

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Cases 13-E-0030, 13-G-0031, and 13-S-0032

MONDAY, MARCH 11, 2013
10:30 a.m.

90 Church Street
4th Floor
New York, New York 10007

ADMINISTRATIVE LAW JUDGES:

PAUL AGRESTA
JULIA BIELAWSKI

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E X H I B I T S

<u>PETITIONER :</u>				
<u>IDENTIFICATION</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>IN EV.</u>	

<u>RESPONDENT :</u>				
<u>IDENTIFICATION</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>IN EV.</u>	

1 ALJ AGRESTA: Good morning, everyone. I'm
2 Paul Agresta. I'm an Administrative Law Judge for
3 the Department of Public Service. With me is Julia
4 Bielawski who is also a newly minted Administrative
5 Law Judge. The two of us are going to preside today.
6 We're going to begin with a pre-hearing conference,
7 and then we're going to go off the record on to the
8 technical conference. Before we do anything else, I
9 want each party to give their appearance please, and
10 we will start with staff and Con Edison. We're using
11 a sound recording system today rather than a
12 traditional court reporter, so it's going to be
13 important that everybody take their turn and speak
14 very loudly. We'll see if you get picked up by this
15 mic. Otherwise, you may have to come forward. Let's
16 try it from where you are. Go ahead.

17 MR. MARC RICHTER: Marc Richter for
18 Consolidated Edison Company of New York, Inc. For
19 the purposes of today's proceeding I'd also like to
20 enter the appearances of the attorneys, Anna Chacko,
21 Enver Acevedo and Mary Kraveske.

22 MR. STEVEN KRAMER: For the Department of
23 Public Service, Steven Kramer, Guy Mazza, Brian
24 Ossias, Brandon Goodrich and Alan Michaels.

25 MR. GEORGE DIAMANTOPOULOS: George

1 Diamantopoulos with the Law Firm of Seham Seham Meltz
2 & Petersen appearing on behalf of the New York Energy
3 Consumers Council, also here as the executive
4 director of NYECC is David Bomke

5 ALJ AGRESTA: Thank you.

6 MR. RICHARD KODA: On behalf of the Utility
7 Workers' Union of America Local 1-2, Richard J. Koda
8 of Koda Consulting Inc., and I'd also like to enter
9 the appearance for Local 1-2 of Scott Strauss, S-T-R-
10 A-U-S-S, of Spiegel McDermott [phonetic], LLP and of
11 Sidney H. Kalban.

12 ALJ AGRESTA: Thank you.

13 MR. MICHAEL DELANEY: For the City of New
14 York, Michael Delaney, Kevin Lang and Robert Loughney
15 from Couch White.

16 MS. CATHERINE LUTHIN: For Consumer Power
17 Advocates Catherine Luthin, and I would also like to
18 enter the appearance of John Dowling.

19 MR. STEWART GLASS: Stewart Glass as an
20 individual customer.

21 MR. JOHN MCMANUS: John McManus of Harris
22 Beach on behalf of NRG Energy. With me also is Steve
23 Wilson, Terry Brown and John Holtzer [phonetic].

24 MR. SAUL RIGBERG: Saul Rigberg, on behalf
25 of the Utility Intervention Unit of the Department of

1 State.

2 MS. ANDREA CERBIN: Andrea Cerbin, The Pace
3 Energy and Climate Center in - - .

4 MR. SAM LANIADO: On behalf of the
5 Independent Power Producers of New York, the Law Firm
6 of Read and Laniado by David Johnson and Sam Laniado.

7 MR. STEPHEN WEMPLE: Steve Wemple on behalf
8 of Consolidated Edison Solutions, Inc.

9 MS. LISA KWONG: On behalf of the New York
10 State Attorney General's Officer, I'm Assistant
11 Attorney General Lisa Kwong.

12 MR. USHER FOGEL: On behalf of the Retail
13 Energy Supply Association, Usher Fogel.

14 MR. LEONARD LUCAS: On behalf of the United
15 States Civil Service Administration, Leonard Lucas.

16 MR. ADAM SILVERMAN: On behalf of Entergy
17 Energy Corporation, Adam Silverman from Greenberg
18 Traurig.

19 MS. ANNE SIDERS: On behalf of the Center
20 for Climate Change Law, Anne Siders.

21 FEMALE VOICE: - - .

22 MR. TIM FREOL: Tim Freol [phonetic], New
23 York Department of State, Julianne - - , colleague,
24 Danielle Panko, colleague.

25 ALJ AGRESTA: Anybody else? Okay, we have

1 several matters to discuss in the pre-hearing
2 conference part of today's program. The first item
3 is party status. I've read all of the requests for
4 party status. I do not have any problems with any of
5 the parties that have appeared so far. At this time
6 I'd like to know whether any other party intends to
7 make an objection to anybody's party status? Okay,
8 hearing none we're going to move on.

9 The next item that I would like to discuss
10 is Con Edison made a motion for a limited waiver of
11 the policy statement on test periods. I don't know
12 if the parties are aware of that motion, and I'm
13 wondering whether any of the parties are going to
14 want an opportunity to respond to that motion. Mr.
15 Lang?

16 MR. KEVIN LANG: Judge, Kevin Lang on behalf
17 of the City of New York. While the City does not
18 oppose the motion, we have spoken and it will come up
19 during the schedule that we want to see the updates
20 coming in sooner rather than with rebuttal, which is
21 sometimes the case and in a proposal that will be
22 discussed shortly it talks about bringing at least
23 preliminary updates at the end of March as long as we
24 adhere to something in that general timeframe, the
25 City would not have an objection to the waiver

1 request. If there's going to be a substantial delay
2 beyond that before we see the updates, then there
3 would be a concern.

4 ALJ AGRESTA: Okay. Does anybody else want
5 to be heard on the motion itself? This is going to
6 be a very quick procedural conference. Okay, thank
7 you. The next thing I want to mention is that now
8 that we are in the electronic age, we are going to
9 try to streamline the exhibit process in this case.
10 What I am going to do is set up a system where we
11 will pre-mark all of the exhibits in advance of any
12 hearings. That's not accepting them into evidence.
13 It's only marking them for identification. I'm going
14 to take the exhibits that Con Ed has submitted, and
15 I'm going to pre-mark them, and then as the parties
16 submit their exhibits I'm going to ask that you do it
17 in a certain document format. The document format is
18 going to be that the exhibits will be submitted in an
19 electronic document separate from testimony, so if
20 you have testimony and exhibits, you will have a
21 separate PDF file for your exhibits, and I will also
22 be asking for a cover page on the exhibits. You can
23 put more than one exhibit in one PDF document as long
24 as there's a cover page that meets the
25 specifications. So what I'm going to do is issue a

1 ruling that describes exactly what I want. My hope
2 is if we do have--when we do get to the stage of
3 evidentiary hearings, we won't have to waste a lot of
4 time marking exhibits and all that normal formal
5 stuff that you go through. Everybody will have, will
6 know what the exhibit numbers are and will all have
7 them in advance. We tried this in the Niagara Mohawk
8 cases and it worked very well, and so we're going to
9 try to streamline it and continue doing it that way.

10 Okay, next matter is the Interim Ruling
11 Establishing Discovery Procedures and Adopting a
12 Protective Order. Con Edison circulated some
13 proposed revisions. Mr. Koda marked it up with his
14 proposed changes. Are there any parties who want to
15 be heard on that issue, or should I just proceed to
16 deal with the changes that were submitted in advance?

17 MS. MARY KRAYESKE: Your Honor, - - .

18 ALJ AGRESTA: Use this microphone over here.

19 MS. KRAYESKE: I'm not loud enough? Con
20 Edison would like to be heard on--

21 ALJ AGRESTA: [interposing] If you could
22 just give your name for the guy back there.

23 MS. KRAYESKE: Mary Kraveske, Con Edison.

24 ALJ AGRESTA: Okay.

25 MS. KRAYESKE: Con Edison would like to be

1 heard on the changes that the unit has requested to
2 the protective order.

3 ALJ AGRESTA: Okay.

4 MS. KRAYESKE: Con Edison made several
5 changes to the protective order two of which were
6 under paragraph four and the first one of which Con
7 Edison had requested that if there were documents
8 that the company provided to the parties that were
9 confidential, the company may opt not to provide
10 documents to certain parties because they could get
11 information that may be--that they shouldn't
12 necessarily have, for example, our gas-purchasing
13 practices which is the subject of a request for
14 confidentiality that we submitted, and that we put
15 language in 4A saying that the company would notify
16 the parties and try and work on some arrangement if
17 the parties wished the information in some other
18 format. And then we put a change in 4B, and that
19 change is that it may be for example, we have an
20 embedded cost of service study that a third party has
21 actually developed. That third party has a
22 confidentiality agreement that they have asked the
23 parties to the proceeding who wish the embedded cost
24 of service study to sign. We've asked them to sign
25 that protective order with the company that developed

1 the embedded cost of service study. So that's why we
2 put those changes to 4A and 4B because it may be that
3 we just can't give it to them unless they sign the
4 protective order with the company.

5 The Union made some changes that are
6 significantly burdensome in their 4A and 4B. They
7 have asked that Con Edison seek an order if we wish
8 not to provide it to the parties. The Union's
9 request is very burdensome to the company. We don't
10 expect that there's going to be a lot of instances
11 where we have to you know not provide it to the
12 parties that have signed the protective order.
13 Currently there are only two parties that have signed
14 the protective order, so with that, you know, what
15 the union was asking for was very significant and
16 very burdensome to the company. Basically, the way
17 that we had envisioned the process was we would talk
18 to the party and if they were interested in the
19 information that we were withholding, we would try
20 and work something out as opposed to all of the steps
21 that the Union wants to take, which is to request an
22 order and you know, we would still be submitting a
23 document to Your Honors suggesting, you know,
24 requesting confidential treatment, but the steps the
25 Union was requesting we thought were very burdensome

1 and difficult, and on the second piece of it, they--
2 the Union's changes seem to require that we mandate a
3 consultant that's working for us to release the
4 information.

5 Now, I don't know of any situations where
6 we've worked with an outside consultant that wouldn't
7 release information, but that could happen, and that
8 is why our language was not quite as strict perhaps
9 as the language that the Union had written. So,
10 those were the only changes that have been made to
11 the--changes that have been made to the protective
12 orders. The company did make a couple of other edits
13 to the protective order, and you know, if you have
14 questions about that I'm happy to answer those.

15 ALJ AGRESTA: Okay, is it Con Ed's position
16 that the ultimate question as to whether something
17 gets released or not would be up to the
18 administrative law judges regardless of which
19 procedure you follow?

20 MS. KRAYESKE: We might choose to appeal the
21 administrative law judge's decision.

22 ALJ AGRESTA: I understand.

23 MS. KRAYESKE: But yes, it would ultimately
24 be up to the Judge.

25 ALJ AGRESTA: I'm a little concerned about a

1 consultant dictating the terms of disclosure.
2 Explain to me how that is going to work. In what
3 instances would a consultant have their own
4 disclosure rules.

5 MS. KRAYESKE: For example, as I said the
6 embedded cost of service study, it's done by a
7 consultant. It used to be called--I can't remember
8 the name right now because they've changed names
9 about 7 times. Basically they just have a one-page
10 statement just asking the person to keep it
11 confidential. There are some other things in there,
12 but parties in the past have signed this particular
13 agreement, and they have never had a problem with
14 what has been written in that agreement. We have
15 done this in a number of electric, gas and steam
16 cases because the model is owned by--it's the Shaw
17 Group that owns it.

18 ALJ AGRESTA: So the purpose is to protect
19 the consultant's proprietary model?

20 MS. KRAYESKE: Correct.

21 ALJ AGRESTA: As opposed to the underlying
22 information.

23 MS. KRAYESKE: That's correct.

24 ALJ AGRESTA: Mr. Koda, would you like to
25 respond to anything that you just heard?

1 MR. KODA: Yes, Your Honor. The Union takes
2 the position that we would like a more formal process
3 than what was put forward by Con Edison. We believe
4 that in an extraordinary event that if they don't
5 want to provide confidential information they should
6 show a preponderance of evidence, a reason why they
7 shouldn't show that confidential information.

8 Obviously, there wouldn't be many instances in which
9 that would happen, and I don't think this places an
10 extraordinary burden on the company.

11 ALJ AGRESTA: Okay, I don't know if you--the
12 way I understand the way we have this set up, Con Ed
13 has to when they're going to declare something
14 confidential, they have to make a showing to the
15 administrative law judges but they don't have to wait
16 for an order. They can just go and disperse the
17 information the parties that are permitted to see it
18 and would sign the protective order. Now, if there
19 is--if you are a particular party that even though
20 you may have signed a protective order, they still
21 don't want to give it to you for some particular
22 reason, they still have to come forward with a
23 showing. Okay? But they don't have to wait around
24 for an order. The order only happens if you decide
25 that was unfair and you want the information. So, if

1 Con Ed makes their showing to us, we just assume
2 everything is okay until somebody comes forward and
3 says no, I was--the information was withheld from me,
4 I want the information. At that point, you would
5 make your arguments to the judges and then an order
6 would be issued.

7 MR. KODA: Okay, but you wouldn't make a
8 determination one way or the other, you would make a
9 determination assuming that Con Ed's request is
10 appropriate before you would see any--

11 ALJ AGRESTA: [interposing] We don't make a
12 determination at all. In advance we have said if Con
13 Edison declares something to be confidential, we will
14 allow them to disperse it to the parties that have
15 signed a protective agreement and we would leave it
16 that way unless some party objects. If a party
17 objects, then we would make a decision and make an
18 order as to whether it gets disclosed or not. But I
19 think the concern Con Ed had, was that you were
20 asking us to do an order up front. So this could
21 happen like 30 times during a rate case, and we were
22 trying to avoid that because if you've all signed
23 protective agreements in advance in order to get the
24 information anyway, there's no point in our looking
25 at it and writing an order.

1 MR. KODA: As long as it's understood that
2 once the--that the argument is presented to the ALJs
3 and that they have that--I'm not sure if the ALJs
4 should make that determination before a required
5 objection. I would think that the ALJs may want to
6 make a determination before that.

7 ALJ AGRESTA: Well, if you are--let's say
8 they present something and they say it's
9 confidential, but they give it to you pursuant to the
10 protective order, and every other party that wants it
11 has signed an agreement and gets it. There's no
12 dispute that's worth bringing to us because you have
13 all the information.

14 MR. KODA: But they would bring up an
15 objection to providing a certain party with that
16 information, and that is where we see a conflict.

17 ALJ AGRESTA: If that party disagrees, then
18 the matter would immediately go before the ALJs for
19 an order. So we can clarify that that is what
20 happens.

21 MR. KODA: Okay, I would appreciate if it is
22 clarified in that way.

23 ALJ AGRESTA: Yes.

24 MR. KODA: Thank you, Your Honor.

25 ALJ AGRESTA: Anybody else want to be heard

1 on this matter before we move on to something else?
2 Mr. Lang?

3 MR. LANG: We don't object to the procedure
4 that Ms. Krayeske has laid out. We've used it in
5 the past, and it has worked just fine. I would just
6 ask that--you had mentioned a few minutes ago that
7 you were going to be coming out with a ruling on
8 dealing with exhibits. I think there is probably a
9 very good likelihood in this case that we're going to
10 have some exhibits that would be considered to be
11 confidential energy infrastructure information that
12 will need to be protected, and I don't know if you've
13 thought at all about what procedures you might want
14 to use because those are things that even if we pre-
15 mark and pre-file them, we are going to have to
16 follow the various devices to keep those out of the
17 public domain. So I don't know if you're going to
18 want special coding for those or something like that
19 for your pre-marking. I don't know if that even came
20 up with the Niagara Mohawk case.

21 ALJ AGRESTA: If exhibits are submitted to
22 us on a confidential basis, they can be marked with a
23 number, and it's not confidential that the exhibits
24 exist, so.

25 MR. LANG: I just didn't know if you wanted

1 a separate numbering system for confidential
2 exhibits.

3 ALJ AGRESTA: I'll give that some thought
4 when I'm writing the order. Thank you. Okay,
5 anybody else? All right, then let's move on.

6 MALE VOICE: Just one point of
7 clarification. Will you be spelling out in your
8 order how you want to handle discovery disputes with
9 the company, not just in terms of confidentiality but
10 in terms of general discovery?

11 ALJ AGRESTA: Well, like all discovery
12 disputes, we want you to try to work it out among
13 yourselves first. It's only when you can't work it
14 out among yourselves that you should bother bringing
15 us into the picture.

16 MALE VOICE: That's what we're currently
17 doing.

18 ALJ AGRESTA: But if there is a real
19 dispute, I would encourage you to either call me or
20 send me an e-mail. I prefer I think an e-mail
21 because you can make better arguments if you think
22 about them in advance, but I would like to be brought
23 in and we'll get everybody on the phone and we'll try
24 to work it out.

25 MALE VOICE: Thank you.

1 ALJ AGRESTA: Okay. All right, let's move
2 on to the schedule then. Mr. Kramer, could you take
3 us through the proposed schedule that you guys have
4 come up with and tell me who signed onto it so far.

5 MR. KRAMER: Okay, sure Your Honor. I'll
6 move close to the mic again. So we've proposed a
7 schedule. I think frankly it's as I mentioned in my
8 e-mail, New York City, NYPA, NYECC, CPA, the company,
9 and I believe, Usher, your clients as well. Anyone
10 else? Oh, yes, the UIU. I believe that's it. We
11 had discussion about a week or so ago and came up
12 with a schedule of March 25th as the day that Con
13 Edison would provide us updates. May 31st staff and
14 intervenor direct testimony would be due. June 21st
15 rebuttal update testimony would be due, and on July
16 22nd, we would commence the hearings with the idea
17 that about a month later on August 30th initial
18 briefs would be filed, and September 23rd would be
19 the date for reply briefs.

20 ALJ AGRESTA: Okay.

21 MR. KRAMER: About three weeks.

22 ALJ AGRESTA: Okay, can I get a
23 clarification from Con Edison whether the updates on
24 March 25th are going to include the infrastructure
25 information that Mr. Lang was looking for?

1 [crosstalk]

2 ALJ AGRESTA: You could take a minute if you
3 want.

4 MALE VOICE: If we could maybe ask Mr. Lang
5 to clarify specifically what he would be looking for
6 in the update.

7 ALJ AGRESTA: Mr. Lang, could you give us a
8 clarification of what you're looking for in the
9 update?

10 MR. LANG: Certainly, Your Honor. The test
11 year policy statement, as you are well aware requires
12 them to have linkages between the preceding year and
13 the rate year. In this case they are asking for
14 waiver of that because some of their information
15 exceeds the six-month duration as permitted in the
16 test year policy statement, and they've also stated
17 repeatedly throughout their testimony that
18 particularly with the storm hardening issues, which
19 are of great importance to the city that those remain
20 a work in progress both as to dollars and as to the
21 projects that they are planning on doing. And we
22 would like to know before we have to put in testimony
23 and sufficiently in advance of the testimony exactly
24 what it is the company is proposing in this case. We
25 don't want to be in a situation as has occurred in

1 the past where the company comes in on rebuttal with
2 such substantial new information and different
3 information that we are forced to come back to you
4 for the opportunity to both conduct new sensitive
5 discovery and file surrebuttal.

6 So, the only way in which the city would
7 agree to delay the request so that they don't have to
8 provide all the linkages is that if we get the
9 information that otherwise should have been provided
10 in their testimony on a timely basis. Mr. Kramer has
11 stated that he doesn't object to May 31st for
12 testimony. If we get all of that information that
13 they have kind of left as placeholders on March 25th,
14 we think that gives us enough time to deal with that
15 in our direct testimony. If that information isn't
16 coming in until rebuttal testimony, then we have a
17 significant problem.

18 ALJ AGRESTA: Okay, thank you.

19 MR. RICHTER: Your Honor, this is Robert
20 Bucilo, vice president and controller with Con
21 Edison. He'll explain the update that we plan on
22 providing on March 25th from an accounting
23 standpoint, and I would mention that this preliminary
24 update is something which is developed I believe in
25 Con Edison cases. It's a way--it's sort of like the

1 mid-point of the discovery process to the extent that
2 discovery and other discussions have eliminated
3 certain issues or brought certain data to a higher
4 level that will avoid parties having to address
5 certain issues in their direct cases, we do that.
6 All right, and we will have a formal update at the
7 time that the company files it's rebuttal testimony.
8 To the extent there are material changes I guess in
9 our proposed plans for some reason, at this point in
10 time I don't know of any such changes or what they
11 might be, we'll make them part of the preliminary
12 update, but as you'll hear today from Robert - - we
13 have a plan with respect to storm bargaining that we
14 will present and explain today. We can answer any
15 additional discovery about it. To the extent that
16 it's appropriate, we will provide updates as part of
17 the preliminary update and formal update of like any
18 capital program, you know, it's subject to changes
19 over time. But at this point in time there are no
20 wholesale or material changes to my knowledge that
21 are contemplated. If some should arise during the
22 course of this proceeding, we'll appropriately update
23 the Court.

24 MR. ROBERT BUCILO: So, Kevin, the quick
25 answer to your question is, yes, we will provide full

1 updates as Marc described, and we'll talk a little
2 bit about that in the presentation. We don't
3 anticipate significant updates in terms of the
4 dollars on storm hardening nor the programs. We fine
5 tune the input into our models by projects so staff
6 can do a better audit and verification of the
7 expenditures and how they are rolling with the
8 revenue requirement, but we will have a full update.
9 To your point on the linkage period though, I'm a
10 little confused with that comment since capital
11 generally doesn't have a linkage period back to the--
12 back to the historic year like an operating expense
13 does. Capital is generally zero based and does not
14 have a linking period. So you won't see that as part
15 of an update.

16 MR. LANG: I agree, you won't see that, but
17 where we are struggling is I mean both you and Mr.
18 Richter are now saying that you're not making any
19 changes, but if you go back and you actually read
20 your infrastructure panel testimony, they very
21 clearly say that this is a work in progress and that
22 they plan on continuing to work on what projects they
23 are going to do and in what time frame they are going
24 to do them, and that that was going to come out later
25 in this case. I don't have all the testimony with me

1 today, but it's clearly stated as such in the
2 testimony, so if you are now saying that absent
3 correct testimony in fact you are not proposing
4 anything else, that is fine, and we will work forward
5 on that basis, but what I am very concerned about is
6 that we respond to what we now understand and then
7 you come back in a rebuttal case and you have a whole
8 new set of projects with new cost projections and
9 capital that we knew nothing about, and that is what
10 we are trying to avoid here.

11 MR. BUCILO: And Kevin, I'll talk more to
12 that, but we don't anticipate that happening. What
13 you see here today are the projects that are being
14 proposed in this rate case over a four-year period
15 that we expect to carry out and the cost estimates
16 that you see, or will see shortly, are best cost
17 estimates at this point in time, and we don't expect
18 to have changes to those or significant changes to
19 those by the time we file rebuttal. What you see
20 today is our best estimate in terms of projects and
21 in terms of the costs.

22 ALJ AGRESTA: So I think what you are saying
23 then is the update that you were talking about in the
24 testimony about where the billion dollars are going
25 to be spent, that is the March 25th update that you

1 were talking about?

2 MR. BUCILO: Correct, and that update is
3 going to reflect some fine-tuning of those estimates
4 and really not wholesale changes. I would describe
5 them more as fine-tuning.

6 ALJ AGRESTA: Okay, thank you. Okay? I
7 have a question for staff. At what point in the
8 process do you expect to commence settlement
9 discussions assuming you are going to have settlement
10 discussions at all? Would it be after the filing of
11 your testimony?

12 MR. KRAMER: Sure. Yes, Your Honor, we've
13 had some discussions about that, and in prior cases
14 we have commenced settlement negotiations I don't
15 want to say maybe right after filing direct testimony
16 but perhaps shortly after. I think in this instance,
17 you know, really it's there's quite a bit of time for
18 discovery and preparing testimony, but we believe
19 that to the extent that the company is able to and
20 other parties are interested, we could meet some time
21 after May 31st. Hopefully that will give us some
22 extra time to negotiate and see whether we are going
23 down a road that may bear fruit.

24 ALJ AGRESTA: Okay, the reason why I ask is
25 I want to be able to assure the commission that you

1 won't commence settlement discussions until after you
2 file your testimony.

3 MR. KRAMER: Yeah, we wouldn't do that.
4 That is absolutely certain.

5 ALJ AGRESTA: Thank you. Does anyone else
6 want to be heard on the proposed schedule? Okay, all
7 right, then we will issue a scheduling ruling
8 sometime in the next few days probably. Okay, that
9 brings me to the end of my list. Did I cover
10 everything?

11 ALJ JULIA BIELAWSKI: Yes, you did.

12 ALJ AGRESTA: Okay, is there any other
13 matters anybody would like to raise? Mr. Glass?

14 MR. GLASS: Stewart Glass. There was a
15 compliance filing by Con Edison regarding the
16 allocation of the East River Repowering Project fuel
17 cost, and I just want to be sure that that will be
18 included in this proceeding.

19 ALJ AGRESTA: Does someone from Con Ed want
20 to address that? I'm not--

21 MR. LANG: [interposing] Your Honor, I
22 would just note that as long as Stu raised that,
23 we're actually working right now on a motion to
24 consolidate that issue into these rate cases. So
25 that will be--I don't know whether that would be

1 before you or whether that would be before the
2 secretary since I'm not sure whether there are still
3 judges assigned to the other proceeding, but we do -
4 - formally if you're not going to do it suasponte, we
5 plan to formally ask you to do that.

6 MR. RICHTER: Your Honor, right now it is a
7 civil proceeding, just background for Your Honors in
8 the company's last rate proceeding, we were directed,
9 the company was directed to make a compliance filing
10 with respect to the allocation of the ERRP fuel costs
11 with its next rate filing assuming--

12 ALJ AGRESTA: [interposing] Could you tell
13 us what ERRP means?

14 MR. RICHTER: That is the East River
15 Repowering Project.

16 ALJ AGRESTA: Okay, now I know.

17 MR. RICHTER: The cost of fuel for
18 generating steam and electricity. The Commission
19 made a ruling in the company's last rate decision
20 that required the company to make a filing coincident
21 with its next steam rate filing assuming we made a
22 filing for rates to be effective on October 1, 2013,
23 and that if the company did not propose new rates to
24 be effective at that date, make a separate compliance
25 filing. Since we delayed the rate filing, we made

1 the separate compliance filing. At this point in
2 time the company is not proposing consolidation of
3 that filing with that case. We consider that a
4 separate matter before the commission assuming the
5 City or another party makes an argument as to the
6 reasons why it should be consolidated in this case
7 we'll appropriately respond, but at this point in
8 time we haven't--this is the first we've heard about
9 an interest in consolidation and we have no idea of
10 the underlying rationale for such consolidation.

11 MR. KRAMER: Your Honors, on behalf of
12 staff, we would just like to note that we would be
13 opposing that petition to consolidate. And again
14 we're not really sure what the idea of--

15 ALJ AGRESTA: [interposing] Why?

16 MR. KRAMER: --why there is any movement to
17 consolidate.

18 ALJ AGRESTA: Okay.

19 MR. RICHTER: We would like to see the
20 arguments, and we'll react to them, but at this point
21 we don't see any reason to do it.

22 MR. LANG: Your Honor, as Mr. Richter just
23 stated had they timely filed the rate case, this
24 issue wouldn't be before you because the issue--well,
25 the issue of whether to consolidate wouldn't be

1 before you because this would already be a part of
2 this rate case because the commissioner required it
3 to be a part of the rate case. For over 30 years the
4 issue of ERRP allocation and steam electric
5 allocation has been a matter that has been litigated
6 in rate cases. The issue right now is on appeal to
7 the Third Department. We are waiting for a decision
8 in that case. I would note that counsel for the
9 commission stated to the Third Department during oral
10 argument that if there was a need for a hearing in
11 the case that there would be a hearing on the issue
12 of what the ERRP cost allocation should be from 2013
13 forward. We believe for the reasons that were set
14 forth by Con Edison in their motion that there is
15 such a need for a hearing, that the impacts could be
16 rather significant, that the law requires the
17 commission to hold the hearing and there's no reason
18 to do it separate and apart from a rate case when
19 this is an issue that has been dealt with in rate
20 cases for other 30 years. So, we're here simply
21 asking for the relief that otherwise would have
22 happened but for the approximate two-month delay by
23 Con Edison in filing this rate case. We - - in our
24 papers, but since people are wondering what the basis
25 is, that is the basis, Your Honor.

1 ALJ AGRESTA: Okay.

2 MS. LUTHIN: Your Honor, I also support the
3 City of New York.

4 ALJ AGRESTA: Could you give your name so
5 that--

6 MS. LUTHIN: It's Catherine Luthin, Consumer
7 Power Advocates. Your Honor, the allocation of ERRP
8 has a material impact on what ultimately state
9 consumers will pay, and I feel very strongly it
10 should be a matter that is discussed within the
11 context of this rate case.

12 MR. DIAMANTOPOULOS: Your Honor, George
13 Diamantopoulos for NYECC. We too support or will be
14 supporting the City's application to have this issue
15 be part of the steam rate case—.

16 ALJ AGRESTA: Mr. Richter?

17 MR. RICHTER: Again, Your Honor, we would
18 wait and like to review the papers and rationale for
19 the consolidation. I would just note that from the
20 commission's own order, the commission itself didn't
21 deem it critical that the ERRP - - cost allocation
22 matter be considered in the context of a rate case
23 since the requirement to make a compliance filing was
24 not coincident with the next rate case but they
25 wanted compliance filing so a change could be made

1 effective January 1, 2013, so to me by definition - -
2 rationale was a date and time that they thought the
3 change should take place and be considered either
4 with a rate case if that vehicle happens to be
5 available at the time or through a separate
6 compliance filing if the rate case was put off until
7 some time in the future. So, again we'll review the
8 paper to come in and see the rationale, but we don't
9 see it from the commission standpoint as it being
10 critical that it be resolved in the context of this
11 rate proceeding.

12 ALJ AGRESTA: Okay. We get assigned cases.
13 We don't have the option of assigning ourselves to
14 cases, so if you want to pursue that, there's going
15 to have to be a motion made in the other case, and
16 then we'll either deal with it or not deal with it
17 depending on what we're told to do. Can somebody
18 give me the case number that the compliance filing
19 was made with?

20 FEMALE VOICE: 09S0974 and 09S0029.

21 MR. LANG: 0029.

22 ALJ AGRESTA: Thank you.

23 Mr. LANG: Your Honor, one of the judges in
24 that case has since retired, Judge Jack so we'll send
25 it to the secretary and we'll address it, but I'm not

1 sure since he's no longer here whether that would go
2 to Judge Stegemoeller or whether that would go to you
3 folks. I'll leave that to you, but I just wanted you
4 to know that Judge is no longer available to decide.

5 ALJ AGRESTA: Any other matters, anybody
6 wants to raise in the pre-hearing conference portion?

7 MR. LANG: Actually, I do have another
8 matter that I guess I would just like some
9 understanding. Con Edison has filed three separate
10 rate cases. As we understand it, you two Your Honors
11 are assigned to all of them. Are we considering
12 these to be three separate proceedings, or are we
13 considering this to be a consolidated proceeding? It
14 hasn't been clear yet. These issues have become very
15 important because one of the issues that rose in the
16 lawsuit that the city brought against the public
17 service commission in the last rate case was we
18 thought the commission and the Judges were very clear
19 when they said that the proceedings were
20 consolidated. However, the Commission then went into
21 court and argued that notwithstanding all of the
22 written statements that said the proceedings were
23 consolidated in fact they were not and the - - issue
24 was being separately decided, and that was very
25 problematic for us. And so I think it is very

1 important because basically the commission after the
2 fact re-created rules for a rate case, and that is
3 very problematic for us, but we would like to know
4 and would like to get a written ruling on whether or
5 not we should be looking at these as three separate
6 and distinct cases, or whether this is one
7 consolidated case or three cases decided on a common
8 record, three cases decided on separate records. I'm
9 happy to give you a copy of the GSE's briefs in that
10 case so that you can understand what the concerns
11 are, but I think it's important to understand exactly
12 how we're proceeding here.

13 ALJ AGRESTA: It's--

14 MR. KRAMER: [interposing] Your Honor, if I
15 might just add to that. I think from staff's point
16 of view obviously we have three cases, right, a gas
17 case, a steam case, an electric case, and they're
18 running contemporaneously right, filed the same time.
19 Was the gas case filed the same time?

20 MIXED VOICES: Yes.

21 MR. KRAMER: Filed the same time and you
22 know frankly for practical--as a practical matter
23 they are basically in a way consolidated as far as
24 they are kind of working on the same track. However,
25 on the other hand, they are also separate cases. I

1 mean obviously there is not going to be in the gas
2 case testimony about steam matters. However, there
3 are also common issues that are--that run through all
4 three businesses, so I mean certainly we would like
5 to discuss this if you see a need to make a concrete
6 determination on how these cases are going to
7 proceed, but I think we need to take a practical view
8 of it and consider these cases as really going
9 together but being separate matters.

10 MR. LANG: Your Honor, the problem with
11 taking a practical view is again in the last case we
12 had written rulings that said they were consolidated
13 and then the Public Service Commission took the
14 stance that in fact that wasn't the case and they
15 were decided on separate records. So while I
16 understand what Mr. Kramer is saying and that
17 certainly was the history in Commission practice for
18 many, many years before the last case, we don't want
19 to get burned again by that kind of a situation and
20 therefore we think it's important so that we
21 understand are issues being commonly decided that
22 will apply equally to all cases? Are they being
23 decided on separate records but heard at the same
24 time? These are all issues that came up and are
25 being litigated in Court right now, and I don't want

1 to get the City in a situation where we are
2 potentially going to be at risk based on an argument
3 that comes up after the fact again that we can't rely
4 upon that we understood to be the practical
5 considerations.

6 ALJ AGRESTA: Okay, my reaction is that
7 these are three separate cases that are going to be
8 heard on a consolidated record, which means that
9 anything in the record can be cited in any brief in
10 any of the cases. It is likely that they will all be
11 briefed on a consolidated basis as well unless the
12 commission decides to break off separate tracks for
13 some reason. I don't anticipate that that is likely,
14 but there are a lot of economies to hearing them on a
15 common record, especially where there are inter-
16 relationships between what happens in the gas side,
17 the steam side and the electric side, but they are--
18 my understanding is they are three separate cases.
19 That is why in our captions we have three separate
20 cases listed, and so I--my intention is that we are
21 going to proceed on that basis, and I don't think
22 that is unusual or different from the way we have
23 done it in the past.

24 MR. KRAMER: Your Honor, just if I--since
25 this is being recorded, I thought it would probably

1 be a good idea for staff to just note that we do
2 disagree with Kevin--Mr. Lang's characterization of
3 the record in that case he is referring to.

4 ALJ AGRESTA: Okay. Okay, anybody else have
5 any other matters? Okay, then I would like to thank
6 everyone for their participation. There will be one
7 or more rulings coming out of us in the next few
8 days, and we are now going to go off the record, and
9 we're going to turn it over to Con Edison to give us
10 a presentation to start the technical conference, and
11 hopefully we'll have questions and answers either
12 during the presentations or after, however you want
13 to structure it. Okay? Thank you very much. We're
14 off the record.

15 [END OF HEARING]

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C E R T I F I C A T E

I, Trisha Ruckart, certify that the foregoing transcript of proceedings in the New York State Department of Public Services, Cases 13-E-0030, 13-G-0031, and 13-S-0032 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Signature: _____



Date: March 14, 2013