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**Via Electronic Delivery**

November 16, 2016

Hon. Kathleen H. Burgess  
Secretary to the Commission  
New York State Public Service Commission  
Empire State Plaza  
Agency Building 3  
Albany, New York 12223

Re: CASE 16-E-0060 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service.

Dear Secretary Burgess:

This letter is being filed on behalf of the Metropolitan Transportation Authority (“MTA”) in lieu of a post-hearing brief.

In its Statement in Support of the Joint Proposal (“JP”), the MTA explained that no party had objected to the provision of the JP that realigned costs and rates for the PASNY 12 Rate 1 Tariff. Nor was that provision challenged in the subsequently filed testimony or statements, or during the hearings, concerning the JP. Accordingly, what we said then continues to remain valid:

[i]n its direct testimony, Con Edison proposed to correct this cost allocation discrepancy by allocating the cost differential to low tension rates, but gradually over the next three years in order to limit bill impacts to low tension customers. Although the [Embedded Cost of Service (“ECOS”)] study justified a one-year realignment of costs to rates, the MTA acknowledged that cost impacts should be mitigated and, therefore, supported Con Edison’s proposed three-year phase-in (Wislo Direct, p. 5, L. 7). DPS Staff and the City of New York also supported the three-year

phase-in to correct the cost allocation discrepancy and it was eventually incorporated into the JP (JP at 55, Appendix 19).

As to the opposition to the JP, according to the New York Department of State Utility Intervention Unit (“UIU”), “PULP and UIU are the only parties that focus on the interests of residential customers” (Statement of the Utility Intervention Unit on the Joint Proposal (Oct. 13, 2016), p. 24 (“UIU Statement”)). But UIU made no credible showing that any other parties, including the Department of Public Service Staff (“DPS Staff”) or the Consolidated Edison Company of New York, Inc. (“Con Edison”) ignored the interests of residential customers. To the contrary, as reflected in the JP, both DPS Staff and Con Edison, together with the City of New York, and other parties, worked hard to develop a number of programs to benefit residential customers, including reducing the Con Edison rate request.

The UIU also mischaracterizes the MTA’s role in this case by claiming that the MTA is simply a large energy user and, by implication, apparently unconcerned about residential customers (*See Id.*). However, UIU fails to acknowledge that the MTA’s customers basically include the residential customers that UIU states it is representing. The MTA’s ridership is extremely diverse; its buses, subways, and railroads operate in residential neighborhoods throughout the Greater Metropolitan Area; and its customers come from all walks of life, socioeconomic strata, and backgrounds. The MTA operates at a loss and is subsidized from a variety of governmental sources. In that context, the MTA works hard to keep fares as affordable as possible. Advocating for a fair electric rate design that reflects its true cost of service helps protect its diverse ridership from paying unnecessary costs. To this point, the UIU witnesses acknowledge that the New York Power Authority (“NYPA”) customers, including the MTA, deliver benefits to residential and small commercial customers through a variety of services (Transcript (“Tr.”) 132 (all references to the hearing transcript in this letter are to the November 3rd hearing)).

With that perspective, UIU challenged, *inter alia*, the JP’s use of the Con Edison ECOS Study (“JP ECOS Study”) to allocate costs amongst the service classes. Con Edison, DPS Staff, and other parties presented rebuttal statements and testimony addressing the UIU arguments. DPS Staff and Con Edison witnesses answered questions on cross-examination concerning their support of the JP ECOS Study. UIU acknowledged that the development of assumptions and other inputs for an ECOS study is subjective and, thus, reasonable minds can and do differ (*See UIU Statement*, p. 9). The UIU witnesses concurred that cost allocation is an imprecise science, if a science at all, and, that there are multiple ways to conduct cost-of-service studies (Tr. 113, 157, 159, 162).

MTA respectfully suggests that the instant inquiry is whether use of the JP ECOS Study in the JP “produce[s] results that were within the range of reasonable results that would likely have arisen from a Commission decision in a litigated proceeding” (Settlement Guidelines, p. 8).<sup>1</sup> The MTA submits that the UIU proposed ECOS revisions would likely have been rejected

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<sup>1</sup> Cases 90-M-0255 et al., *Proceeding on Motion of the Commission Concerning its Procedures for Settlement and Stipulation Agreements*, Opinion No. 92-2, Order and Resolution Adopting Settlement Procedures and Guidelines (Mar. 24, 1992), Appendix B (“Settlement Guidelines”).

in a litigated proceeding because they were the result of a systematic drive to reach a pre-determined result.

Working from its perceived role in the case as one of two parties focusing on the interests of residential customers (PULP is not opposing the JP though), UIU sought a consultant that would advocate for the following goals and objectives:

- The UIU's foremost objective in this case is ensuring the protection of New York residential and small commercial consumers' interests.
- The consultant is expected to focus on specific cost of service methodologies that carry the highest potential impact on customer class-specific revenue distribution and customer charges, with the primary focus on impacts to residential consumers and small commercial consumers.
- This should demonstrate the consultant's general understanding of the Con Edison's electric rate case with an emphasis on specific cost of service methodologies that carry the highest potential impact on rates, particularly rate increases to residential consumers and small (non-residential) commercial customers.
- This list must also highlight and explain any instances where the client's needs and/or expectations, and the consultant's work on the client's behalf, may have been in tension with the UIU's primary objective of protecting residential and small commercial consumers.
- The consultant must also be able to coordinate and incorporate recommendations from multiple witnesses testifying on behalf of consumers' groups, small commercial consumers, and others in order to build advocacy consensus around Con Edison's electric rate case.
- The Work Plan should provide a description, with a reasonable level of detail, of how the consultant will evaluate the degree to which Con Edison's AMI proposal and handling of REV related issues benefits consumers, with a particular emphasis on residential and small business consumers.
- This consultant will also be expected to consider other parties' interests and develop responsive strategies to counter other parties' positions concerning cost of service and other relevant issues that are inconsistent with the public interest or UIU goals (Exh. 315).

UIU's witness acknowledged that its ECOS consultant was indeed hired to promote these objectives (Tr. 104). UIU's Requests for Quotations ("RFQs") articulate the expectations, goals, and objectives, established by UIU, for the products that would be developed by their hired consultants (Tr. 324).

It is inconceivable to conclude that the consultants did not have the UIU goals in mind when they reviewed the JP ECOS Study and proposed revisions thereto. While the UIU consultants testified that they would not employ technically incorrect methods to perform ECOS analyses (Tr. 220), it is agreed by all parties that the cost-of-service study discipline is not a science (Tr. 157-162). Many judgments can be made that produce results without being

“technically incorrect.” Is it a coincidence that UIU’s revisions, if adopted, would make the small customer groups’ revenue deficiencies disappear, and shift huge costs onto the other service classes? Nor was this case an example of “One and Done”; UIU’s systematic and singular goal to allocate costs away from small customers is exemplified by the RFQs it has issued in five other Commission proceedings, with the same or similar deliverables from the consultants it sought to hire (Exh. 316).

The bottom line is that employing the JP ECOS Study complies with the requirements of the Settlement Guidelines. The proposed revisions by UIU are suspect, and Con Edison, DPS Staff, and other parties have provided a detailed basis upon which to reach the conclusion that the results produced in the JP fall within the range of likely results that could have arisen in a litigated proceeding.

Accordingly, the MTA requests that the Commission approve the JP without modification.

Respectfully submitted,

READ AND LANIADO, LLP  
Attorneys for the Metropolitan Transportation  
Authority

By: \_\_\_\_\_ /s/  
Sam M. Laniado

cc: Hon. Ben Wiles, Administrative Law Judge  
Hon. Dakin Lecakes, Administrative Law Judge  
Party List