to consumers, NEM would consider cost-based and performance based rate measures to address them. Indeed, NEM submits that a bottoms-up zero rate base review is the most efficient manner in which to keep energy costs to NYSEG customers at their lowest possible level over both the short and long terms.

3. NEM is concerned that NYSEG views a return of monopoly rents to NYSEG customers as a subsidy. Moreover, NEM is concerned that NYSEG is using the crisis in California to reverse the progress made in New York and establish new and significant barriers to effective competition in its service territory. NEM attaches hereto and incorporates herein a document it filed in the ConEd Phase four proceeding and testimony it recently submitted to the U.S. Senate regarding the California Energy Crisis to more fully address the points mentioned in NYSEG's letter.

4. Contrary to NYSEG's assertion, the ALJ in NYSEG's back-out rate proceeding did not have the specific cost-based data NEM is requesting be supplied, reviewed and analyzed in the instant proceeding. On this point the Order stated:

> Moreover, parties participating in the pending competitive energy markets proceeding (Case 00-M-0504) are addressing issues related to unbundling utility rates and we expect them to make substantial progress in the near future. Thus, the range of additional credits that the marketers have generally suggested is overstated, at least for current purposes. Accordingly, we find that only a limited number of cost categories that the parties have identified are currently ripe for consideration and action here. In particular, only certain electricity procurement costs and retail customer care costs that marketers have begun to incur are candidates for additional retail access credits. Therefore, by adopting the approach advanced by the marketers, and by applying it to the limited number of cost categories that are ripe for current action, we find that an additional credit in the amount of 0.4 ¢/kWh for residential and small commercial customers and 0.2 ¢/kWh for large commercial and industrial customers is proper and should be added to the market-based credit NYSEG shall implement.[1]

NEM respectfully requests the opportunity to participate in the March 30, 2001, prehearing conference by conference call and would offer its telecommunications bridge to facilitate this possibility.

Sincerely,

Craig G. Goodman
President

cc: ALJ Jeffrey Stockholm (via email and Federal Express)
Andrew Irving, Esq. (via email and Federal Express)
Frank J. Miller, Esq. (via email and Federal Express)

Enclosures

[1] Case 96-E-0891, Order Adopting a Market-Based Retail Access Credit, issued and effective January 26, 2001, pages 10-11.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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Case 00-M-0095 – Joint Petition of Consolidated Edison, Inc. and Northeast Utilities for Approval of a Certificate of Merger, with All Assets Being Owned by a Single Holding Company.	:
Case 96-E-0897 - In the Matter of Consolidated Edison Company of New York, Inc.'s for Plans for (1) Electric Rate/Restructuring Pursuant to Opinion No. 96-12; and (2) the Formation of a Holding Company Pursuant to PSL, Sections 70, 108 and 110, and Certain Related Transactions.	:
Case 99-E-1020 - Petition of Consolidated Edison Company of New York, Inc. for Permission to Defer Certain Capacity Costs Associated with the Divestiture of Power Plants, filed in C. 9187.	:
Case 00-E-1208 - Proceeding on Motion of the Commission in the Matter of Consolidated Edison Company of New York, Inc.'s Plans for Electric Rate Restructuring With Respect to Service Provided in Westchester County.	:
Case 00-E-1461 - Petition of the New York State Attorney General to Examine the Electric Rates and Charges of the Consolidated Edison Company of New York, Inc.	:
Case 99-M-0631 - In the Matter of Customer Billing Arrangements	:

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STATEMENT OF THE NATIONAL ENERGY MARKETERS ASSOCIATION

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Dated: Washington, DC
March 16, 2001.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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STATEMENT OF
THE NATIONAL ENERGY MARKETERS ASSOCIATION

This statement is submitted by The National Energy Marketers Association (NEM) in all of the above-referenced proceedings. Pursuant to the Commission's Order of November 30, 2000, a collaborative process for Phase Four of Consolidated Edison's (ConEd's) retail access program was initiated.[1] In its Order,

[1] Case 96-E-0897 et al., Opinion No. 00-14, Opinion and Order Adopting Terms of Settlement, Subject to Modifications, issued and effective November 30, 2000.

the Commission defined the scope of the Phase Four collaborative process such that, "[a]ll potential issues related to the retail access program (including the degree to which delivery rates should be unbundled) remain open for discussion and for the parties to attempt to reach a consensus."[2] Furthermore, the Commission specifically stated with respect to the collaborative process for Phase Four that, "we are not passing on the merits of the initial proposals CENY has offered."[3] To ensure that "[a]ll potential issues related to the retail access program (including the degree to which delivery rates should be unbundled)" were, in fact, properly considered in the Phase 4 collaborative process and did not "fall between the cracks" due to the multiple proceedings being conducted in parallel, NEM and other Marketers[4] filed a motion with the Commission. In its Notice[5] addressing the Motion, the Commission granted an extension of time for completion and discussion by the parties of the analysis by an independent consultant of ConEd's long run avoided costs (LRAC Study) and a Retail Access Proposal ("Proposal") sponsored by the Marketer Coalition. The documents were developed by an independent expert with experience in identifying these costs and in reliance on (1) the Commission's numerous Orders on this subject, (2) ConEd's FERC One form and (3) the material provided to us by the company. Both documents were provided to the Staff and parties and discussed. The Study identifies and quantifies the <u>minimum</u> proper computation of LRACs associated with ConEd's exit from the merchant function.[6]

[2] Id. at 29.

[3] Id.

[4] In addition to NEM, the Marketer Coalition included AES New Energy, Amerada Hess Corporation, Keyspan Energy, 1st Rochdale, and the Small Customer Marketer Coalition.

[5] Case 96-E-0897, Notice Extending Deadline, issued and effective February 20, 2001.

[6] It should be noted that arguments regarding short run avoided costs, POLR and whether and/or to what extent a utility will or would like to avoid costs are irrelevant to the computation of LRAC as provided by the Commission in a series of Orders. See Case 99-M-0631, Order Denying Petitions for Rehearing, issued and effective September 1, 2000, page 2, affirming methodology set forth previously in the proceeding, Order Providing for Customer Choice of Billing Entity, issued and effective March 22, 2000; Case 94-E-0952, Order Providing for Competitive Metering, issued and effective June 16, 1999. NEM also hereby incorporates by reference its analysis of the NYPSC's enabling legislation that empowers the commission to require a utility to exit the merchant function by a date certain.

Given the fact that this proceeding is not a full "bottom's up" analysis, the identification and quantification of LRACs associated with ConEd's exit from the merchant function as provided herein was performed in conformance with the Commission's policy, recently set forth in its Orders in the billing proceeding as follows:

> We will require that the credits be based on long run avoided costs (LRACs) for the billing functions described herein and the associated customer care functions that would be avoided if ESCOs do the billing, and they may be differentiated by customer class if supported by the LRACs. If determination of such LRAC estimates cannot be accomplished within the time periods provided by this order, proxy amounts, using the same methodology as above, but based on embedded cost of service studies instead of LRACs, can be presented and used, subject to provision of the LRAC estimates in a reasonable time thereafter. *Further, the LRACs should be derived based on an assumption that the utilities exit the retail billing function for all customers, or, alternatively, based on the incremental cost for the total billing function if it were being established today. In either case, the calculation should include the cost of all support functions associated with billing to serve the full complement of customers.*[7](emphasis added)

Consistent with the Commission's direction, the LRAC analysis and Retail Access Proposal identified the minimum costs on a yearly basis that would be avoided if ConEd were to fully exit the merchant and related functions as envisoined by the NYPSC. Indeed, the Study conservatively identified approximately $130 million that ConEd could avoid incurring each year by exiting the merchant function. Moreover, the Retail Access Proposal provided a way in which to both minimize the $130 million per year in LRAC and to minimize any resulting stranded costs as well.

NEM cannot overstate the costs and the risks (price, financial and political) that are being imposed on the marketplace and onto NY consumers by the multiple,

[7] Case 99-M-0631, Order Denying Petitions for Rehearing, issued and effective September 1, 2000, page 2, affirming methodology set forth previously in the proceeding, Order Providing for Customer Choice of Billing Entity, issued and effective March 22, 2000.

concurrent "piecemeal" resolutions to the fundamental issues surrounding the exit of utilities from the merchant function and the separation of natural monopoly functions from functions that can clearly be outsourced and provided on a competitive basis. The longer it takes and the more and more bifurcated the restructuring issues, the higher the costs that NY consumers will be forced to pay for energy. We urge the Commission to use the LRACs developed in this proceeding as a minimum starting point to provide ratepayers in the ConEd service territory sufficient funds to shop for alternative, competitively priced energy and related products, services, information and technology.[8]

The proposed settlement fails to comply with the Commission's instructions in ConEd Phase 4 to consider "[a]ll potential issues related to the retail access program (including the degree to which delivery rates should be unbundled)." NEM submits that it is virtually impossible to construct a successful retail access program and to provide consumers with the true long run avoid costs associated with ConEd's exit from the merchant function without either a complete "bottom's up" approach to back-out credits, or at a minimum, to provide consumers with a "shopping credit" that utilizes either the fully embedded or the long run avoided costs for all functions related to ConEd's exit from the merchant function that were identified, quantified and developed for this proceeding.

NEM and the other marketers in this collaborative have identified, at a minimum, approximately $130 million per year in additional costs that will be incurred in every year that ConEd fails to exit the merchant function. The settlement presented to the Commission that essentially maintains the status quo should, but fails to, incorporate these costs.

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[8] NEM would like to stress that the proper LRAC analysis and Retail Access Plan is a minimum quantification of a true LRAC analysis that starts with a zero rate base and looks literally at every cost that is reasonable for a "wires only" distribution service company, and then subtracts that number from the current fully bundled sales rate to quantify the proper "shopping credit" that consumers are entitled to receive.

Failure to provide consumers shopping credits that equal the long run avoided costs associated with ConEd's exit from the merchant function deprives consumers of a minimum of $130 million per year in credits to shop for alternate supplies and related services at the very moment in time when these credits may be needed the most.

Additionally, the structure of the agreement incents ConEd to delay exiting the merchant function in a manner that maximizes the ultimate costs on NY consumers of the transition to a competitive retail marketplace. If it takes ConEd ten years to avoid the range of costs that are associated with its merchant function, the total amount that consumers will ultimately pay could exceed a billion dollars. The Retail Access Proposal attempted to mitigate this total cost to NY consumers consistent with the Commission's policy on LRAC and both Staff and ConEd's desire to minimize stranded costs. NEM urges the Commission to increase the settlement to more fully reflect the $130 million per year in LRAC identified in this proceeding.

Conclusion

In conclusion, NEM submits that the negotiated settlement is basically a "stand-still" agreement for six months that may help a small number of NEM members to maintain an existing customer base and attempt to survive what may be a difficult summer in New York. NEM has a number of serious concerns about the substance, structure and process related to this negotiated, "piece meal" settlement. NEM appreciates the Commission's extension of time to find and commission an independent expert to identify and quantify the minimum amount of costs that ConEd can and should properly avoid when it fully exits the merchant function. However, the proposed settlement does not comport with multiple Orders issued by this Commission and does not fully advance the best interests of New York consumers who may very well need more than the $130 million in LRAC to permit meaningful price competition to offset potential price increases forecasted for this summer. Without a full and proper breakdown of all costs that comprise ConEd's fully bundled rates, funds in addition to the $130 million identified in this proceeding that could and should properly be useable to provide consumer back-out credits will always "slip between the cracks" due in part to the various financial, regulatory and utility accounting methods and terminology in use. Consequently, NEM urges the Commission to increase the proposed back out credit. Additionally, NEM urges the Commission to immediately open up a fully consolidated proceeding to quantify a full "bottoms-up" analysis of ConEd's natural monopoly functions and therein determine the full amount of funds that consumers should receive to shop for energy and related products, services, information and technology. This will permit competitive suppliers to make long term investments and at the same time set the minimum level of costs that the utility should strive to eliminate in the shortest possible time. We believe this approach will save consumers and the New York economy the maximum amount of unnecessary economic dislocations.

Respectfully submitted,

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March 16, 2001.

NATIONAL
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Senate Committee On Energy and Natural Resources

The California Energy Crisis and Recommendations for Federal Legislation

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February 13, 2001

This document reflects the views of the National Energy Marketers Association and does not necessarily reflect the views of any specific member of the Association.

I.
Introduction

My name is Craig G. Goodman. I am submitting this testimony as President of the National Energy Marketers Association (NEM). NEM is a national, non-profit trade association representing a regionally diverse cross-section of both wholesale and retail marketers of energy and energy-related products, services, information and technology throughout the United States. NEM members include: small regional marketers; large international wholesale and retail energy suppliers; energy consumers; billing firms, metering firms, Internet energy providers, energy-related software developers, risk managers, energy brokerage firms, customer service and information technology providers. Affiliated and independent marketers have come together under the NEM auspices to forge consensus and to help eliminate as many issues as possible that would delay competition. NEM supports the implementation of laws, regulations, standards of conduct, rates, tariffs and operating procedures: (a) that provide all customers meaningful choice; (b) that implement open, efficient, "liquid" and price-competitive energy markets, and (c) that encourage the development of new, and innovative energy services and technologies, at the earliest possible date.

As a national trade organization, NEM brings a wide range of experiences, as well as broad perspectives to its testimony in this proceeding that should aide the United States Senate Committee on Energy and Natural Resources and enhance the quality of the record to be developed here. NEM currently participates in more than 50 restructuring proceedings around the country and at the FERC. The testimony and recommendations presented here represent major issues and barriers to price competition that are most often confronted in proceedings around the country.

II.
Background

Price competition is the goal of deregulation, whether it is for airfares, long distance telephone rates or energy prices. Meaningful choice and true price competition are always the best consumer protection laws possible. When laws and regulations set prices, restrict access to consumers, establish barriers to entry, mandate sales of assets coupled with spot purchases of volatile commodities, markets get distorted and everyone loses, consumers, taxpayers, utilities, governments and suppliers. Real competition always works. Deregulation is not a failure. *California Style Deregulation*, however, is a failure.

California was first and could have established a model for other states to follow. Unfortunately, a number of political compromises made supply shortages and price spikes inevitable. In the face of strong and growing demand for power, no new power plants were built. Price cuts were legislated at the same time that tens of billions of dollars in stranded costs were allowed into rates. Energy sellers and buyers were prohibited from doing business with each other and all energy purchases and sales were mandated through a state run monopoly. Simultaneously, utilities sold most of their generating assets at values higher than book value and purchased energy supplies in the spot market. All this occurred at a time when no new power plant construction made future shortages and price spikes foreseeable and ownership of existing plants excellent investments. Financially, the utilities were selling electricity short without generation to deliver as a hedge against price increases. Predictably, wholesale prices grew to meet demand yet, at the same time, retail prices were capped. This is a recipe for disaster in any market.

California is one of the world's largest economies, the epicenter of a worldwide technology revolution, and built around an electricity system that is in need of significant new investments to deliver "digital power quality." The direct and indirect impact to California, the western United States and the global economy of local decisions that stalled construction of needed supplies is potentially astronomical. Meaningful choice and true price competition can only occur when consumers are assured that new supplies will be available to meet their growing demand. This has not happened in California.

Now, California is in a cycle of stage 3 energy emergencies with rolling blackouts, major utilities are having cash flow and credit/confidence crises, taxpayers and consumers are revolting against both high prices and utility bailouts, new generation and construction is stalled, and politicians have actually threatened to expropriate private generating assets that utilities sold when values were high and shortages were foreseeable.

While California-style deregulation is unique, the impact of the California energy crisis is not contained within the borders of the state, and will be felt throughout the region and could affect the national and global economies. The impact of California's energy and environmental choices is now being passed on to ratepayers throughout the Northwest. Ironically, in order to allay short-term blackouts, older, coal-burning facilities that could have been replaced with newer cleaner plants will be running overtime for the foreseeable future.

Importantly, every state has a legitimate interest in protecting in-state consumers from increasing energy prices. However, the current 60-year old system of federal and state laws and regulations were designed around a local franchise monopoly paradigm. To deliver the lowest possible prices to consumers, new laws and regulations are needed immediately so that competitive suppliers can super-aggregate energy demand and deliver national economies of scale to even the smallest consumers. Competitive energy suppliers cannot succeed unless they can offer consumers lower prices than the local franchise monopoly.

III.
Recommendations

There are a number of actions that federal and state governments need to take to ensure the proper restructuring of the electric industry. Members of NEM spent hundreds of man-days forging consensus on the proper role of the federal, state and local governments in the implementation of electric restructuring. NEM members operate in virtually every market that has opened for competition, and their broad base of experience was the basis for the attached document entitled, "***National Guidelines for Restructuring the Electric Generation, Transmission and Distribution Industries***." Since this document was released, the California model for deregulation has produced empirical evidence as to how the failure of one state's deregulation program can have significant economic and environmental impacts on other states as well as the national and global economies.

Accordingly, NEM urges the Congress to consider a number of important actions to bring meaningful choice and true price competition to all US consumers of energy at the earliest possible date. Generally speaking these actions would: (a) encourage the development of national economies of scale through more uniform rules, operating procedures, tariff structures, scheduling coordination and technology platforms, (b) limit utility services to pure monopoly functions (transmission and distribution) and provide current monopoly cost-base prices to consumers as "shopping credits" to procure competitive services, and (c) expand existing energy and environmental tax credits to include *Qualified Restructuring Investments* such as advanced metering, computer system upgrades, distributed generation and provide tax and performance based regulatory incentives for infrastructure upgrades, congestion management, maintenance and streamlined interconnection procedures.

A. National Economies of Scale are Critical to Lower Energy Prices. True price competition and lower energy prices require competitive suppliers to achieve national, or at least, regional economies of scale. Competitive suppliers can only succeed in winning customers away from incumbent utilities if they can offer lower prices, better services, more novel products, services and technologies or all three.

Currently, there are 50 different states with different rules in multiple utility service territories, different data protocols and transaction sets, different operating rules, different switching, scheduling and customer protection rules, even different units of measurements. As long as market participants are forced to divert scarce resources to customize computer systems, billing, back-office, and customer care facilities, and to develop and maintain non-standardized information protocols or develop specialized knowledge of different business rules in each jurisdiction, it drives energy prices higher nationwide. Add to this the fact that one marked failure like California can have a devastating impact on consumers, taxpayers, financial markets and regional ecosystems.

Energy is the lifeblood of the world economy. It is time to coordinate and implement relative uniformity among the states, in rules, processes, procedures, scheduling delivery, and even information technologies.[1] There are a significant number of business rules,[2] consumer protection laws, technology platforms and comparable operating rules and scheduling processes which, if established fairly, efficiently, and uniformly across the country could bring significant cost savings and have a profound impact on the country and the reliability of energy supplies.

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[1] ***National Energy Technology Policy*** (October 30, 2000). Available on the NEM website at: http://www.energymarketers.com/documents/NEM_National_Energy_Technology_Policy_final.pdf

[2] Uniform Business Practices for the Retail Energy Market, Sponsored by EEI, NEM, CUBR and EPSA. Accessible at www.eei.org.

B. Utilities Should Exit the Merchant Function and Consumers Should Be Provided Shopping Credits Equal to Current Monopoly Prices to Shop for Competitive Services. Utilities should be encouraged to "exit" competitive businesses and focus all ratepayer dollars on performing services that can only be performed by a natural monopoly. In the process, consumers should be given "shopping credits" on their utility bills equal to the utility's fully embedded costs of providing competitive services that have been historically bundled with traditional monopoly services. Currently, captive utility customers pay monopoly prices for a bundle of services that include many products and services that can and should be provided by competitive suppliers at competitive prices. Failure to give consumers credits that reflect the full costs historically associated with these services will send erroneous pricing signals to consumers and cause consumers to pay twice for the same services. Shopping credits which "back out" the proper amounts from utility rates will permit consumers to shop for competitive services, encourage price competition among suppliers, improve efficiency and stimulate innovation. Until consumers are given the full monopoly prices they are currently paying for competitive services to shop for alternative energy services, price competition and lower energy costs will be difficult to achieve.

C. Federal and State Tax and Regulatory Incentives are Needed Immediately for Investments in New Energy Supplies, Conservation, Technology, and Infrastructure Immediately. The United States has entered the digital age with an energy infrastructure constructed for the industrial revolution. The United States is operating on a level of reliability that cannot support digital power quality needs. A flicker of the lights in Silicon Valley has global impacts.

One of the lowest cost, highest yield policy solutions is to create targeted tax incentives to encourage all forms of new energy supply, technology and conservation investments. This includes investments in new pipes and wires to reduce congestion, advanced metering systems, new computer systems, new energy supplies as well as distributed generation. Both the state and federal governments have powerful and effective tools to encourage new investments in energy supply and conservation. The federal tax code already contains a myriad of targeted energy, environmental and efficiency tax credits that should be updated to increase the supply of electricity and natural gas and reduce consumption. Either or both the existing energy tax credits contained in Section 48 of the Internal Revenue Code (IRC), or the existing credit for research contained in Section 41 of the IRC, could be expanded to include "qualified energy restructuring investments."

NEM recommends that the definition of "qualified restructuring investments" include, at a minimum, expenses incurred to modernize and upgrade computer and information systems, metering systems, billing systems and customer care facilities to facilitate competitive restructuring. The credit should be available to both regulated and unregulated entities. To ensure that restructuring tax credits and regulatory incentives are targeted and effective, investments that are not "qualified" should also not qualify for stranded cost recovery.

Conclusion

The market structure and added supplies necessary for deregulation to succeed in California were not in place, and the failure of *California style deregulation* was therefore predictable. In order to prevent similar crises, permit meaningful choice and true price competition and ensure the reliability of a digital quality U.S. energy infrastructure, (a) far greater uniformity is necessary among the states to achieve national economies of scale, (b) utilities must be incented to exit the merchant function while consumers are given adequate shopping credits to shop for competitive supplies, and (c) existing tax and regulatory incentives must be expanded to encourage new investments in energy supply, technology and conservation.

If both federal and state laws are written in a manner that ensures meaningful price competition for the smallest retail consumer, the country will benefit from lower energy costs, greater efficiency and improved competitiveness internationally. Higher energy costs operate like a regressive tax on low-income individuals and small businesses. Conversely, laws and policies that help to lower energy prices have a disproportionately greater benefit for lower income individuals and those on a fixed monthly income. NEM experts are available to work with Committee staff to draft appropriate language to implement these recommendations.

Respectfully submitted,

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