STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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.
CASE 16-G-0061 –	Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Gas Service.
CASE 15-E-0050 –	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.
CASE 16-E-0196 –	Tariff filing by Consolidated Edison Company of New York, Inc. to revise General Rule 20 Standby Service contained in its electric tariff schedules, P.S.C. Nos. 10 and 12.

REPLY STATEMENT IN SUPPORT OF ELECTRIC AND GAS JOINT PROPOSAL

Dated: October 21, 2016
New York, New York

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REPLY STATEMENT IN SUPPORT OF
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I. Preliminary Statement

Pursuant to a Ruling on Schedule, on October 13, 2016, the following parties submitted Statements in Support and/or Opposition[1] to the Joint Proposal ("Proposal") filed in the referenced proceedings: Consolidated Edison Company of New York, Inc. ("Con Edison" or "Company"), New York State Department of Public Service Staff ("Staff"), New York Power Authority ("NYPA"), the City of New York ("City" or "NYC"), Consumer Power Advocates ("CPA"), New York Energy Consumers Council, Inc. ("NYECC"), the Pace Energy and Climate Center ("Pace"), the Environmental Defense Fund ("EDF"), Metropolitan Transportation Authority ("MTA"), Time Warner Cable Inc. ("Time Warner"), Community Housing

[1] Public Utility Law Project filed a statement that was neither in support nor opposition to the Proposal.

Improvement Program ("CHIP"), Great Eastern Energy, LLC, Digital Energy Corp., Joint Supporters, the E Cubed Company, LLC, Northeast Clean Heat and Power Initiative, Association for Energy Affordability, Inc., Energy Spectrum, RiverBay Corporation, New York Independent Contractors Alliance and Utility Intervention Unit, Division of Consumer Protection, New York State Department of State ("UIU").[2]

On an overall basis, parties provided comments that supported the Proposal and demonstrated that the Proposal fell within the range of litigated outcomes. There are a handful of issues that are contested in the statements. Con Edison provides reply comments to comments on the Electric Cost of Service Study including revenue allocation, Standby Rates, the Gas Cost of Service Study, allocation of EAMs and Local 175's opposition to the interference reconciliation.

A. Electric Rate Design

UIU's statement in opposition discusses UIU's dissatisfaction with the Proposal's allocation of the revenue requirements to the various classes of customers. This statement and the accompanying testimony address UIU's overall contested electric rate design issues: the embedded cost of service ("ECOS") study, revenue allocation and standby rates, as well as the comments made by UIU in its opposition statement.

1. UIU's Statement

UIU's Statement alleges that the Proposal is not in the public interest and the cost allocation and revenue allocation portions of the Proposal should be modified. Basically, UIU

[2] UIU states that 15 parties did not sign the Proposal. This statement unfairly seeks to obfuscate the overwhelming support or non-opposition to the Proposal. For example, PULP and SolarCity Corporation neither signed nor opposed the Proposal. And other parties included among UIU's "15 parties" did not generally participate in the settlement discussions and therefore would not have been expected to sign or oppose, including, for example, Tesla Motors, Inc., the United Plant and Production workers, R.G. Vanderweil Engineers PC, the Retail Energy Supply Association, the Urban Green Council and the New York Oil Heating Association.

disagrees with the Company's electric and gas ECOS studies, which are adopted in their entirety in the Proposal. As explained herein, UIUs alleged "flaws" in the studies are allocation methodologies that they believe could be approached differently. UIU's statement concedes (pp. 9-10) that "reasonable minds can and do differ with respect to determining a customer's embedded cost of service" and that "[m]any of these assumptions represent judgment calls, not cut-and-dried fact …" In fact, in not one of the items that UIU questions does UIU provide support for its positions as based on the NARUC manual or other well-known ratemaking publications.

For the reasons explained in both this Statement and the Company's testimony, the Proposal is in the public interest and should be approved as is.

a) Impacts of Electric and Gas Increase Amounts

Claiming that the revenue allocations and rate changes are not in the public interest, UIU (pp. 3-5) includes two tables showing the electric and gas delivery revenue increases, on both a dollar and percentage basis, for some customer classes. The impacts included in the tables are in line with the expected results. For example, the electric SC1 residential class comprises approximately 39 percent of the Company's delivery revenue, so a large overall dollar increase is expected for these customers. Similarly, the gas residential classes, SC1 and SC3, comprise approximately 73 percent of delivery revenue so it is no surprise that these classes receive the majority of the gas revenue increases.

In reviewing UIU's tables, the most relevant comparison is the percentage impacts. After considering the ECOS surpluses and deficiencies as well as the revenue requirements in this case, the allocation of the rate increases over the term of the Proposal is not out of line between customer classes. For example, in UIU's tables, for electric in RY1, the residential impact of 4.2 percent is only slightly greater than the total overall impact of 3.6 percent and the percentage increase to NYPA is greater than the percentage increase to SC1 and SC2 customers. Equally important, in total in UIU's tables, SC2 commercial customers and NYPA will experience Rate Plan total increases that are only slightly less than SC1 residential customers.

In addition, the UIU tables reflect percentage increases on a delivery-only basis. The revenue increases should also be viewed on a total bill basis, which better represents the impact customers will see on their actual electric and gas bills. The table below shows these percentage increases on a total bill basis.

Electric					
Rate Year	**SC1 Residential**	**SC2 Commercial**	**All other CECONY**	**NYPA**	**Total**
Percent Change					
Rate Year 1	2.4%	2.6%	1.1%	2.1%	2.1%
Rate Year 2	2.6%	2.6%	1.4%	1.9%	1.9%
Rate Year 3	2.6%	2.6%	1.5%	1.9%	1.9%
3-Year Total	7.9%	8.0%	3.9%	6.0%	5.7%

Gas			
Rate Year	**SC1 & SC3 Residential**	**All Other SCs**	**Total**
Percent Change			
Rate Year 1	2.4%	0.7%	1.9%
Rate Year 2	6.1%	4.1%	5.5%
Rate Year 3	4.0%	1.6%	3.3%
3-Year Total	13.6%	6.6%	11.5%

As shown in the table above, the percentage increases are modest. For example, electric SC1 residential customers will experience an average increase of 2.4 percent in RY1 as compared to an overall increase of 2.1 percent. Also, to put the residential impact in perspective, a typical SC1 residential electric customer using 300 kWh per month can expect an average monthly bill increase of only $1.78 per month in RY1. A typical SC1 residential gas customer using 6 therms per month can expect an average monthly bill increase of only $1.44 per month in RY1.

UIU claims (p. 7, fn. 11) that "the JP shifts 100% of the purported deficiencies outside of a narrow 10% tolerance band over the course of the three rate years, without any other mitigation measures, or consideration of any other evidence concerning appropriate rate levels for the various firm service classes" and (p. 8) "other considerations can – and should – factor into the rate changes to be assigned to each customer class." While UIU appears to recognize that spreading the surplus/deficiency indications resulting from the electric and gas ECOS studies over the three-year term of the Rate Plan is a mitigation measure, it fails to acknowledge other mitigation measures included in the Joint Proposal and why other mitigation measures that have been used in other rate cases are unnecessary in this case. For example, the Joint Proposal recommends that the electric revenue increases be implemented on a levelized basis "to provide rate stability over the term of the Electric Rate Plan" (Proposal, p. 7). This mitigation measure will benefit all customers but will unquestionably provide benefits to the SC 1 and 2 classes. In addition, with the exception of gas SC1, the Joint Proposal includes no increases in customer charges. This mitigates the impact of the revenue increases on low usage electric SC1 customers and gas SC3 customers.

Other mitigation measures that were applied in other rate cases are unnecessary in this case. For example, in Orange and Rockland Utilities, Inc.'s last electric rate case, Case 14-E-0493,[3] the Commission adopted a revenue allocation in which delivery revenue changes by class were mitigated in a manner such that each class did not receive a revenue change that was more

[3] Case 14-E-0493 - *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Orange and Rockland Utilities, Inc. for Electric Service*, Order Adopting Terms of Joint Proposal and Establishing Electric Rate Plan (issued October 16, 2015).

than +2.0 times or less than -2.0 times the overall delivery revenue change on a percentage basis.[4] In other words, the Commission found it reasonable that certain classes would experience delivery revenue percentage increases that were up to two times the overall average increase. Based on the summary of impacts provided by UIU (p. 4), the ratios of residential percentage impacts to overall percentage impacts shown below are very small and do not warrant any additional mitigation measures in the Joint Proposal.

Electric			
Rate Year	**SC1 Residential Percent Change**	**Overall Percent Change**	**Ratio (SC1 / Overall)**
Rate Year 1	4.2	3.6	1.2
Rate Year 2	4.6	3.9	1.2
Rate Year 3	4.5	3.9	1.2

Gas			
Rate Year	**SC1 & SC3 Residential Percent Change**	**Overall Percent Change**	**Ratio (SC1 & SC3 / Overall)**
Rate Year 1	3.7	3.1	1.2
Rate Year 2	8.2	7.5	1.1
Rate Year 3	7.2	6.7	1.1

b) UIU as sole representative for residential customers

UIU (pp. 5, 24-25) first claims that it is the only representative for small customers in rate cases and later argues that PULP and UIU are the only parties that represent small customers. UIU claims that while its mandate is to represent all energy customers, UIU needs to focus on small customers because "smaller customers tend to be disproportionally underrepresented in rate proceedings." UIU then states that its representation of smaller customers only occurs if its "focus is consistent with the fair treatment of all customers." UIU's "fair" treatment of "all

[4] *Id.*, at Attachment A (Joint Proposal), Appendix 18.

customers" is questionable, especially given that the results of UIU electric and gas ECOS studies would shift millions of dollars of deficiencies from residential to commercial customers.

As the Company noted in its initial statement, other parties in these cases represent the interests of residential customers. These parties include PULP, NYC and Staff. In the end, the Company and Staff consider the overall increases and attempt to appropriately apportion revenue allocation in a manner that is fair to all.

c) Public Interest Standard

UIU (pp. 7-11) claims the Proposal is not in the public interest because the Proposal allocates revenues to service classes based "exclusively according to the results of the Company's electric and gas ECOS studies," which it claims "suffer from serious deficiencies." Literally, one paragraph later, UIU concedes that "reasonable minds can and do differ with respect to determining a customer's embedded cost of service" and the "assumptions [that underlie the ECOS study] represent judgment calls."

Moreover, UIU claims that using the ECOS study in its entirety, without making any adjustments, is contrary to Commission precedent. Apparently, UIU's position is that because the Commission did not "strictly apply" the results of certain Con Edison ECOS studies in the past, the Commission cannot approve using the study in its entirety in this case because somehow that causes the Proposal to violate the public interest standard. The fact that a method was not strictly used before does not mean that it is inappropriate to use in this case or that using it in and of itself causes the Proposal not to be in the public interest.[5]

[5] UIU quotes (p. 8) from a Commission Order in Case 94-G-0885 about complete reliance on an embedded cost of service study in designing rates. UIU's quote would lead one to believe that the Commission believes that only an irresponsible person would only rely on the ECOS study. UIU is quoting the section of the Commission decision which recites the briefing positions taken by the parties in the case; it is not the Commission's position. Since the Commission's opinion does not address this statement, UIU's use of this quote is misleading.

UIU (p. 8) suggests that other factors – gradualism, proportionality and circumstances of utility customers – should be considered when determining revenue allocation. UIU ignores the Company's efforts in these areas. After the study is completed, the Company does not blindly incorporate the results into the next rate proceeding. Rather, the Company considers how each class compares to the average and to other classes. The Company also looks at the increase in total. In fact, some of the Company's ECOS related proposals in this proceeding considered the items mentioned above. For example, the Company's filing did not include an increase to the customer charge that would have been justified by its ECOS study and proposed to allocate the class surpluses and deficiencies over three years instead of in one year alone.

d) AMI Cost Allocation

UIU (pp. 11-21) proposes that AMI costs should be allocated based on program benefits. The Company's reply testimony demonstrates that benefits should not be used to allocate AMI costs.

e) Alleged Affordability Crisis

UIU (pp. 21-23) claims in its statement that there is a utility affordability crisis, but none of UIU's witnesses even this discussed this assertion. Instead, UIU relies on testimony of one party who is neither supporting nor opposing the Proposal. No other party to the proceeding made any claims about unaffordability. UIU also fails to note that these increases are the first increases for Con Edison's electric and gas service in several years.

2. Embedded Cost of Service ("ECOS") Study and Revenue Allocation

UIU's electric and gas rate design issues should be rejected based on UIU's own testimony, which quotes a 2008 Central Hudson decision. UIU's quote notes that:

> Staff proposed to reclassify gas distribution main costs for purposes of the pro forma embedded cost of service study by assigning them entirely to the demand component of rates. [This] reclassification results in a very

> large shift in cost responsibility from residential customers to large gas users. The [Recommended Decision] noted that both the existing and proposed methodologies are deemed acceptable by NARUC with no indication that one or the other is superior. It concluded that such a large shift in cost responsibility should not be adopted without some compelling evidence that it is necessary to rectify some serious inequity.[6]

UIU contends this quote justifies its position that the Company's gas minimum system should not be accepted. However, the statement equally applies to UIU's requested changes in both the electric and gas ECOS studies and revenue allocation proposals. UIU has not provided "compelling evidence" of a "serious inequity" that would require the Proposal's rate design and revenue allocation to be adopted.

The Company has a long history of performing electric ECOS studies and allocating revenue increases based on the results of its ECOS studies. Predictably, there is generally at least one or more parties to each rate case challenging the ECOS study and the resulting revenue allocation. Generally, objecting parties complain about an aspect or two of the study that they believe if corrected would benefit their constituency. Despite claiming to the contrary, UIU, in fact, is no different.

UIU (p. 25) goes so far to say that "residential and small commercial consumers have traditionally been underrepresented in [Con Edison] proceedings and have suffered for it." UIU's statements about the underrepresentation of residential and small commercial customers fail to admit that UIU and its predecessor have been involved in Con Edison rate cases for decades. Moreover, UIU fails to point out that there have been items included in prior rate cases that helped the residential customer, such as the $18 million in NYPA deficiency that was addressed as part of the 2014 Rate Plan.

[6] Cases 08-E-0887 et al, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Central Hudson Gas & Electric Corporation for Electric Service, *Order Adopting Recommended Decision with Modifications* (Issued June 22, 2009), pp. 46-47. Emphasis added.

UIU's claimed issues with the ECOS are that the Company: (1) used Individual Customer Maximum Demand ("ICMD") and Non-coincident Peak ("NCP") to allocate low tension distribution demand costs; (2) classified a portion of the primary distribution system as customer related using a minimum system methodology; and (3) developed and used a minimum system methodology for secondary distribution that was established by an MOU from 2005.

As explained in the Company's testimony, the Company properly developed its electric ECOS study and fully rebuts UIU's arguments in its reply testimony.

3. Standby Service and Buyback Rates

a) Response to Great Eastern et al. on Reliability Credit Measurement Period

The Commission required in the REV Track Two Order that utilities implement a "Reliability Credit" for standby customers. [7] In the case of Con Edison, the Reliability Credit set forth in the Joint Proposal will replace the existing Standby Performance Credit.[8]

The Track Two Order left to individual utility rate filings the development of certain parameters necessary to implement the Reliability Credit. In this proceeding, the Staff Electric Rates Panel proposed in its direct testimony that the measurement hours for the Reliability Credit should be defined as 8:00 AM to 10:00 PM Monday through Friday, June 1 through September 30. Staff explained that this is consistent with the summer period used for charging demand

[7] Case 14-M-0101, Order Adopting a Ratemaking and Utility Revenue Model Policy Framework, issued May 19, 2016 ("REV Track Two Order"). Under the Reliability Credit, customers can earn credits for reducing their demand on the utility grid below the contract demand level for two consecutive summer periods. The credit is equal to the difference between a customer's contract demand and the maximum recorded demand during the measurement period, multiplied by the contract demand rate per kilowatt. The Joint Utilities, including Con Edison, have petitioned for rehearing of the Track Two Order on this issue. The Joint Proposal appropriately provides that the credit will be changed to reflect the Commission's order on rehearing. Joint Proposal at 58 n. 63.

[8] The Standby Performance Credit provides standby customers with an opportunity to earn credits based on generator performance during weekdays from 10:00 AM to 10:00 PM for the previous two consecutive full summer periods, defined as June 15 through September 15.

metered customers.[9] As Staff explains in its Statement of Support, "[s]ince the Reliability Credit is based on a customer's net load and a customer may earn a Reliability Credit by managing its energy usage even if such customer's generation assets are offline, expanding the measurement period to the full extent of the peak hours and summer period is reasonable."[10]

No party discussed or objected to this Staff proposal in rebuttal testimony. In its rebuttal testimony,[11] the Company adopted the Staff-proposed measurement hours because they make sense. The Reliability Credit rewards customers for all actions that reduce demand. Accordingly, the measurement hours for the Reliability Credit should be the same as the hours applicable to measuring demand for the summer period for demand customers generally. The June 1 to September 30 period for measuring customer demand for the summer peak has been in the Con Edison tariff since March 16, 1983. In other words, since that year it has been recognized that this is the proper period for measuring customer demand for the summer period.

The Joint Proposal adopts the Staff's proposed measurement hours, but postpones implementation for one year, to the summer of 2018, which gives customers currently participating in the existing Standby Performance Credit program an extra year to adjust to the Reliability Credit measurement hours. Many parties who are distributed generation advocates, and who are ordinarily adversarial to the Company on standby rates, support the implementation of the Reliability Credit as provided for in the Joint Proposal, including the measurement hours. These parties include Pace, NYECC, New York City, Consumer Power Advocates and REBNY.

[9] DPS Staff Electric Rates Panel Testimony at 27.
[10] DPS Statement in Support at 39.
[11] Con Edison Electric Rates Panel Update/Rebuttal Testimony at 49.

Great Eastern heads up a group of entities[12] that complain that the measurement hours of the Reliability Credit should be the same as the Standby Performance Credit. They state this "change" represents an increase in the total number of measurement hours from 780 to 1204, an increase of 54 percent, as compared with the measurement hours of the Standby Performance Credit. They state that this is objectionable because it would require large scale residential customers to maintain "high" power plant production during a required maintenance period in the late summer.[13] In other words, they do not object to the peak hours each day, or the June 1 commencement, but just the September 30 end of summer date as compared with the September 15 end of summer date for the Standby Performance Credit.

The principal Great Eastern complaint with the September 30 end of summer date is that it ignores the New York City law that requires heat to be supplied between October 1 and May 31st under certain temperature conditions. They claim that, because of this requirement, residential and other customers that have DG that is a combined heat and power ("CHP") facility must perform required annual maintenance before September 30. In addition, they note that the City of New York has enacted new laws requiring the cleaning of all cooling towers bi-annually. They allege that typically it takes at least 8 or as many as 15 days to clean the cooling towers, which takes place at the same time as turbine maintenance. They request that the Commission modify the JP to apply the same measurement hours to the Reliability Credit as currently applies to the Standby Performance Credit[14] or, in the alternative, require the parties to convene a

[12] The parties submitting the objection are: Energy Spectrum, Riverbay Corporation, commonly known as "Co-op City," and Great Eastern Energy, an ESCO (hereinafter collectively referred to as "Great Eastern").
[13] Great Eastern Statement in Opposition at 1**.**
[14] Con Edison notes that Great Eastern offers no evidence or argument for this broad request for relief given that their only evidence and arguments focus on the September 30th end date only.

process to develop a measurement rule that will allow customers subject to these requirements "to continue to earn a credit against their Standby rate bills."[15]

The Commission should reject this request. First, while Great Eastern claims that a particular class of customers will be excluded from earning the credit, they present no evidence demonstrating this to be the case. Indeed, the point of the Reliability Credit is that customers can take other actions to reduce demand during the measurement period, and will not be forced to rely on just their DG facility. Accordingly, even if the CHP is on outage (and the Reliability Credit permits three outages), the customer can still take other actions to reduce demand, and the customer's demand can still be lower or significantly lower than the contract demand, thereby enabling such customers to earn incentives. Mr. Ahrens provides no proof that residential customers would not be able to earn a credit even if they are unable to operate their CHP (this would not apply to a residential customer with a DG that is not a CHP because the DG would not be used to heat the building).

Mr. Ahrens also asserts that the extended peak period will make it "difficult" or impossible for residential customers to achieve the same amount of credit as they have in the past.[16] Relying upon Mr. Ahrens's testimony, Great Eastern claims that Commission relief is necessary so that existing Standby Performance Credit residential customers can continue to earn credits, but provides no proof that they will unable to earn a Reliability Credit. In other words, Great Eastern claims that relief is necessary so that certain customers can "continue to earn" a credit, but they fail to demonstrate that they will be unable to earn a credit. Moreover, a customer's ability to earn credits under the Reliability Credit should not be measured against the

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[15] Great Eastern Statement in Opposition at 2.
[16] Ahrens Testimony at 6. This is contrary to Great Eastern's assertion that residential customers will now be "excluded" from qualifying for the credit. Great Eastern Statement in Opposition at 2.

ability to earn credits under the Standby Performance Credit. They are two distinct programs and there is nothing in the Track Two Order that requires equality.

Finally, Great Eastern also argues that these new measurement hours were proposed without any studies that take into account customer impact. Their witness Ronald Lukas testifies that typically, the Commission requires bill impact studies to accompany rate design changes[17] but he presents no Commission decision demonstrating that customer impact information is required for Commission consideration of a performance incentive and not a rate. Indeed, if Great Eastern believed that a customer impact analysis is necessary, it should have provided the Riverbay customer impact information, which it did not. [18] Mr. Ahrens states that Riverbay earned a credit under the Standby Performance Credit program, but he does not present any detailed customer billing information demonstrating that Riverbay would not be able to earn a Reliability Credit even if its CHP is not operating during the last two weeks of September, even without considering whether Riverbay could otherwise take actions to reduce demand.

b) Response to Digital Energy

On October 17, 2016, Digital Energy ("Digital") submitted a late-filed "Statement in Support" of the Joint Proposal that also purported to further explain Digital's position on certain Standby rate matters resolved in the Joint Proposal.

First, Digital argues that Reliability Credit customers should not be required to pay for the installation of PSC approved utility grade interval meters because the meters will be used for Con Edison's internal purposes only and that this is confirmed by Section G.6.C. of the Joint

[17] Lukas Testimony at 7-8.

[18] They also argue that no evidence was presented on incremental benefits to the system resulting from the longer measurement period. As has already been discussed, the proposal is to conform the measurement hours to the Commission approved peak demand period for demand metered customers, so this evidence is unnecessary.

Proposal.[19] That section provides only that the meters must be "compatible with the Company's metering infrastructure, including compatibility with the Company's meter reading systems and meter communication systems" and states nothing about the purpose of this requirement. [20] The metering of distributed generation, however, is critically important to the Commission's REV paradigm, under which the Commission expects that reliable generation can be counted on by the local utility company, which the Company believes is the justification for providing the individual customer with a reliability credit.[21] Only through metering of DG units can the Commission and the utilities confirm their reliable operation and protect the interests of the non-standby customers that are funding the credits. This provision is also consistent with Commission approved rules for the Company's Standby Performance Credit, which requires that the customer pay for the metering.

Second, Digital claims that the Company's SC-11 contract demand should be based exclusively on import capacity provided by the Company but it provides no evidence or argument in support of that claim. Moreover, this claim should not be reviewed here as the Company's buy-back rates are being reviewed in the REV Track Two proceeding.[22]

In sum, Digital's late attempt to justify its exceptions should be dismissed because these settlement provisions are just and reasonable and within the range of litigated results.

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[19] Digital Statement at 2 n. 3.

[20] Digital also claims that Con Edison made certain statements regarding the alleged need for the metering requirement but these statements should be disregarded because Digital was recounting (its version of) confidential settlement negotiations.

[21] In its Order Continuing and Expanding the Standby Rate Exemption, issued April 20, 2015, in Cases 09-E-0109 and 14-E-0488, the Commission stated (pp. 8-9), "Ultimately, these units should be able to demonstrate a reliable generation output level that can be counted on by the local utility company, under the future REV paradigm, to benefit the grid."

[22] Digital also complains about the measurement period for the Reliability Credit, which Con Edison has responds to above. Finally, Digital notes that the minimum performance being used as the measurement methodology for the Reliability and SC -11 bill credits. Minimum performance is the measurement methodology used for the currently existing performance credit and Digital ignores that it makes sense for to use minimum performance for these reliability based programs because they are incentive based programs.

B. Gas Rate Design

1. Gas ECOS Study

The Company made no changes to its gas ECOS methodology used in prior rate cases. UIU primarily takes issue with the inclusion of a gas minimum system in the gas ECOS study. UIU posits that the Commission should reject the Company's use of a minimum system in the gas ECOS study primarily because many other jurisdictions do not use a minimum system in their gas ECOS studies. Moreover, UIU complains about the sizes of the gas equipment that the Company includes in the minimum system.

As the Company's reply testimony explains, the fact that other jurisdictions do not include a minimum system is not relevant and the Company's method conforms with past Commission precedent and established industry practice.

UIU makes other arguments questioning the revenue allocation. These revenue allocation issues result from the ECOS study and since the Company has demonstrated that the ECOS study is appropriate, these issues are no longer applicable. UIU has not demonstrated that a change to the ECOS study is necessary.

2. Off-peak Firm Service

UIU objects to the Proposal's Off-peak firm delivery rate. As the Company explained in its Statement, this was a contentious issue in the case. As part of the give and take in settlement discussions, the combination of the RY2 and RY3 increases along with the collaborative established to further study this issue during the term of the Gas Rate Plan constitutes a reasonable resolution of this issue within the range of potential results if this issue had been litigated.

C. Allocation of EAMs

The City objects (p. 12) to the provision in the Proposal that requires NYPA to contribute its full class allocation (11 percent) to fund outcome-based EAMs, claiming that NYPA and its customers regularly undertake outcome-based efforts to improve energy efficiency and system peak reduction that benefit all Con Edison customers, without receiving any incentive payments for the work, and that "[i]t is not equitable that the City, and other NYPA customers, must now pay Con Edison shareholders for outcome-based results that are a direct consequence of the City's and other NYPA customers' initiatives, and for which Con Edison has not contributed." The City objects but does not propose an alternative allocation of the outcome-based EAM costs. For the reasons set forth below, the Commission should adopt the Proposal without modification to this provision.

First, the City's argument is based upon the false premise that the Company will not incentivize NYPA customers' initiatives that directly lead to outcome-based results. While the City is generally correct that the Company has not incentivized NYPA customers' energy efficiency and system peak reduction programs in the past,[23] the Company will provide incentives to NYPA customers through the System Peak Reduction Program,[24] incentives which could contribute to just the type of customer initiatives that will directly impact outcome-based results. In addition, NYPA customers may be able to opt-in to Clean Energy Fund and utility energy efficiency programs depending upon the Commission's pending decision in Case 16-M-0395, *In the Matter of New York Power Authority Customer Opt-In to Clean Energy Programs.*

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[23] NYPA customers have not been eligible to participate in the Company's energy efficiency programs (*i.e.*, the Energy Efficiency Portfolio and Energy Efficiency Transition Implementation Plan programs) and Demand Management Program (*i.e.*, the Energy Efficiency/Demand Reduction/Combined Heat and Power Program approved in Case 12-E-0503), but they have been eligible to participate in the Brooklyn Queens Demand Management Program.

[24] Proposal, p. 82.

Further, even if the Company did not incentivize NYPA customers' initiatives, the City does not provide any basis for its assertion that there should be a link between the Company incentivizing the City and other NYPA customer initiatives that directly cause outcome-based results and NYPA customers' responsibility to fund outcome-based EAMs. Achieving the three specific outcome-based EAMs (*i.e.,* increasing DER utilization, lowering energy intensity and improving customer load factors) will provide system-wide benefits that will accrue to all customers in Con Edison's service territory, including NYPA and its customers. In addition, the City's argument is inconsistent with the REV Track 2 Order, which explicitly rejected arguments that would "confine EAMs to items under direct control or strong influence of the utility."[25]

Moreover, the Commission has previously determined that NYPA and its customers should share in the costs of these kinds of programs. For example, the Commission determined that cost recovery of demand response program costs "should include NYPA customers since they stand to benefit from those programs."[26] For the same reasons, NYPA customers will share in the benefits related to the outcome-based EAMs and should bear their share of the associated EAMs.

Finally, the Company notes that neither NYPA nor the other NYPA customers that participated in the proceeding (*i.e.,* MTA and County of Westchester) object to the class allocation of these EAMs to NYPA. The Commission should take note of this fact in finding that all of the provisions of the EAM section of the Proposal, taken together, represent a reasonable compromise among Signatory Parties with competing interests as respects certain aspects of this section.

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[25] REV Track 2, p. 62.

[26] Case 09-E-0115, Proceeding on Motion of the Commission to Consider Demand Response Initiatives, Order Adopting Modifications to Demand Response Programs, issued January 20, 2011, p. 18.

D. Local 175 Opposition to Recovery of Interference Expenses

The New York Independent Contractors Alliance ("NYICA") submitted testimony addressing Section E-2 of the Joint Proposal, which is the reconciliation mechanism for Municipal Infrastructure Support ("interference") O&M expenses. NYICA's witness James Kilkenny states the purpose of his testimony is for the Commission to be certain of two facts:

1. that the Commission has been fully, accurately and reliably informed by the Company as to its estimated future interference costs so that the Commission can make an informed decision on the implications of passing these costs along to customers; and
2. that if the Commission eliminates some or most of the Company's financial incentive to control and minimize its future interference expenses that the Commission will not have inadvertently approved a rate increase that is significantly higher than originally expected.

Mr. Kilkenny goes on to state that the sole reason and basis for NYICA's position is that the Company's October 2014 Standard Terms and Conditions for Construction Contracts ("Standard Terms") may result in Con Edison paying more for paving services during the term of the Rate Plan (*i.e.*, 2017-2019) than it would otherwise pay before October 2014.

To remedy this situation, NYICA asks the Commission to either (i) deny the Company recovery of interference expenses above the targeted amount upon which the revenue requirement is based if the reason for exceeding such target is the result of the Company's own actions, or (ii) require the Company to revert to its pre-2014 Standard Terms.

As explained in this Reply Statement, the record in this proceeding fully informs the Commission of the Company's estimated interference expenses; customers are protected against the Company recovering increased costs due to actions that may be found to be imprudent; and the Joint Proposal provides the Company traditional and meaningful incentives to minimize its costs. Specifically:

1. The Company submitted robust testimony explaining the bases for its estimates of interference expenses.[27] NYICA's sole claim is that these estimates may be too low if, as NYICA speculates, the Company's 2014 Standard Terms results in higher interference costs during the term of the rate plans. As explained below, under the terms of the Joint Proposal, customers are protected against an increase in such expenses where the reason for such increase is imprudent action by the Company.

2. Specifically, if we assume that some percentage of additional paving costs is attributable to higher paving costs as a result of the 2014 Standard Terms, for example, 10 percent, then an increase in interference-related paving expenses recoverable under the interference reconciliation mechanism is reasonably estimated to be approximately $120,000; and even as to this amount, customers are protected because costs recoverable by the Company through the interference reconciliation mechanism are subject to audit by Staff and may be disallowed should there be a determination that such costs were not prudently incurred.

3. And contrary to the implications of NYICA's testimony, the vast majority of paving costs that the Company incurs for work performed by its contractors is not in connection with interference work and therefore not subject to upward reconciliation pursuant to Section E-2 or any other section of the rate plans.

4. Moreover, contrary to NYICA's speculation that the Company's Standard Terms will reduce the number of contractors competing for the right to provide paving services to Con Edison, the Company's experience to date has been the opposite. That is, the Company received a higher number of bids in response to its solicitation for Manhattan paving services in 2015 under the 2014 Standard Terms. And NYICA's surmise that the 2014 Standard Terms will itself raise prices is equally speculative.

5. Finally, the Commission should follow its longstanding practice of not intervening in labor matters. The appropriate agency for considering such labor issues, the National Labor Relations Board ("NLRB"), has already considered and dismissed a charge that claimed that the 2014 Standard Terms violate federal labor law.[28] Following the

[27] *See* Cases 16-E-0060 and 16-G-0061, Consolidated Edison Company of New York, Inc., Direct Testimony of Municipal Infrastructure Support Panel – Electric & Gas (filed January 29, 2016); and Consolidated Edison Company of New York, Inc., Rebuttal Testimony of Municipal Infrastructure Support Panel – Electric & Gas (filed June 17, 2016).

[28] Feb. 24, 2015 NLRB Region 29 Decision, *NLRB Case 29-CE-143863 (dismissal sustained by NLRB Office of the General Counsel), found at* https://www.nlrb.gov/case/29-CE-143863.

> dismissal of that charge, NYICA attempted to repackage the labor dispute as an antitrust matter and filed a lawsuit in federal court in New York, which is still pending.[29]

1. The Estimate of Interference Costs is Reasonable

The testimony of the Company's Municipal Infrastructure Support Panel presents a detailed explanation of how the Company estimates future interference costs.[30]

Mr. Kilkenny asserts that the Company's estimate of future interference expenses is unreliable because it is based upon a three-year period (*i.e.*, 2013-2015) during which the Company's contracts for paving services were unaffected by the October 2014 Standard Terms. Mr. Kilkenny posits that if prior winning bidders are excluded in the future from bidding on paving services, it is reasonable to assume that the remaining pool of bidders will consist of "eligible Building & Construction Trades Council ("BCTC") members" who allegedly have in the past submitted bids with higher prices, lower quality or less reliability than previous winning bidders.

The Commission should reject Mr. Kilkenny's speculations for the following reasons.

First, it should be made clear that Con Edison does not contract with BCTC members. The Company contracts with companies that provide paving services. The contractors' workers may be represented by a union of their choosing. The workers' choice of a union representative is governed by federal labor law. The 2014 Standard Terms do not exclude any contractor from bidding on Con Edison work. Moreover, under the 2014 Standard Terms, Con Edison retains the

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[29] *New York Independent Contractors Alliance, Inc., and Local 175 of the United Plant and Production Workers Union v. Consolidated Edison Company of New York, Inc.*, 16-cv-01172 (S.D.N.Y., filed February 16, 2016).
[30] *See* Cases 16-E-0060 and 16-G-0061, Consolidated Edison Company of New York, Inc., Direct Testimony of Municipal Infrastructure Support Panel – Electric & Gas (filed January 29, 2016); and Consolidated Edison Company of New York, Inc., Rebuttal Testimony of Municipal Infrastructure Support Panel – Electric & Gas (filed June 17, 2016).

discretion to hire contractors that do not utilize BCTC unions, as Con Edison determines to be appropriate under the circumstances of the project.[31]

Second, experience to date demonstrates that Mr. Kilkenny's speculation of reduced competition for Con Edison paving under the 2014 Standard Terms is wrong. Con Edison solicits contractors for paving work through a competitive bid process. Contrary to Mr. Kilkenny's supposition, the first Con Edison solicitation for bids made under the 2014 Standard Terms for paving work in Manhattan resulted in the receipt of six bids, which is one more than the five bids received for Manhattan paving work in 2012; three more than the three bids received for Manhattan paving work during the 2009 solicitation; and more than all of the bids received in response to solicitations for paving work in other boroughs during the 2009 and 2012 solicitations.[32]

Third, the 2015 contract for Manhattan paving work was awarded to a contractor affiliated with a contractor that is a NYICA member, thereby further demonstrating that qualified contractors continued to bid on Con Edison work.

Fourth, with respect to Mr. Kilkenny's assertions that NYICA member contractors have contractual obligations to a particular local paving union (Local 175) that must be honored (about which Con Edison expresses no opinion), Mr. Kilkenny provides no basis for assuming that such agreements (which presumably have a fixed term) will actually "drive up the cost of doing work for Con Ed and no doubt be reflected in their bids." (Kilkenny, p. 9) That is, Mr. Kilkenny does not provide any evidence to support his assumption that a contractor's cost of employing workers under a labor contract with Local 175 would be lower than the costs of employing labor under a contract with Local 1010, the BCTC paving local union. For example,

[31] See Kilkenny Exhibit 2, Standard Terms Article 14.
[32] Con Edison solicitations for paving work normally seek commitments for three-year periods.

Mr. Kilkenny does not address how the higher wages paid by NYICA's members to Local 175, compared to the prevailing wage rate in New York City, does not increase NYICA members' relative bid prices.[33] Mr. Kilkenny also does not explain why it is reasonable to assume that one contractor's obligations to a particular labor union would or should influence the competitive initiatives of that contractor. Moreover, Mr. Kilkenny does not explain why it would not be more reasonable to assume that the contractor would use Local 175 labor to bid on other non-Con Edison work.

What Mr. Kilkenny is really complaining about is the unfortunate internecine dispute that continues to rage between two paving unions (Local 1010 and Local 175) following their split. And as explained later in this submission, the Commission has wisely chosen not to become enmeshed in such disputes, which are within the NLRB's exclusive jurisdiction.

For all of the foregoing reasons, there is no basis for the Commission to accept NYICA's supposition that paving costs will increase under the 2014 Standard Terms for reasons other than inflation, work scope changes, and other market conditions having nothing to do with the 2014 Standard Terms.

2. The Joint Proposal Provides Con Edison The Same Incentives to Mitigate Costs as Current and Past Commission-Approved Rate Plans

Mr. Kilkenny states erroneously (p. 5) that the Company does not presently recover its interference expenses, including interference expenses above the targeted amount, from customers. In fact, a provision identical to Section E-2 of the Joint Proposal is currently in effect pursuant to Commission-approved rate plans in 2014.[34] Accordingly, the Commission has demonstrated by its own actions that a mechanism that permits the Company to recover

[33] See Con Edison's December 10, 2014 Response to Local 175's withdrawn petition in Case No. 14-M-0523, at 7.
[34] Cases 13-E-0030, *et. al.*, Order Approving Electric, Gas and Steam Rate Plans in Accord with Joint Proposal (issued February 21, 2014), Appendix C, p. 53.

interference expenses above the targeted amount does not eliminate the Company's financial incentive to mitigate its interference expenses or otherwise interfere with the Company's overall efforts to reduce its costs of doing business.

Moreover, as further explained below, the Company's contracts for paving services are, for the most part, rendered in connection with Company projects and programs other than interference work. For this work, there is no comparable reconciliation mechanism. And since the Company does not solicit bids for paving work associated with interference work separate from paving work associated with other projects and programs, there can be no reasonable argument that the interference reconciliation mechanism diminishes in any manner the Company's incentive to minimize paving expenses.

Finally, it bears emphasis that the proposed interference reconciliation mechanism exposes the Company to the full financial impact of increased interference expenses above the 30 percent cap (with limited exceptions regarding certain unanticipated major projects). Accordingly, the 80/20 sharing above the target up to the cap under Section E.2, which exposes the Company to a not-insignificant cost absorption of up to approximately $7.4 million, cannot be reasonably viewed as weakening the Company's financial incentive to reduce its interference expenses.

3. The Proposal Is Structured to Protect Customers From Potentially Imprudent Paving Costs

The possibility that Con Edison may seek to recover increased paving costs through the interference reconciliation mechanism provides no basis for the Commission to reject or otherwise modify the interference reconciliation mechanism. As explained below, the Joint Proposal fully protects customer interests in this regard.

First, even assuming *arguendo* that one could demonstrate that future paving costs will in fact be higher because of the 2014 Standard Terms, there is no basis for assuming that the higher expenses would be imprudent expenses. As explained in the Company's March 24, 2014 response to Local 175's petition to the Commission on the very same issue raised in Mr. Kilkenny's testimony (p. 2),

> The Commission has issued regulations that establish rules that jurisdictional utilities must observe in "contracting for and procurement of services, equipment or materials to be used in its utility operations." See, 16 NYCRR Part 215 – Utility Contract and Procurement Procedures. The Commission's regulations recognize that a utility may exclude bidders and may award a construction contract to a contractor other than the lowest bidder. Part 215 permits a utility to establish "criteria used for including and excluding bidders" (see § 215.1 (2)(i)) and "the procedure employed in making awards … where competitive bidding is employed, to a person other than the low bidder" (see § 215.1 (4)).

As explained in the next section, the 2014 Standard Terms are a reasonable exercise of the discretion afforded the Company under the Commission's regulations.

Second, based upon the following calculation, even assuming *arguendo* that the 2014 Standard Terms results in increased paving expenses, a reasonable estimate of the potential amount of increased expenses that may be borne by customers is *de minimis* in the context of the Company's overall paving expenses and interference expenses. This is because paving services required in connection with interference work are provided by New York City contractors (not Company contractors) for all but some portion of the annual recurring interference work, the first of the three categories of interference work explained in direct testimony.[35] For example, in 2015, paving costs for services provided by Company contractors were approximately $5.1 million out of total interference expenses of $126.6 million, or approximately 4.0 percent.

[35] *See* the Direct Testimony of Municipal Infrastructure Support Panel – Electric & Gas Direct for a description of the three categories of interference work performed by the Company.

As noted by Mr. Kilkenny in his testimony, the interference reconciliation mechanism provides for the Company to recover up to 80% of interference expenses incurred above the targeted amount subject to a cap that is 30% above the target. This equates to a capped amount of approximately $29.4 million.[36] Assume for purposes of this example that a proportional amount of increased interference expenses is attributable to increased paving costs (*i.e.*, 4.0% or approximately $1.2 million). In consideration of Mr. Kilkenny's allegations, assume further for purposes of this example that some percentage of these additional paving costs is attributable to higher paving costs as a result of the 2014 Standard Terms, for example, 10 percent. In that instance, the amount of increased expenses recoverable by the Company under the interference reconciliation mechanism that NYICA challenges would be $120,000. And even as to this amount, costs recoverable by the Company from customers through the interference reconciliation mechanism are subject to audit by Staff and therefore customers are protected should there be a determination that any of such costs were not prudently incurred.

Finally, for purposes of transparency, the Company acknowledges that it also recovers paving costs as part of its recovery of capital expenditures. That said, there is no upward reconciliation of capital costs under the electric or gas rate plans, except for limited upward reconciliation under the gas plan in the event of a major unanticipated municipal infrastructure project. Accordingly, if the capital projects and programs are implemented as forecasted except for the Company incurring additional paving costs, the Company will not recover the additional paving costs during the terms of these rate plans. Second, the limited upward reconciliation under the gas rate plan for certain unanticipated major interference projects is not anticipated to

[36] Mr. Kilkenny's testimony refers only to the Company's opportunity to recover up to $22.8 million under the Electric Rate Plan. For purposes of this Reply Statement and the Company's demonstration of the reasonableness of both rate plans, the Company's analysis captures the impact of this reconciliation mechanism as respects both the electric and gas rate plans.

be affected by an increase in Company paving costs because, as discussed above, City contractors provide paving services for major projects. Finally, even assuming arguendo an increase in paving costs resulting from the 2014 Standard Terms that are allocated to capital costs, the amounts recoverable during these rate plans would be very small since capital costs are recovered over the life of the facilities, which are typically in excess of 50 years. For example, the Company spent approximately $18.2 million for paving services related to electric and gas capital work in 2015. If the change in contract terms resulted in 10% higher paving costs, that would be equal to $1.82 million of increased capital spend. That amount of capital spend is equal to approximately $230,000 per year recoverable from customers assuming the Company is otherwise below its net plant targets.

Accordingly, considering the small potential exposure under this essentially worst-case scenario that would only arise if all of NYICA's speculative circumstances should come to pass, there is no basis for modifying the Joint Proposal in a manner that denies the Company recovery of its interference expenses pursuant to the terms established in the Joint Proposal.

4. The Commission Should Reject NYICA's Request That the Commission Require Con Edison to Revert to Its Pre-2014 Standard Terms

Separate and apart from the fact that no change to the provisions governing the Company's recovery of interference expense under the Joint Proposal is justified, the Commission should continue its longstanding recognition of its limited authority over labor relations issues[37] and, consistent therewith, its long-standing practice of declining to interfere in

[37] *See, for example,* Case 01-M-0075, *Joint Petition of Niagara Mohawk Holdings, et al.,* Order Dismissing Petition (issued January 31, 2003) p. 5 in which the Commission said, "Although the Union would characterize the issues raised by its petition as arising under the Joint Proposal . . . the issues in fact relate to labor relations matters over which our authority is limited. Moreover, . . . the specific relief sought . . . would interject us into the collective bargaining process in a manner we have, for good reason, historically avoided." *See also* Case 07-E-0949, Re Orange and Rockland Utilities, Order Establishing a Three-Year Rate Plan, at 79 (issued July 23, 2008); Case 11-

labor relations matters. While Mr. Kilkenny's testimony is framed as a challenge to the reasonableness of the Joint Proposal, the driver of his submission is the continuing internecine battle between two trade unions that had been one—now Locals 1010 and 175.[38] These types of disputes are properly within the exclusive jurisdiction of the NLRB. Indeed, Local 175 has already pursued its challenge to the 2014 Standard Terms at the NLRB *and lost.*[39] Furthermore, Local 175 voluntarily withdrew its prior petition to the Commission on the same issue after receiving Con Edison's opposition papers.[40] NYICA and Local 175 have also attempted to repackage their labor dispute as antitrust claims in the federal court.[41] Con Edison has moved to dismiss that federal suit, and the court expressly stayed discovery while it considers Con Edison's motion to dismiss so that Con Edison would not have to incur the expense of discovery.[42] Under the doctrines of judicial economy and comity, the Commission should not permit NYICA to further litigate its claims in this forum. Nor should the Commission allow NYICA to use this proceeding as an end-run around the court's discovery stay.

M-0237, Petition of Transport Workers Union of America, Local 101 - Utility Division for Investigation of National Grid's Proposed Changed to the One Call Damage Prevention Dispatching Process, Order Denying Petition, at (issued July 16, 2012).

[38] *See Rammers & Pavers Union, Local 1010 v. Falzone, et al.*, No. 05CV2336ERKRML, 2009 WL 1322352 at *2-5 (E.D.N.Y. May 12, 2009) (Explaining that 1010's predecessor, Local 1018, expelled some of its officers because of their ties to organized crime. These officers took over Local 175, and a bitter rivalry developed between Local 1018/Local 1010 and Local 175 over members and paving work.); *Int'l Union of Journeymen Horseshoers v. Am. Fed'n of Labor & Cong. of Indus. Orgs.,* No. 03CV6070 (ARR), 2004 WL 3362704 at *1-12 (E.D.N.Y. Aug. 9, 2004) (providing details on the takeover of the horseshoers union by outside forces and how that newly constituted union— which became the International Union of Journeymen and Allied Trades, the parent organization of Local 175—was not permitted to affiliate itself with the AFL-CIO).

[39] *See* Feb. 24, 2015 NLRB Region 29 Decision, *NLRB Case 29-CE-143863 (dismissal sustained by NLRB Office of the General Counsel), found at https://www.nlrb.gov/case/29-CE-143863.*

[40] *See In the Matter of the Petition of Local 175 of the United Plant and Production Workers Union* (Case No. 14-M-0523).

[41] *See New York Independent Contractors Alliance, Inc., and Local 175 of the United Plant and Production Workers Union v. Consolidated Edison Company of New York, Inc.*, 16-cv-01172 (S.D.N.Y. filed February 16, 2016).

[42] *Order, New York Independent Contractors Alliance, Inc., and Local 175 of the United Plant and Production Workers Union v. Consolidated Edison Company of New York, Inc.*, 16-cv-01172 (S.D.N.Y. April 18, 2016), ECF No. 27.

Moreover, in light of NYICA's public dispute with the Building and Construction Trades Council,[43] and Con Edison's concerns for labor peace, it is unreasonable to suggest that Con Edison should ignore this situation in evaluating its choice of contractors and the potential impact of choosing certain contractors to work on its facilities.[44] The Company, like any utility, must be able to exercise reasonable management judgment in situations like this. In fact, as noted above, the Commission's regulations specifically recognize that a utility should exercise such judgment and, in doing so, may exclude bidders and may award a construction contract to a contractor other than the lowest bidder.[45]

II. <u>Conclusion</u>

For the reasons explained in the initial statement in support, the reply testimony and herein, the Joint Proposal should be adopted without modification.

Dated: October 21, 2016
New York, New York

Respectfully submitted,

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Richard B. Miller
Mary Krayeske

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[43] Mr. Kilkenny essentially concedes in his testimony (pp. 10-11) that NYICA and Local 175's real claim is a labor dispute over membership in the BCTC.

[44] Mr. Kilkenny's states (p. 11) that "NYICA has repeatedly asked Con Ed, both through formal and informal channels, to explain the reason for changing its Standard Terms and Conditions …. We have never received an answer." This claim is both erroneous and disingenuous. For example, Local 175 already challenged the 2014 Standard Terms in front of the NLRB, and filed a petition with the Commission in 2014 seeking the very same relief sought here. Con Edison responded to each of these submissions, which included an explanation of the basis for the Company's actions. While NYICA may disagree with the Company's rationale, NYICA cannot reasonably maintain they are uninformed as to the reasons for the Company's action.

[45] NYICA's suggestion (pp. 12-13) that allowing BCTC members to bid on Con Edison projects creates a risk of fraud is baseless. BCTC Locals have over 100,000 members practicing construction trades in New York City for numerous construction companies. (*See* http://www.nycbuildingtrades.org/.) The two vendor employees that defrauded Con Edison were imprisoned for their crimes, making this a moot concern.

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