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January 20, 2006

Via Hand Delivery

Hon. Jaclyn Brilling
Secretary
New York Public Service Commission
3 Empire State Plaza
Albany, NY 12223

Re: Case 03-S-1672 - Con Edison Steam Business Development Plan

Dear Secretary Brilling:

The City of New York (City) hereby comments on the January 4, 2006 letter of Consolidated Edison Company of New York, Inc. (Con Edison), which was styled as a petition for clarification concerning the Commission's December 5, 2005 Order in the above-captioned matter. That Order related to the Con Edison Steam Business Development (SBD) Plan submitted to the Commission on August 26, 2005 by the Steam Task Force created in the Commission's Rate Case Order of September 27, 2004. For the reasons set forth below, there is no need for the Commission to clarify the December 5th Order and Con Edison's petition should be denied.

The City, which acting through its Economic Development Corporation (NYCEDC) served as the Task Force Chair with the concurrence of DPS Staff and the other Task Force members, is fully supportive of the SBD Plan as providing a guide for the steps vitally needed to foster the Con Edison steam business, and ensure its continued viability. As noted in the Order of December 5, the vast majority of those necessary steps are changes – some of them far reaching – in the Company's steam operations.

It is undoubtedly true, as Con Edison contends in its petition, that external changes are needed as well in governmental and other organizational incentives. Neither the City nor other Task Force members dispute that contention. But importantly, those external concerns must be seen primarily as a complement to the far greater range of critically needed measures that are within the sole control of the company. Because of this, the December 5th Order properly

focuses almost exclusively on a wide range of actions and internal reforms to be undertaken by Con Edison on various schedules set out at length in the Plan. This emphasis is not simply a reflection of the fact that Con Edison is the entity subject to regulatory oversight by the Commission. Rather, it evidences the Commission and the Task Force view that the Company must first look inward, and effect reforms within.

In any event, there has been no demonstration by Con Edison of the need for clarification, or what might be more properly characterized as a rewriting, of the December 5th Order. The Order, at page 2, explicitly accepts the SBD Plan, and appears to implicitly adopt by reference both the general content and specific emphases of that Plan. Accordingly, there is no need to revisit its terms concerning the governmental or other exogenous factors¹ that may ultimately bear on the competitiveness of the steam business. This is particularly true given the Commission's recognition, reflected at page 7 of Appendix A to the Order, that: 1) the Company needs the cooperation of NYCEDC, Staff and others to develop new steam incentives, and 2) this "has been the subject of ongoing discussions" among the same parties. The City can also verify that such discussions are indeed taking place, and that it recognizes the need for a range of actions to address systemic challenges to the steam system.

Moreover, the inclusion in the SBD Plan of some seventeen pages of discussion of "Governmental and Policy Factors"² is also testament to the Task Force's recognition of the importance of such concerns. To the extent they are addressed in the Plan, as Con Edison itself acknowledges they are, the Commission can hardly be expected to restate or reiterate those same factors, particularly where the parties most relevant to address them are not subject to Commission jurisdiction. And while Con Edison cites to an Order in another case in which the Commission included public policy advocacy that reached beyond its strict regulatory oversight role, such editorial judgments on matters of emphasis and prominence in Commission Orders are surely within the sphere of its judgment, and not properly subject to requests for "clarification" that would satisfy an individual party's editorial desires.³

The December 5th Order and the SBD Plan do not need to be clarified, or rewritten. Con Edison's filing not only fails to raise any errors of law or fact,⁴ it fails to identify any area of confusion. Instead, the filing seeks to rewrite the Order in a manner that Con Edison would prefer. The City does not believe correction or clarification of the December 5th Order is needed in what is essentially no more than a passing observation in the Commission's background discussion of the SBD Plan. Accordingly, the relief sought in Con Edison's January 4th letter should not be granted.

¹ Such as those related to the New York Independent System Operator that are reflected in the discussion at pp. 115-116 of the SBD Plan

² SBD Plan Chapter Six, at pp. 101-118

³ There is a second concern noted by Con Edison in its filing: the reference in the December 5th Order to what the Commission characterizes, in paraphrasing the SBD Plan, as "captive" customers, i.e., those who are constrained due to space limitations or other factors from considering the installation of other forms of heating and cooling facilities in lieu of steam. The City would only observe here that the usage of "captive" in quotations by the Commission is clearly an economic term, not a pejorative one or denoting any suggestion of coercion.

⁴ Commission Rules and Regulations, § 3.7(b).

Respectfully submitted,

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cc: Active parties, Case No. 03-S-1672 (electronic service)

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