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April 30, 2024

Via e-filing

Hon. Michelle L. Phillips  
Secretary to the Commission  
New York State Public Service Commission  
Empire State Plaza  
Agency Building 3  
Albany, NY 12223-1350

**Re: Matter No. \_\_\_\_\_ – Complaint and Formal Dispute Resolution Request For Expedited Resolution of Robison Energy (Commercial), LLC Regarding Payments Due From Consolidated Edison, Inc.**

Dear Secretary Phillips:

In accordance with Section 8(B)(2) of the Uniform Business Practices (“UBP”),<sup>1</sup> and the Billing Services Agreement between Robison Energy (Commercial) LLC (“REC”) and Consolidated Edison, Inc. (“ConEd”) dated April 22, 2011 (“BSA”), REC submits this complaint and formal dispute resolution request (“Request”) for expedited resolution against ConEd concerning payments due to REC in connection with customer receivables (such payments, the “Customer Receivables”). As discussed in detail below, in hundreds of instances, ConEd has failed to pay REC monies it is owed as a result of ConEd’s failure to accurately and timely bill customer accounts. To date, ConEd has not reissued bills for a significant number of REC’s customers and owes REC more than \$550,000.<sup>2</sup>

**A. Need for Immediate and Expedited Staff Involvement**

ConEd currently owes REC approximately \$415,000 in customer receivables due to its failure to properly bill hundreds of REC’s customer accounts. REC seeks to terminate its relationship with ConEd and winddown its business operations; however, ConEd’s continuous delays in resolving these unbilled accounts hinders REC’s ability to finalize this separation. This unresolved financial obligation has significantly impacted REC’s operating cash flow, limiting its capacity to manage and fulfill its financial commitments effectively. The ongoing harm caused by

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<sup>1</sup> Case 98-M-1343: *In the Matter of Retail Access Business Rules*, Uniform Business Practices (September 2020).

<sup>2</sup> REC reserves its right to supplement this initial submission outlining its position and attendant concerns with further analysis and evidence.

ConEd's inaction poses a substantial financial risk to REC, thereby satisfying the criteria for an emergency situation as defined under Section 8.B.2 of the UBP.

Accordingly, REC submits that immediate resolution of this dispute on an expedited basis pursuant to Section 8(B)(2) of the UBP is warranted, and requests (i) a meeting within the next three (3) business days among REC, ConEd, and of Department of Public Service Staff ("DPS Staff"); (ii) immediate direction to ConEd to resolve the outstanding billing issues; and (iii) assistance in the parties' attempt to resolve this dispute.

## **B. Background**

Over the years, REC has encountered numerous instances where ConEd failed to bill REC's customers both timely and accurately. For the purposes of this Request, REC has pinpointed the four most critical categories of billing issues that necessitate immediate resolution. In an effort to expedite resolution of the billing issues, significant internal and external resources have been deployed by REC to identify the impacted accounts. Additionally, REC has promptly communicated these issues to ConEd upon discovery and has consistently followed up, as evidenced by Exhibit 1, "REC/ConEd Email Exchanges, 2022-2024". Despite these efforts, REC has not yet achieved a satisfactory resolution. REC dropped all accounts last year, such that the Service End Date for any account is April 30, 2023, at the latest.

In November 2023, REC submitted to ConEd a spreadsheet identifying the four categories of billing issues detailed below ("Billing Issues Spreadsheet"). That spreadsheet is attached here as Exhibit 2 and titled, "Spreadsheet of Unbilled and Incorrectly Billed ConEd Accounts". The few instances where ConEd has resolved the billing issue are reflected on the Billing Issues Spreadsheet. In most cases, REC had previously communicated the billing discrepancies to ConEd. The four categories are:

**Electric and Gas Missing Usage** – These represent customer accounts that are missing meter reads and therefore, billings prior to their service drop dates. These accounts were previously shared with Con Edison by REC's operations team. For example, the last time the meter the customer described in Row 5 of the "Electric and missing usage tab" was read was November 4, 2020, and thus usage for this customer is missing from November 2020 through April 2023.

**Con Edison Billing Error (October -December 2021)** – Con Edison underwent a system upgrade in late calendar year 2021 and during this upgrade, supply prices on a population of gas accounts were inadvertently changed. The system upgrade affected bills generated October-December 2021. In the months that followed, ConEd communicated to affected ESCOs that the customer bills would be corrected by the end of 2022, Q1. This did not happen.

In early calendar year 2022, REC shared a file with Con Edison regarding the affected customers. Then, following an email inquiry from REC, on March 23, 2022, ConEd promised that these accounts would be properly billed by the end of April, 2022.<sup>3</sup> Two years later, many of the original accounts billed incorrectly in 2021 remain unbilled. As of April 30, 2022, there were approximately 315 transactions that were open/unresolved and as of March 31, 2024, there remained approximately 160 transactions that have not been rebilled.<sup>4</sup>

**Cancels Without Rebills** - These represent charges that were canceled before service drop dates without being rebilled (cancels and rebills should have been handled simultaneously). The open list in the attached spreadsheet represents customer accounts that contain canceled charges that haven't been rebilled as of March 20, 2024. In some cases, such as the account ending 0009, energy commodity charges were canceled without rebills for the service period spanning September 2, 2021 through April 6, 2023. As evidenced under the "Cancels without rebills" tab on the Billing Issues Spreadsheet, this is not an isolated instance as there are approximately 20 more accounts in this category that have not yet been rebilled.

**Unbilled Meter Reads** – These represent customer meter reads that haven't been billed to the customer. These accounts were previously shared with Con Edison by REC's operations team, and then again in November 2023. As evidenced on the "Unbilled meter reads" tab on the Billing Issues Spreadsheet lists, there remain approximately 114 transactions that still have not been billed.

REC has been actively communicating with ConEd in good faith throughout this dispute, but years later, the issue remains unresolved. REC now turns to the Commission for relief and requests the Commission's assistance in expediting the resolution of this important matter.

### **C. Positions of the Parties**

#### **1. ConEd**

It appears that ConEd does not generally dispute the billing issues identified by REC and has not challenged REC's timely identification of billing issues. Based on numerous email communications from ConEd employees, it appears ConEd recognizes that hundreds of REC customer accounts have not been properly billed. For reference, please see the attached emails that document ongoing communications between ConEd and REC, evidencing ConEd's awareness of the billing issues raised by REC.

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<sup>3</sup> See Exhibit 1 at page 1, email from B.Rose to retailaccess@coned.com and C. Santo regarding "Billing Issues – Continuous" dated March 4, 2022 at 10:14AM.

<sup>4</sup> See Exhibit No. 2, Billing Issues Spreadsheet at "Con Ed bill error" tab.

2. REC

Under the terms of the BSA, ConEd explicitly assumes the responsibility to bill and collect ESCO Charges from ESCO Customers related to commodities supplied by the ESCO.<sup>5</sup> REC has consistently provided notice to ConEd of any billing errors within the required timeframe and has timely submitted rate information for customer charges to ConEd. Despite these efforts, ConEd has not fulfilled its obligations under the BSA, failing to meet its contractual responsibilities.

ConEd needs to resolve the billing issues described in the Background Section above. REC recognizes that ConEd has made efforts to correct these billing errors, including the Cancel/Rebills, but the pace of resolution is far too slow. Currently, ConEd is only resolving a few accounts per month, a rate that fails to meet the urgency required given the large number of affected accounts.

REC seeks immediate payment for the amounts owed as detailed in the accounts listed in the Billing Issues Spreadsheet (*i.e.*, Exhibit 2). Prompt action is required to address these financial discrepancies and to move towards a resolution. If ConEd cannot resolve the billing issues in a timely manner, it should settle with REC for a dollar amount equivalent to the funds owed to REC.

**D. Proposed Resolution & Requested Relief**

REC respectfully requests that the Commission, through the expedited dispute resolution process under Section 8.B.2 of the UBP, take the following remedial actions:

1. A meeting within the next three (3) business days among REC, ConEd, and DPS Staff to collaboratively discuss and resolve the outstanding billing issues. This session aims to enhance transparency, align on a mutually acceptable resolution strategy, and ensure compliance with regulatory standards.
2. Order ConEd to complete an accounting of all REC accounts within two weeks of the date of this Request for any other missing billings, rebills/payments, and provide the results of such accounting to REC upon completion.
3. In the event ConEd is unable to resolve the outstanding Billing Issues within two weeks of the date of this Request, require ConEd to settle with REC for a dollar amount equivalent to the funds owed to REC.
4. Require ConEd to pay interest calculated at the rate of 1.5% per month from the date

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<sup>5</sup> BSA at 5.

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payment of the Customer Receivable was due to REC.<sup>6</sup>

If the Commission or DPS Staff has any questions or concerns, please do not hesitate to contact the undersigned at [natarafeller@feller.law](mailto:natarafeller@feller.law) or (212) 590-0145.

Respectfully submitted,

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CC: ConEd Retail Choice Operations Department via email to [retailaccess@coned.com](mailto:retailaccess@coned.com).

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<sup>6</sup> This interest rate of 1.5% per month is consistent with that applied to monies owed to customers or ESCOs for overpayment. See UBP Section 7.C.4 (“Interest is calculated at the rate of 1.5 % per month from the date of the overpayment to the refund.”)