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April 11, 2006

Hon. Rafael Epstein
Administrative Law Judge
New York State Public
Service Commission
Three Empire State Plaza
Albany, NY 12223

Re: Case 05-S-1376
Con Edison Steam Rates

Dear Judge Epstein:

Attached are an original and two copies of the Motion of Consolidated Edison Company of New York, Inc. to Strike A Portion of the Rebuttal Testimony of Dr. Alan Rosenberg. Copies of this Motion have been provided electronically to all parties in this proceeding.

If you have any questions, please contact me.

Respectfully submitted,


Mary L. Krayske

MLK/md
Enclosure

cc: Hon. Jaclyn Brillling (5 copies)
Active Parties in Case 05-S-1376 (via e-mail)

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**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

Proceeding on Motion As to :
The Rates, Charges, Rules And :
Regulations of Consolidated :
Edison Company of New York, Inc. :
For Steam Service :
:
Case 05-S-1376 :

**MOTION OF
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
TO STRIKE A PORTION OF THE REBUTTAL TESTIMONY OF
DR. ALAN ROSENBERG**

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April 11, 2006

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

Proceeding on Motion As to : **MOTION OF CONSOLIDATED EDISON**
The Rates, Charges, Rules And : **COMPANY OF NEW YORK, INC.**
Regulations of Consolidated : **TO STRIKE A PORTION OF THE**
Edison Company of New York, Inc. : **REBUTTAL TESTIMONY OF**
For Steam Service : **DR. ALAN ROSENBERG**
:

Case 05-S-1376 :

Consolidated Edison Company of New York, Inc. ("Con Edison" or the "Company") hereby moves to strike the rebuttal testimony of Dr. Alan Rosenberg, testifying on behalf of the City of New York, at page 13 lines 1-6. This testimony is not responsive to any intervener testimony submitted in this proceeding. It is responsive solely to Con Edison's direct testimony, to which Dr. Rosenberg already had an opportunity to respond in his direct testimony.

The testimony at issue addresses the Company's recovery of its costs for the East River Repowering Project ("ERRP"). In its direct testimony, the Company proposed to recover the steam department's share of the annual carrying charges related to capital investment in ERRP and associated property taxes, depreciation and operation and maintenance ("O&M") expense in base rates, instead of continuing to recover the costs through the Steam Fuel Adjustment Clause ("FAC"). (Steam Rate Panel, p. 10, line 1 through p. 14, line 10 and p. 15, line 22 through p. 17, line 19).

In his direct testimony in this proceeding, filed on February 27, 2006, Dr. Rosenberg did not oppose the Company's proposal to recover the steam department's share of ERRP costs in base rates. Nor did Dr. Rosenberg propose any limit whatsoever on the amount of ERRP costs that would be recovered. The only aspect of the ERRP cost recovery addressed by Dr. Rosenberg's direct testimony was the manner in which the

ERRP costs would be allocated to the various customer classes (p. 21, line 1 through p. 23, line 2). According to Dr. Rosenberg, these costs should be allocated to customers in the same manner as all other production plant investments are allocated.

However, in his rebuttal testimony, filed two weeks later, Dr. Rosenberg proposed, for the first time, that the Company's recovery of its ERRP costs be limited to "a fraction of the ERRP costs," with the remainder to be deferred pending a prudence review of the costs (Page 13, lines 1-6). This proposal is clearly not appropriate rebuttal testimony. It does not respond to any of the interveners' testimony and there is no reason why it could not have been raised by Dr. Rosenberg in his direct testimony.

While Dr. Rosenberg purports to offer his new proposal in response to Staff's direct testimony on ERRP cost recovery, it is nothing more than a thinly-veiled attempt to hide his misuse of rebuttal testimony to put forth a revised position. Staff's direct testimony did not challenge the Company's position that it should be entitled to full cost recovery in the rate year. Staff differed from the Company only in the manner in which the Company would recover these costs; that is, Staff would have the Company continue to recover the steam department's share of ERRP costs through the FAC instead of through base rates, so that they would be subject to refund should the Commission determine any of the costs to have been imprudently incurred. Thus, any proposal by Dr. Rosenberg to limit the Company's recovery of its ERRP costs could and should have been made in his direct testimony, in response to the Company's proposal for full recovery, rather than in his rebuttal testimony, in purported response to Staff testimony that did not challenge the Company's proposal for full recovery.

It is well established that rebuttal testimony must be limited to issues that are responsive to another intervener's direct testimony and could not have been raised by the

proponent in its direct testimony.¹ As aptly stated by the late Judge Garlin in his Procedural Ruling and Prehearing Conference Report, dated December 23, 2005, in this proceeding:

- o Prefiled rebuttal testimony and exhibits must strictly respond to the testimony and exhibits to which they are directed. Information that could have been provided at an earlier stage of this proceeding may not be introduced in prefiled rebuttal testimony and exhibits.²

In sum, Dr. Rosenberg's direct testimony addressed the recovery of ERRP costs and, although he could have easily done so, he did not propose to limit the Company's recovery. Nor did Staff or any other intervener. To allow Dr. Rosenberg to propose a limit on recovery of ERRP costs for the first time in his rebuttal testimony would be patently improper and prejudicial. As such, Dr. Rosenberg's proposal to limit recovery of the ERRP costs should be stricken.

Dated: April 11, 2006
New York, New York

Respectfully submitted,



Marc Richter

Mary Krayske

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of New York, Inc.

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April 11, 2006

¹ See, for example, Case 95-C-0657, et al, Ruling Modifying Schedule and Admitting A Party, Hon. Joel A. Linsider, May 21, 1998; and Case 02-M-0132, et al, Ruling Establishing Schedule and Issues, Hon. Jaclyn A. Brillling and Walter T. Moynihan, March 11, 2002.

² This ruling was unchallenged.