STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on September 17, 2008

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
Robert E. Curry, Jr.

CASE 06-G-1332 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Gas Service.

ORDER CONTINUING GAS ENERGY EFFICIENCY PROGRAMS

(Issued and Effective September 18, 2008)

BY THE COMMISSION:

INTRODUCTION

On September 19, 2007, the New York State Public Service Commission (Commission) adopted a three year gas rate plan for Consolidated Edison Company of New York, Inc. (Con Edison)[1] which authorized Con Edison to implement a gas energy efficiency program, subject to certain guidelines and parameters. During the first rate year of the three-year plan, the New York State Energy Research and Development Authority (NYSERDA) was responsible for administering the $14 million efficiency program for Con Edison. The rate plan required the formation of a collaborative (Collaborative) to develop a Gas Efficiency Program for rate years two and three (RY2 and RY3) including recommendations for program design, funding levels,

[1] Case 06-G-1332, Consolidated Edison Company of New York, Inc. - Gas Rates, Order Adopting the Terms of a Joint Proposal (issued September 25, 2007).

administration, and incentives for Con Edison. Con Edison chaired the Collaborative, which included a number of interested parties, including Department of Public Service Staff (Staff), NYSERDA, New York City, the County of Westchester, New York State Consumer Protection Board, Consumer Protection Association, New York Energy Consumers Council, Inc., Pace Energy and Climate Center, Natural Resources Defense Council, Inc., Public Utility Law Project, Inc. and Association for Energy Affordability.

The Collaborative's charge was to address and attempt to reach consensus on nine action items related to energy efficiency programs either offered or to be offered in Con Edison's service territory: Program Administrator; Stakeholder Participation; Energy Efficiency Programs; Con Edison Financial Incentives; Outreach, Education and Marketing; Monitoring, Verification and Evaluation; Program Cost Recovery; Energy Efficiency Portfolio Standard (EEPS)[2]; and Legislative/Regulatory Opportunities. With the direction established in Case 06-G-1332, Con Edison convened an initial Collaborative meeting on September 6, 2007 in New York City with additional meetings and conference calls held throughout April, 2008.

Case 06-G-1332 also authorized Con Edison to contract with an independent consultant to perform a study to analyze and recommend the appropriate level of funding for RY2 and RY3 as part of a long-term plan to maximize net benefits to customers from gas efficiency, the need for changes, if any, to existing programs, and new programs that could be developed to be distributed to participants in the Collaborative for exploration and comment. The study was required to include, for each

[2] Case 07-M-0548, Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard.

suggested energy efficiency program, empirical data of the program’s estimated costs and cost-effectiveness.

Con Edison developed a Scope of Work for the study for distribution to the Collaborative members for their review and comment at the first meeting of the Collaborative held on September 6, 2007. Con Edison incorporated the final Scope of Work into a Request for Proposal (RFP) that was used to solicit competitive bids for the study. Con Edison provided the RFP to the Collaborative on September 17, 2007 for final comment and issued the RFP on September 20, 2007.

Con Edison received three responses to the RFP and invited Collaborative members to participate in the evaluation process of those responses. NYSERDA, New York City, and Staff chose to participate. After completing the competitive bidding and evaluation process, Con Edison engaged GDS Associates, Inc. (GDS) to perform the study. The GDS study, which expanded on the March 2006 Optimal Energy Report for the Con Edison service area, estimated that the economic potential for natural gas savings in Con Edison’s service territory by 2016 was nearly 20 million dekatherms, of which GDS expected 80%, or nearly 16 million dekatherms, to be achievable based on the expected replacement market for gas equipment. The GDS study also recommended a prototypical portfolio of programs to achieve savings of approximately 0.6 million dekatherms annually, and accompanying budgets totaling about $25 million annually. The average program cost would be approximately $4.25 per annual therm saved (averaging anticipated costs and energy savings from 2009 through 2010).

The Study recommended ten residential and three commercial natural gas energy-efficiency programs for the Con Edison service territory: 1) Residential High-Efficiency Space-Heating Program; 2) Residential High-Efficiency Water-Heating

Program; 3) Advanced Residential Controls Program; 4) Residential ENERGY STAR Homes Program; 5) Residential ENERGY STAR Replacement Windows Program; 6) Residential Weatherization Program (Non Low Income); 7) Residential Low Income Program (1-4 units); 8) Multifamily Residential Low Income Program (Five or More Units); 9) Multifamily Residential Housing Program (Non Low Income); 10) Energy Analysis: Internet Audit Program; 11) Commercial High-Efficiency Heating Program; 12) Commercial Energy-Efficiency Program; and 13) Business Energy Analyzer Program.

Of the nine action items it was required to analyze, the Collaborative was able to reach consensus on some items, but not on others. In preparing the final report to the Commission, Con Edison, as the chair of the Collaborative, detailed the areas of general agreement among Collaborative members, the comments of the Collaborative members concerning each action item, regardless of whether consensus was reached or not, and Con Edison’s recommendation for each action item.[3] Con Edison filed the final version of the report with the Secretary to the Commission on April 15, 2008.

NOTICE SOLICITING COMMENTS

On May 16, 2008, a Notice Soliciting Comments was issued by the Secretary that invited interested parties to comment on the gas energy efficiency collaborative report. A deadline of June 3, 2008 was established for initial comments and June 13, 2008 for reply comments. The comments received are summarized below.

[3] The Collaborative discussed a tenth item, Interruptible Gas Customers, which was included at the end of the report filed with the Secretary to the Commission on April 15, 2008.

NOTICE OF PROPOSED RULEMAKING

A Notice of Proposed Rulemaking concerning Con Edison's report was published in the State Register on May 28, 2008. The minimum period for the receipt of public comments pursuant to the State Administrative Procedure Act (SAPA) regarding that notice expired on July 14, 2008. No comments other than those received from the parties to the proceeding were received.

SUMMARY OF THE POSITIONS OF THE PARTIES

Following is a summary of the Comments and Reply Comments received from the parties in this proceeding.

Staff

In its Initial Comments, filed on June 3, 2008, Staff recommends shared administration for gas efficiency programs between NYSERDA and Con Edison with NYSERDA continuing to administer its existing programs for Rate Year 2 (RY2). Staff finds a $17 million program budget amount, proposed by Con Edison and NYSERDA, to be a reasonable amount, representing a 21% increase from RY1.

Staff notes a lack of detail regarding projected program spending levels and expected natural gas savings associated with the energy efficiency programs and, therefore, reserved judgment on the program mix. It also recommends that the funding level for RY3 be addressed at a later date.

Staff supports a process that maximizes stakeholder input and participation but does not agree with the approach described in the Consensus Recommendation, which Staff claims would bifurcate collective efforts and exclude key stakeholders. Staff instead recommends a more informal approach such as the one outlined in Staff's March 25, 2008 filing in the EEPS

Proceeding. That filing advocated that in determining which entity should administer a given energy efficiency program, the decision should be based on which entity is the most sensible choice given the particular energy efficiency application and consumer sector. Staff further recommends that the specific data to be collected concurrent with the implementation of the programs should be delineated when a program funding request is made.

In terms of energy efficiency programs, Staff recommends that NYSERDA should continue to administer its existing programs in the Con Edison service territory and that Con Edison should propose programs that complement NYSERDA programs without duplicating them, structured in such a way as to accomplish equitable distribution of program resources over the greatest number of ratepayers who fund the efficiency program, with programs that can be scaled based on program size and funding levels. Staff recommends that the current allocation of funding between market sectors be reevaluated for RY2 and RY3 based on the economic potential for gas savings to achieve the greatest savings at the most reasonable cost.

On the topic of incentives, Staff notes that the issue of utility incentives associated with energy efficiency programs is being addressed in the EEPS proceeding and decisions on their use should be deferred until their resolution in that venue. Staff notes that it does not oppose incentive structures that are reasonable and performance based. In response to Con Edison’s assertion that energy efficiency incentives should provide a return equivalent to Con Edison’s supply-side investments, Staff notes that the cost recovery framework for energy efficiency programs varies significantly from the rate basing framework used for supply-side investments, obviating the need for parity in terms of shareholder returns among these activities.

Staff supports use of a comprehensive, systematic, and effective outreach, education and marketing (OE&M) approach, with Con Edison playing the central coordinating role. Staff continues by saying that OE&M of all programs can be greatly enhanced by a systematic approach that leverages Con Edison’s knowledge of its customer base and its customer information, metering, and billing systems, and provides customer referrals to the various programs.

Staff recommends deferring any decisions on Monitoring, Verification, and Evaluation (MV&E) to the EEPS proceeding. It also supports Con Edison’s proposal that it should continue to recover RY2 and RY3 program costs through the Monthly Rate Adjustment. Staff also recommends deferring any decisions on the role of energy codes and standards to the EEPS proceeding. Staff emphasizes that, overall, the outcome of this case will need to conform to decisions made in the EEPS proceeding.

Finally, on the subject of interruptible customers, Staff does not support a pilot initiative for interruptible customers. In general, Staff does not support offering efficiency programs to interruptible customers if firm customers will have to pay for any interruptible customer efficiency program costs not met by revenues received from interruptible customers. According to Staff, important issues will need to be resolved before inclusion of interruptible customers can occur.

<u>Con Edison</u>

Con Edison requests that the Commission approve the filing, including Con Edison’s recommendations, with one modification. Con Edison has revisited the proportionality of the allocations recommended in the GDS Study and developed a new budget allocation table, with an approximately 60/40 allocation between residential and commercial markets. Based on Con Edison's review of census data, it estimates that the low income sector is approximately 24% of the residential market and 13% of the overall firm market. Con Edison recommends adjusting the initial residential budget allocation for the low income market to 30% of the overall firm market with another 30% being allocated to the residential non-low income market. Con Edison also recommends that the Commission allow the program administrator to reallocate up to 35% of sector dollars upon notification to Staff and the Collaborative.

NYSERDA

NYSERDA comments that it commends the efforts on the Collaborative but has a number of concerns. It states that the Report submitted by Con Edison lacks sufficient detail for the Commission to properly evaluate and approve the gas efficiency programs it contains. For now, NYSERDA recommends that the Commission expand existing energy efficiency programs, as detailed in an Implementation Plan that NYSERDA prepared in April 2008 in the instant case until the relevant decisions are made in the EEPS proceeding.

NYSERDA has concerns about the use of multiple program administrators. It is also concerned that separate and different OE&M, audits, evaluation, and other program components will result in program overlap, cause confusion, and incur ratepayer cost. It considers these issues especially important if a utility program administrator is to be paid performance incentives. NYSERDA has concerns about the use of financial utilities and believes that incentives have the potential to provide a disincentive to "market transformation" initiatives and will increase the cost of this case's energy efficiency program. NYSERDA continues, "If financial incentives are to be awarded, the amount of such incentives should be determined before any commitment to utility administration is made."

NYSERDA describes its concerns about the adoption of the Con Edison program plan: 1) the program leaves out substantial gas efficiency potential that can be attained from a whole building approach, 2) six of the eleven proposed programs are equipment-based rebate programs that might inhibit market transformation, 3) rebate programs have been shown to increase energy efficiency only on a limited basis, 4) whole building approaches provide a more effective outcome to the consumer, 5) integrated electric and gas programming and funding will result in better market penetration and better serve customers and service providers who address whole buildings, 6) multiple administrators will increase administrative costs, and 7) competition will reduce the ability of the two administrators to collaborate.

NYSERDA then recommends that the Commission only approve the implementation of energy efficiency programs that are currently existing, fully integrated, and cost-effective. It recommends use of the Implementation Plan that NYSERDA filed in April 2008, which it attaches as an Appendix. NYSERDA also recommends that the allocation of total funds remain consistent with the Pilot and Transition programs: 50% for low income residential, 25% for market rate residential, and 25% for commercial/industrial programs.

Staff's Reply

In Reply Comments filed on June 13, 2008, Staff notes that in its June 3 comments, Con Edison had, for the first time, provided a Pro-forma Budget Allocation, which differs from the $24 million annual budget allocation described in the GDS study. Staff also notes that Con Edison has not provided a detailed implementation plan for its proposed programs.

Staff supports Con Edison's proposed budget allocation of 40% Commercial, 30% Residential Low Income, and 30% Residential Non-Low Income. Staff also agrees that if the company is going to reallocate funds it should notify Staff and the Collaborative at least 60 days prior to the reallocation. Staff recommends going further and requiring that the company provide, prior to the actual reallocation of funds, the rationale behind and the data supporting the proposed reallocation to Staff and members of the collaborative. Staff also recommends that if it or other parties have concerns regarding the proposed reallocation, the company, Staff and collaborative members should attempt to resolve their differences through discuss, and, failing a successful conclusion, rely on alternative dispute resolution to settle the issue.

Staff agrees with NYSERDA's concerns about the use of multiple program administrators without identifying their specific roles and responsibilities. In response to NYSERDA's comments on incentives, Staff avers that both rebate programs and market transformation programs are necessary at this time. Staff believes rebate and market transformation programs can coexist and points to previous Commission approval of rebate programs for several New York State gas energy efficiency programs.

On the topic of oil to natural gas conversions, Staff says that Con Edison should use care in its accounting to ensure that only non-energy efficiency funds should be used to pay for conversions and that accounting methods for these projects need to be transparent.

With regard to the NYSERDA recommendation that until the EEPS proceeding determines differently, the Commission should only approve the implementation of efficiency programs that are existing, fully integrated, and cost-effective, Staff says that this standard would have the effect of preventing Con Edison from administering any efficiency programs. Staff instead believes that Con Edison should have a role in administering programs during RY2.

Staff prefers Con Edison’s proposed allocation of funding over that proposed by NYSERDA because it better reflects Con Edison’s customer load. Staff also notes that the Pro-forma Budget in the June 3, 2008 filing contains some important information lacking in NYSERDA’s June 3 filing that will be important for comparing the program proposals.

New York City's Reply

New York City believes that there must be a substantial role for Con Edison in future gas efficiency programs, and opposes the view that existing gas-related programs offered by NYSERDA are sufficient. It instead believes that a comprehensive approach using the capabilities of both NYSERDA and utilities is needed. New York City further believes that the determination of efficiency program management does not need to await the final resolution of the EEPS proceeding. It does not agree with the notion of continuing existing NYSERDA programs for the balance of the gas rate plan or that any utility role should be strictly supplemental to NYSERDA programs.

Con Edison's Reply

Con Edison rejects comments that it should not administer gas energy efficiency programs in the short term. It avers that NYSERDA “has had difficulty implementing the RY1 program” and “the Commission should review the most recent results before it decides to have NYSERDA continue these programs with an expanded budget.” Con Edison proposes that the Commission require Con Edison and NYSERDA to jointly file proposed detailed gas efficiency program with Con Edison primarily responsible for administration and delivery of the programs within its territory. Con Edison continues to recommend that it have lead program administrator responsibility for a variety of end-use programs and that NYSERDA should have responsibility for state-wide upstream market transformation initiatives, new construction programs for 1-4 family residential buildings, and for changes to building codes and appliance standards.

Con Edison says that it is prepared to file a detailed plan and believes that NYDERDA should likewise be required to file a more detailed plan. Con Edison further states that "the best way for the State to achieve its goal is for the Commission to direct Con Edison and NYSERDA to work cooperatively to develop a joint program."

Con Edison reiterates its support for rebate programs to avoid missing opportunities for customer action. Con Edison does not believe that its role should be limited to a "gateway" role and calls for the criteria for program administrator selection to be applied for each program. Con Edison then claims that "it is only Con Edison that has the economic resources, experience in the specific gas marketplace and existing effective relationships with the target customer base that will likely result in the broadest level of participation." It also cites strengths it has in access to confidential customer information and expertise with demand side electric programs.

Con Edison expresses some concerns with NYSERDA's operation of the current gas energy efficiency program and calls on the Commission to review the most up to date information available from NYSERDA, including the $17 million goal. Con Edison continues to propose that it should focus on resource acquisition while NYSERDA would focus on market transformation efforts. The filing includes the comment, “NYSERDA has been fostering the competitive market for ten years under the SBC program – if those efforts had been effective at capturing all energy efficiency opportunities, the Commission would not have seen the need for the EEPS.” Con Edison continues to support the Partnership structure it filed with some other parties on January 11, 2008 and rejects Staff proposal for coordination among interested parties.

Con Edison believes that utilities should be provided with an incentive for both administration of its own programs and marketing performed on behalf of NYSERDA’s programs. It continues to support the notion of receiving incentives in line with supply-side investments. Con Edison states its belief that the Total Resource Cost should exclude utility shareholder incentives.

DISCUSSION AND CONCLUSION

Con Edison's Report lacks sufficient detail for us to properly evaluate the proposed gas efficiency programs, particularly as to projected individual program spending levels and expected energy savings. The Collaborative Report lacks actionable specific program recommendations and given the lack of agreement resulting from the Collaborative process and the brief time left before the beginning of Rate Year 2, we will require the continuation of the current programs for another year and possibly enhance them shortly when we consider Con Edison's utility fast track "Expedited" filing. In advance of Rate Year 3, we will require Con Edison to work with NYSERDA and to file a program plan for our approval to implement a comprehensive portfolio of gas energy efficiency programs for Rate Year 3 with an annual budget of $24 million, including administration and evaluation costs. Finally, to better ensure proper administration, monitoring and evaluation of the programs, we will require an enhanced level of program evaluation (including measurement and verification) as we have done for the electric programs and impose some additional reporting and other administrative requirements.

The Commission orders:

1. Consolidated Edison Company of New York, Inc. (Con Edison) shall continue for Rate Year 2 (October 1, 2008 through September 30, 2009) its arrangement with the New York State Energy Research & Development Authority (NYSERDA) such that NYSERDA is authorized and will continue to administer the Natural Gas Efficiency Program Plan filed on June 1, 2007 [See, Case 03-G-1671, Consolidated Edison Company of New York, Inc. – Gas Rates, Order Authorizing Implementation of the Natural Gas Efficiency Program Plan (issued June 22, 2007), Appendix A] for another year in the manner discussed in the body of this order. The issuance of this order does not preclude adoption by the Commission of additional gas energy efficiency programs or targets for Con Edison that may be under consideration in other proceedings such as Case 08-G-1008 and Case 07-M-0548.

2. Unencumbered funds held by NYSERDA from the Rate Year 1 program (October 1, 2007 through September 30, 2008) shall be retained by NYSERDA and used to enhance the Rate Year 2 programs. The Natural Gas Efficiency Program Plan budget for Rate Year 2 shall continue at the annual level of $14 million with an additional 3% ($420,000) being added for enhanced evaluation (including measurement and verification activities). The current mechanism of a Gas Energy Efficiency Surcharge to recover these costs and any net lost revenues will continue as modified herein. No later than 30 days after the issuance of

this order, Con Edison shall enter into an agreement with NYSERDA for NYSERDA administration of the plan and arrangements for a quarterly, graduated payment schedule of $14,420,000 in funding for the plan. To the extent that any unencumbered funds remain after September 30, 2009, they will be returned to Con Edison to be used for the benefit of ratepayers or they will be used as otherwise directed by the Commission.

3. Status reports shall be completed by NYSERDA and submitted to the Commission for public and Department of Public Service (Staff) review on an annual basis for all programs. Summary status reports shall be completed by NYSERDA and submitted to the Commission for public and Staff review on a quarterly basis for all programs. The details of the requirements for the status reports and summary status reports shall be developed by NYSERDA in cooperation with Staff.

4. Program evaluations will follow such guidance to program administrators regarding the components of evaluation plans as may be given from time to time by the Director of the Office of Energy Efficiency and Environment. Program evaluations and reports shall be completed by NYSERDA and submitted to the Commission for public and Staff review on quarterly basis for all programs. The details of the requirements for the program evaluations and reports shall be developed by NYSERDA in cooperation with Staff.

5. NYSERDA shall provide a monthly "scorecard" reports to Staff of NYSERDA’s actual expenditures against a forecast of expected program enrollment, expended and committed funds, etc, as approved or modified by the Commission. NYSERDA shall advise Staff and Con Edison at least 120 days in advance of any program anticipated to exceed its authorized budget level for commitments and provide recommendations for addressing the situation. NYSERDA shall advise Staff and Con Edison at least

90 days in advance of any planned changes to program eligibility, contract length or incentive levels so that Staff may review the planned changes and provide feedback prior to implementation. Con Edison shall provide a monthly report to Staff of the low income referrals made by Con Edison to NYSERDA.

6. On or before March 2, 2009, Con Edison shall submit a program plan for our approval to implement a comprehensive portfolio of gas energy efficiency programs for Rate Year 3 (October 1, 2008 through September 30, 2009) with an annual budget of $24 million, including administration and evaluation costs. The program plans shall include detailed benefit/cost estimates using the Total Resource Cost methodology, and to the degree applicable to gas programs, all the information identified in the June 23, 2008 Order and appendices in Case 07-M-0548 as necessary to demonstrate that program portfolios meet the Program Selection Criteria. The program plan shall also include a detailed plan for evaluation of each individual program, including details on the scope and method of measurement and verification activities which comports to the guidance to program administrators regarding the components of evaluation plans given by the Director of the Office of Energy Efficiency and Environment. The program plan shall demonstrate that collaborative discussions have been held with NYSERDA to establish the extent to which individual programs would best be administered by either Con Edison or NYSERDA to meet the needs of the Con Edison service territory. If NYSERDA does not support the program plan submitted by Con Edison, on or before March 16, 2009 NYSERDA may file its own program plan for our approval.

7. Con Edison is directed to file on not less than one day's notice, to become effective on October 1, 2008 on a temporary basis, such tariff revisions as are necessary to effectuate the terms of this order. The company shall serve

copies of its filing upon all parties to this proceeding. Any comments on the compliance filing must be received at the Commission's offices within ten days of service of the company's proposed amendments. The amendments specified in the compliance filing shall not become effective on a permanent basis until approved by the Commission. The requirements of Section 66(12)(b) of the Public Service law as to newspaper publication of the changes proposed by this filing is waived.

8. This proceeding is continued.

By the Commission,

(SIGNED) JACLYN A. BRILLING
Secretary