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January 18, 2006

Via Overnight Mail
Hon. Jaclyn Brilling
Secretary
State of New York Public
Service Commission
Three Empire Plaza
Albany, New York 12223

Re: Case 03-E-0641 - Proceeding on Motion of the Commission
Regarding Expedited Implementation of Mandatory Hourly Pricing
of Commodity Service—Con Edison Compliance Filing

Dear Secretary Brilling:

Our firm represents the Greater New York Hospital Association (“GNYHA”). Enclosed for filing are an original and five (5) copies of GNYHA’s comments to the compliance filing made by Consolidated Edison Company of New York, Inc. (“Con Edison” or “the Company”) in the above-referenced docket.

Introduction

GNYHA, a trade association that has intervened before the Public Service Commission (“PSC” or “Commission”) on numerous occasions, represents approximately 250 not-for-profit and public hospitals and nursing homes in New York State and the surrounding areas. Of those, many are located in Con Edison’s service territory, i.e., New York City and Westchester.

Con Edison made its compliance filing on November 21, 2005 pursuant to the Order of the Commission in this proceeding dated September 23, 2005. Con

Hon. Jaclyn Brilling
January 18, 2006
Page 2

Edison's filing provides for applying its draft real time pricing ("RTP") rider to all of the Company's customers subject to mandatory time-of-day ("TOD") rates, including Service Classification ("SC") 9 Rate II, the rate under which most hospitals and nursing homes take service. Under its draft tariff proposal, full service customers, i.e., those that continue to take energy commodity service from Con Edison, would be subject to mandatory RTP rates.

Summary of GNYHA's Recommendation

For the reasons expressed herein, Greater New York Hospital Association respectfully requests that the Commission order an exemption for hospitals from the mandatory RTP tariff filed by Con Edison.

Background

GNHYA has had occasion to meet with representatives of Con Edison on January 11, 2006 to discuss the proposed tariff and its implementation. Of the many hospitals and nursing homes represented by GNYHA in the Company's service territory, at this time only about 20 institutions have accounts that would be eligible for mandatory real time pricing under Con Edison's proposed program. All of the other member hospitals and nursing homes, if subject to mandatory TOD rates, are presently purchasing their electricity from ESCOs or, alternatively, under a Power for Jobs allocation.

The bulk of the institutions which continue to purchase commodity service from Con Edison and are subject to RTP, are hospitals and/or nursing homes that have generally poor credit and have been, as a result, unable to procure ESCO service. GNYHA's concern is that these institutions will have little or no opportunity to control their energy costs if they are subject to hourly commodity charges.

Impact of Proposal on Hospital Operations and Inability to Load Shift

The Commission's enunciated purpose in instituting mandatory real time pricing is "reducing peak period demand and shifting load to off-peak, less expensive time periods." Case 03-E-0641, Order Instituting Further Proceedings and Requiring the Filing of Draft Tariffs (Issued and Effective September 23, 2005), at 1. This is hard for hospitals to accomplish under the best of circumstances, and is even more difficult for institutions that are struggling financially.

Hon. Jaclyn Brilling
January 18, 2006
Page 3

In recent years, with the advent and continued development of ever more sophisticated medical equipment for patient care, as well as the increased use of computers in all aspects of hospital business, hospital loads have been increasing. Most hospitals long ago instituted easy, low cost load shifting and conservation measures, such as energy efficient lighting. Certain conservation measures, such as reduced lighting, can only be taken so far without posing problems with patient care. For example, lighting is critical in patient care, and levels cannot be reduced in nursing areas, operating rooms or patient rooms. HVAC, which creates a major load, is used year round, as it is needed in operating rooms and for patient comfort.

In hospitals, it is difficult for the building engineers to obtain allocations of scarce capital to procure energy efficient equipment. In the financially strapped hospitals that would be subjected to mandatory RTP under Con Ed's proposal, this problem is exacerbated, as compressors and energy management equipment (to the extent it exists) are frequently old and the load is not subject to load shifting.

Further complicating this problem is that hospitals, like utilities, have obligations to serve the public, and may not shut down in order to maximize their energy efficiency. Nor can a hospital reschedule surgeries, patient treatments, or emergency care, among other things, simply to create energy cost reductions. Indeed, they would do so potentially at the peril of patient claims for compensation were anything to go awry.

Two of GNYHA's member hospitals have filed for bankruptcy protection. A substantial increase in the cost of electricity, which could result from scarcity on a high peak summer day (e.g., if the NYISO experiences one or more plant outages) could be intolerable for financially stressed hospitals which have trouble paying all vendors, not just Con Edison. In fact, several institutions have had difficulty paying their Con Edison bills in recent months. Because of large hourly fluctuations in NYISO electric prices and affected hospitals' great difficulty in load shifting, even normal variations in monthly bills due to mandatory RTP could push a financially shaky institution into bankruptcy.

It is not only the size of the bills that creates financial pressure, but, to the extent that a financially stressed hospital is unable to pay in full on an immediate basis, the fact that the unpaid portion of the bill is subject to steep interest charges. These charges drive up even further the cost of procuring electricity and are commonly paid by those health care institutions that would be subject to mandatory RTP rates in Con Edison territory.

Hon. Jaclyn Brilling
January 18, 2006
Page 4

Causes of Hospital and Nursing Home Financial Crisis

As GNYHA has advised the Commission in many of its past filings, voluntary hospitals and nursing homes are strictly regulated by the federal, state and local governments which mandate certain expenditures. Hospitals and nursing homes have severely limited budgets which are tied to the strictures of the health care reimbursement system. Health care reimbursement has over the past several years become ever more stringent in an effort by government to curb skyrocketing health care costs. Most of these increasing health care costs are technology and labor driven.

Critical to the deterioration of health care finances has been the recent determination by Medicare to dilute hospital payments by comparing New York City labor costs to those in New Jersey and cutting the payments to hospitals accordingly. Payments by third party payers, such as Blue Cross and other health insurance carriers, are now negotiated, resulting in payments that are lower than they were historically. As compared to other parts of the country, hospitals in New York are dangerously under-funded. The result is poor cash flow, limited ability to meet current operating and capital obligations, and over-reliance on debt, rather than equity, to pay for capital improvements and upgrades.

At the same time, certain profitable hospital procedures involving insured patients are being provided by “niche” providers, such as ambulatory surgery centers, draining stable portions of hospital business and revenues. Hospitals are left with many of the less profitable procedures, as well as with the continuing responsibilities of caring for the uninsured, maintaining round-the-clock emergency and trauma services, and covering the full array of operating and capital costs. In essence, niche providers add to the total cost of the health care system by creating new providers that are paid for patient care, while leaving hospitals with stranded costs.

Financial pressure on hospitals in recent years have led to a large number of hospital closure and threatened closures.¹ The costs of delivering care have skyrocketed as the cost of pharmaceuticals, hospital supplies, and new treatment and diagnostic modalities have risen dramatically. The cost of new health care information technology, a tool for improving the quality and efficiency of care, is

¹ These pressures resulted in curtailed services, reductions in patient volumes, resignations by physicians, etc. Even if facilities have not closed, many are unable to continue as they had and converted to other uses, such as diagnostic and treatment center, rather than making full care available to the local community.

Hon. Jaclyn Brilling
January 18, 2006
Page 5

often beyond the means of many New York hospitals. The need for emergency preparedness has also imposed costs on hospitals which are largely unreimbursed.

Nursing shortages have also led to increased costs, as hospitals are required to pay premiums to recruit and retain skilled nurses. Finally, the spiraling cost of professional liability insurance has caused many hospitals to consider eliminating high risk services. Over the years from 1999 through 2004, the average annual increase in premiums was 17%, for a total cumulative increase of 147%. At the same time, the inflation increases paid by Medicare and Medicaid were only 17% and 16%, respectively.

Important Community Services

GNYHA member hospitals provide important services to the community. Hospitals provide both in-patient and out-patient care, including emergency care, to their local communities. Limitations on services resulting from financial pressures force people to go far from home for their care. Downstate hospitals provide free care to millions of uninsured patients every year.

In addition, hospitals provide emergency care and put even greater attention on existing emergency preparedness plans after 9/11. These plans work towards being prepared to withstand power interruptions and to serve their communities, including the infirm and elderly, during blackouts. During the 2003 blackout, hospitals increased ambulance runs, offered dialysis to patients who were unable to receive treatment from their usual free-standing facilities, provided shelter to the elderly, and provided substitute lab and pharmacy services. Hospitals are also engaged in area emergency management with the region's public health officials, local, state and federal governments. In addition, GNYHA and its members have been preparing for bioterrorism, flu pandemic, and addressing emergency planning for special needs populations.

Teaching hospitals in New York also provide important graduate medical education, and provide cutting edge medical treatments. Other important services offered by hospitals to the community are ambulance services, alcohol and drug detoxification, assisting patients to apply for existing insurance, especially Medicaid, and worker retraining.

Hon. Jaclyn Brilling

January 18, 2006

Page 6

GNYHA's Specific Comments to Con Edison's Compliance Filing

Additional Reasons for Providing Hospitals with an Exemption

In the informational meeting held between GNHYA and Con Edison, the Company advised GNYHA that it had studied the impact on customer bills as if mandatory RTP had been in place during the years 2002 and 2003. That analysis revealed that in 2002 customer bills would have increased by 4% to 9% over the existing Con Edison rates (and assuming the same usage patterns), while for the 2003 bills, the costs would have decreased by 5% to 9%.

In light of the present reimbursement rate methodologies employed by the federal and state regulators, this is exactly the type of cost change that is hard for health care facilities to bear. The tariff would create great risk for hospitals, and hospitals are not in the risk-taking business. Increases in electricity would not be passed through or compensated for under the present system, while decreases would be passed through. This presents a lose/lose situation for hospitals and nursing homes and is one of the major reasons for GNYHA seeking an exemption for application of mandatory RTP to its members. While the draft tariff which was filed with the compliance filing makes it clear that customers that purchase from ESCOs will not be subjected to the mandatory RTP rates, most of the health care facilities impacted by this rate are unable to procure service from ESCOs, as ESCOs that they have approached are unwilling to extend them credit due to their dire financial circumstances.

Pilot Program Alternative

Should the Commission, against GNYHA's recommendation, take the disastrous step of applying mandatory RTP rates to hospitals, it should, at a minimum, delay implementation of the new rates to hospitals pending a pilot program that would enable the Commission, the Company and the affected hospitals to determine how the affected hospitals would be impacted and how to resolve outstanding problems associated with time-of-day pricing.

A pilot program should be designed with the assistance of GNYHA, NYSEDA and Con Edison prior to application of mandatory RTP to hospitals to determine how it would affect hospitals and how to best shift load in response. The purpose of a pilot program would be to determine if any loads can be shifted, and, if so, to what time period; whether conservation can be affected without resort to costly capital improvements, and if capital improvements are required, the offering of grants to procure capital equipment that would otherwise be

Hon. Jaclyn Brilling
January 18, 2006
Page 7

unattainable by this group of hospitals.; what the impact will be on a hospital's costs of procuring electricity; and whether and how to tailor RTP rates to hospitals' regulatory requirements.

Implementation Must Not Take Place in May 2006

GNYHA also objects to implementation as early as May 2006. While we understand the Commission's desire to encourage load shifting in the upcoming summer capability period, there is simply insufficient time to enable hospitals and large nursing homes to ready themselves for the program's implementation.

To date, the only marketing and outreach by Con Edison has been a meeting with representatives of GNYHA's legal department and outside counsel. Except for receiving a general letter dated December 8, 2005 advising customers of the upcoming change, health care facilities have not had any direct outreach regarding the mandatory RTP program. The December 8 letter did not contain a copy of the draft tariff. A copy of the draft of that letter is attached hereto.

Con Edison has advised GNYHA that it had planned a meeting to discuss the RTP program with customers on January 31, 2006. Needless to say, that would leave only three months for health care facilities to become familiar with the tariff and its implementation and to attempt to determine if any load shifting at all were possible in their facilities. Such a short period would not afford adequate opportunity for hospitals to obtain grants from NYSERDA to permit load shifting and conservation. Moreover, such a meeting could not address detailed questions specific to a hospital's facility.

We call on the PSC to ensure that Con Edison provides each customer that seeks it with an opportunity to sit down with a Con Edison representative to review detailed questions about how the new tariff will work in its individual facility before the tariff is implemented. However, Con Edison's filing is unclear about whether each customer that wishes to will have the opportunity to discuss the impact of the tariff with the Company.

In its Marketing, Outreach and Education Plan filed in conjunction with its compliance filing, Con Edison states (p. 4):

"Mandatory Customers will be identified and ranked according to price impact based on kwhr consumption calculated at day-ahead market pricing for the 2005 period. The Company will focus its initial efforts on the Mandatory Customers who would have paid

Hon. Jaclyn Brilling
January 18, 2006
Page 8

the highest prices under MHP and help them determine whether there are changes they could make that would reduce peak demand.”

Thus, it is not clear whether affected hospitals will even make the list of customers that Con Ed will focus its initial efforts on, or whether Con Edison will ever meet with customers that would not pay the highest prices under MHP. In the mean time, the dramatic change in procurement caused by the new tariff could result in severe financial deterioration for an affected hospital.

Con Edison also states in its Marketing, Outreach and Education Plan (p.4) that it is in the process of modifying its web technology to include a tool to model hourly pricing rates. Although it states that the modification is in progress, Con Edison does not state when it will be complete. Con Ed also states (pp. 4-5) that it is planning web seminars for early 2006. However, Con Ed has not advised GNYHA that such tools are available to customers at the present time. Again, there is likely insufficient time for customers to learn and employ such changes prior to the expected implementation date of the tariff.

Implementation of the RTP program requires a much longer lead time than Con Edison has projected. Because Con Edison’s plans for implementation are in progress, but not fully realized, more lead time is needed before the RTP tariff is made mandatory, especially for hospitals.

Conclusion

Those hospitals subject to mandatory real time pricing under Con Edison’s compliance filing are the least able to cope with volatile hourly electric charges that would result from the program. Because of the dire financial circumstances they are facing, these hospitals have no choice but to procure their electricity from Con Edison, rather than ESCOs that could fix electric charges by contract. Because fluctuating and potentially sky-rocketing charges resulting from mandatory RTP could threaten the continued operations of institutions that are already having trouble paying their Con Edison electric bills, GNYHA respectfully requests that the Commission exempt hospitals from mandatory RTP rates.

In the event that the Commission determines to subject hospitals to Con Edison’s mandatory RTP tariff, the PSC should delay implementation until after receiving the results of a pilot program that would enable those hospitals that would need to continue to purchase their commodity service from Con Edison to best manage their procurement of electricity under the new tariffs. To do

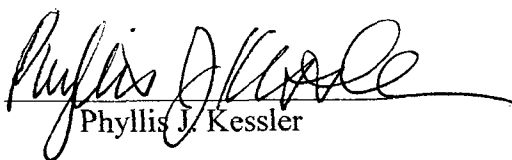
FOREHT LAST LANDAU & KATZ, LLP

Hon. Jaclyn Brilling
January 18, 2006
Page 9

otherwise could inadvertently damage the ability of institutions to provide important health care services to their communities.

Respectfully Submitted,

Foreht, Last, Landau & Katz

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cc. Doris Varlese, Esq.
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December 8, 2005

«Contact_Name»
«Customer_Name»
«Mailing_Address_1»
«City» «State» «Zip»

Dear Valued Customer:

Con Edison submitted a draft tariff for mandatory hourly pricing for large time-of-day customers at the request of the New York Public Service Commission (PSC). Under this rate structure, customers pay hourly retail electric energy rates as determined by the New York Independent System Operator day-ahead market. If the tariff is approved by the PSC, it will affect how you and other large energy users are charged for electricity. You can find the draft tariff on our Website at www.conEd.com/documents.

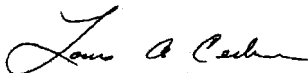
The draft tariff was filed November 22, 2005 with the PSC. Interested parties may comment to the tariff within 60 days of the filing. For more information on how to submit comments, visit www.AskPSC.com.

We recommend that you learn more about electric load management programs and how they can help you to use energy efficiently. You can find this information on the New York State Energy Research and Development Authority's (NYSERDA) Website at www.nyserda.org.

Retail choice is an option that can help customers to manage the supply-side of their energy use. To learn more about retail choice and for a listing of energy services companies, visit www.poweryourway.com.

Our representatives are available to assist you with questions about the draft mandatory hourly pricing tariff, please call Con Edison at 1-800-643-1289.

Sincerely,



Louis A. Cedrone
Director, Marketing and Sales