

**STATE OF NEW YORK**  
**PUBLIC SERVICE COMMISSION**

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Petition of Consolidated Edison Company	:	
of New York, Inc. for Approval of a	:	
Voluntary Renewable Electricity Supply	:	Case 20-E-0386
Program	:	

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**RETAIL ENERGY SUPPLY ASSOCIATION COMMENTS IN OPPOSITION TO  
PETITION OF CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**

The Retail Energy Supply Association (“RESA”)<sup>1</sup> hereby submits its comments regarding the Petition of Consolidated Edison Company of New York, Inc. (“ConEd”) for approval of a voluntary renewable electricity supply program.<sup>2</sup> For the reasons set forth more fully below, the Commission should deny the Petition.

**I. BACKGROUND**

On August 3, 2020, ConEd filed the Petition requesting that the New York State Public Service Commission (“Commission”) approve a program that would allow ConEd to provide residential and small commercial full-service customers with a renewable option (“Program”).<sup>3</sup> Under the Program, ConEd would purchase and retire New York State Tier Two renewable energy certificates (“RECs”) equal to subscribers’ total monthly electricity consumption.<sup>4</sup> Subscribing customers would be charged a dollar-per-kilowatt-hour (\$/kWh) price premium on

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<sup>1</sup> The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at [www.resausa.org](http://www.resausa.org).

<sup>2</sup> Petition of Consolidated Edison Company of New York, Inc. for Approval of a Voluntary Renewable Electricity Supply Program (Aug. 3, 2020) (“Petition”).

<sup>3</sup> See Petition, at 1.

<sup>4</sup> See *id.* at 1, 7.

their total energy consumption to participate in the Program and would continue to be obligated to pay all otherwise applicable supply-related charges.<sup>5</sup>

ConEd would incur certain costs, in addition to the cost of RECs, to launch and run the Program.<sup>6</sup> These costs initially would be recovered from all SC 1 and SC 2 full-service customers through a component of the Merchant Function Charge (“MFC”).<sup>7</sup> After the Program is launched, SC 1 and SC 2 full-service customers would be credited through the MFC with the subscription revenue collected from subscribing customers.<sup>8</sup>

On August 26, 2020, notice of the Petition was published in the New York State Register, with comments due in sixty (60) days.<sup>9</sup> RESA hereby submits its comments on the Petition.

## **II. COMMENTS**

Voluntary renewable products are “competitive”<sup>10</sup> products that are marketed and sold in New York’s energy markets. Unlike commodity supply, customers are not required to buy voluntary renewable products. Customers *choose* to do so. Moreover, the current competitive market for voluntary renewable products in New York is vibrant. There are a plethora of voluntary renewable options already available to customers. In fact, nearly half of the electricity

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<sup>5</sup> See Petition, at 10.

<sup>6</sup> See *id.* at 10-12. These costs would include pre-launch incremental capital and operation and maintenance (“O&M”) costs, as well as ongoing marketing costs, in addition to the cost of the RECs. See *id.* at 10.

<sup>7</sup> See *id.* at 11.

<sup>8</sup> See *id.*

<sup>9</sup> See New York State Register (Aug. 26, 2020), at 7-8.

<sup>10</sup> Case 03-E-0188, *Proceeding on Motion of the Commission Regarding a Retail Order Regarding Retail Renewable Portfolio Standard* (Sep. 24, 2004), at 4 (“We believe an important objective of the RPS program is to stimulate and complement *voluntary/competitive* renewable energy sales and purchases (or ‘green markets’) so that these competitive markets, not government mandates, sustain renewable activity.”) (emphasis added).

offers available in the ConEd service territory are renewable offers.<sup>11</sup> In addition, once the new Reset Order goes into effect, RESA expects that the number of voluntary renewable offers available will increase.<sup>12</sup> Thus, there is no need for ConEd, as a regulated distribution utility, to offer such products. Further, because ConEd’s proposed Program would be offering a voluntary renewable commodity product in the competitive electricity market, as a regulated distribution utility, ConEd simply should not be permitted to offer it. Instead, ConEd should focus on providing safe and reliable distribution service.<sup>13</sup>

**A. Customer Demand For Voluntary Renewable Products Is Being Satisfied**

ESCOs have developed the current voluntary renewable offers available to consumers over time in response to customer demand based on what customers purchase (or do not purchase). Thus, the current options available in the competitive market reflect customer preferences. Moreover, although ConEd asserts that there is unmet demand,<sup>14</sup> it bases that claim

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<sup>11</sup> See, e.g., NYS Power to Choose, <http://documents.dps.ny.gov/PTC/zipcode/10023> (displaying 111 electric offers for zip code 10023; 50 of which were renewable) (last visited Oct. 26, 2020).

<sup>12</sup> Case 15-M-0127, *In the Matter of Eligibility Criteria for Energy Service Companies*, Case 12-M-0476, *Proceeding on Motion of the Commission to Assess Certain Aspects of the Residential and Small Non-residential Retail Energy Markets in New York State*, Case 98-M-1343, *In the Matter of Retail Access Business Rules*, Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process (Dec. 12, 2019) (“2019 Reset Order”), at 37-83 (limiting the types of offers available from Energy Service Companies (“ESCOs”) but allowing ESCOs to continue to provide renewably sourced electricity products to mass market customers); see also Case 15-M-0127, *In the Matter of Eligibility Criteria for Energy Service Companies*, Case 12-M-0476, *Proceeding on Motion of the Commission to Assess Certain Aspects of the Residential and Small Non-residential Retail Energy Markets in New York State*, Case 98-M-1343, *In the Matter of Retail Access Business Rules*, Order on Rehearing, Reconsideration, and Providing Clarification (Sep. 18, 2020), at 35-40 (discussing renewable energy products).

<sup>13</sup> Cf. Matter 20-01633, *In the Matter of DPS Investigation into the Utilities' Preparation and Response to August 2020 Tropical Storm Isaias and Resulting Electric Power Outages*, Notice of Apparent Violations Related to Tropical Storm Isaias addressed to ConEd (Aug. 19, 2020), at 1 (noting that utilities have a “regulatory obligation to provide electric . . . services in a safe, adequate and reliable manner”).

<sup>14</sup> Petition, at 1.

on a survey of *less than one half of one percent* of its electric customers.<sup>15</sup> Further, ConEd’s survey results do not establish that customers will buy the particular renewable product that ConEd is proposing to offer.<sup>16</sup> Thus, the Commission should deny ConEd’s Petition.

***I. New York Mass Market Customers Already Have Numerous Voluntary Renewable Products Available***

A vibrant, dynamic market for electric supply and, in particular, voluntary renewable energy already exists in New York. Within ConEd’s service territory, an array of ESCOs offer a range of electric supply products, including voluntary renewable products. Nearly fifty percent of the offers available to ConEd customers are renewable products.<sup>17</sup> Three (3) of those voluntary offers have a per-kilowatt-hour price less than that of ConEd’s default service,<sup>18</sup> which does not include renewables above the mandatory minimum.<sup>19</sup> Further, to the extent customers wish to continue to receive default service from ConEd, they already have access to a competitive REC-only product that would allow them to do so.<sup>20</sup> Thus, there is no need for ConEd to provide a voluntary renewable product to respond to some purported and amorphous “unmet demand.” Instead, the Commission should allow the market to continue to satisfy customer demand for

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<sup>15</sup> 1,333 customers surveyed divided by 3.4 million electric customers = 0.039%. *See* Petition, at 7 n.12 (noting that ConEd surveyed 1,333 customers); ConEd Corporate Facts, <https://www.coned.com/en/about-us/corporate-facts> (noting that, through its electric system, ConEd serves 3.4 million customers) (last visited Oct. 26, 2020).

<sup>16</sup> Petition, at 7 (noting results of survey but no mention of customer interest in Tier Two RECs).

<sup>17</sup> *See* NYS Power To Choose, <http://documents.dps.ny.gov/PTC/zipcode/10023> (last visited Oct. 26, 2020).

<sup>18</sup> There is an additional offer that is both a renewable product and that provides guaranteed savings to customers. *See id.*

<sup>19</sup> *See id.*

<sup>20</sup> *See* Sterling Planet, Sterling NY Choice, <https://www.sterlingplanet.com/Enroll/UtilityPrograms/NewYork/ConEdisonNY.aspx> (last visited Oct. 26, 2020) (“Sterling Planet offers Sterling NY Choice™ for Con Edison customers in New York. With our three signup levels - for a small, medium or large New York City house or apartment - subscribers pay \$10, \$15 or \$20 a month. You stay with Con Edison, and pay Sterling Planet directly for the renewable energy upgrade.”).

voluntary renewable products by designing and marketing voluntary renewable products that customers want.

**2. *ConEd's Survey Does Not Demonstrate Significant Customer Interest In The Program***

In order to demonstrate demand for the Program, ConEd cited the results of a 2019 survey of residential full-service customers.<sup>21</sup> However, those survey results are unreliable. As an initial matter, the survey was conducted before the COVID-19 pandemic. Because economic circumstances and consumer sentiment have changed markedly since 2019,<sup>22</sup> consumer preferences in 2019 is a poor gauge of current consumer interests.

Further, the results are not representative of the preferences of ConEd's customers. ConEd surveyed an extremely small proportion of the customers who would be eligible for the Program. In fact, ConEd surveyed only about 0.05% of the 2.7 million full-service residential and small commercial customers that would be eligible to participate in the Program.<sup>23</sup> Moreover, the survey sample did *not* include *any* small commercial customers<sup>24</sup> even though they would be included in the Program.<sup>25</sup> Ultimately, all the survey results show is that:<sup>26</sup>

- 0.036% of eligible customers are interested in purchasing renewable energy;<sup>27</sup>
- 0.030% of eligible customers expressed a preference for purchasing renewable energy from ConEd;<sup>28</sup> and

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<sup>21</sup> See Petition, at 7, 7 n.12.

<sup>22</sup> See Surveys of Consumers, University of Michigan, University of Michigan: Consumer Sentiment © [UMCSENT], retrieved from [FRED, Federal Reserve Bank of St. Louis, https://fred.stlouisfed.org/series/UMCSENT](https://fred.stlouisfed.org/series/UMCSENT) (Accessed on Oct. 26, 2020).

<sup>23</sup> Petition, at 9; *Id.* at 7 n.12 (describing as survey of 1,333 residential full service customers).

<sup>24</sup> *Id.* at 7 n.12 (describing as survey of 1,333 residential full service customers).

<sup>25</sup> *Id.* at 1.

<sup>26</sup> See *id.* at 7.

<sup>27</sup> [(73% x 1,333)/2,700,000]\*100.

<sup>28</sup> [(60% x 1,333)/2,700,000]\*100.

- 0.023% of eligible customers are willing pay a premium of a monthly price premium of \$5.00 to \$10.00 for renewable energy.<sup>29</sup>

These results are simply insignificant and do not establish that ConEd's Program will satisfy any purported unmet demand. Further, the survey did *not* ask customers whether they: (a) are interested in purchasing Tier Two RECs; or (b) are willing to pay a premium for Tier Two RECs. Thus, there is no evidence that customers would purchase the product that ConEd proposes to offer.

### ***3. Other Utility Voluntary Renewable Programs Do Not Demonstrate Customer Interest In The Program***

In the Petition, ConEd noted that New York State Electric and Gas Corporation ("NYSEG"), Rochester Gas and Electric Corporation ("RG&E"), and Niagara Mohawk Power Corporation d/b/a National Grid ("NiMo") offer voluntary renewable energy to customers.<sup>30</sup> ConEd further used the current levels of enrollment in the NYSEG and RG&E programs as the basis for its target first year enrollment figure.<sup>31</sup> The existence of these programs and customer interest in them does not meaningfully inform the demand level for ConEd's proposed Program. The NYSEG, RG&E, and NiMo programs have been available for over fifteen (15) years.<sup>32</sup> Current levels of customer awareness and interest in those programs cannot be separated from

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<sup>29</sup> [(46% x 1,333)/2,700,000]\*100.

<sup>30</sup> See Petition, at 6.

<sup>31</sup> See *id.* at 9 n.18 ("NYSEG/RGE's program has over 14,000 subscribers buying over 31 GWh of annual RECs. Given Con Edison's larger customer base, it has set its first year goal at 20,000 subscribers.").

<sup>32</sup> See, e.g., Case 15-E-0302, *In the Matter of the Implementation of a Large Scale Renewable Program*, Case 14-M-0101, *Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision*, Case 03-E-0188 *Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard*, Response of New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation to Notice Soliciting Comments on Large Scale Renewable Energy Development in New York (Aug. 12, 2015) ("NYSEG and RG&E Response"), at 10 ("NYSEG's and RG&E's wind energy programs began in August 2002 and April 2004, respectively"); Case 03-E-0188 *Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard*, Comments of Multiple Intervenors (Sep. 26, 2003), at 51 (discussing participation in NiMo's GreenUp program in its first year).

their long histories and “ongoing marketing”<sup>33</sup> in a way that could meaningfully predict customer interest in the Program.

Moreover, customer interest in the existing renewable energy programs is waning. For example, at the end of 2008, 22,000 customers were enrolled in the NYSEG and RG&E program.<sup>34</sup> However, participation has decreased significantly since that time. In fact, currently, the NYSEG and RG&E program has only 14,000 subscribers,<sup>35</sup> which represents a 36% decrease in participation.<sup>36</sup> Consequently, the existence of and participation the NYSEG, RG&E, and NiMo programs does not indicate that there will be participation in the ConEd Program.

#### **B. The Program Is Not Necessary To Protect Tier Two RECs**

According to the Petition, ConEd would procure Tier Two RECs from New York renewable generators that are “at risk” because they are not currently, or will soon no longer be, selling their RECs to New York State Energy Research and Development Authority (“NYSERDA”).<sup>37</sup> First and foremost, there is no basis for believing that, to the extent there is unmet customer demand for voluntary renewable products supported by Tier Two RECs, ESCOs will not contract for and make those products available to customers.<sup>38</sup>

Moreover, NYSERDA and the Commission have already taken steps to protect Tier Two RECs. For example, in response to a Petition from NYSERDA, the Commission recently

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<sup>33</sup> Cf. Petition, at 10 n.21 (describing other New York utilities’ feedback on the importance of “ongoing marketing” for obtaining customer participation in voluntary renewable supply options).

<sup>34</sup> Case 03-E-0188 *Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard*, NYSEG and RG&E Correspondence (May 29, 2009), at 8.

<sup>35</sup> See Petition, at 9 n.18.

<sup>36</sup> In light of potentially waning interest and the availability of voluntary renewable products from ESCOs, it may be an apt time for the Commission to revisit whether other utilities should be able to continue to offer voluntary renewable products.

<sup>37</sup> See Petition, at 7, 14.

<sup>38</sup> See, e.g., NYS Power to Choose, <http://documents.dps.ny.gov/PTC/zipcode/10023> (displaying multiple offers for zip code 10023 that include biomass) (last visited Oct. 26, 2020).

expanded the Tier Two REC program with the express goal of “ensuring that baseline renewable energy resources sell their energy in-state.”<sup>39</sup> As a consequence, the ConEd Program is unnecessary to protect against purported Tier Two REC leakage.

In further support of its Petition, ConEd also asserted that the voluntary purchase of renewable energy under the Program “could reduce the number of RECs all customers need to purchase on a mandatory basis to meet the CLCPA [Climate Leadership and Community Protection Act] requirements.”<sup>40</sup> However, because not all Tier Two RECs (e.g., biomass)<sup>41</sup> qualify as renewable within the meaning of the CLCPA,<sup>42</sup> this is not necessarily true. Thus, it is just as possible that the Program would not help satisfy the CLCPA at all.

### **C. ConEd Should Focus On Its Role As A Distribution Utility**

Fundamentally, ConEd is a distribution utility. As such, it serves a critical role in New York’s energy markets, perhaps most importantly in ensuring the safe and reliable delivery of electricity.<sup>43</sup> However, its role is centered in New York’s regulated energy market. ConEd’s role is not to provide products or services that can and, in this case, are provided<sup>44</sup> in the competitive

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<sup>39</sup> See Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Order Adopting Modifications to the Clean Energy Standard (Oct. 15, 2020) (“CES Modifications Order”), at 64; see also *id.* at 61-62.

<sup>40</sup> Petition, at 14.

<sup>41</sup> Case 15-E-0302, *Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard*, Order Adopting Measures for the Retention of Existing Renewable Baseline Resources (Mar. 16, 2018), at 2.

<sup>42</sup> Climate Leadership and Community Protection Act, § 4.

<sup>43</sup> See Uniform Business Practices (Sep. 2019) (“UBP”), § 1 (s.v. “distribution utility”) (defining “distribution utility” as “[a] gas or electric corporation owning, operating or managing electric or gas facilities for the purpose of distributing gas or electricity to end users”). The effects of Tropical Storm Isaias highlight the critical role of distribution utilities in ensuring the safe and reliable delivery of power, from which they should not be distracted by other business opportunities. See, generally, Case 20-E-0422, *In the Matter of DPS Investigation into Consolidated Edison Company of New York, Inc.'s Preparation and Response to Tropical Storm Isaias*.

<sup>44</sup> See, e.g., NYS Power to Choose, <http://documents.dps.ny.gov/PTC/zipcode/10023> (displaying 111 electric offers for zip code 10023; 50 of which were renewable) (last visited Oct. 26, 2020).



market.<sup>45</sup> In the particular area of commodity supply, the role of the utility is to provide primarily basic default service, while ESCOs provide value-added options.<sup>46</sup>

However, by offering the Program, ConEd would be providing just such a value-added service. Consequently, the Program is functionally a competitive supply product.<sup>47</sup> In fact, ConEd would promote it and endeavor to enroll customers with marketing campaigns,<sup>48</sup> just like ESCOs promote and endeavor to enroll customers in their products. Thus, given ConEd's role as a distribution utility, ConEd should not be permitted to offer the Program. If ConEd wishes to provide the Program in New York, it could assign this task to an unregulated subsidiary, so long as appropriate standards of conduct are in place.<sup>49</sup> In fact, at one time, a ConEd affiliate was

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<sup>45</sup> See, e.g., Case 14-M-0101, *Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision*, Order Adopting a Ratemaking and Utility Revenue Model Policy Framework (May 19, 2016), at 24-25 (“A set of criteria is established to ensure that utilities have the opportunity to develop new revenues *without* intruding into arenas best served by competitive markets.”) (emphasis added).

<sup>46</sup> See Case 05-E-1222, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of New York State Electric & Gas Corporation for Electric Service*, Order Adopting Recommended Decision with Modifications (Aug. 23, 2006) (“[W]e envisioned a competitive market for retail electric commodity services, in which utilities would primarily provide basic default service, while ESCOs would provide value-added options . . .”). Historically, ConEd recognized its role and even promoted the competitive retail market as a source of voluntary renewable energy. See Case 00-M-0504, *Competitive Markets Proceeding*, Consolidated Edison Company Of New York, Inc. Retail Access Plan (May 19, 2006), at 2 (“[ConEd’s] primary message to customers will be that the marketplace provides customers with choices of energy suppliers, pricing options, and green power options, and that customers should make an affirmative choice of an energy supplier based upon their preferences.”).

<sup>47</sup> Case 03-E-0188, *Proceeding on Motion of the Commission Regarding a Retail Order Regarding Retail Renewable Portfolio Standard* (Sep. 24, 2004), at 4 (“We believe an important objective of the RPS program is to stimulate and complement *voluntary/competitive* renewable energy sales and purchases (or ‘green markets’) so that these competitive markets, not government mandates, sustain renewable activity.”) (emphasis added).

<sup>48</sup> See Petition, at 10 n.21 (“The Company’s planned marketing efforts include paid social media posts, online search advertising, and promotion of the program in New York City farmers’ markets and community-based events.”).

<sup>49</sup> See, e.g., Case 14-M-0101, *Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision*, Order Adopting a Ratemaking and Utility Revenue Model Policy Framework (May 19, 2016), at 26 (“Unregulated utility subsidiaries are authorized to engage in competitive value-added services. To engage in these activities the utilities must have in place standards of conduct to avoid affiliate abuse, to be monitored by the Commission.”).

registered as an ESCO in New York<sup>50</sup> and even marketed voluntary renewable products, enrolling over 20,000 customers.<sup>51</sup> There is no reason why ConEd could not use a similar method for offering the Program now.

That said, if the Commission determines that ConEd should be permitted to offer the Program (which RESA vehemently opposes), it should require ConEd to comply with clearly-specified, robust consumer protections, including all of the consumer protections that have been established for ESCO voluntary renewable products and marketing. For example, ConEd proposed to implement changes in the Program’s subscription price simply by providing customer with “advance notice” of the change.<sup>52</sup> However, material changes to ESCO products—such as changes in price—require express customer consent.<sup>53</sup> Similarly, the UBP imposes a set of marketing standards applicable to ESCOs and their marketing representatives.<sup>54</sup> However, in the Petition, ConEd, although noting that it would market the Program,<sup>55</sup> did not

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<sup>50</sup> See Matter No. 15-00555, *In the Matter of New ESCO Applications*, CES Retail Energy Supply, LLC Correspondence (Sep. 7, 2016) (observing that Consolidated Edison Solutions, Inc. was “a licensed electric and gas supplier in New York”).

<sup>51</sup> See *ConEdison Solutions*, Company Overview, [https://www.energy.gov/sites/prod/files/2013/10/f3/ces\\_escoqual.pdf](https://www.energy.gov/sites/prod/files/2013/10/f3/ces_escoqual.pdf) (last visited Oct. 26, 2020); Con Edison Environment, Health and Safety Annual Report for 2005, [https://www.conedison.com/-/media/files/conedison/about-us/sustainability-reports/ehs\\_annual\\_report\\_2005.pdf?la=en](https://www.conedison.com/-/media/files/conedison/about-us/sustainability-reports/ehs_annual_report_2005.pdf?la=en) (last visited Oct. 26, 2020), at 45.

<sup>52</sup> Petition, at 10. Similarly, ConEd did not propose any review by the Commission about whether such changes are just and reasonable. See Public Service Law § 65(1) (“All charges made or demanded by any such gas corporation, electric corporation or municipality for gas, electricity or any service rendered or to be rendered, shall be just and reasonable and not more than allowed by law or by order of the commission.”).

<sup>53</sup> See UBP, § 5(B)(5)(d) (“[N]o material changes shall be made in the terms or duration of any contract for the provision of energy by an ESCO without the express consent of the customer obtained under the methods authorized in the UBP.”).

<sup>54</sup> See UBP, § 10.

<sup>55</sup> See Petition, at 9, 10 n.21. ConEd’s marketing may well be aggressive, since it would be intended to expand subscriptions from 20,000 in the first year to 200,000. See Petition, at 9.

indicate whether it would adhere to any particular marketing standards.<sup>56</sup> Consumers should not receive less protection simply because ConEd is responsible for the marketing and pricing.

Further, if it will not regulate subscription prices,<sup>57</sup> the Commission should subject the Program to the same restrictions to which ESCO voluntary renewable products are subject. For instance, ESCOs may not enroll a low-income customer in a voluntary renewable commodity product unless they can guarantee that the customer will “pay no more than he or she would have paid to the utility.”<sup>58</sup> Low-income customers of ConEd are just as deserving of this protection as low-income customers of ESCOs. Thus, the Commission should require that ConEd offer the Program (together with default service) to low-income customers at a price that is guaranteed to be lower than default service. Alternatively, if the Program is approved, the Commission should permit ESCOs to offer renewable commodity products to low-income customers at prices that do not exceed the sum of the ConEd default price *and* the Program subscription price.

#### **D. Non-Subscribing Customers Should Not Subsidize The Program**

ConEd’s Petition raises serious concerns about the potential for cross-subsidies. First and foremost, it is not clear that the Program subscription fees will be designed to “cover all [P]rogram costs.”<sup>59</sup> The Petition only specifically mentioned initial billing infrastructure upgrade capital costs, marketing costs and REC costs.<sup>60</sup> However, ConEd likely will incur other costs as well, such as labor costs.<sup>61</sup> Because these costs are costs of the Program, they should be

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<sup>56</sup> *See, generally*, Petition.

<sup>57</sup> *See* Public Service Law § 65(1) (“All charges made or demanded by any such gas corporation, electric corporation or municipality for gas, electricity or any service rendered or to be rendered, shall be just and reasonable and not more than allowed by law or by order of the commission.”).

<sup>58</sup> 2019 Reset Order, at 83.

<sup>59</sup> Petition, at 11 n.22.

<sup>60</sup> *See id.* at 10.

<sup>61</sup> *See id.* at 8 (“The same employees responsible for those Tier One REC activities will carry out this program’s REC market operations and related administrative matters.”).

recovered through the Program fees from subscribing customers. To ensure that this is done, and that no Program costs are embedded in ConEd's base rates, all direct and indirect costs associated with the Program should be itemized and tracked.

Further, as proposed, the Program includes a "backstop mechanism."<sup>62</sup> Under this mechanism, Program costs will be recovered from ConEd's *entire* full-service residential and small commercial customer base - even customers who do not subscribe to the Program.<sup>63</sup> Subscribing customers would pay subscription fees,<sup>64</sup> and revenues from these fees would be credited to ConEd's entire full-service residential and small commercial customer base to offset the charges incurred to fund the Program.<sup>65</sup> However, to the extent subscription prices are not sufficient to pay Program costs, ConEd's entire full-service residential and small commercial customer base would bear the risk of any shortfalls. In fact, because of ConEd's unreasonably optimistic view of interest in the Program,<sup>66</sup> the potential for such subsidization is high.

This ratemaking scheme violates principles of cost causation because non-subscribing customers will not have caused ConEd to incur any Program costs.<sup>67</sup> Moreover, this ratemaking scheme is inequitable because the Program will compete with ESCO voluntary renewable

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<sup>62</sup> See Petition, at 11 n.22.

<sup>63</sup> See *id.* at 11.

<sup>64</sup> See *id.* at 11 n.22.

<sup>65</sup> See *id.* at 11.

<sup>66</sup> See *supra* Section II.A.

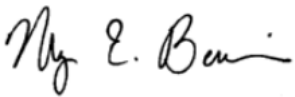
<sup>67</sup> Cf., e.g., Case 14-M-0101, *Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision*, Order Adopting a Ratemaking and Utility Revenue Model Policy Framework (May 19, 2016), at 159 ("Rates should reflect cost causation, including embedded costs as well as long-run marginal and future costs.").

products who do not have the same ability to recover expenses not covered by revenues.<sup>68</sup> As a consequence, this rate-making treatment will send inaccurate price signals making it impossible for customers to accurately compare ESCO voluntary renewable prices with those of ConEd.

### III. CONCLUSION

For all of the foregoing reasons, the Commission should deny the Petition.

Respectfully submitted,

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Dated: October 26, 2020

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<sup>68</sup> Cf. Case 15-M-0127, *In the Matter of Eligibility Criteria for Energy Service Companies*, Case 12-M-0476, *Proceeding on Motion of the Commission to Assess Certain Aspects of the Residential and Small Non-residential Retail Energy Markets in New York State*, Case 98-M-1343, *In the Matter of Retail Access Business Rules*, Direct Testimony of Frank Lacey on Behalf of RESA (Sep. 15, 2017, revised on Dec. 1, 2017), at 16-17 (discussing inherent problems with comparing utility rates to ESCO prices).