

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

FERC RATE SCHEDULE
FOR THE WHOLESALE SALE OF ELECTRICITY
AT MARKET-BASED RATES

filed by

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

with the

FEDERAL ENERGY REGULATORY COMMISSION

Communications concerning this Tariff should be addressed to:

Manager, Energy Management
Consolidated Edison Company of New York, Inc.
4 Irving Place, Room 1300
New York, New York 10003

Issued by: _____

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Note - pagination is uncorrected

1. DEFINITIONS

The following words or terms used in this Tariff shall have the meanings indicated below:

1.1 Capacity: Electric capacity from various sources made available by Con Edison to be sold pursuant to this Tariff.

1.2 Customer: Any entity (including, but not limited to any investor owned corporation, municipal electric system, rural electric cooperative or an association of such or similar entities authorized by state law to provide public utility services) (i) that is engaged in the sale of electricity for resale or at retail to ultimate customers and (ii) that executes or proposes to execute a Service Agreement.

Ultimate consumers of electric utility service (i.e., retail customers) are not eligible as a Customer.

1.3 Energy: Electric energy and/or capacity from various sources made available by Con Edison to be sold pursuant to this Tariff.

1.4 Federal Power Act ("FPA"): That Federal Power Act, 16 U.S.C. §792 *et seq.*, as it is now or may be amended in the future, or any successor thereto.

1.5 FERC: The Federal Energy Regulatory Commission, or its successor having regulatory jurisdiction over this Tariff.

1.6 MWh: Megawatthour or Megawatthours.

1.7 PSC: New York State Public Service Commission.

1.8 Con Edison: Consolidated Edison Company of New York, Inc.

1.9 Local Furnishing Bonds: Tax-exempt private activity bonds issued by Con Edison under an agreement between Con Edison and the New York State Energy Research and Development Authority and pursuant to Section 142(8) of the Federal Revenue Code, 26 USC §142(8).

1.10 NYPP: New York Power Pool.

1.11 Parties: The Parties to a Service Agreement

executed pursuant to this Tariff.

1.12 Service Agreement: An agreement between Con Edison and Customer for service under this Tariff.

1.13 System Constraints: Conditions on the generation, transmission or distribution facilities of Con Edison, NYPP members, or any transmitting utility which, consistent with good utility practice, require the interruption of a Transaction made pursuant to this Tariff in order to maintain system integrity and to maintain safety and reliability.

1.14 Tariff: This Con Edison Electric Tariff as it is now or as it may be amended or supplemented from time to time in accordance with the terms hereof.

1.15 Transaction: A separately-arranged reservation or sale of Capacity and/or Energy to a Customer under this Tariff.

2. CREDIT-WORTHINESS

2.1 Financial Information: Prior to the execution or during the term of a Service Agreement, Con Edison may require Customer to provide financial information necessary to establish Customer's credit-worthiness, including the following information:

- (a) current financial statements, annual reports, and other publicly available reports and filings;
- (b) a bank reference and trade references; and
- (c) verification of Customer's solvency.

2.2 Payment Guarantees: In lieu of providing financial information pursuant to Section 2.1, Customer may provide security that Con Edison reasonably deems necessary to establish Customer's credit-worthiness.

3. SERVICE AGREEMENT

3.1 Service Agreement: Each Customer shall execute a Service Agreement as a condition precedent to Con Edison's provision of service hereunder, which agreement shall be filed with the FERC by Con Edison.

3.2 Agreement: By signing a Service Agreement, the Customer agrees to take and pay for, and Con Edison agrees to supply, such Energy and/or Capacity as is mutually agreed upon, subject to the terms and conditions of this Tariff, as amended from time to time, and such other terms and conditions agreed upon by Con Edison and the Customer. In addition, both Con Edison and Customer agree to comply with all applicable requirements established by Con Edison or other entity having authority with respect to regional power transactions. The terms of this Tariff shall apply to all sales hereunder, except insofar as they are expressly modified by a Service Agreement.

3.3 Transaction Memoranda: The terms and conditions agreed upon for each Transaction shall be stated on a Transaction Memorandum that shall be signed by Con Edison and Customer and made an exhibit to the Service Agreement.

3.4 Cancellation: Con Edison reserves the right to cancel the Service Agreement between Con Edison and the Customer and/or to terminate Transactions under the Service Agreement consistent with the provisions of FERC's regulations

governing notices of cancellation or termination; provided that such cancellation shall not be effective prior to the completion of any on-going Transaction.

4. NATURE AND PRIORITY OF SERVICE

4.1 Transactions Voluntary: Upon execution of a Service Agreement by Customer, Con Edison may sell and Customer may purchase, from time to time, Capacity and/or Energy upon such terms and conditions and in such quantities as Con Edison and Customer agree. Neither Con Edison nor Customer shall be obligated to enter into any particular Transaction, except as they agree.

4.2 Priority: The priority and nature of service shall be negotiated between Con Edison and Customer and specified in the Transaction Memorandum.

4.3 Bankruptcy and Insolvency: Con Edison shall not be required to execute a Service Agreement or a Transaction Memorandum or to continue a Transaction if (a) Customer files a voluntary petition or has an involuntary petition filed against it, for bankruptcy under the United States Bankruptcy Code, 11 U.S.C. §§101 et seq., or similar state insolvency laws: (b) Customer otherwise becomes insolvent and regularly fails to meet its payment obligations when due; or (c) upon review of the financial data in Section 2.1, Con Edison reasonably determines that Customer is not credit-worthy; provided, however, that Con Edison may continue to provide

Capacity and Energy if Customer prepays for such service or furnishes reasonable security to assure payment of Customer's liabilities under its Service Agreement.

5. DELIVERY POINT

5.1 Delivery Point: All deliveries of energy hereunder will be made at delivery point(s) designated by the mutual agreement of Con Edison and customer; provided that such delivery point(s) shall be located outside of Con Edison's franchised service territory or at a point of interconnection of the transmission facilities of Con Edison and those of another transmitting utility.

5.2 Transmission Costs: The parties shall negotiate the responsibility for obtaining and/or providing all necessary transmission and ancillary services and the costs related thereto. Con Edison shall have the right to receive assurances satisfactory to it that all necessary transmission arrangements are in place prior to committing to any transactions pursuant to this tariff.

5.3 Metering: Deliveries of Capacity and Energy shall be metered at the point of delivery. The metering equipment shall be maintained in accordance with good utility operating practice.

6. SCHEDULING AND OPERATING PROCEDURES

6.1 Procedures: Throughout the term of this tariff, Con Edison shall maintain in effect scheduling and operating procedures governing the provision of service hereunder. Such procedures shall specify content, deadlines and contact points for communications which Con Edison may require for scheduling, operating, reporting and accounting purposes, and shall be consistent with the requirements (including Con Edison's Local Reliability Rules) established by Con Edison, NYPP or any other entity having authority with respect to regional power transactions.

7. CHARGES

7.1 Advance Determination: Prior to the commencement of a Transaction, Con Edison and Customer shall agree in writing upon starting date and time, duration, quantity, rates, charges, and other terms of the transaction.

8. GENERAL TERMS AND CONDITIONS

8.1 Local Furnishing Bonds: No sale by Con Edison pursuant to this Tariff shall be deemed to constitute the dedication of Con Edison's system or any portion thereof to the public, to the Customer, or to any other entity. Con Edison shall not be required to sell energy to Customer if the sale of such energy would jeopardize the tax-exempt status of Con Edison's Local Furnishing Bonds.

8.2 Billings and Payments

8.2.1 Monthly Billing: As soon as practicable after the end of the calendar month during which a Transaction takes place, Con Edison shall render to Customer a bill for charges accruing during the month. The bill shall incorporate such information as may be reasonably necessary to determine the payments due. If actual meter readings are not available at the time a bill is rendered, the bill may be based upon estimated data; provided that reconciled charges, based upon actual meter readings, shall be stated on the next monthly bill.

8.2.2 Payment: Customer shall pay all bills rendered under this Tariff no later than the Due Date (as defined in Section 8.2.3 below). Customer shall make payment in immediately available funds by wire transfer. Any amount remaining unpaid after the Due Date will be deemed delinquent and will accrue interest at the annual rate of two percent (2%) over the interest rate on prime commercial loans then in effect at the main office of Citibank N.A., located in New York, New York, calculated from the Due Date to the date the amount is paid in full.

8.2.3 Due Date: Except as otherwise provided in this section, the Due Date for a bill will be the later of (i) ten (10) days after receipt of the bill, or (ii) the first banking day common to Con Edison and Customer following the nineteenth day of the month in which the bill was rendered. If the Due Date should fall on a Saturday, Sunday, or holiday,

the Due Date will be the next Con Edison business day after such weekend or holiday.

8.2.4 Billing Disputes: Customer may in good faith challenge the correctness of any bill rendered under this Tariff, provided that such challenge is brought within twelve (12) months after the date the bill was rendered. Any billing challenge shall be in writing and shall state the specific basis for the challenge. In the event that Customer challenges any portion of a bill, Customer shall, despite the challenge, pay both the disputed and undisputed portions of the bill on or before the Due Date.

8.2.5 Billing Adjustments: Con Edison may adjust any bill rendered under this Tariff, provided that such adjustment is made within twelve (12) months after the date the bill was rendered. Any billing adjustment shall be in writing and shall state the specific basis for the adjustment.

A billing adjustment will constitute a new bill for all purposes of this Section 8.2.

8.2.6 Interest: Refunds and additional charges that are due as a result of a billing adjustment or billing challenge will include interest calculated at the rate specified in Section 8.2.2. In the case of an additional charge, interest will be calculated from the Due Date of the bill to which the adjustment or challenge relates to the date the additional charge is paid to Con Edison. In the case of a refund, interest will be calculated from the date the amount

being refunded was received by Con Edison to the date the refund is made.

8.2.7 Default: In the event that Customer fails to make full payment of a bill rendered under this Tariff on or before the Due Date and such default continues for thirty (30) days after the Due Date, Con Edison shall have the right to suspend or terminate any existing Transactions and to file with the FERC a notice of cancellation of the Service Agreement pursuant to 18 CFR Section 35.15.

8.3 Liability and Indemnification: Neither Con Edison nor Customer shall be responsible to each other in tort (including negligence and strict liability), contract or otherwise for any loss, cost or damage of any kind, which may result from performance or non-performance of obligations under this Tariff, except for losses, costs, or damages resulting from gross negligence or willful misconduct; provided in any event that neither Con Edison nor Customer shall be liable for incidental, consequential, punitive, special, and indirect damages, which may result from performance or non-performance of obligations under this Tariff.

Customer expressly agrees to indemnify, hold harmless and defend Con Edison against all claims, liability, costs, attorneys fees, recoveries, court costs, and all other obligations to third parties, or expense for loss, damage, injury, or death to persons or property in any manner directly

or indirectly connected with or growing out of, the performance, actions, or inactions of Con Edison pursuant to this Tariff on behalf of Customer, except insofar as such liabilities arise because of gross negligence or willful misconduct by Con Edison. Nothing herein shall create, or be interpreted as creating, any standard of care with reference to, or any duty or liability to any person not a Customer hereunder.

8.4 Force Majeure: In the event that either Con Edison or Customer is delayed in or prevented from performing or carrying out its obligations under this Tariff or a Service Agreement, in whole or in part, by reason of Force Majeure, such Party shall not be liable to the other Party for or on account of any loss, damage, injury or expense resulting from or arising out of such delay or prevention. "Force Majeure" means any cause beyond the reasonable control of the Party claiming Force Majeure, including, without limitation as to the nature or kind of events, sabotage, strikes, lockouts or other labor disputes, riots, disorders or civil disturbances, vandalism, acts of God, acts of public enemy, droughts, epidemics, earthquakes, floods, explosions. fires, storms, snow, hail, ice, lightning, wind, landslides, washouts, embargoes, acts of military authorities, actions or inactions of local, state or federal legislative, judicial or regulatory agencies or other proper authorities, arrests, restraints, system outages, System Constraints, inability to obtain or

failure of equipment, and transportation delays. The Party encountering such delay or prevention shall notify the other as soon as reasonably possible of the delay or prevention and shall use due diligence to remove promptly the cause or causes thereof. In order to be relieved of obligations pursuant to this Section 8.4, neither Con Edison nor Customer shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the party involved in the dispute, are contrary to its interest. Force Majeure shall not excuse the payment of money.

8.5 Records: Con Edison and Customer shall each keep complete and accurate records of all transactions conducted pursuant to this Tariff. Con Edison and Customer shall maintain such records for a period of at least two years. Con Edison and Customer shall make such records available for inspection, copying, and audit by Con Edison or Customer at reasonable times and places upon request.

8.6 Successors and Assigns: Any Service Agreement shall be binding upon the parties thereto, their successors and assigns, on and after the effective date of such Service Agreement. Such Service Agreement may not be assigned by Customer, in whole or in part, to any third party without the prior written consent of Con Edison, which consent shall not be unreasonably withheld.

8.7 Notices: All notices provided pursuant to this Tariff or any Service Agreement hereunder shall be in writing

and addressed as set forth in the Service Agreement.

8.8 Regulation: The provision of service by Con Edison under this Tariff and any Service Agreement is subject to the jurisdiction of the FERC. Nothing contained in this Tariff or any Service Agreement entered into hereunder shall be construed as affecting or limiting in any way the right of Con Edison unilaterally to file with the FERC, or make application to the FERC for, changes to this Tariff; provided that such changes shall not amend the terms and conditions of any Transaction for which Con Edison and Customer have executed a Transaction Memorandum.

8.9 Term of Tariff: This Tariff shall become effective when it has been accepted for filing by order of FERC under the FPA, in which case the Effective Date of this Tariff shall be as specified in the said FERC order. However, if FERC or any reviewing court, in such order or in any separate order, imposes any condition, limitation or qualification under any of the provisions of the FPA which, individually or in the aggregate, Con Edison determines to be adverse to Con Edison, then Con Edison may, at its option, terminate this Tariff in light of such FERC or court action. Otherwise, this Tariff shall remain effective until terminated by Con Edison upon thirty (30) days notice and receipt of all regulatory approvals necessary for such termination.

8.10 After Termination or Cancellation: The applicable provisions of this Tariff and any Service Agreement entered

into under this Tariff shall continue in effect after termination or cancellation thereof to the extent necessary to provide for final billing, billing adjustments and payments, and with respect to any party's indemnification obligations hereunder.

8.11 Governing Law and Venue: The validity and meaning of this Tariff and any Service Agreement entered into hereunder shall be governed by the laws of the State of New York. All disputes arising out of the performance of this Agreement shall be settled in the State or Federal Courts located within the City of New York or before FERC.

8.12 Confidentiality: Con Edison and Customer shall treat as confidential all prices and terms and conditions of any proposed or actual Transaction hereunder ("Confidential Matter"). Confidential Matter shall be for the sole and exclusive use of Con Edison and Customer, and, subject to the provisions set forth below, neither Con Edison nor Customer shall publish, disclose, or otherwise divulge the Confidential Matter to any person at any time without the prior written

consent of the other unless the release of the Confidential Matter is pursuant to a requirement imposed by FERC or any other governmental or judicial body of competent jurisdiction. When either Con Edison or Customer receives from any other entity or person a request for Confidential Matter, not then in the public domain, it shall inform the other of such request as soon as reasonably practicable. Con Edison and Customer shall reasonably cooperate with each other in the exercise of any applicable rights to oppose the disclosure of the Confidential Matter to the requestor or to prevent the Confidential Matter from becoming part of the public domain. Confidential Matter need not be treated confidentially once it has passed into the public domain.

8.13 Affiliate Transactions: Con Edison shall not sell Capacity or Energy under this Tariff to any of its affiliates, nor shall Con Edison purchase Capacity or Energy from an Affiliate, unless FERC approves the transaction in a separate rate filing under Section 205 of the FPA.

8.14 Transmission Service: If Con Edison provides transmission and/or ancillary services in connection with a sale pursuant to this tariff, it will do so pursuant to the terms and conditions of Con Edison's Open Access Transmission Service Tariff, and Con Edison shall charge transmission service rates determined in accordance with that tariff. The maximum rates for service under Con Edison's Open Access

Transmission Service Tariff are set out in Appendix B to this Market-Based Rates Tariff. If in connection with a sale pursuant to this tariff Con Edison provides transmission and/or ancillary services to itself or to a customer, Con Edison will file a service agreement placing itself or the customer, respectively, under Con Edison's Open Access Transmission Service Tariff.

APPENDIX A

FORM OF SERVICE AGREEMENT

This Agreement is entered into this _____ day of _____, 199__, by and between _____ ("Customer") and Consolidated Edison Company of New York, Inc. ("Con Edison"). In consideration of the mutual covenants and agreements herein, Customer and Con Edison (the "Parties") hereby agree as follows:

Article 1. Service.

1.1 Con Edison agrees, during the term of this Agreement, to sell electric energy and/or capacity to Customer, and Customer agrees to pay for such sale, in accordance with Con Edison's Rate Schedule No. ___ for the Wholesale Sale of Electricity at Market-Based Rates ("Tariff") on file with the Federal Energy Regulatory Commission ("FERC").

1.2 The terms and conditions of such service shall be (1) governed by the Tariff, as it exists at the time of this Agreement or as subsequently amended, and (2) agreed upon by Customer and Con Edison with respect to each Transaction. The Tariff as it exists or as subsequently amended is incorporated in this Agreement by reference. The agreed upon terms and conditions for each Transaction shall be memorialized in a Transaction Memorandum, each of which shall become an exhibit

Consolidated Edison Company
of New York, Inc.

FERC Electric Tariff
Rate Schedule No. 2
Original Sheet No. 19

to this Service Agreement.

effective date March 31, 1997

1.3 In executing this Agreement, neither Con Edison nor Customer commits to enter into any individual Transaction.

Article 2. Effective Date and Term of Agreement.

2.1 This Agreement shall become effective on the date first stated above. However, if FERC or any reviewing court imposes any condition, limitation, or qualification under any of the provisions of the Federal Power Act ("FPA") which, individually or in the aggregate, Con Edison determines to be adverse to Con Edison, then Con Edison may, at its option, terminate or renegotiate the terms of this Agreement in light of such FERC or court action. Each Party will use its best efforts to take, or cause to be taken, all actions requisite to obtain the necessary approvals so that this Agreement shall become effective as provided herein at the earliest practicable date.

2.2 This Agreement shall remain effective until terminated by either Party on thirty (30) days written notice.

Article 3. Notice.

3.1 Any notice given pursuant to this Agreement or the Tariff shall be in writing and delivered to the following:

If to Con Edison:

Consolidated Edison Company
of New York, Inc.
4 Irving Place
New York, New York 10003

If to Customer:

3.2 The names and address for notice to either Party may be changed at any time by written notice to the other Party.

IN WITNESS WHEREOF, the Parties have caused this Service Agreement to be executed by their respective authorized officials as of the date first above written.

CUSTOMER

**CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.**

By: _____

By: _____

Title: _____

Title: _____

APPENDIX B

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
CHARGES FOR UNBUNDLED COMPONENTS OF ELECTRIC SALES

Set out below are the maximum rates for service under Con Edison's open-access transmission tariff. Rates may be discounted on a non-discriminatory basis, pursuant to the provisions of the tariff and in accordance with the Federal Energy Regulatory Commission's Orders Nos. 888 and 889.

Firm Transmission Service:

\$ 3.65	KW/month
\$ 0.84	KW/week
\$ 0.17	KW/day

Non-Firm Transmission Service:

\$ 3.67	KW/month
\$ 0.85	KW/week
\$ 0.17	KW/day
\$10.37	MW/hour

Ancillary Services:

Scheduling, System Control, & Dispatch	\$ 0.618	MW/hour
Reactive Supply & Voltage Control	\$ 0.317	MW/hour
Regulation & Frequency Resp.	\$ 0.632	MW/hour
Energy Imbalance	*	
Operating Reserve (Spinning)	\$ 0.585	MW/hour
Operating Reserve (Supplemental)	\$ 0.332	MW/hour

Note:

- * Energy Imbalance Charge = 150% of Con Edison's marginal cost per hour for energy supplied by Con Edison.