STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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-0060**
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 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 Electric Service	**Case 15-E-0050**

CITY OF NEW YORK COMMENTS IN OPPOSITION TO PROPOSED OUTCOME BASED EAMS

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COUCH WHITE, LLP
540 BROADWAY
ALBANY, NEW YORK 12201-2222
(518) 426-4600

PRELIMINARY STATEMENT

In furtherance of the Public Service Commission's ("Commission") Reforming the Energy Vision ("REV") Track Two Order ("Track Two Order")[1], the Joint Proposal that was filed with the Commission on September 20, 2016 in the above-referenced Consolidated Edison Company of New York, Inc. ("Con Edison") electric and gas rate proceedings includes five energy efficiency and system peak reduction earnings adjustments mechanisms ("EAMs"). Two of the five EAMs are program-achievement based, while the other three are outcome-based: (i) DER Utilization; (ii) Customer Load Factor; and (iii) Energy Intensity. The Joint Proposal provides that the total outcome-based EAMs available to be awarded to shareholders is as follows: $5.43 million in Rate Year ("RY") 1, $16.67 million in RY2 and $30.59 million in RY3.

Pursuant to the Joint Proposal, the details of the three outcome-based EAMs were to be developed in a collaborative to be commenced in September 2016 with the objective of completing work on these EAMs for RY1 by November 1, 2016. The City of New York ("City") was an active participant in the collaborative meetings. To be clear, the City is a strong supporter of energy efficiency measures. At the same time, the City is an advocate for all New York City customers and strives to mitigate the effects of bill impacts where possible. Therefore, the City took great interest during the collaborative to ensure that the RY1 outcome-based incentives soundly balanced both the interests of customers and Con Edison shareholders – as customers will experience increases in their bills above the levels contemplated in the Joint Proposal as a result of paying shareholders these incentives.

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[1] Case 14-M-0101, Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision, Order Adopting a Ratemaking and Utility Revenue Model Policy Framework (issued May 19, 2016) ("Track 2 Order").

The timeframe for developing the outcome-based EAMs was very compressed, and although the parties spent significant time and effort on the tasks at hand, it became clear that more work is needed, the details of the metrics have not been properly developed or analyzed, and there exists a strong likelihood that customers will end up paying Con Edison's shareholders double incentives for the reductions in energy usage (MWh) and energy demand (MW). Moreover, whereas the "outcome-based" metrics are intended to, as their name implies, measure actual outcomes, certain of the proposed metric largely rely on assumptions that are not specific to New York City or Westchester County and/or are not realistic. Exacerbating this problem, there is no provision to confirm the validity of the assumptions or adjust the incentives based on variations between the assumptions and actual performance. Put another way, the proposed would effectively mean that customers will pay shareholder incentives based on assumed outcomes and performance without regard to desirable results are actually achieved.

For these reasons, the City could not support the metrics proposed by Con Edison, and it respectfully urges the Commission to adhere to its fundamental purpose of protecting captive customers by rejecting the proposal as not being in the public interest and because it will result in unjust and unreasonable rates in contravention of Public Service Law §65(1). The Commission should either remand this matter for further development of more equitable and sound metrics or modify certain aspects of the proposed metrics in accordance with these recommendations.

ARGUMENT

Proposals for the three outcome-based metrics have been advanced by Con Edison, New York State Department of Public Service Staff, Environmental Defense Fund, Association for Energy Affordability, Inc., Acadia Center, Pace Energy and Climate Center, and Natural Resources Defense Council ("Proponents") in a document entitled *Comments Supporting Resolution of Outcome-based EAM Collaborative Issues*. In order to better balance the interests of customers with those of Con Edison shareholders, the City respectfully submits that (i) as proposed, the Energy Intensity EAM presents the potential for providing double incentives to Con Edison's shareholders for the same energy reductions as the programmatic EAMs; (ii) the Energy Intensity metric is flawed because it does not include public employment figures; (iii) the DER Utilization metric is flawed because it awards shareholders an incentive based on assumptions and not actual outcomes; (iv) demand response should not be included as a resource in the DER Utilization metric; and (v) the DER Utilization target should be increased. Importantly, the Proponents generally conceded during the collaborative discussions that the proposed metrics are likely to result in double incentives. Also, the DER Utilization metric will allow Con Edison to earn incentives for "business as usual" conduct.

The proposed metrics do not represent a fair or reasonable balance between customer and shareholder incentives and instead are heavily biased towards shareholders. The fundamental role of the Commission is to protect consumers and it is statutorily obligated to ensure that the rates and charged imposed by regulated utilities are just and reasonable. Because the metrics harm customers and are not just or reasonable, the Commission should not approve or accept them as proposed.

The City is cognizant of the Commission's decisions in the REV proceedings and its interest in moving to outcome-based shareholder incentives. However, the core purpose of the REV construct is to benefit consumers and lower energy costs. Therefore, it would inconsistent with the REV vision to award incentives to Con Edison's shareholders that provide no incremental benefits to customers and unnecessarily increase their energy costs.

POINT I

THE ENERGY INTENSITY EAM ALLOWS FOR DOUBLE INCENTIVES TO SHAREHOLDERS FOR THE SAME ENERGY REDUCTIONS AS THE ENERGY EFFICIENCY PROGRAMMATIC EAMS INCLUDED IN THE JOINT PROPOSAL

The purpose of the energy intensity EAM is to "incentivize efforts that will result in a decrease in energy intensity beyond recent trajectories."[2] The City has concerns that the Energy Intensity EAM is duplicative of the energy efficiency programmatic efforts that already award Con Edison shareholders EAMs for energy efficiency targets. Specifically, pursuant to the Joint Proposal, Con Edison will implement the Energy Efficiency Program that will have budgets and savings targets above and beyond those currently offered through its Energy Efficiency Transition Implementation Plan ("ETIP"). The Company will develop these programs to increase energy efficiency achievements through a number of measures (*e.g.*, bundling offerings through DER providers, time-variant pricing). The Company will then be awarded an EAM based on how effective these energy efficiency efforts are.

The Energy Efficiency EAM and the Energy Intensity EAM both measure energy reductions by customers; the difference is only the manner in which the measurements occur..

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2 Proponents' EAM Proposal at 10.

Thus, the Company would be rewarded twice for the same efficiency actions that it performs. During the collaborative, the City raised this concern and requested that the known Con Edison energy efficiency efforts performed and rewarded under the Energy Efficiency Program EAM be adjusted out of the Energy Intensity metric. The Proponents disagreed. However, they acknowledged the potential for overlap but asserted that an outcome oriented metric is not meant to distinguish between direct programmatic efforts and other efforts in the territory.

The City has a fundamental disagreement with the approach taken by the Proponents. The EAMs set forth in the Joint proposal are significant - $52.7 million over the three-year rate plan for outcome-based metrics and $34.7 million for the MWh savings from efficiency over three years. For RY1, Con Edison shareholders will potentially earn $12 million in incentives from customers from the same efficiency actions it has taken. The City submits that this is not just and reasonable and is not in the best interests of customers. Moreover, the Proponents' assertion that an outcome-oriented metric is not meant to distinguish between direct programmatic efforts and other efforts is irrelevant. Regardless of the broader purpose of outcome-based metrics, there is no legitimate justification to force customers to pay Con Edison's shareholders double incentives for the same achievements. Also, the double incentives should be considered in context of the up to 10% bill increases that customers will experience over the next three years, as well as the many surcharges and reconciliations included in the Joint Proposal that are likely to further increase customers' bills.

The City respectfully recommends that it either reject this metric and remand the matter to the collaborative to develop an Energy Intensity metric that is not duplicative of the programmatic metrics, or it require that efficiency efforts undertaken pursuant to the Energy Efficiency Program by adjusted out of the Energy Intensity metric.

POINT II

THE ENERGY INTENSITY METRIC IS FLAWED BECAUSE IT DOES NOT CONSIDER PUBLIC EMPLOYMENT FIGURES

The Energy Intensity EAM has two metrics: (i) a residential metric that measures energy use per customer for Service Classification 1; and (ii) a commercial metric that measures energy use per employee for the combined Service Classification 2 and Service Classification 9. The Proponents propose that the commercial Energy Intensity metric use only private employment when measuring employment for the six counties in Con Edison's service territory. However, the calculation for private employment will be measured against all commercial sales. The City has concerns with limiting employment to private employers because there are instances where public employers rent space from private building owners, and because there are instances where private employees rent space in public buildings (*e.g.*, Battery Park City). The potential for skewed results exists, and the impact of this concern has not been studied. Although Con Edison has alleged that it does not believe the impact to be significant, it provided no basis for that assertion. The City is concerned that this flaw has the potential to award higher shareholder incentives than are appropriate.

Because it is not clear what the magnitude of such crossover effect may be, the City respectfully submits that the metric be modified to include total employment instead of private employment. Alternatively, the Commission could remand this matter for evaluation of the potential impacts and possible ways of ameliorating any impacts that are found. In any event, the Commission should place customer interests above shareholder interests and not approve the metric if it has the potential to award excessive or unwarranted incentives.

POINT III

THE DER UTILIZATION METRIC IS FLAWED BECAUSE IT AWARDS SHAREHOLDERS AN EAM BASED ON ASSUMPTIONS AND NOT ACTUAL OUTCOMES

The Proponents propose to use statewide or other generic (*i.e.*, not specific to Con Edison's service territory) DER resource assumptions to calculate the DER Utilization metric. Moreover, there will not be any actual resource evaluation, measurement, or verification ("EM&V") activities until (potentially) RY2. Based on the collaborative discussions, it was the City's understanding that DER performance would be validated with actual performance from a statistically significant sampling of each DER technology.

The Proponents propose to use technology assumptions to measure incentive achievement that are not tailored to Con Edison's service territory. Instead, Con Edison would base its measurements using state-wide or generic industry data. The Proponents provide no evidence that such data is consistent with actual experience in New York City. Moreover, this approach results in customers paying shareholders an incentive based on assumptions and not actual outcomes achieved – which is the cornerstone of this very "outcome-based" metric. For example, under the proposed metric, Con Edison would calculate the amount of MWh of solar using the following formula: [Megawatts Solar PV] * [8760 hours per year] * [13.4% annual capacity factor]. The capacity factor being assumed is a statewide number included in the NYSERDA NY-Sun Initiative Program Manual. A cursory review of the NY-Sun Program illustrates that each solar installation requires monitoring equipment and reporting for the systems as a prerequisite. Specifically, the NY-Sun program requires that "[e]ach solar electric system must have the ability to record system production in kWh."[3] Thus, it is not apparent why actual solar MWh contributions cannot be readily verified.

Another example of a significant flaw in the proposed approach pertains to the calculation associated with batteries. That calculation assumes that every battery would be fully discharged every day (*i.e.*, Daily battery inverter discharge rating (MWh) * 365 days per year). However, the City is not aware of any routine practice to use batteries in the manner contemplated for measuring the shareholder incentive. Further, the Proponents offer no evidence demonstrating that the formula and assumed use of batteries is reasonable and consistent with actual practice. Therefore, using a 365-day factor does not appear appropriate.

The Commission has long required EM&V as part of energy efficiency programs to ensure that ratepayer dollars are being prudently spent and achievements are in line with expectations and commitments. Here, in the context of shareholder incentives, it is especially important to conduct EM&V since Con Edison intends to base its incentive calculations on assumptions as to the outputs of different technologies. If EM&V reveals that actual performance varies from the assumptions used, the potential exists here, too, that shareholders will be overcompensated.

Given that the underlying purpose of this outcome-based metric is to drive specific outcomes in Con Edison's service territory, it is not reasonable for this metric to be based on assumptions with no verification of actual performance of DERs. Therefore, the City respectfully requests that the Commission modify the structure of the DER Utilization metric require similar EM&V as the Commission requires of energy efficiency programs administered by NYSERDA

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3 See NY-Sun Initiative Residential/Small Commercial <200kW Solar Electric Systems Program Manual, p. 27-28 available at: https://www.nyserda.ny.gov/-/media/NYSun/files/Residental-SC-Program-Manual.pdf.

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and the utilities. If the Proponents argue in reply to these comments that such EM&V activities are not appropriate, such an argument would demonstrate that more work is needed and this matter should be remanded to the collaborative.

POINT IV

THE DER UTILIZATION TARGET SHOULD BE INCREASED

In addition to the lack of EM&V for the assumptions upon which the DER Utilization incentives would be based, the DER Utilization metric would reward Con Edison for business-as usual efforts. Historically, the Commission has allowed shareholder incentives only for extraordinary efforts, or achievement of stretch objectives. The City respectfully submits that providing Con Edison's shareholders with incentives for activities they are already performing and would continue to perform regardless of the incentives serves no legitimate purpose and is not in the public interest.

The target for this metric was set by using the Company's forecast for DER installations included in its July 28, 2016 Distribution System Implementation Plan ("DSIP"). In other words, before this metric was developed, Con Edison already had plans in place to take the actions necessary to allow the target level of DER projects to interconnect to its electric system. Thus, Con Edison would not need to undertake any additional efforts (additional meaning efforts that previously were not contemplated by the Company) to achieve the incentive under this metric.

It is also important to recognize that 55,000 MWh, or almost a quarter of the target, are associated with the Brooklyn-Queens Demand Management ("BQDM") project. The Commission has already provided multiple shareholder incentives for this project, and there is no legitimate reason to provide shareholders even more incentives for this existing project. Further, when comparing the Company's proposed incentive target to DER projects and MWh that are pending in the Company's interconnection queue, it appears that Con Edison does not need to solicit or encourage any new projects in order to achieve the target.

Based on the information provided by Con Edison to the collaborative, the projects already in Con Edison's interconnection queue total 564,720 MWh. The target level for the DER Utilization metric is 244,500 MWh. In other words, there could be an attrition rate of more than 50%, and Con Edison would still receive the full incentive. Such a metric design is highly unlikely to induce superior performance, and it cannot be considered a stretch goal.

Similar to the target levels that were included in the Joint Proposal for the Energy Efficiency Program which used the forecasts included in the Company's ETIP filing to set the minimum metric target, the City respectfully submits that the Company's DSIP forecast for DER MWhs for 2017 should be used to set the minimum target for the outcome-based DER Utilization metric, and the Company's ability to receive more than a nominal incentive should be based on achievements above the DSIP level.

POINT V

THE DER UTILIZATION METRIC SHOULD NOT INCLUDE DEMAND RESPONSE

The Proponents propose to include demand response as a DER that will be counted towards achieving the metric targets in awarding shareholders an incentive. The City submits that it is not appropriate to include demand response in the metric. While increasing participation in demand response is important to system reliability under certain circumstances, incentivizing the Company to increase such resources may also serve as a barrier to having the Company correct system deficiencies, where and when needed.

In addition to this general concern, the City strongly opposes the proposal to include participation in New York Independent System Operator, Inc. ("NYISO") demand response programs in calculating the DER Utilization metric. The NYISO's demand response programs are wholesale programs governed by the Federal Energy Regulatory Commission.[4] Con Edison is not responsible for the registration of NYISO demand response program participants, or for making the decision to call a NYISO demand response event. Indeed, Con Edison has no role in administering the NYISO's demand response programs.

Moreover, the cost of NYISO programs are recovered from wholesale customers via the NYISO's tariffs. While the City recognizes the Commission's interest in supporting demand response, it is inappropriate to require retail ratepayers to pay Con Edison shareholders for wholesale market activities that are outside of the Commission's jurisdiction.

Finally, both Con Edison and the NYISO have administered demand response programs for many years. Participation levels in those programs are almost entirely dependent on two factors – the amount paid to program participants and the number of activations called by Con Edison or the NYISO. Simply providing Con Edison's shareholders with incentives for demand response participation will have no effect on either factor and is not likely to change enrollment levels. In fact, the Proponents offer no evidence to demonstrate that there will be any value achieved by including demand response in this metric.

4 *See* FERC v. Elec. Power Supply Ass'n, 136 S. Ct. 760 (2016).

For all of the foregoing reasons, the Commission should exclude demand response from the DER Utilization metric.

CONCLUSION

For all of the foregoing reasons, the City respectfully requests that the Commission either remand this matter for further development or modify certain aspects of the proposed outcome-based metrics as discussed herein.

Respectfully submitted,

Amanda De Vito Trinsey, Esq.
Kevin M. Lang, Esq.
Justin J. Fung, Esq.
COUCH WHITE, LLP
Counsel for the City of New York
540 Broadway
P.O. Box 22222
Albany, New York 12201-2222
Tel.: 518-426-4600
Fax: 518-426-0376
E-mail: adevito@couchwhite.com
klang@couchwhite.com
jfung@couchwhite.com

Dated: November 7, 2016
Albany, New York

Susanne DesRoches
Deputy Director, Infrastructure Policy
NYC Mayor's Office of
Recovery and Resiliency
253 Broadway, 10th Floor
New York, New York 1007
Tel.: 212-788-7554
E-mail: sdesroches@cityhall.nyc.gov

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New York, New York