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January 4, 2006

*Via Hand Delivery*  
Honorable Jaclyn A. Brillling  
Secretary  
Public Service Commission  
Three Empire Plaza  
Albany, New York 12223

Re: Case No. 03-S-1672 - Con Edison Steam Business Development Plan

Dear Secretary Brillling:

Consolidated Edison Company of New York, Inc. ("Con Edison" or "Company") respectfully submits this petition for clarification of the Commission's December 5, 2005 order in Case 03-S-1672 ("SBD Order") on the Company's steam business development plan ("SBD Plan").<sup>1</sup> The Company worked diligently with the members of the SBD Task Force to produce this report and is generally in accord with the recommended action items. The Company is therefore committed to implement the SBD Plan's action items.

The Company's commitment is wholly consistent with the desire, shared by both the Company and the Commission, to see its steam system succeed. Although the Company does not agree with the Order in its entirety, specifically with respect to certain characterizations contained in the Order concerning the Company's efforts and actions regarding steam business development, the Company's submission seeks clarification solely as set forth in this request.

Indeed, the SBD Plan included many positive findings as to Con Edison's efforts, such as the findings that "Con Edison Steam historically has won about 80-90 percent of new large commercial customer heating loads on or near its existing lines *and has a relatively low customer defection rate* (emphasis added)." (SBD Plan, p.16). This relatively low defection rate exists notwithstanding the availability of competitive alternatives for all steam customers, which will be discussed in more detail below. These achievements are present because Con Edison provides reliable, high-quality steam service to its customers, which is reflected in the survey's showing that 100% of the customers are satisfied, with 50% being either "very satisfied" or "extremely satisfied."<sup>2</sup>

By this petition, the Company requests that the Commission clarify the SBD Order to make it clear that actions undertaken by the Company cannot, in and of themselves, make steam a viable competitive alternative for many new and existing

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<sup>1</sup> Case 03-S-1672, Order on Consolidated Edison Company of New York, Inc.'s Steam Business Development Plan (Dec. 5, 2005).

<sup>2</sup> While the survey had limited participation, the Commission relied on the survey and noted that it provided at least "an indication" of steam customers' opinions. (SBD Order at 11 & n. 15).

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customers, particularly with respect to cooling. That is, the health of the steam system also depends on changes in current governmental and regulatory policies that currently place the steam system at a competitive disadvantage. In that regard, the Commission should also clarify that its conclusion that "a significant number" of steam customers are "captive" does not mean that steam customers do not have competitive alternatives. Such an implication is not supported by the SBD Plan's findings and could adversely affect the Company's implementation of certain of the Plan's recommendations.

## Discussion

The Commission acknowledges in the SBD Order (p. 7) that:

Government and regulatory factors are critical when assessing the competitive position of steam heating and cooling. For example, incentives have played an important role in improving the cost competitiveness of steam chillers compared to electric chillers. Analysis provided in the Plan shows that the incentives offered by NYSERDA are insufficient to encourage customers to stay with or switch to steam or hybrid chiller systems.

Moreover, the SBD Plan (p.15) states explicitly "Tax policies harm steam's competitive position. For example, where steam is less expensive than natural gas, differential taxation results in steam having a higher end-use price than natural gas." See SBD Plan, pp. 116-17, for a detailed discussion of the taxes. The SBD Plan also notes that some of its action items are focused on "regulatory and institutional initiatives that will help to create a more level playing field between steam and other energy sources." (Id.).

The references in the Commission Order to certain regulatory and taxation reforms that would be beneficial to steam system competitiveness are accurate insofar as they went. However, the Order does not, in the Company's view, recognize these factors sufficiently in the steps needed to increase the vitality and success of the steam system. In the part of the Order (p. 5) where the Commission noted that "the Plan explains why the economics of steam cooling make that option unattractive to customers" the Commission recognized that, among other things, inadequate NYSERDA incentives have resulted in a loss of steam cooling market share.<sup>3</sup> Con Edison has continuously advocated for higher steam air conditioning incentives, including its request in its comments on the demand management action plan filed by NYSERDA that the Commission direct NYSERDA to provide parity between distributed generation and steam chiller incentives.<sup>4</sup> The Company respectfully requests that the Commission clarify its Order to extend explicit support for the regulatory reforms identified by the Company for the steam system --

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<sup>3</sup> Seen in this light, the Commission's suggestion that the loss of steam market cooling market is the Company's responsibility ignores the principle that the Company cannot dictate public policy development. See SBD Order at 10.

<sup>4</sup> Case 04-E-0572, Con Edison Comments on NYSERDA filed Demand Management Action Plan (Oct. 14, 2005).

these reforms are very important to the future success of the steam system and it is important therefore that they be kept in the forefront of efforts to maintain and grow the steam system.

While it is beyond the Commission's power change to effectuate changes in other areas such as taxes, it is not unusual for the Commission to call for changes in laws or policies that are necessary to advance the Commission's public policy objectives – here, a viable steam system.<sup>5</sup> Lack of identification and pursuit of needed changes to these policies is at odds with the widely-acknowledged public interest in a viable steam system and may well thwart the significant efforts that have been taken to improve the system.

The Company is also concerned with the following conclusion reached by the Commission:

Due to space limitations or other constraints, a significant number of [steam] customers are considered “captive” to the steam system in that they cannot install other types of heating and/or cooling systems. (Order, p. 4)

Read literally, this conclusion is inconsistent with the SBD Plan's findings (p. 16) that, while steam customers in general value the building space they save by using steam in Manhattan's dense urban environment, they are not necessarily captive, and that Con Edison's steam business faces competition from customer cogeneration and boilers. In other words, the space saving quality of steam service provides considerable value to steam customers, but those qualities do not render a “significant number” of customers “captive,” because there are competitive alternatives.

This finding, unless clarified, could, for example, interfere with the Company's efforts to explore and implement certain alternative rate structures or business models. This result would be neither reasonable nor fair, since there is nothing in the SBD Plan that provides a basis for the conclusion that a significant number of steam customers are captive and do not have competitive alternatives.

Accordingly, the Company respectfully requests that the Commission clarify that its use of the term “captive” in describing some of the steam customers was not intended to imply that steam customers have no competitive alternatives.

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<sup>5</sup> For example, in the Competitive Opportunities order, the Commission stated that “all possible efforts to reduce electric rates should be continued, including efforts to ease the high tax burdens in New York State.” Opinion No. 96-12 at 100 (May 20, 1996); see also Opinion No. 94-27 at 9 (Dec. 22, 1994).

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**Conclusion**

Based upon the foregoing, the Company requests that the Commission issue the two requested clarifications of its SBD Order.

Yours very truly,



Richard B. Miller



cc: Active Parties to Case No. 03-S-1672 (via e-mail)