

August 24, 2011

VIA E-MAIL

Hon. Jaclyn Brilling
Secretary
State of New York Public
Service Commission
Three Empire State Plaza, 14th Floor
Albany, New York 12223-1350

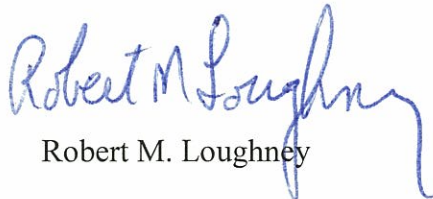
Re: Case 11-E-_____ - Petition of the City of New York for a
Declaratory Ruling Waiving Tariff Restriction and Ruling of Tariff
Applicability

Dear Secretary Brilling:

Attached is a Petition for a Declaratory Ruling Waiving Tariff Restriction and Ruling of
Tariff Applicability of the City of New York with respect to its planned combined heat and
power plant at the Rikers Island correctional facility. Please call me if there are any questions.

Very truly yours,

COUCH WHITE, LLP


Robert M. Loughney

RML/slg
Enclosure

cc: Marc Richter, Esq. (via e-mail; w/enc.)
Leonard Van Ryn, Esq. (via e-mail; w/enc.)
Susan Vercheak, Esq. (via e-mail; w/enc.)

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**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

Petition of the City of New York for a Declaratory Ruling
Waiving Tariff Restriction and Ruling of Tariff Applicability

Case 11-E-_____

**PETITION OF THE CITY OF NEW YORK FOR A
DECLARATORY RULING WAIVING TARIFF
RESTRICTION AND RULING OF TARIFF
APPLICABILITY**

Dated: August 24, 2011

**COUCH WHITE, LLP
540 BROADWAY
P.O. BOX 22222
ALBANY, NEW YORK 12201-2222
518-426-4600**

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PRELIMINARY STATEMENT

Pursuant to Rule 8.1 of the Rules and Regulations of the New York State Public Service Commission (“Commission”), and for the reasons set forth herein, the City of New York (“City”), acting on behalf of its Department of Correction (“DOC”), hereby requests that the Commission rule that the DOC cogeneration facility planned for Rikers Island is eligible for standby delivery service of energy and capacity provided by the New York Power Authority (“NYPA”) under the terms contained in Consolidated Edison Company of New York Inc.’s (“Con Edison”) P.S.C. No. 2, Retail Access, S.C. No. 14-RA, Special Provision E (“Special Provision E”), or grant such other relief as the Commission deems appropriate.

BACKGROUND

DOC owns and operates correctional facilities on Rikers Island. In an effort to improve the reliability of electric and steam supply on the Island, and to obtain energy cost savings and reduce emissions, in 2009, DOC, working with NYPA, embarked on a path to design and install a high-efficiency combined heat and power plant (“CHP Plant”) on Rikers Island. The CHP Plant is designed for a 15 MW nominal capacity. The Plant will provide electricity and thermal energy to the facilities located on Rikers Island, but it is not designed to export electricity to Con Edison or any other electric load.

The CHP Plant will satisfy several critical energy and environmental goals established by the DOC and the City. For DOC, the Plant will increase reliability on Rikers Island by adding a third source of supply (presently, DOC receives supply from NYPA via Con Edison and from emergency generators); and provide 100 percent redundancy for thermal energy (from the Plant and existing boilers) and significant energy cost savings (approximately \$6.9

million annually). The CHP Plant also advances important City reliability and environmental goals, as set forth in PlaNYC,¹ by generating 15 MW of clean capacity that will not have to be supplied by Con Edison (thereby reducing demands on the Con Edison system) and reducing harmful emissions.

Interconnection Options

Rikers Island currently is connected to the Con Edison electric system as shown on Exhibit A. Initially, the City proposed to connect the CHP Plant to the Con Edison system as shown on Exhibit B. However, the interconnection set forth in Exhibit B has been discarded, because: (a) Con Edison wanted \$2.85 million to transfer certain existing network protectors and transformers that it currently owns and operates on the Island to DOC (“Stranded Assets”); and (b) if DOC takes ownership of the Stranded Assets, it would have to upgrade the assets so that they meet National Electrical Code (“NEC”) standards at a prohibitive cost.² Together, these added costs rendered the option shown on Exhibit B uneconomic.

When the unforeseen costs associated with the Exhibit B option were confirmed, the City asked Con Edison to consider the interconnection option shown on Exhibit C, which is the same as the Exhibit B option except that Con Edison would maintain ownership and control

¹ PlaNYC is available at <http://www.nyc.gov/html/planyc2030/html/home/home.shtml>. An update to the plan was issued in April, 2011, and will be referenced herein as “PlaNYC.”

² The City and its representatives met twice with the NYC Department of Buildings, Electric Advisory Board to discuss the scope of the upgrades. Although the Board may grant some exemptions, the upgrades still are likely to be in excess of \$15 million and would make the project uneconomic.

of the Stranded Assets. Con Edison, in turn, rejected the Exhibit C option because of operational and safety concerns it had with operating its equipment behind the DOC substation.³

Finally, the City and Con Edison began to focus on the interconnection shown on Exhibit D, the so-called “campus style” interconnection initially proposed by Con Edison. Under the “campus style” option, Con Edison would continue to own and operate its assets on the Island, and DOC would pay for that service under Special Provision E, which would differentiate between the high voltage (two) and low voltage (nine) accounts. The “campus style” option would require the addition of disconnect switches to the four main feeders into the Island. This means that there would not be an automatic switchover to the CHP Plant in the event of a system outage but, instead, the Plant would have to be switched manually. Although the loss of the automatic switchover could interrupt power supply and, therefore, is very undesirable from the City’s standpoint, Con Edison’s positions on the other options (see above) have made the “campus style” interconnection the only viable option.

The City has advised Con Edison that it is ready to proceed with the “campus style” option and asked that Con Edison support the City in securing Commission approval for service under the terms of Special Provision E. Con Edison refused and has stated that, although it is willing to proceed with a “campus style” approach for Rikers Island, it needs to complete multiple levels of internal and external reviews before it can file a new “campus style” tariff, and that the tariff changes also may include new standby rates for “campus style” service. The delay and uncertainty associated with Con Edison’s approach to a “campus style” interconnection for the CHP Plant on Rikers Island are unacceptable. For the reasons set forth herein, the City requests that the Commission order Con Edison to waive the size limitations that limit service

³ The City’s efforts to provide Con Edison with complete control over all equipment on the Island did not assuage Con Edison, which rejected the Exhibit C option.

under Special Provision E and otherwise declare that Rikers Island is qualified to take delivery service under the terms of that tariff.

Special Provision E

The terms of Special Provision E are set forth in Exhibit E hereto. As demonstrated below, with the exception of artificial, or non-consequential, limitations contained in Special Provision E, the CHP Plant materially satisfies the criteria set forth therein. By ordering Con Edison to provide service to the CHP Plant under the terms of Special Provision E, the Commission will eliminate substantial uncertainty and delay created by Con Edison's decision to proffer a new "campus style" tariff and facilitate the development of clean, energy-efficient distributed generation, consistent with important State and City policies.

ARGUMENT

POINT I

THE RIKERS ISLAND CHP PLANT MATERIALLY SATISFIES THE TECHNICAL REQUIREMENTS OF SPECIAL PROVISION E

Special Provision E allows a low tension customer to connect a private generating facility to the Con Edison high tension distribution system subject to certain conditions. The major limiting condition is that the private generating facility is limited to a nameplate capacity rating of between 3 and 5 MW. This limitation is an artificial contrivance because there is no basis for limiting the service based on the nameplate capacity. As set forth below, the tariff has a number of other, substantive conditions that are designed to ensure that the generating facility does not impose undue costs or reliability problems on Con Edison.

Provided that DOC is able to satisfy these cost and operational conditions, which it is, the Commission should waive the very narrow size limitation set forth in the tariff. The City is not aware of any law, rule or policy requiring the narrow size limitation, or preventing the Commission from granting the waiver. Moreover, the fact that only one customer is served under Special Provision E strongly suggests that the size limitation is arbitrary and an artificial constraint on DG development. Because the CHP Plant materially satisfies all of the other terms of Special Provision E, the City requests that the Commission waive the size limitation and order Con Edison to provide service under the terms of Special Provision E.

Specifically, the CHP Plant complies with the following requirements of Special Provision E:

1. The generating unit must meet the criteria for a “combined heat and power project” as set forth in the Commission’s January 23, 2004 Order in Case 02-E-0781.

The CHP Plant exceeds the thresholds for emissions and efficiency in the Order in Case 02-E-0781 and thus satisfies this condition.

2. The service interconnection for the generating unit is made to an interior distribution installation.

The CHP Plant will interconnect in this manner. A diagram of the proposed “campus style” interconnection is attached hereto as Exhibit D.

3. The generator’s output must not exceed the customer load at any given time.

The CHP Plant is designed to satisfy the DOC load only so that there will not be any export to Con Edison or any third party.

4. All electricity supplied by Con Edison and by the Customer's generator can be supplied to only one customer.

DOC will be the only end user of electricity from the CHP Plant. The DOC currently has 11 accounts with Con Edison on Rikers Island, each of which is billed separately, and they would continue to be billed that way under the "campus style" approach. Separate billing is fair to the utility in that it allows Con Edison to recover the connection, metering and billing costs associated with serving individual accounts. Although there are 11 accounts, DOC is a single customer in a very discrete location. In fact, because the CHP Plant will be located on an island with no other customers, the Plant is unique and its interconnection will not involve issues that might arise with more complex interconnections.

5. The generating unit must be connected at high tension voltage on Con Edison's side of the revenue meter.

That is the planned connection for the CHP Plant.

6. The high-tension meter must be adjusted for transformer losses.

Transformer losses will be accounted for with the CHP Plant.

7. The cost to Con Edison for the high tension interconnect must not exceed the costs it would have incurred with a low tension interconnect.

Pursuant to the interconnection agreement that the parties have largely completed negotiating, the City will reimburse Con Edison for the interconnection costs it incurs. With regard to the low tension service, the standby tariff contract and as-used secondary demand charges for the nine accounts supplied at low tension will amply reimburse Con Edison for the continued ownership of the transformers, network protectors and meters needed to serve these accounts. That is because the balance of the low tension system is owned by the end user, DOC,

rather than Con Edison. This ownership of much of the secondary system, including secondary conductors and conduits that are normally owned by Con Edison and recovered in tariff demand charges, distinguishes Rikers Island from nearly all other secondary customers and ensures that Con Edison will be adequately compensated. Further, the level of maintenance on the equipment that would continue to be owned by Con Edison will be less than for other secondary customers because Con Edison only does screwdriver repairs on its limited secondary system equipment on the Island. Con Edison does not install replacement equipment because the equipment is in vaults owned by DOC.

8. The configuration of Con Edison's equipment is the same for high tension and low tension.

See answer to #7. Although the City is unaware of the configuration of Con Edison equipment if all connections were at low tension, Con Edison has control over the configuration of the high tension interconnection and will be reimbursed for its costs.

9. An added customer charge of \$50 per month is applied, the MAC and other charges are applied and the As-Used Demand is measured as the difference between the total Customer low tension metered demand and the demand measured on the high tension meter for the generator output.

The City accepts these billing parameters to the extent they apply to the delivery of NYPA power (i.e., the MAC is not applicable).

10. The customer served under this Special Provision cannot sell output to Con Edison under SC 11.

The City accepts this limitation (see answer to # 3).

There also is a provision of the Special Provision E that states that a standby customer cannot backfeed electricity into Con Edison's system. Although the CHP Plant may "backfeed" into Con Edison owned equipment on Rikers Island (i.e., the transformers, network protectors and meters that serve only the nine DOC low tension accounts), there will be no backfeeding of electricity to Con Edison's system outside of Rikers Island. In fact, the draft Interconnection Agreement will not provide for any sales of electricity to Con Edison (or anyone else).

Clearly, the CHP Plant satisfies all of the cost and operational conditions imposed by Special Provision E. In addition, the City intends to continue working with Con Edison to ensure that all safety and reliability concerns are addressed in the Interconnection Agreement. Thus, the CHP Plant will not impose any negative costs or reliability or safety concerns on Con Edison or its other customers. To the contrary, the CHP Plant will generate 15 MW of clean capacity that will not have to be supplied by the Con Edison system, thereby providing additional system support and environmental benefits.

POINT II

GRANTING THIS PETITION IS IN FURTHERANCE OF IMPORTANT STATE AND CITY POLICIES SUPPORTING THE DEVELOPMENT OF DISTRIBUTED GENERATION

As noted above, the CHP Plant will increase reliability on Rikers Island and in the Con Edison service territory and substantially reduce harmful emissions. As such, the CHP Plant is consistent with important State and City energy and environmental goals. For example, State energy policy recognizes the important contribution of distributed CHP systems to "energy and

cost reductions, improved energy security and reliability and reductions in air emissions.”⁴ In addition, NYSERDA recently proposed to continue the CHP components of its successful CHP Demonstration and Existing Facilities Programs as a CHP Initiative to be administered under the fourth phase of the System Benefits Charge.⁵ The benefits of increasing CHP market penetration cited by NYSERDA are substantial, and include: increased energy efficiency, reliability and security; permanent demand reduction; deferred transmission and distribution upgrades; use of renewable fuels; and improved system-wide environmental performance.⁶ Those benefits align with the State’s energy and environmental policy goals, and are of particular value in load-constrained areas such as New York City where there remains substantial opportunity to increase the deployment of CHP systems. In fact, a study commissioned by NYSERDA in 2002 estimated that the New York City area has the “technical potential” to add approximately 4,500 MW of CHP capacity.⁷

The City has established a goal of developing 800 MW of clean distributed generation (“DG”) within the five boroughs. Achievement of this goal is anticipated to provide up to 10% of the greenhouse gas emissions reduction necessary to achieve the City’s 30 x 17 goal, and the City is developing many of its own clean DG projects in addition to promoting private DG projects. In short, the City is relying on the increased market penetration of DG, including CHP, systems to achieve its emission reduction and energy efficiency goals.

⁴ 2009 State Energy Plan, Volume I (December, 2009) at 50.

⁵ Cases 10-M-0457, In the Matter of the System Benefits Charge IV, and 05-M-0090, In the Matter of the System Benefits Charge III, Operating Plan for Technology and Market Development Programs (2012-2016) (dated May 16, 2011) at Section 9.1.3.

⁶ Id.

⁷ Id. at 9-21.

In the recent DG Report issued in Case 09-E-0428, the Company agreed to consider “campus style” interconnections favorably if the technical challenges could be satisfied:

The Collaborative discussed a proposal presented by the City for expanding the interconnection options currently available to customers to include a “campus” type interconnection consisting of generation connected to the Con Edison primary feeders that also supply the customer’s low tension service(s). The “direct generator interconnect” scenario could offer an alternative that might not otherwise be available to a customer unable – for whatever reason – to connect the generator behind the customer’s meters.

These overall concerns of the Company notwithstanding, the Collaborative agreed that there may be instances, such as the municipal hospital conceptual design presented here, where the direct generator interconnection is beneficial and where technical challenges, such as those listed above, may be resolved satisfactorily through a technical evaluation of each proposal requesting such an interconnection. **As a result, Con Edison will continue to evaluate on a comprehensive basis direct generator interconnection requests on a case-by-case basis including the option for sizes outside that allowed in the current tariff.** The technical requirements of individual interconnections, *e.g.*, the number of feeders; operating limits; communication requirements, will be addressed as part of each application and review process. The Company will encourage customers to work with the Company early in the planning stages to review for an optimal interconnection design.⁸

Con Edison should be held to its commitment to consider CHP plants that are sized “outside that allowed in the current tariff” without imposing a new set of rates. In many ways the arrangement requested by the City for Rikers Island is simpler than the campus arrangement that the Company committed to consider favorably in the recent DG Report because the CHP Plant will be located on an island with virtually no possibility of reducing reliability, or otherwise

⁸ Case 09-E-0428, Proceeding on Motion of the Commission as to the Rates, Charges, Rules, and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service, 2010 Distributed Generation Collaborative Report (dated Nov. 2, 2010) at 11-12, 14 (emphasis added; hereinafter, the “DG Report”).

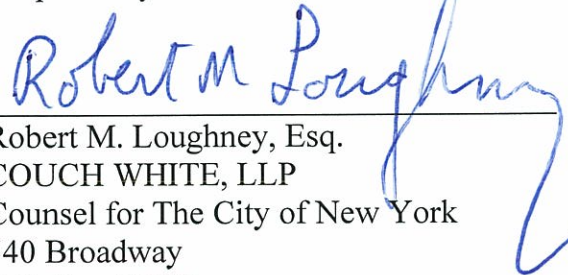
negatively affecting service to other customers. The “campus design” concerns discussed in the DG Report – reliability and safety – are as important to the City as they are to Con Edison, and the City believes that all of these concerns will be addressed in the Interconnection Agreement with Con Edison. Accordingly, the CHP Plant advances important State and City policies and provides positive reliability and safety support for the system.

CONCLUSION

For the reasons set forth herein, the Commission should rule that the CHP Plant on Rikers Island is eligible for service under Special Provision E and order Con Edison to provide such service, or grant such other relief as the Commission deems appropriate to allow this project to proceed without regulatory delay.

Dated: August 24, 2011
Albany, New York

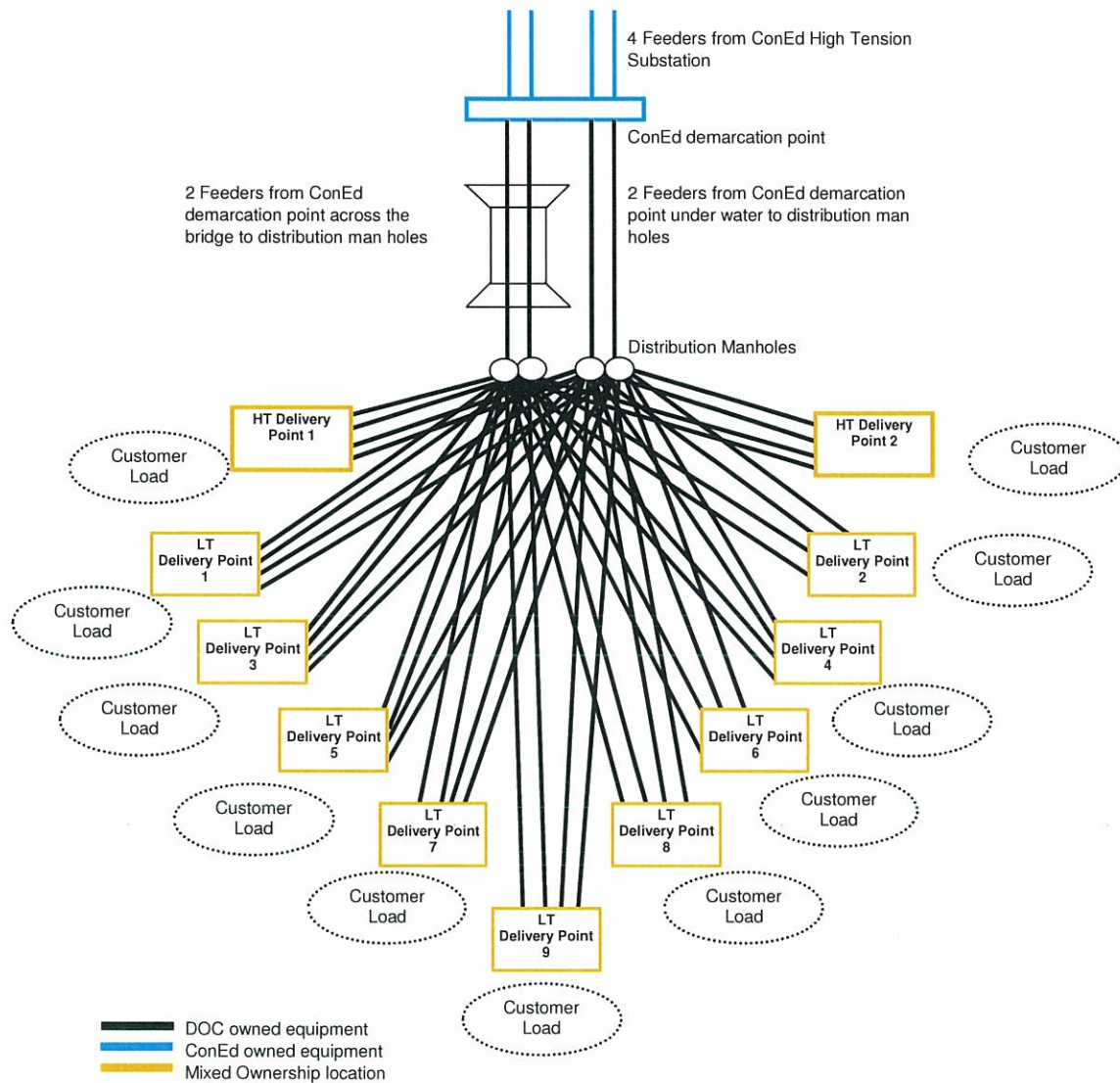
Respectfully submitted,



Robert M. Loughney, Esq.
COUCH WHITE, LLP
Counsel for The City of New York
540 Broadway
P.O. Box 22222
Albany, New York 12201-2222
(518) 426-4600

EXHIBITS

Current Layout of Interconnection at Rikers Island



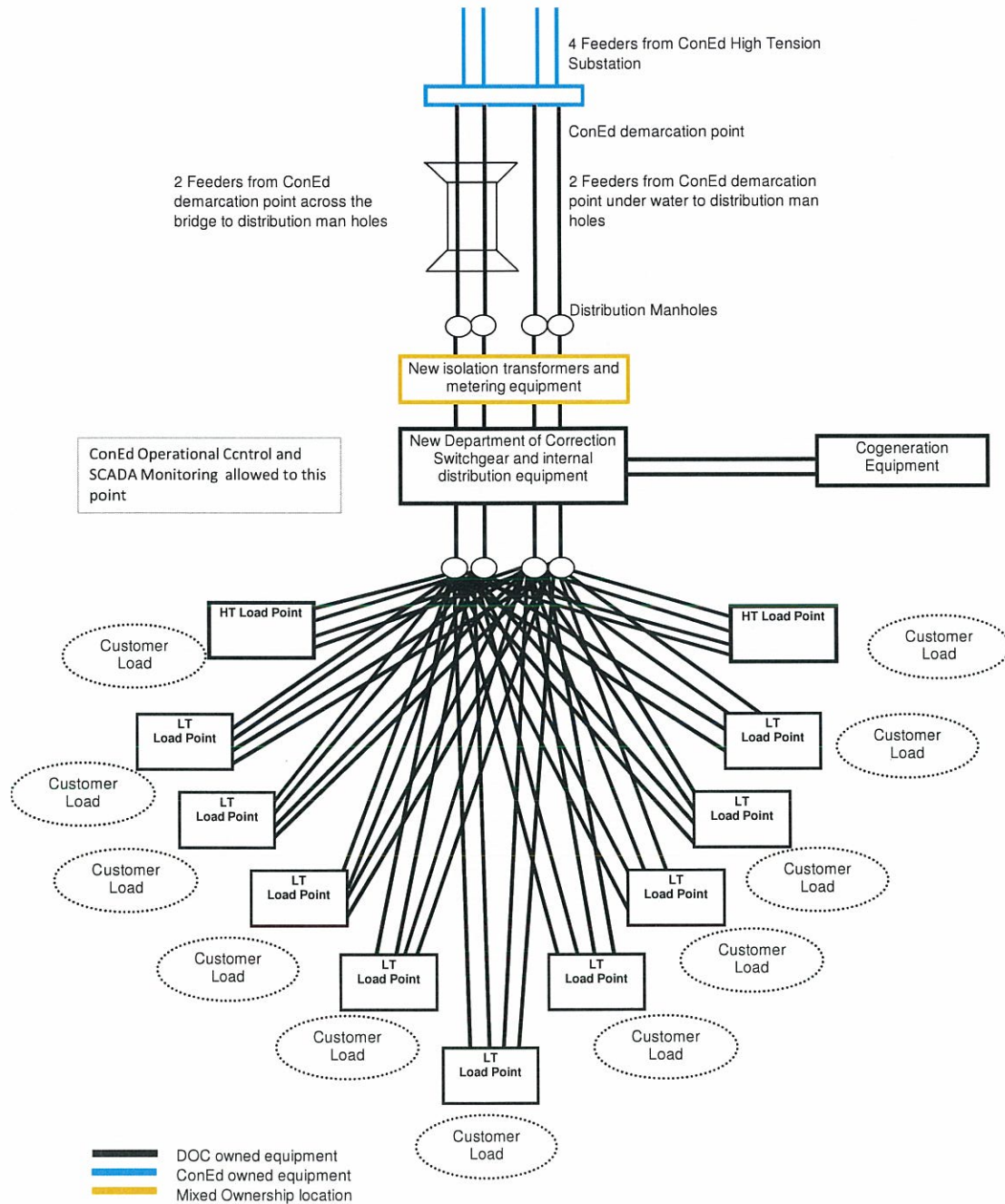
Con Ed delivers second contingency power on four (4) feeders. These feeders run to the island on Department of Correction owned feeders (two on the bridge and two under water). These connect to distribution manholes in the intersection across the bridge.

The power is delivered to eleven delivery points (two high tension and nine low tension).

Exhibit B

Initial Proposed Interconnection at Rikers Island

Includes transfer of all existing ConEd assets to the Department of Correction



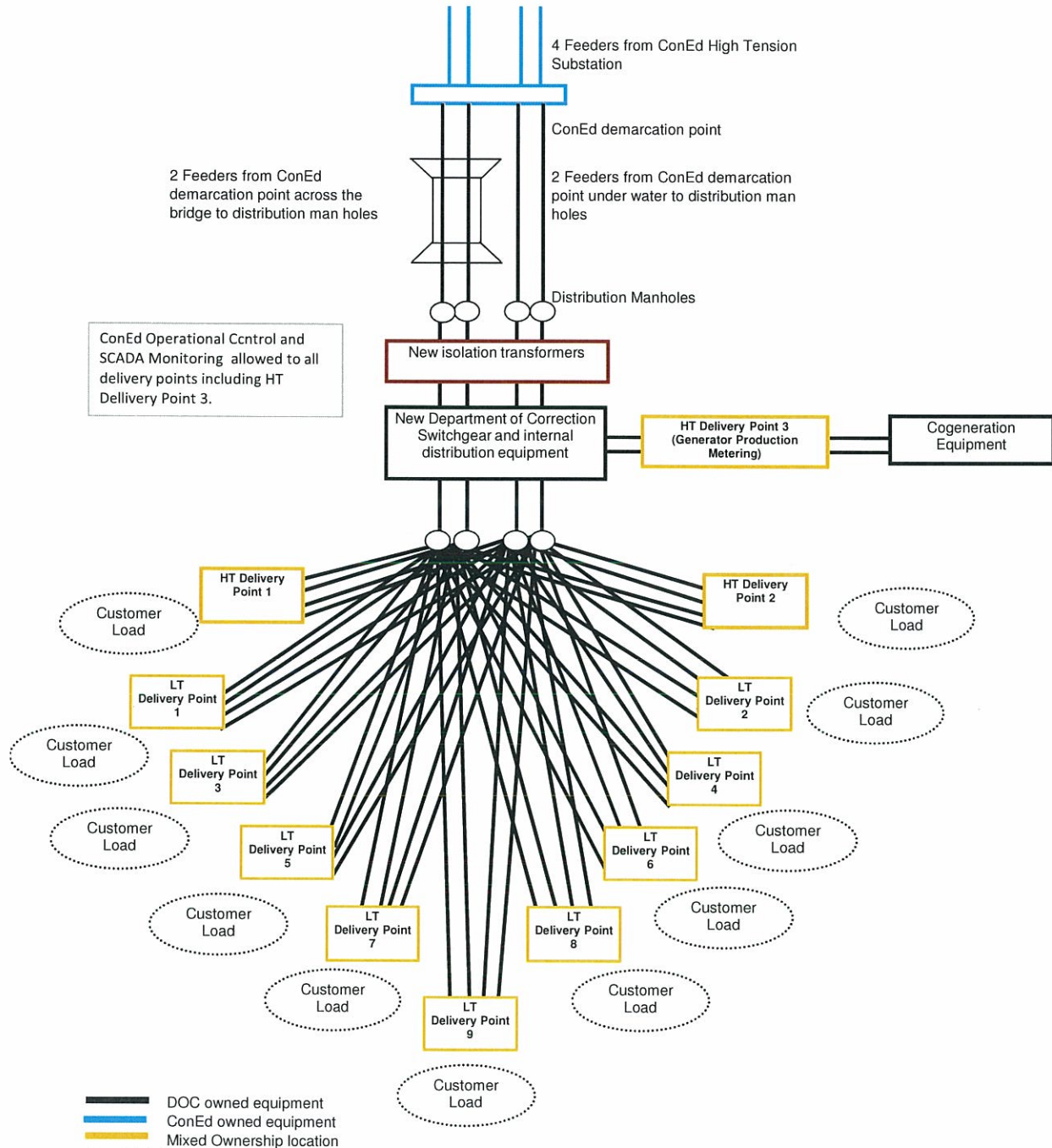
Con Ed delivers second contingency power on four (4) feeders. These feeders run to the island on Department of Correction owned feeders (two on the bridge and two under water). These connect to distribution manholes in the intersection across the bridge.

The power is delivered to a single delivery points and DOC distributes to existing load. This option allows for island operation and for simultaneous operation of the cogeneration plant with the utility.

Exhibit C

City preferred interconnection

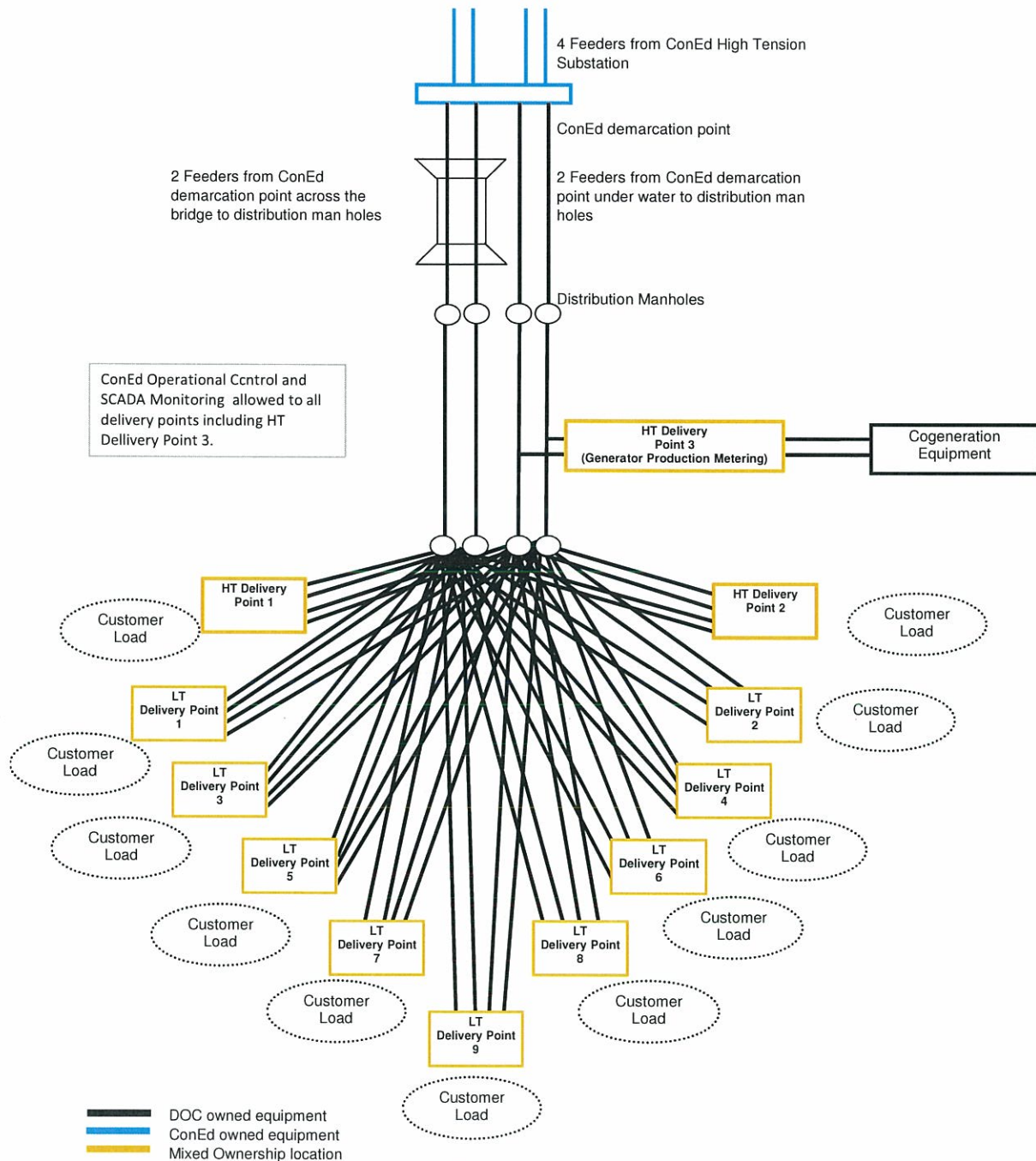
ConEd maintains ownership of existing assets and continues to bill for multiple accounts



Con Ed delivers second contingency power on four (4) feeders. These feeders run to the island on Department of Correction owned feeders (two on the bridge and two under water). These connect to distribution manholes in the intersection across the bridge.

The power is delivered to the existing eleven delivery points (two high tension and nine low tension) and a new high tension delivery point is established for the cogeneration system. This system allows for ConEd to continue to maintain existing equipment at each of the delivery points and to net meter the cogeneration delivered

Exhibit D Campus Style Interconnection



Con Ed delivers second contingency power on four (4) feeders. These feeders run to the island on Department of Correction owned feeders (two on the bridge and two under water). These connect to distribution manholes in the intersection across the bridge.

The power is delivered to the existing eleven delivery points (two high tension and nine low tension) and a new delivery point is added for the interconnection of the cogeneration plant. This meter would act as a Generator Production Metering site.

SERVICE CLASSIFICATION NO. 14-RA - Continued
STANDBY SERVICE**Special Provisions - Continued**

- E. Backfeed of power into the Company's system will not be permitted under this Service Classification, except as follows:

A low-tension Customer who operates a private generating facility having a total nameplate rating between 3 MW and 5 MW may take service under this Service Classification by connecting the facility to the Company's high-tension distribution system, provided the connection and operation of such facility do not jeopardize the safety or operation of the Company's system, facilities or other Customers and all of the following conditions are met: (1) the facility meets eligibility criteria for designation as "combined heat and power" pursuant to the order of the Public Service Commission, dated January 23, 2004, in Case 02-E-0781, except with respect to maximum generating capacity; (2) the service interconnection is made to an interior distribution installation, pursuant to General Rule III-7 of the Full Service Schedule; (3) the generator's output does not exceed the load at the premises at any time; (4) all the electricity supplied by the Company and by the Customer's generator serves a single Customer; (5) the generating facility is connected at high tension voltage (as specified in General Rule III-2(G) of the Full Service Schedule) on the Company's side of the revenue meter; (6) the high-tension meter on the generator's output is adjusted for transformer losses; and (7) the cost to the Company of the installation is no greater than it would be if the generating facility were connected at low-tension voltage on the Customer's side of the meter, and the configuration of Company equipment is the same under either the high-tension or low-tension connection. There will be a Customer Charge of \$50.00 per billing period, exclusive of the Increase in Rates and Charges, to cover incremental billing and administrative costs associated with providing service to this type of installation. The Monthly Adjustment Clause and charges described in General Information Section VIII(B) of the Full Service Schedule will be applied to the Customer's total usage, including that generated by the private generating facility. The As-used Demand will be the difference between the total Customer low-tension registered demand and the demand registered on the high-tension meter measuring the generator's output (adjusted for losses). A Customer taking service under this provision may not take service under Service Classification No. 11. If the Customer generates power and energy in excess of the Customer's requirements at the premises, the Customer will not be credited for such excess, and the Company, at its sole discretion, may remove the Customer from service under this provision.

- F. The following provisions are applicable to Customers with private generation facilities on the premises not connected directly to transmission facilities (that is, delivery facilities other than distribution facilities) that (i) commenced operation prior to February 1, 2000, or (ii) commenced operation between February 1, 2000 and December 30, 2004 and either have a total nameplate rating between 301 kVA and 2 MW or are connected in parallel with the network system; or (iii) have a total nameplate rating greater than 2 MW and are connected in parallel with the distribution system:

- (1) Metering equipment (except meters and metering transformers) and interrupting equipment, as specified by the Company, will be installed and maintained by the Customer in accordance with Company specifications. Where such facilities are located on the Company's property, they will be installed and maintained by the Company at the Customer's expense.

Date of Issue: January 28, 2005**Date Effective: March 18, 2005**

Issued by: Joan S. Freilich, Executive Vice President and Chief Financial Officer, 4 Irving Place, NY, N.Y. 10003