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April 2, 2004

BY UPS

Jaclyn A. Brillling
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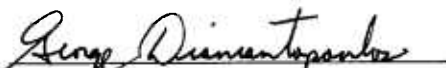
Re: Case 03-S-1672 – Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Steam Service

Dear Secretary Brillling:

Enclosed please find five copies of Motion of the Owners' Committee on Electric Rates, Inc. to Compel Discovery or Strike Testimony of Con Edison's Witness Dr. Bahman Litkouhi.

Thank you for your attention to this matter. Your courtesy is appreciated.

Very truly yours,


George Diamantopoulos

cc: Administrative Law Judge William Bouteiller (by E-mail and UPS)
Active Party List (by E-mail only)
Chanoch Lubling, Esq. (by E-mail and UPS)

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

Proceeding on Motion of the Commission as to)
the Rates, Charges, Rules and Regulations of)
Consolidated Edison Company of New York, Inc.)
for Steam Service.)

Case No. 03-S-1672

TO: ADMINISTRATIVE LAW JUDGE WILLIAM BOUTEILLER

**MOTION OF THE OWNERS' COMMITTEE ON ELECTRIC RATES, INC.,
TO COMPEL DISCOVERY OR STRIKE THE TESTIMONY OF CON EDISON'S
WITNESS DR. BAHMAN LITKOUHI**

The Owners' Committee on Electric Rates, Inc. ("OCER") submits this "Motion To Compel Discovery or Strike the Testimony of Con Edison's Witness Dr. Bahman Litkouhi" in the above-referenced proceeding pursuant to sections 3 and 5 of the Commission's Rules of Procedure. The Consolidated Edison Company of New York, Inc. ("Con Edison" or the "Company") has refused to provide to OCER electronic versions of certain worksheets, which are not password protected worksheets, thereby depriving OCER's consultant the opportunity to check the calculations performed by Dr. Litkouhi and submit rebuttal testimony thereto. While OCER has attempted to resolve this discovery dispute in good faith with Con Edison pursuant to section 5.9(c) of the Commission's Rules of Procedure, this dispute remains unresolved. On April 1, 2004, at a settlement conference held at the Department of Public Service's offices in New York City, counsel for Con Edison, Chan Lubling, advised that Dr. Litkouhi would not provide his password but that Con Edison was having one of its attorneys work with Dr. Litkouhi to presumably obtain an electronic version that was not password

protected but which contained the missing formulas from the worksheets. Con Edison's delay has made it impossible for OCER's consultant to contest in any OCER rebuttal testimony the data information contained within Dr. Litkouhi's testimony and worksheets by the April 5, 2004 deadline for the filing of rebuttal testimony in this proceeding.

Accordingly, OCER seeks the following relief: (1) Con Edison should be compelled to immediately provide electronic versions of the following two worksheets without password protection, or have Dr. Litkouhi's testimony in this proceeding stricken:

Witness-VarForecast – Exhibit – BL7.xls (286KB); and

Witness-Datafile – Exhibits – BL3-4-5.xls (239KB).

(2) Alternatively, if Con Edison does immediately provide the two unprotected electronic versions of these two worksheets, then OCER requests 7 days from the time of receipt of these electronic worksheets for its consultant to review and be afforded the opportunity to submit rebuttal testimony to Dr. Litkouhi's direct testimony.

BACKGROUND

On March 3, 2004, OCER served its First Set of Interrogatories to Consolidated Edison Company of New York, Inc. ("OCER's First Set of Interrogatories") on Con Edison and the active parties by e-mail in the above referenced proceeding. Among this set of Interrogatories was a request in Interrogatory 1 for a copy of Dr. Litkouhi's work papers. On March 10, 2004, OCER's counsel left a voice mail for Con Edison's counsel, Mary Krayeske, requesting electronic versions of the workpapers for Con Edison's consultants referenced in OCER's First Set of Interrogatories. On March 11, 2004, Mary Krayeske advised OCER's counsel that electronic versions of certain workpapers were not available and that she would look into

whether certain other worksheets were available in electronic versions. On March 19, 2004, Con Edison served the two worksheets of Dr. Litkouhi, as attachments to an e-mail from Mary Krayeske. The worksheets were entitled in this e-mail as follows: Witness-VarForecast – Exhibit – BL7.xls (286KB); and Witness-Datafile – Exhibits – BL3-4-5.xls (239KB). The e-mail attachments of the worksheets from Mary Krayeske are attached to the e-mail versions of this motion. On March 26, 2004, OCER's counsel requested a version of the worksheet without the hiding of the cells in an e-mail to Mary Krayeske. On March 31, 2004, OCER's counsel inquired as to the status of OCER's request with Rose Lee-Gaughan at the settlement conference in this proceeding held at the offices of the Department of Public Service in New York City because Ms. Krayeske was not in attendance at the meeting. Ms. Lee-Gaughan had been copied on the March 26, 2004 e-mail to Ms. Krayeske. Ms. Lee-Gaughan advised that she was unaware of the status but that she would inquire of Ms. Krayeske. On April 1, 2004, at another scheduled settlement conference in this proceeding held at the offices of the Department of Public Service in New York City, and not having heard from anyone at Con Edison, OCER's counsel again inquired as to the status of OCER's request, this time with Con Edison's counsel, Chan Lubling. After making a call, Mr. Lubling advised that Dr. Litkouhi would not provide his password but that Con Edison was having one of its attorneys work with Dr. Litkouhi to presumably obtain an electronic version that was not password protected but which contained the missing formulas from the worksheets. OCER's counsel has not received anything from the Company since this conversation. Even if OCER were to receive a response before the making of this motion, due to Con Edison's delay, OCER's consultant would still not have sufficient time to review the worksheets and prepare timely rebuttal testimony to Dr. Litkouhi's direct testimony in this proceeding by the April 5, 2004 deadline.

DISCUSSION

Section 5.10(3) of the Commission's Rules of Procedure states "[i]f a party...renders incomplete...[discovery] responses, the presiding officer may...take such...action as may be proper in the circumstances." Because of Con Edison's failure to provide the electronic worksheets without password protection or to provide the necessary passwords for the worksheets so OCER's consultant can review Dr. Litkouhi's calculations, OCER seeks an order to either compel Con Edison to immediately provide by a date certain the requested electronic worksheets, or to strike the testimony of Dr. Litkouhi in this proceeding. In the event Con Edison immediately provides the requested electronic work sheets to OCER, then OCER requests 7 days from the time of receipt of these electronic worksheets for its consultant to review and to be afforded the opportunity to submit rebuttal testimony to Dr. Litkouhi's direct testimony. There is no disputing that the information sought by OCER is germane to the evaluation of the testimony of Dr. Litkouhi pending proceeding.

The relief sought by OCER is proper under the circumstances. Such relief will not likely impair the existing procedural schedule except that OCER would be afforded rebuttal testimony one week beyond the scheduled deadline in the event Con Edison were to comply by producing the requested electronic worksheets of Dr. Litkouhi. Alternatively, if Dr. Litkouhi's testimony were to be stricken for Con Edison's failure to comply with any order of your Honor, OCER believes that no other active party would be prejudiced thereby. Although the time requested for the Company to comply would be subsequent to the date that rebuttal testimonies are scheduled to be filed in this proceeding, any rebuttal testimony filed by OCER would precede the commencement of the evidentiary hearings, which are scheduled to begin May 3,

2004 allowing approximately three weeks time for Con Edison or any other active party to prepare cross-examination on any OCER rebuttal testimony of Dr. Litkouhi.

CONCLUSION

For the foregoing reasons, OCER requests that Your Honor order Con Edison to immediately provide electronic versions of the following two worksheets without password protection, or have Dr. Litkouhi's testimony in this proceeding stricken:

Witness-VarForecast – Exhibit – BL7.xls (286KB); and

Witness-Datafile – Exhibits – BL3-4-5.xls (239KB).

Alternatively, if Con Edison does immediately provide the two unprotected electronic versions of these two worksheets, then OCER requests 7 days from the time of receipt of these electronic worksheets for its consultant to review and be afforded the opportunity to submit rebuttal testimony to Dr. Litkouhi's direct testimony.

Dated: April 2, 2004
White Plains, NY

Respectfully,



George Diamantopoulos

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