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Honorable Kathleen H. Burgess
Secretary
State of New York
Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

Re: Case 10-M-0457) In the Matter of the System Benefits Charge IV
Case 07-M-0548) Proceeding on Motion of the Commission Regarding
) and Energy Efficiency Portfolio Standard
Case 03-E-0188) Proceeding on Motion of the Commission Regarding a
) Retail Renewable Portfolio Standard

Petition of Multiple Intervenors for Expeditious Relief from Existing Surcharges

Dear Secretary Burgess:

Please accept these comments on the petition filed by Multiple Intervenors (“Petitioners”) for expeditious relief from existing surcharges on behalf of Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (jointly the “Companies”). As explained below, while the Companies agree with aspects of the Petitioners’ arguments, the Companies respectfully urge the Commission to decline to grant the requested relief in favor of evaluation of the surcharges within the Commission’s current review of the Clean Energy Fund.¹

¹ Case 14-M-0094, Proceeding on Motion of the Commission to Consider a Clean Energy Fund, Order Commencing Proceeding (issued May 8, 2014).

*Admitted only in New Jersey

Background

In 2004, the Commission established the State's Renewable Portfolio Standard ("RPS") to develop renewable energy in the State through contributions from the State's electric customers.² In 2008, the Commission established the State's Energy Efficiency Portfolio Standard ("EEPS") using a similar model to expedite the development of energy efficiency throughout the State. Additionally, the Commission has relied on the Systems Benefit Charge ("SBC") since 1996 to fund public policy initiatives expected to be inadequately addressed by New York's competitive electricity markets. Over time, collections for these three programs (collectively the "Existing Surcharges") have grown through various Commission authorizations and are expected to total roughly \$925 million statewide in 2015.

The Companies collect these funds from customers on a kWh basis, based on the target amounts and forecast sales for all customers for the prospective recovery period.

In their petition, Multiple Intervenors seek expeditious relief from these Existing Surcharges. Multiple Intervenors' membership includes large industrial, commercial, and institutional energy customers that consume large amounts of energy on an annual basis. Petitioners argue that the current collection method places a "disproportionate and inequitable burden" on large, high-load-factor customers due to the kWh basis for collections. Petitioners cite several examples where existing surcharges exceed the cost of "traditional" delivery service for select utilities.

Petitioners request that the Commission change the collection method to collect fees from customers on the basis of class coincident peak demand or on a per customer basis. Petitioners

² Case 03-E-0188, *Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard*, Order Regarding Retail Renewable Portfolio Standard (issued September 24, 2004).

alternatively propose the Commission could implement a cap or ceiling on the amount of existing surcharges that a single customer could be assessed in a given month or year.

Argument: The Multiple Intervenors' Petition Should Be Denied and the SBC, EEPS, and RPS Collections Should Be Evaluated in the Clean Energy Fund Proceeding

The Companies agree with the Petitioners and the Commission that the level of Existing Surcharges collected from customers should better reflect program needs. Particularly as the Commission evaluates changes to these programs through the Clean Energy Fund proceeding, the Commission should consider the Existing Surcharges within that proceeding.

When it established the RPS and EEPS programs, the Commission also established performance targets. Under the RPS, the State committed to generating 30 percent of its energy from renewable resources by 2015. Under the EEPS, the State committed to reducing its energy use by 15 percent of projected usage by 2015. As the Commission recently noted, these goals remain unfulfilled.³ At the end of 2013, RPS was at 49 percent of the 2015 goal and EEPS electric and gas programs were at 55 percent and 59 percent, respectively, of their 2015 MWh goals.

Indeed, the New York State Energy Research Development Authority (“NYSERDA”) has not fully deployed the funds it has received through the Existing Surcharges. According to its Fiscal Year 2014-15 Budget and Financial Plan, NYSEDA expects to be in possession of a combined SBC/EEPS/RPS surplus of \$694.8 million, up from a surplus of \$518.2 million projected for those programs at the start of the 2014-15 fiscal year.

Customers should see the benefits of the contributions they make through the Existing Surcharges as the funds are collected. If the use of funds does not keep pace with collection, rates should be adjusted so that customers can retain funds for their own economic use. The

³ *Id.*, at p.2.

Companies support a transition to the Commission's proposed "bill-as-you-go/pay-as-you-go" model where the utility would retain any collections not immediately needed to fund NYSERDA's work. The utility would transfer funds to NYSERDA at a specified frequency based on actual program expenditures with the proviso that if NYSERDA program cash-flow needs fall short of protections, utility surcharge levels could be periodically adjusted to reflect near-term needs.

The Companies support the Commission's active consideration of such modifications through the open, and comprehensive, Clean Energy Fund proceeding. Through this proceeding, the Companies encourage the Commission to consider using Regional Greenhouse Gas Initiative ("RGGI") proceeds as a potential financing mechanism for programs currently funded by Existing Surcharges. The Companies also urge the Commission to make any modifications to the collection methodology of Existing Surcharges through the Clean Energy Fund proceeding. The Companies would be open to an alternate allocation method for these fees as long as this allocation was fair, equitable, and administratively feasible. Any revision to the methodology could lower the SBC contributions of MI's constituents while shifting the cost responsibility to other customers.

By undertaking a comprehensive the Clean Energy Fund review, with participation by all stakeholders, the Commission is eschewing a narrow, siloed approach to reviewing the Existing Surcharges. The Commission's effort would be undercut by adoption of interim changes to the recovery mechanism of existing surcharges in response to the comments of one stakeholder group. Moreover, any interim changes ahead of the Clean Energy Fund decision would create unnecessary confusion on the part of utilities and customers. In addition, more specifically, the customer-by-customer cap or ceiling approach proposed by the Petitioners would create

unnecessary complexity, by virtue of the customer-by-customer analysis required to set the appropriate ceiling level and the need to implement costly and administratively burdensome billing systems to ensure the ceiling was appropriately applied. Moreover, capping collection levels at some arbitrary amount per customer would inequitably result in smaller customers funding more of the Existing Surcharges than larger customers, regardless of the load-factor of the customer. Addressing Petitioners' request within the Clean Energy proceeding provides a framework for evaluating the points of view of all stakeholders.

In sum, the Companies urge the Commission to deny the requested relief and, instead, to consider these issues and potential alternative solutions within the Clean Energy proceeding.

Respectfully submitted,

CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC., and ORANGE
AND ROCKLAND UTILITIES, INC.

By: */s/ Susan Vercheak*

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