

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073

2 STATE OF NEW YORK

3 PUBLIC SERVICE COMMISSION

4 CASE 25-E-0072 - Proceeding on Motion of the
5 Commission as to the Rates, Charges, Rules, and
6 Regulations of Consolidated Edison Company of New
7 York, Inc. for Electric Service.

8

9 CASE 25-G-0073 - Proceeding on Motion of the
10 Commission as to the Rates, Charges, Rules, and
11 Regulations of Consolidated Edison Company of New
12 York, Inc. for Gas Service.

13 EVIDENTIARY HEARING

14 DATE: DECEMBER 3, 2025 at 10 a.m.

15 LOCATION: 90 Church Street

16 4th Floor Boardroom

17 New York, New York 10007

18 BEFORE: ALJ JAMES COSTELLO

19 ALJ TARA KERSEY

20 ALJ NICHOLAS PLANTY

21

22

23

24 Reported by Ildiko Nyari

25

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073

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24 FLORIS KEVERLING BUISMAN

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2 I N D E X O F P R O C E E D I N G S

3 CON EDISON WITNESSES:

4	KELLY MCLAUGHLIN, Sworn;	141
5	YAN FLISHENBAUM, Sworn;	141
6	SHAKIRA WILSON, Sworn;	141
7	JAMES BRENNAN, Sworn;	141
8	CHRISTINE CUMMINGS, Sworn;	141
9	REBECCA ROBERTS, Sworn;	141
10	DENNIS BRADY, Sworn;	142
11	DPS STAFF WITNESS:	
12	JERRY SHANG; Sworn	142
13	DAVID WARNOCK; Sworn	142
14	ROBERT CULLY; Sworn	142
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23	CRAIG CARROLL; Sworn	142
24	JACK HAMANT; Sworn	142
25	CAITLYN EDMONDSON; Sworn	142

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6	1237	WMC-4, questions 48-109 and WMC-3 133 Questions 43 and 44	

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2 (The hearing commenced at 10:00 a.m.)

3 A.L.J. KERSEY: Good morning. I call
4 case numbers 25-E-0072 and 25-G-0073, proceedings on
5 the motion of the Commission as to the rates,
6 charges, rules, and regulations of Consolidated
7 Edison Company of New York, Inc. for gas and electric
8 service.

9 My name is Tara Kersey. I am an
10 administrative law judge with the Department of
11 Public Service. With me today are Administrative Law
12 Judges James Costello and Nicholas Planty. Together,
13 we are presiding over these proceedings. We are here
14 this morning for an evidentiary hearing that was
15 noticed by the secretary on November 10th, 2025. At
16 today's hearing, we will receive into evidence the
17 Joint Proposal that was filed in these proceedings on
18 November 5th, 2025, as well as other exhibits and to
19 admit certain testimony and allow cross-examination
20 of certain witnesses.

21 We will start by taking appearances.
22 And to streamline the process, we will call the
23 parties and ask that the party representative
24 identify themselves for the record.

25 Ildiko, our court reporter, to the

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2 extent you require the spelling of any names, please
3 feel free to interrupt so that we can ensure an
4 accurate record. We have provided some of those
5 spellings for you.

6 Okay. And as I said, if any of the
7 attorneys would like to use this podium who may not
8 be seated at a table with a microphone, please feel
9 free. So we will start with the Company,
10 Consolidated Edison Company of New York, Inc.

11 MR. KONECNI: Good morning, Your
12 Honor. Joshua Konecni. And with me today are, Grace
13 Su, Enver Acevedo, Edward Sherwin, and Walter
14 Hedeman.

15 A.L.J. KERSEY: Okay. Thank you. New
16 York State Department of Public Service.

17 MR. KRAMER: Thank you, Your Honor.
18 For Department of Public Service staff, Steven
19 Kramer, as well as Charles Coryer and Michelle
20 Zaludek. Thank you.

21 A.L.J. KERSEY: Thank you. City of
22 New York.

23 MR. LANG: Good morning, Your Honors.
24 For the City of New York, Kevin Lang from the law
25 firm Couch White, along with my colleague Amanda

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073
2 Trinsey.

3 A.L.J. KERSEY: Thank you. Alliance
4 for a Green Economy. Okay.

5 Consumer Power Advocates.

6 MS. LOFFREDO: Madalyn Loffredo.

7 UNIDENTIFIED SPEAKER: Speak up.

8 A.L.J. KERSEY: Can you speak up, Ms.
9 Loffredo?

10 MS. LOFFREDO: Yes. Madalyn Loffredo.

11 A.L.J. KERSEY: Okay. Electrify
12 America, LLC. Okay.

13 Environmental Defense Fund.

14 MS. MURPHY: Good morning. Erin
15 Murphy on behalf of Environmental Defense Fund.

16 A.L.J. KERSEY: Good morning.
17 National Railroad Passenger Corporation or Amtrak.
18 Okay.

19 New York Energy Consumers Council,
20 Inc.

21 MR. DIAMANTOPOULOS: George -- George
22 Diamantopoulos from the law firm of Seham, Seham,
23 Meltz & Petersen for the New York Energy Consumers
24 Council.

25 A.L.J. KERSEY: Okay. I just want to

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2 ask that everybody just speak up and speak clearly.
3 We have certain mics with respect to the audio with
4 respect to our court reporting. So please just speak
5 loud.

6 Thank you, Mr. Diamantopoulos.

7 The New York Geothermal Energy
8 Organization. Okay.

9 The New York Power Authority.

10 MR. LEVENSON: Your Honor, Gary
11 Levenson for the New York Power Authority. I'm also
12 entering an appearance for colleague, Matthew
13 Barnett.

14 A.L.J. KERSEY: Okay. Thank you.

15 Thank you, Mr. Levenson.

16 Retail Energy Supply Association.

17 Okay.

18 Metropolitan Transportation Authority.

19 Public Utility Law Project of New
20 York, Inc.

21 MS. NOVAK: Good morning, Your Honor.

22 Kelly Novak for Public Utility Law Project and with
23 me is Patrick O'Brien and Sonja Rezepski.

24 A.L.J. KERSEY: Thank you, Ms. Novak.

25 Utility Intervention Unit, Division of

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073
2 Consumer Protection, Department of State.

3 MR. MUSICH: Good morning, Your Honor.
4 Thomas Musich on behalf of the Department of State
5 Utility Intervention Unit.

6 A.L.J. KERSEY: Thank you, Mr. Musich.
7 Westchester Municipal Consortium.

8 MR. DICHTER: Good morning, Your
9 Honor. Joel Dichter of Dichter Law, LLC on behalf of
10 the Westchester Municipal Consortium. Thank you.

11 A.L.J. KERSEY: Good morning, Mr.
12 Dichter.

13 Digital Energy Corporation. Okay.
14 NineDot Energy.

15 The Office of State Senator Robert
16 Jackson, representing the 31st Senate District.

17 MR. QUINSAC: Good morning, Your
18 Honor. Dario Quinsac on behalf of the State senator.

19 A.L.J. KERSEY: Can I -- can I
20 actually have you come up and speak into the mic?
21 Thank you so much. You're just so far away.

22 MR. QUINSAC: Dario Quinsac on behalf
23 of State Senator Robert Jackson. Thank you.

24 A.L.J. KERSEY: Thank you. Thank you,
25 Mr. Quinsac.

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2 Brooklyn Navy Yard Cogeneration

3 Partners, LP. Okay.

4 Natural Resources Defense Council.

5 New York Battery and Energy Storage Technology

6 Consortium.

7 AARP New York.

8 New Yorkers for Clean Power. Sane

9 Energy Project.

10 County of Westchester. UtiliSave,

11 LLC.

12 MR. STEIFMAN: Thank you, Your Honor.

13 Michael Steifman from UtiliSave. And with me is

14 James Knowlton from Steifman, LLP.

15 MR. KNOWLTON: Stephen.

16 MR. STEIFMAN: What did I say?

17 MR. KNOWLTON: James.

18 MR. STEIFMAN: I said James?

19 MR. KNOWLTON: Yes.

20 A.L.J. KERSEY: Can you repeat his

21 name again?

22 MR. STEIFMAN: Stephen Knowlton. My

23 apologies.

24 A.L.J. KERSEY: Thank you so much.

25 MR. STEIFMAN: I've only know him for

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2 many years.

3 A.L.J. KERSEY: The Office of Assembly
4 Member Chris Burdick.

5 The Office of Assembly Member Dana
6 Levenberg.

7 The Office of Assembly Member MaryJane
8 Shimsky.

9 Utility Workers Union of America, AFL-
10 CIO, Local 1-2.

11 Roger Caiazza?

12 MR. MENTON: Your Honor, I'm Francis
13 Menton, Independent Intervenor. And Mr. Ellenbogen
14 and I are taking care of Mr. Caiazza's interest
15 today. He couldn't make it from Syracuse.

16 A.L.J. KERSEY: Thank you so much.
17 All right. Richard Ellenbogen.

18 MR. ELLENBOGEN: Good morning, Your
19 Honor.

20 A.L.J. KERSEY: Good morning. Mr.
21 Menton who just appeared.

22 And Passive House Center, Inc.

23 MR. KEVERLING BUISMAN: Floris
24 Keverling Buisman for Passive House Center, Inc.

25 A.L.J. KERSEY: Good morning. I'm

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073
2 going to just ask you to -- can you stand up and just
3 say that one more time for the record?

4 MR. KEVERLING BUISMAN: Floris
5 Keverling Buisman, Passive House Center, Inc.

6 A.L.J. KERSEY: Thank you, Mr.
7 Buisman.

8 MR. KEVERLING BUISMAN: Keverling
9 Buisman.

10 A.L.J. KERSEY: Thank you. Thank you.
11 And Fred Farella.

12 All right. Is there anyone else who
13 is making an appearance today who I have not called?
14 Okay. Seeing none.

15 We will now go through the exhibit
16 list. We previously requested the parties to
17 identify any corrections to the exhibit list. At
18 this point, does anyone have any further corrections?

19 MR. MENTON: Your Honor, I -- I don't
20 have that list in front of me. I -- the -- the
21 question I have is, does -- does it include the
22 thirty-three exhibits that have been listed by the
23 Independent Intervenors?

24 A.L.J. KERSEY: It does not currently,
25 Mr. Menton, and we will -- we will address those a

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2 bit later --

3 MR. MENTON: When --

4 A.L.J. KERSEY: -- in the proceeding.

5 MR. MENTON: -- when you're ready, we
6 are ready, too.

7 A.L.J. KERSEY: Certainly. Thank you.
8 And I will just ask everybody when they speak, just
9 for the record, please identify yourself.

10 A.L.J. COSTELLO: I just -- I just
11 want to clarify. You were going to -- you cannot get
12 them admitted unless you lay a foundation for them,
13 which you'll have to do on cross-examination of the
14 witness panels. So they're not automatically
15 admitted, which is what we had indicated earlier.

16 MR. MENTON: I -- I know you've
17 admitted -- you've said that, Your Honor. By a
18 foundation, I understand -- my understanding would be
19 you're talking about authenticity, so we have an --
20 we have to start with an affirmation --

21 A.L.J. COSTELLO: You have to --

22 MR. MENTON: -- from Mr. Ellenbogen.

23 A.L.J. COSTELLO: If you're going to
24 cross-examine witnesses -- there's two things, all
25 right?

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2 MR. MENTON: Right.

3 A.L.J. COSTELLO: If you're going
4 to -- if you're going to try to get it in on cross-
5 examination, you can do that. If you want to get it
6 in independently, we'll deal with that after -- after
7 the cross-examination. We'll see what you can get in
8 that way, okay?

9 MR. MENTON: Actually, not okay. I
10 would like to admit the exhibits --

11 A.L.J. COSTELLO: Okay.

12 MR. MENTON: -- before the cross-
13 examination if we can.

14 A.L.J. COSTELLO: We'll -- we'll
15 address it then before cross-examination.

16 MR. MENTON: Great. Thank you, Your
17 Honor.

18 A.L.J. KERSEY: I did notice some
19 entries to the room. Before we get started, is there
20 anyone else who is making an appearance today who I
21 have not called?

22 MS. OSTROVSKAYA: Nora Ostrovskaya,
23 Metropolitan Transportation Authority.

24 A.L.J. KERSEY: Can you -- can you
25 just say that one more time very loudly and clearly

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073
2 for the court reporter?

3 MS. OSTROVSKAYA: With pleasure. Nora
4 Ostrovskaya, O-S-T-R-O-V-S-K-A-Y-A, Metropolitan
5 Transportation Authority. Thank you.

6 MS. MURPHY: And this is --

7 A.L.J. KERSEY: That was --

8 MS. MURPHY: -- Erin Murphy for EDF.
9 We had another clarification on the exhibit list.

10 A.L.J. KERSEY: Let me just -- just
11 one second on that. I just want to confirm that's
12 with Metropolitan Transportation Authority, correct?

13 MS. OSTROVSKAYA: Yes, ma'am.

14 A.L.J. KERSEY: For the record. Thank
15 you so much, Ms. Ostrovskaya.

16 The exhibit list. I'm sorry, Ms.
17 Murphy.

18 MS. MURPHY: Thanks. Erin Murphy for
19 Environmental Defense Fund.

20 A.L.J. KERSEY: Thank you.

21 MS. MURPHY: I -- I believe there's --
22 I don't think there's any, like, dispute on this
23 topic but we did just want to make sure there was
24 clarity. The affidavit that was filed by the Company
25 along with a number of other files on November 24th,

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2 which is the greenhouse gas emissions accounting that
3 was submitted by the Company, consistent with the JP.
4 I don't believe those files have been assigned
5 exhibit numbers in the exhibit list. I'm happy to
6 defer to the Company on the approach there. But we
7 just did want to make sure that those are for the
8 record. Thanks.

9 A.L.J. KERSEY: Yes, I don't believe
10 that is on the list, Ms. Murphy. So again, can you
11 go through what -- what you're looking to have
12 admitted to the exhibit list?

13 MS. MURPHY: So Erin Murphy for EDF.
14 It was our understanding that those -- that affidavit
15 and the attachments would be part of the record of
16 decision before the Commission, and I believe that
17 means that they should be assigned exhibit numbers as
18 well to ensure they're all admitted to the record.

19 A.L.J. KERSEY: Correct. But what are
20 they exactly? Can go through them again? And --

21 A.L.J. COSTELLO: When were they
22 submitted?

23 MS. MURPHY: On November 24th. I
24 might defer to the -- I'm happy to go through them or
25 if -- if the Company would like to since it's the one

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073
2 that filed them.

3 UNIDENTIFIED SPEAKER: You're --

4 A.L.J. COSTELLO: Well, if it's the
5 Company, we'll get to the companies -- we'll get to
6 the Company's -- with the affidavit and the exhibits,
7 we'll get to the companies. That's not EDF's
8 submission. That's the Company's submission. Is
9 that correct?

10 MS. MURPHY: That's correct. We just
11 want to makes sure that they --

12 A.L.J. COSTELLO: Okay. Yes. We
13 haven't -- we -- we'll deal with that later on once
14 we go through what's already on the list.

15 MS. MURPHY: Okay. Thank you.

16 A.L.J. KERSEY: Give us another ten
17 minutes and let us know if that's still an issue for
18 you.

19 MS. MURPHY: Okay.

20 A.L.J. KERSEY: Okay. Thank you.

21 Okay. We have the exhibit list with
22 exhibits that are identified from Number 1 to 1,216.
23 The first 1,212 exhibits consist of the pre-filed
24 testimony and pre-filed exhibits that would have
25 underlined the litigated hearing had it not gone the

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073
2 proposed settlement route. We are marking the Joint
3 Proposal and appendices filed on November 5th, 2025
4 as Exhibit 1213.

5 The summary of the Joint Proposal
6 filed November 6th, 2025, as Exhibit 1214. Corrected
7 appendix 18, gas safety measures -- I'm sorry, gas
8 safety performance measures, filed on November 21st,
9 2025, as Exhibit 1215. And the revised Joint
10 Proposal with appendices, including revised appendix
11 18, as Exhibit 1216.

12 A.L.J. COSTELLO: And just for
13 clarity -- just for clarity, I submitted yesterday,
14 or I provided everybody yesterday, with an updated
15 exhibit list that includes those documents.

16 A.L.J. KERSEY: The revised Joint
17 Proposal with the corrected version of Appendix 18
18 has been uploaded to DMM, as Judge Costello just
19 mentioned, on December -- I'm sorry. It's been
20 uploaded to DMM on December 2nd, 2025. It replaces
21 the original version, has been marked as Exhibit
22 1216, as I just mentioned, and is the version that
23 will be attached to the Commission's order in this
24 case.

25 We note DPS staff submission of

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073
2 certain corrected materials as follows. I'm going to
3 go through each one. Staff's accounting panel
4 corrected direct testimony filed on December 2nd,
5 2025, on DMM, which I am marking as Exhibit 1217.

6 Staff's accounting panel corrected
7 exhibits, part 1 of 4, filed on December 2nd, 2025,
8 which I am marking as Exhibit 1218.

9 Staff's corrected sales forecasting
10 panel direct testimony filed on December 2nd, 2025,
11 which I am marking as Exhibit 1219. All these for
12 identification. Staff corrected sales forecasting
13 panel, redacted exhibits, filed on December 2nd,
14 2025, which I am marking as Exhibit 1220 for
15 identification.

16 And staff-corrected sales forecasting
17 panel exhibits confidential, which I believe, Mr.
18 Kramer, has been provided to all parties.

19 MR. KRAMER: Yes, Your Honor.

20 A.L.J. KERSEY: And it's been provided
21 to the secretary, just not yet uploaded to DMM, which
22 I am marking as exhibit 1221 for identification.

23 We also note the Company's submission
24 of the following. There is a one-page affidavit from
25 Greg Slintac (phonetic) sworn to on November 21st,

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073
2 2025 and filed on November 26, 2025, which I am
3 marking as Exhibit 1222 for identification.

4 2025 rate case, N gas projects GHG
5 impact final updated.xlsx, which contains a number of
6 Excel spreadsheets and which I am marking as Exhibit
7 1223 for identification.

8 2025 rate case shared services
9 building exhibit.xlsx, which also contains a number
10 of Excel spreadsheets and which I am marking as
11 Exhibit 1224.

12 Appendix 23.xlsx. Hold for just one
13 moment. Let me just repeat that. Appendix 23.xlsx.
14 I want to -- yes. I want to clarify that with the
15 Company. So is the projected steam electric CO2
16 emissions -- they're -- they're two separate, I
17 believe. I believe Appendix 23 is with respect to an
18 update to the JP. Is that correct?

19 MR. ACEVEDO: That is correct, Your
20 Honor.

21 A.L.J. KERSEY: Okay. So Appendix 23
22 updated, which I'm going to mark as Exhibit 1225, and
23 then projected steam electric CO2 emissions.xlsx,
24 which I'm marking as Exhibit 1226.

25 Subpart DD reporting form for RY 2019

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073
2 through RY 2024, which I am marking for
3 identification as Exhibit 1227. And Subpart W
4 reporting form RY2024_04202025.xlsx, which I am
5 marking as Exhibit 1228 for identification.

6 I just want to note, please correct me
7 if I'm wrong, that exhibits -- the exhibits that have
8 been marked for identification, 1223 through 1228,
9 they're all Excel files which contain Excel -- a
10 number of Excel spreadsheets in each. Is that
11 correct?

12 MR. ACEVEDO: That's correct, Your
13 Honor.

14 A.L.J. KERSEY: Thank you so very
15 much. Okay.

16 We are -- Ms. Murphy, does that
17 cover -- was that the issue that you were looking at
18 covered?

19 MS. MURPHY: Yes, it did.

20 A.L.J. KERSEY: Thank you very much.
21 Okay. We are going to --

22 MR. LANG: Your Honor, this is Kevin
23 Lang from the City. Just a clarification question.

24 A.L.J. KERSEY: Yes, sir.

25 MR. LANG: When you look -- when you

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073
2 mentioned corrected Exhibit 18, you said -- which I
3 think is 126 -- 1215 -- you mentioned that when this
4 goes to the Commission, it's going to include that
5 corrected exhibit. So I think Appendix 23 should be
6 treated the same way. I'm just asking, is it your
7 plan to treat it the same way as you're doing with
8 18? Is that --

9 A.L.J. KERSEY: We can do that, Mr.
10 Lang.

11 MR. LANG: Okay. Thank you.

12 A.L.J. KERSEY: Thank you. All right.
13 So -- so we will -- to correct what I had said before
14 then we will update Appendix 23.

15 A.L.J. COSTELLO: So what we'll end up
16 doing is, we'll add it to the JP, and then we'll
17 reupload the JP. We'll add another document, another
18 JP document, to the exhibit list, which we'll
19 circulate. We're going to strike 1226, because --
20 I'm sorry -- 1225. So that number will not be used,
21 1225, because it will become part of the exhibit that
22 will be updated Joint Proposal with the Appendix 23
23 update.

24 (Judges confer)

25 A.L.J. KERSEY: Okay. Any questions

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2 on any of that so far? We have a little bit more to
3 do. We are going to require that the testimony of
4 the Department of Public Service Staff Management and
5 Operations Audit Panel and the portion of Con
6 Edison's accounting panel testimony regarding
7 management audits be entered into the record in these
8 proceedings. We have received three affidavits.

9 Con Edison, we have a one-page
10 affidavit sworn to by Kelly McLaughlin on November
11 12th, 2025, which I am marking as Exhibit 1229.

12 For DPS staff, we have a two-page
13 affidavit sworn to by Angela Marino (phonetic) on
14 November 12th, 2025, which I am marking as Exhibit
15 1220 -- no, 1230.

16 And a two-page affidavit of Jeremy
17 Rusier (phonetic) sworn two on November 12th, 2025,
18 which I am marking as Exhibit 1231.

19 We also require DPS staff to provide
20 sufficient witnesses to adopt all the factual
21 statements in its statement of support of the Joint
22 Proposal or affidavits of those witnesses if there is
23 no cross-examination plan for that witness.

24 Counsel for DPS?

25 MR. KRAMER: Yes, Your Honor.

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2 A.L.J. KERSEY: With respect to those
3 affidavits?

4 MR. KRAMER: So we apologize. Those
5 affidavits are still in process. Some of them will
6 take a little bit longer than next couple of days.
7 We have some folks out who will be back next week,
8 but we are working towards getting the affidavits. I
9 can give you list of the affidavits, the names of the
10 individuals, who will be providing affidavits if
11 that's helpful?

12 A.L.J. KERSEY: Sure, that would be
13 great.

14 MR. KRAMER: Okay.

15 A.L.J. KERSEY: Thank you.

16 MR. KRAMER: So the first, individual
17 is Andrew Carpenter. And the next is Daniel
18 Gadomski.

19 A.L.J. KERSEY: Can you spell that
20 please?

21 MR. KRAMER: G-A-D-O-M-S-K-I.

22 A.L.J. KERSEY: Thank you so much.

23 MR. KRAMER: The next individual is
24 Robert Jucha, J-U-C-H-A.

25 A.L.J. KERSEY: Okay.

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2 MR. KRAMER: Then we have, Jeremy
3 Routhier, R-O-U-T-H-I-E-R.

4 A.L.J. KERSEY: Thank you.

5 MR. KRAMER: And Angela Morina.

6 A.L.J. KERSEY: Okay.

7 MR. KRAMER: The next -- next
8 individual is Richard Schuler, S-C-H-U-L-E-R.

9 A.L.J. KERSEY: Okay.

10 MR. KRAMER: Then we have Brian Fisher
11 (phonetic).

12 A.L.J. KERSEY: Okay.

13 MR. KRAMER: We -- we have -- the next
14 affidavit will be provided by Jeremy Flaum,
15 F-L-A-U-M.

16 A.L.J. KERSEY: Thank you.

17 MR. KRAMER: And that -- that is it,
18 Your Honor. Thank you.

19 (Judges confer)

20 A.L.J. KERSEY: Okay. So we are --
21 when we receive those, when they've been filed, then
22 we will admit those by a ruling, a separate ruling,
23 that will come in the future. Also, the testimony
24 that is procured today will be reliant on those
25 witnesses.

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2 A.L.J. COSTELLO: Yes, it's subject --
3 the admission of the statement, the factual portions
4 of the statement, it's just -- we'll admit it, but
5 subject to the -- the submission of those documents.

6 MR. KRAMER: Understood, Your Honors.
7 Thank -- thank you. That's very helpful. Just
8 one -- one point of clarification. I believe my
9 recollection is that you indicated previously that
10 these affidavits should not be filed with the
11 secretary. Is that still the case?

12 A.L.J. COSTELLO: That's -- yes.
13 That's correct. What we'll do is, when we issue a
14 ruling admitting those documents, we'll -- we'll
15 assign exhibit numbers to them. We'll update the
16 exhibit list, and we'll -- we'll have the exhibit
17 uploaded.

18 MR. KRAMER: Very good. Thank you,
19 Your Honor.

20 A.L.J. KERSEY: Thank you. It is our
21 understanding that Independent Intervenors are not
22 going to be seeking direct testimony, but Mr. Menton,
23 Mr. Ellenbogen, I believe that you had an -- is
24 that -- I'd like to confirm that, I guess, first of
25 all.

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2 MR. MENTON: Yes. Let me explain.

3 A.L.J. KERSEY: Sure.

4 MR. MENTON: So in -- in the pre-trial
5 conference, the question of whether Mr. Ellenbogen
6 would testify directly came up. The issue is we have
7 a number of exhibits. It's actually thirty-three of
8 them. And the question is whether there will be
9 objections on ground of authenticity to those
10 exhibits. That is the only subject on which Mr.
11 Ellenbogen would -- would testify directly if -- if
12 that comes up. If there's an objection to
13 authenticity, which is a bona fide objection, which I
14 don't think there will be, but if there is, then Mr.
15 Ellenbogen could testify as to authenticity of the
16 document, and -- and -- and that would be it.

17 To -- to obviate this, we have
18 prepared, and we have here signed -- we could submit
19 right now, and we have many copies to pass out -- an
20 affirmation of Mr. Ellenbogen authenticating each of
21 the documents. It also affirms the fact statement in
22 our -- in our statement in opposition. So if Your
23 Honors would like, we can, provide that affidavit --
24 or that affirmation -- I'm sorry -- to you now and
25 pass out copies to the parties who are here. And

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2 hopefully, that will take care of the authentication
3 issue, and we won't have to put Mr. Ellenbogen on the
4 stand.

5 A.L.J. KERSEY: I don't -- I don't
6 know that it will take care of the authentication
7 issue, but I would ask that you hand out your
8 affidavits now to counsel and to the judges. We can
9 take a look at them. Thank you.

10 MR. MENTON: We have twenty copies. I
11 hope that's enough.

12 MR. ELLENBOGEN: It's a moving target
13 on Monday at the meeting, so.

14 MR. MENTON: I -- I believe we asked
15 for twenty -- more than twenty on -- on Monday when
16 you made we go through the count.

17 MR. ELLENBOGEN: Actually, you got up
18 to eighteen.

19 MR. MENTON: However --

20 MR. ELLENBOGEN: You got up to
21 eighteen in the count, so.

22 MR. MENTON: Okay. 18?

23 A.L.J. KERSEY: Yes. Yes.

24 MR. MENTON: Okay. twenty should be
25 fine.

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2 A.L.J. KERSEY: Yes, we're good.

3 MR. ELLENBOGEN: All right.

4 A.L.J. KERSEY: Thank you.

5 A.L.J. COSTELLO: At this -- at this
6 point we'll give time for counsel to look at this,
7 and then we'd like to hear from Con Edison and DPS
8 staff. Anything else? Are there parties that wants
9 to comment on this?

10 So just let us know, Mr. Konecni, when
11 you're -- when you're ready.

12 MR. LANG: Your Honor, this is Kevin
13 Lang. Could I ask a procedural question about
14 matrix. I don't know if it's for you or -- or for
15 the Independent Intervenors. But it appears there's
16 more exhibits on this list than what they circulated.

17 MR. ELLENBOGEN: Yes, I have more
18 copies.

19 MR. LANG: So --

20 A.L.J. KERSEY: No, it appears that --
21 I'm sorry -- it appears that there's more exhibits
22 here than what you had originally submitted. I think
23 we had nineteen originally --

24 MR. LANG: Yes.

25 A.L.J. KERSEY: -- submitted.

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2 UNIDENTIFIED SPEAKER: Yes.

3 A.L.J. KERSEY: Correct, Mr. Lang?

4 MR. LANG: Yes. That's what I'm
5 trying to figure out. There's a lot --

6 A.L.J. COSTELLO: Right. And people
7 haven't had the opportunity to -- to look at that, so
8 we're not going to be able to address those --

9 MR. ELLENBOGEN: Okay. Can -- I can I
10 have copies of them?

11 A.L.J. COSTELLO: If -- if -- not
12 if -- it's not --

13 MR. ELLENBOGEN: Okay.

14 A.L.J. COSTELLO: -- not the way we're
15 going to do it.

16 MR. ELLENBOGEN: Okay.

17 A.L.J. COSTELLO: So what we'll do, I
18 think, is go through exhibit by exhibit and hear what
19 counsel has to say.

20 MR. ELLENBOGEN: Okay.

21 A.L.J. COSTELLO: We'll, at this
22 point, just mark the exhibits for identification
23 purposes only, which doesn't -- so they're not going
24 in at this time. But just for purposes of clarity of
25 the record, we're going to mark the exhibits for

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2 identification as we go through exhibit by exhibit.

3 (Counsel confer)

4 A.L.J. COSTELLO: Just so you know
5 what we're doing. What we plan on doing is just
6 determining at this juncture whether the affidavit is
7 going to come in and we'll allow the exhibits. So
8 if -- if it does, it does. If it doesn't, we'll
9 allow the exhibits to come in. Then you'll have the
10 opportunity to put Mr. Ellenbogen on the stand, or
11 you have the opportunity on cross-examination to try
12 to get the documents in. Whatever you don't get in
13 through cross-examination, you might -- again, I'm
14 saying -- I'm just saying if this happens.

15 I'm not saying what we're doing yet.
16 We haven't heard from counsel. But I just wanted you
17 to understand. We're only deciding right now whether
18 it's going to be done through affidavits or
19 affirmation.

20 MR. MENTON: Your Honor, Francis
21 Menton, Independent Intervenor. May I -- may I make
22 one other suggestion? The question of foundation or
23 authenticity --

24 A.L.J. COSTELLO: It's not just a
25 question of foundation or authenticity. So let's

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2 hear from counsel and see what they have to say.

3 MR. KONECNI: Your Honor, Joshua
4 Konecni for Con Edison. We do have concerns on some
5 of these exhibits, and I don't know how you'd like us
6 to proceed if you'd like us to go --

7 A.L.J. COSTELLO: Well, let's -- let's
8 do it exhibit by exhibit. You just mark them for
9 identification. So Exhibit 1 --

10 MS. SU: Yes, sure.

11 A.L.J. KERSEY: Start with what we
12 think we have then. Because we only have nineteen of
13 them at the moment. Are there any other -- yes.
14 Understood. So Exhibits 1 and 2 are questions posed
15 by the Independent Intervenors in discovery. I'm
16 going to be very specific here. Number 1 is Response
17 to Independent Intervenors' Interrogatories, set 2-2.

18 Number 2 is Response To Independent
19 Intervenors' Interrogatories, sets 2-1. And we're
20 going to mark those for identification as Exhibits
21 1232. Number 1 is marked as -- for identification as
22 Exhibit 1232. And Individual Intervenor's Exhibit 2
23 is marked as Exhibit 1233 for identification.

24 Okay. Are there any objections?

25 A.L.J. COSTELLO: Mr. Konecni?

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2 A.L.J. KERSEY: Yes.

3 MR. KONECNI: We do not -- no

4 objections to Exhibits 1 and 2.

5 A.L.J. COSTELLO: Okay. And just --

6 Mr. Kramer?

7 MR. KRAMER: Yes.

8 A.L.J. COSTELLO: Go ahead.

9 MR. KRAMER: So my recollection, and
10 that's really what I'm going on right now, but my
11 recollection is that many of the questions posed by
12 Independent Intervenors were objected to. And those
13 objections are not facts. They're -- they're a legal
14 argument. So we would -- we would oppose that --
15 that -- the -- the responses that our objections
16 being part of the record here today, Your Honor.

17 A.L.J. COSTELLO: Mr. Lang, do you
18 have any anything you'd like to add?

19 MR. LANG: Yes. I mean, the -- the
20 City -- this is Kevin Lang for the City. I mean,
21 we -- we generally object to all of these because
22 they weren't included with any statements submitted
23 by the Independent Intervenors. If they can
24 establish that there's a need, if they're cross-
25 examining a party, that's one thing. But the fact

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2 that Mr. Ellenbogen is going to take the stand and
3 say, I -- I verify these, that's irrelevant, because
4 he's not being crossed on these issues. And -- and
5 he had the opportunity to submit them with his
6 statement, and he didn't do it. So to do them here
7 en masse is completely inappropriate.

8 A.L.J. COSTELLO: All right. I'm just
9 going -- we can hear from you, too.

10 MR. MENTON: Yes. Francis Menton,
11 Independent Intervenor. These exhibits absolutely
12 were submitted with the statement on the same day as
13 the statement. So that -- so that was incorrect.

14 A.L.J. COSTELLO: The exhibits that --
15 that we have already --

16 MR. MENTON: The first nineteen. And
17 these are -- these are Number 1 and 2. They were
18 submitted on November 26th with our statement. The
19 second thing -- the second objection, I guess, as --
20 from Mr. Kramer, it sounds like it goes to relevance.
21 It -- it -- it --

22 A.L.J. COSTELLO: It doesn't go to
23 relevance. It goes to -- these are -- these are
24 not -- these interrogatories are not factual
25 information that was provided by witnesses. They are

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2 legal objections that were provided by counsel. That
3 is not relevant information, and it's -- it's legal
4 information that's not appropriate to put in the
5 record.

6 MR. MENTON: Okay.

7 A.L.J. COSTELLO: Had you -- had a
8 problem with the objections, your appropriate
9 recourse was a motion to compel at which it could
10 have been decided at the time that these were --
11 responses were submitted. You can't point to any
12 witness panel that is identified on those two
13 documents as providing responses. The responses, it
14 says NA, I believe, on both of those documents. So
15 we are not going to do by affidavit. And quite
16 frankly, I don't see any basis to get these in
17 because -- based on the fact that they're legal
18 objections.

19 MR. MENTON: Okay. Let -- let me
20 address that, Your Honor. If -- if I assume many or
21 most of the parties and yourselves either have or
22 will read our statement in opposition, and a major,
23 maybe the most important, or one of the most
24 important, reason for our opposition is that the
25 Company and the DPS staff have refused to identify

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2 which of the projects that are being funded by the
3 Joint Proposal are for safety and reliability and
4 which are for climate act purposes, which are
5 impossible.

6 A.L.J. COSTELLO: Right.

7 MR. MENTON: This --

8 A.L.J. COSTELLO: They refused to
9 identify on legal grounds. They didn't respond on
10 legal grounds. So no, these are not coming into
11 evidence --

12 MR. MENTON: The -- these documents --

13 A.L.J. COSTELLO: -- based on --

14 I'm -- that's the ruling.

15 MR. MENTON: -- are written proof of
16 their refusal.

17 A.L.J. COSTELLO: We're -- you can
18 state that they refused. That's an argument, right?
19 The legal -- the legal objections are not something
20 that's a factual basis where you can rely on. So you
21 can -- and if you want to cross-examine the
22 Company --

23 MR. MENTON: We will.

24 A.L.J. COSTELLO: -- and ask them
25 these questions, you can do that. They can make

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2 whatever objections they want to those questions, and
3 we'll rule it on them at that time. But these
4 documents are not going to come into evidence.

5 MR. MENTON: Okay. I -- I
6 respectfully submit that this document is proof of
7 the refusal, and I ask for it to be admitted.

8 A.L.J. COSTELLO: Okay.

9 MR. MENTON: I understand --

10 A.L.J. COSTELLO: And I -- we said
11 we're not going to admit it.

12 MR. MENTON: Okay.

13 A.L.J. COSTELLO: So that's -- if --
14 if you -- you can take whatever process you want to
15 take with respect to that ruling, but those two
16 documents are not going to be admitted.

17 MR. MENTON: We note an exception for
18 appeal.

19 A.L.J. COSTELLO: Yes. You can -- you
20 can try -- you can try again with the witnesses, but
21 the fact is legal objections are not something that
22 are admitted as -- into the record as factual
23 information. Okay. So we're going to move on now.

24 A.L.J. KERSEY: Exhibit 3 is
25 government data taken from the website of the Federal

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2 EPA. We will note it as summary data E grid with
3 2023 data, and we are marking that as Exhibit 1234
4 for identification.

5 Do any parties want to -- Mr. Konecni?

6 MR. KONECNI: Yes, Your Honor. We do
7 object to the -- this exhibit. From our
8 understanding of the exhibit, it's a comprehensive
9 inventory of environmental attributes of electric
10 power systems, and we don't understand how that's
11 relevant. It is not something that we would have
12 relied upon in conducting the JP.

13 A.L.J. KERSEY: Counsel for DPS?

14 MR. CORYER: This is Charles Coryer
15 with DPS, and we share that concern with the Company.

16 A.L.J. KERSEY: Mr. Lang, or any other
17 parties?

18 MR. LANG: Your Honor, Kevin Lang, for
19 the City. To the extent that this exhibit is offered
20 as support for their statement, it is what it is, and
21 we don't object on that basis. If they try to cross-
22 examine someone on it that is familiar with it, we'll
23 deal with it at that point.

24 A.L.J. KERSEY: Thank you. Mr.
25 Menton, do you want to speak to that?

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2 MR. MENTON: Yes. Francis Menton,
3 Independent Intervenor. As I understand it, Mr.
4 Konecni does not challenge authenticity, so I
5 understand that is conceded. And so I'm addressing
6 relevance. The data in this document with simple
7 arithmetic calculations that anybody can understand
8 with high school arithmetic, established that adding
9 electric heat on the downstate system will increase
10 rather than decrease emissions of -- of greenhouse
11 gases over having people combust natural gas at their
12 own home. That is extremely, extremely relevant to
13 this. It -- it -- it -- that is what proves that --
14 that the Joint Proposal is counterproductive to the
15 purposes of the Climate Act.

16 A.L.J. KERSEY: Any response? Mr.
17 Konecni, Mr. Kramer, Mr. Lang, any other attorneys?

18 MR. KONECNI: So Your Honor, Mr.
19 Menton talked about simple mathematics and simple
20 proposals. So I -- I don't know what he means by
21 that and -- and the kind of calculations he's talking
22 about, but I can tell you that we did not look at --
23 or did not do the mathematics that he's referring to,
24 so I -- I don't think that this exhibit is pertinent
25 to the Joint Proposal.

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2 A.L.J. COSTELLO: And let me just ask.

3 Is this something -- so this was something that was
4 included as part of -- I think it's a footnote in the
5 statement in opposition. All of the -- whatever
6 exhibits are referenced are in there. Is that
7 something that can be considered regardless of
8 whether it's admitted into evidence? So -- and --
9 and perhaps as -- on judicial notices there or
10 administrative notice?

11 MR. KONECNI: If -- if Your Honors
12 believe so, yes. We have no objection to you taking
13 notice of it.

14 A.L.J. COSTELLO: Okay. Any -- anyone
15 else want to respond to that?

16 MS. MURPHY: Your Honors?

17 A.L.J. COSTELLO: Yes.

18 MS. MURPHY: This is Erin Murphy with
19 Environmental Defense Fund. I think we would also be
20 opposed to the admission of this exhibit in terms of
21 relevance concerns. Generation makeup decisions for
22 not -- are not part of the Joint Proposal or this
23 rate case, and so the generation mix is not directly
24 relevant to the outcome of the JP.

25 A.L.J. COSTELLO: Okay. With it --

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2 that's their -- I mean, that's their argument. They
3 have an argument. I'm not saying whether the
4 argument has merit or not. It doesn't have merit.
5 They have an argument as to why they believe that the
6 Joint Proposal doesn't actually advance CLCPA goals
7 in part. Again, I'm not saying that there's merit to
8 it or not. I'm just saying since that's their
9 argument, doesn't that give it some -- some force to
10 again, perhaps we could take judicial notice of it,
11 which means it doesn't have to be admitted into the
12 record. It's something that -- that administrative
13 notice could be taken of.

14 MS. MURPHY: Yes. I think I would
15 agree with the point Mr. Lang made earlier that we
16 don't -- certainly don't dispute the EPA data, but
17 don't see it as relevant, and so that's why we
18 were -- were opposed to it.

19 A.L.J. COSTELLO: Okay. And isn't
20 that something -- again, I understand we're talking
21 about admission into the record, but if -- if we
22 took -- if we say we're going to take administrative
23 notice of this document, that's an argument that can
24 be made on your post-hearing brief explaining why
25 that's -- you do not agree that this is something

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2 that should be considered.

3 MS. MURPHY: Yes, I think we would
4 agree with that.

5 MR. MENTON: Excuse me, Your Honor?

6 A.L.J. COSTELLO: Yes.

7 MR. MENTON: Each of these documents,
8 in and of themselves, does not paint the picture.
9 When you look at the group of them together, that's
10 where the picture forms. It's like you're looking at
11 a tree or you're looking at a forest.

12 A.L.J. COSTELLO: Yes, but we can't --

13 MR. MENTON: Okay.

14 A.L.J. COSTELLO: -- we can't just do
15 wholesale --

16 MR. MENTON: Okay.

17 A.L.J. COSTELLO: -- adopting the
18 documents.

19 MR. MENTON: But -- okay.

20 A.L.J. COSTELLO: So this -- I -- I
21 believe this type of document is something that we
22 could take administrative notice of. It doesn't have
23 to be admitted into the record, which means you can
24 make arguments on it. Your arguments based on it,
25 we -- we could consider this document, and the

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2 parties that are -- want to respond to this in post-
3 hearing briefs --

4 MR. MENTON: And -- and incidentally,
5 the -- the arithmetic was provided in some -- in some
6 of the documents that he said he did not get. That
7 is in the documents. The arithmetic was included.

8 A.L.J. COSTELLO: Okay. We'll --
9 we'll -- okay.

10 A.L.J. KERSEY: Okay.

11 MR. CORYER: This is Charles Coryer on
12 behalf of DPS.

13 A.L.J. COSTELLO: Yes.

14 MR. CORYER: We agree with Mr. Lang's,
15 contention that this should be taken in
16 administrative notice. And just to the extent that
17 if this is only supportive arguments made in the
18 Statement of Opposition, then we understand. But
19 caution against side arguments or implications of
20 this data that aren't contained within the text of
21 their Statement of Opposition.

22 A.L.J. COSTELLO: It would be -- yes,
23 it would be -- it would be based on the Statement of
24 Opposition and then you'd have the opportunity to
25 reply to that in post-hearing briefs.

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2 MR. CORYER: Thank you.

3 A.L.J. COSTELLO: So -- so what we're
4 doing is we're not admitting that document into
5 evidence, but we're saying that it's subject to
6 administrative notice. So it's something that you
7 can rely upon.

8 MR. MENTON: Thank you, Your Honor.

9 A.L.J. KERSEY: Exhibit 4 is the
10 complete draft comprehensive energy -- I should say,
11 it's the comprehensive reliability plan -- the New
12 York State Independent System Operator Comprehensive
13 Reliability Plan 2025 to 2034, which I am marking for
14 purposes of identification as Exhibit Number 1235.

15 Counsel for Con Ed?

16 MR. KONECNI: So we have the same
17 objection. Well, we have an objection regarding
18 relevance, that this is setting rates for -- well,
19 the -- the first objection here is that this is a
20 draft, and I'm not aware of what the current status
21 of this NYISO document is, and how it may relate to
22 the NYISO document. But we -- we also have questions
23 about the relevance of this plan. And if Your Honors
24 want to take notice of it and follow the same
25 procedure, that would be fine with us.

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2 MR. LANG: Your Honor, this is Kevin
3 Lang. If I may?

4 A.L.J. COSTELLO: Yes.

5 A.L.J. KERSEY: Yes.

6 MR. LANG: The document has been
7 finalized. There is a final version available on the
8 New York Independent System Operator's website. As
9 with the last one, this is an official document from
10 NYISO, and it's something that you could take notice
11 of. So if we were to just substitute the final
12 version for the draft, I think we could treat it the
13 same way we did for the last one.

14 A.L.J. KERSEY: Ms. -- I'm going to
15 hear from DPS counsel first and then Mr. Menton, I'd
16 like to hear what your thoughts are on that.

17 MR. KRAMER: Yes, Your Honor. Staff
18 would be fine with Your Honors taking administrative
19 notice of this --

20 A.L.J. KERSEY: Of the final?

21 MR. KRAMER: Of the final document.
22 We do want to point out, however, that calling out
23 portions as exhibits, copies of illustrations found
24 within the exhibit, is objectionable. We should just
25 have the single document.

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2 A.L.J. KERSEY: Okay. And we'll --
3 yes, we'll -- we'll get to that in just a second.

4 MR. KRAMER: Thank you, Your Honor.

5 A.L.J. KERSEY: Thank you. No, thank
6 you so much.

7 MR. KRAMER: Yes.

8 A.L.J. KERSEY: Mr. Menton, thoughts
9 on -- particularly on the thoughts of Mr. Lang and
10 the -- that we take administrative notice of the
11 final document versus the draft?

12 MR. MENTON: Yes. We recognize that
13 problem. The final only came out a few days ago, and
14 we hadn't actually found it when we submitted the
15 exhibit, although it was immediately prior. We have
16 found it since. We've made copies of the final, and
17 we are happy to substitute that and have it used.
18 All of the charts we want to use are the same between
19 the draft and the final. So --

20 MR. ELLENBOGEN: The only thing that
21 happened is they changed the page numbers. We've --
22 we've noticed the page changes. I've made them on my
23 copy. I can attest to the page number change. So
24 all the -- all the images are -- are in there.

25 A.L.J. KERSEY: And no -- no concerns

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2 about that, Mr. Ellenbogen. We would -- we're going
3 to take -- does any other counsel have anything to
4 say about this?

5 All right. So we are going to do the
6 same thing as we did -- we are going to take
7 administrative notice of the final NYISO 2025 to 2034
8 Comprehensive Reliability Plan. And actually, at
9 this point, Mr. Ellenbogen, would you pass out that
10 document? You said you have copies. Do you have --

11 MR. ELLENBOGEN: We have -- we have
12 one copy.

13 A.L.J. KERSEY: You have one copy.

14 MR. MUSICH: It's eighty -- it's
15 eighty pages.

16 A.L.J. KERSEY: Okay. Don't worry
17 about it.

18 MR. ELLENBOGEN: I can -- I can
19 provide it to you if you would like?

20 A.L.J. KERSEY: No. That's all right.

21 MR. ELLENBOGEN: Okay.

22 A.L.J. KERSEY: We will take
23 administrative notice of the --

24 MR. ELLENBOGEN: All right. The --

25 A.L.J. KERSEY: -- of the finalized

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2 2025 to 2034 New York Independent System Operator
3 Comprehensive Reliability Plan. And that will be --
4 well, we're not going to mark it. Okay. Thank you.
5 So exhibit -- right. Exhibits -- exactly. So just
6 to make note of that, Exhibits 5 to 7 -- Mr. Menton,
7 if you'll just confirm for us, they are included --
8 these items are included. They were graphs in the
9 NYISO report. And as we are taking administrative
10 notice of the finalized NYISO report, we are not
11 going to be addressing those as individual exhibits.
12 Is that satisfactory to you?

13 MR. MENTON: Yes, that's satisfactory.
14 We just thought it would be easier for cross-
15 examining a witness to have a one-page document
16 instead of eighty. That's all.

17 A.L.J. KERSEY: Okay. All right.
18 Thank you. Okay. Exhibit 8 is a -- is a article
19 entitled "Study Shows Heat-Related Deaths Rose in
20 Florida Nursing Homes after Hurricane Irma". And it
21 was published December 15th, 2021.

22 Mr. Konecni, go ahead.

23 MR. KONECNI: Yes, Your Honor. Thank
24 you. We don't understand why that would be relevant
25 to this case.

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2 A.L.J. KERSEY: Okay. Counsel DPS?

3 MR. LANG: Yes, thank you, Your Honor.

4 A number of objections here. The first one is it
5 apparently is referring to a report, this article. I
6 would think that the report itself would be the
7 better evidence. However, having said that, we do
8 agree with Mr. Konecni, the Company, that this is
9 irrelevant to these proceedings.

10 A.L.J. KERSEY: Mr. Lang, any other
11 counsel would like to speak to the issue?

12 MR. LANG: Kevin Lang for the City.

13 A.L.J. KERSEY: Thank you.

14 MR. LANG: We agree as to relevance to
15 the end if it's a document that they're citing to in
16 their statement, and it's offered simply as support
17 for their statement for whatever that's worth, we
18 didn't have -- we wouldn't object on that basis.

19 A.L.J. KERSEY: Any other counsel?
20 Mr. Menton, would you like to be heard on this issue?
21 No?

22 MR. MENTON: Well, I -- I -- I guess
23 so. I'm -- I'm trying to -- trying to digest Mr.
24 Lang's objection because he's saying that he doesn't
25 object to having this document support our statement,

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2 but he does object to have it in the proceeding. But
3 our -- our -- our statement is -- our objection
4 that's in this proceeding, we want the panel to
5 understand why we've made it.

6 I mean, the issue here is if you
7 electrify heat or if you electrify air conditioning
8 and the electricity goes out, people are going to
9 die. I just want everybody to understand because
10 that's the plan of the Joint Proposal. That's what
11 the Joint Proposal is charging the ratepayers to
12 electrify the heat so that people will die when the
13 electricity goes out. Thank you.

14 MR. KRAMER: Your Honor, we're going
15 to object to that. Can that be stricken from this
16 record? That was testifying. That was testimony.
17 He's unsworn.

18 A.L.J. COSTELLO: We're -- we're not
19 treating any of this as testimony.

20 MR. KRAMER: Okay. Thank you, Your
21 Honor.

22 A.L.J. COSTELLO: We're treating this
23 as argument.

24 MR. KRAMER: All right. Fair enough.
25 Thank you.

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2 MR. LANG: Your Honor, this is Mr.
3 Lang. Just to clarify, we're objecting that the
4 document is not relevant to the issues in this case.
5 However, it's a document that they referenced in
6 their report, so it's solely on that basis that it's
7 something they referenced that they're providing in
8 the source material. That's a different issue as to
9 whether it's relevant to this proceeding.

10 A.L.J. COSTELLO: Mr. Lang, let me
11 just ask you a follow-up question. So -- so to the
12 extent that they relied on it in their statement and
13 opposition, does that mean that the document
14 automatically comes in as -- into the evidentiary
15 record, or is it something that would just be --
16 something they can refer to in argument and something
17 that could be responded to in argument, but not
18 necessarily something that would come in as evidence,
19 like an evidentiary exhibit?

20 MR. LANG: So based on my experience
21 in PSC proceedings, I would say it would come into
22 the record because things like this have definitely
23 come into the record in prior proceedings. As to
24 what weight, first you and then the Commission gives,
25 that's -- that's up to them. But it -- it's been my

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2 experience over many years that if it's a document
3 that a party relies upon that that is appropriately
4 included in the administrative record.

5 A.L.J. COSTELLO: And Mr. Lang, I'm
6 sorry. Can we go back to you? But I just want to
7 ask. So -- I mean, with respect to documents that
8 they rely upon, to the -- so anything that --
9 anything that's in their statement in opposition
10 that's been listed as one an -- one of the exhibits,
11 you would say that comes in, whatever weight as the
12 Court is doing, and it's subject to argument by
13 parties, and -- and post-hearing briefs.

14 MR. LANG: I -- I wouldn't say any
15 because they also include what they call exhibits as
16 a law. The law is not an --

17 A.L.J. COSTELLO: Right.

18 MR. LANG: -- exhibit, so to answer,
19 in my view, the law is the law is the law. It's
20 not -- it shouldn't be marked as an exhibit. As to
21 the other documents, I mean, yes, we all have
22 objections on relevance grounds, and -- and it's one
23 thing for these documents to come in because they
24 referenced them if they did in their statements, but
25 if their intent is to cross-examine other parties on

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2 them, that's a different story, and -- and we would
3 have different objections.

4 A.L.J. COSTELLO: Right.

5 A.L.J. KERSEY: That's understood.

6 A.L.J. COSTELLO: They -- they still
7 have to lay the foundation --

8 MR. LANG: Correct.

9 A.L.J. COSTELLO: -- to be able to
10 cross-examine.

11 MR. HEDEMAN: Your Honor, Walter
12 Hedeman. I'd also like to point out that this
13 document and, in fact, all documents but Exhibit 1
14 and 3, are not called out in their Statement of
15 Opposition.

16 A.L.J. COSTELLO: And can you point
17 out any Statement of Opposition?

18 MR. MENTON: Well, I'll have to go
19 through it. I think -- I don't know that all of them
20 are, but I think most of them are. But I'd -- I'd
21 have to take time to go through the footnotes of it
22 to --

23 (ALJs confer)

24 A.L.J. KERSEY: We're going to take a
25 ten-minute break, Mr. Menton, and let you do that.

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2 MR. MENTON: Okay.

3 A.L.J. KERSEY: And let people use the
4 restroom. We will come back on the record at 11:15.

5 (Off the record)

6 (On the record)

7 A.L.J. KERSEY: We're back on the
8 record. We were discussing individual (sic)
9 Intervenor's Exhibit 8.

10 Mr. Menton, can you identify which of,
11 between 8 and 19, of your exhibits that you have
12 provided, which ones are reflected in your statements
13 in opposition?

14 MR. MENTON: I haven't been able to
15 come up with a checklist. And relatively few of them
16 are specifically referenced in the Statement of
17 Opposition. I can give you some examples, but I'll
18 tell you what has occurred in our preparing for
19 cross-examination.

20 A.L.J. COSTELLO: No, let me just say
21 this. So right now what we're trying to do is see if
22 you have them referenced in your statement in
23 opposition, because we were going to see from counsel
24 what their position was, if those documents, as Mr.
25 Lang has suggested were to come in for whatever the

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2 weight -- they'll come into the record for whatever
3 weight they could be accorded, and be subject to
4 post-hearing briefing. So we did want to know what
5 documents. If you want -- can you tell us which
6 documents are not included, because we're not
7 prepared to do this without knowing specific
8 information. We can't just say, okay, we need to
9 have it on the record specifically what we're dealing
10 with.

11 MR. MENTON: Well, let me just -- let
12 me just give Your Honor an example.

13 A.L.J. COSTELLO: I'm not looking for
14 an example. Do you have your statement in
15 opposition?

16 MR. MENTON: Yes, I have.

17 A.L.J. COSTELLO: Okay. Do you
18 have -- what documents are listed in the footnotes
19 that are also exhibits that you are purported to want
20 to get into the evidence?

21 MR. MENTON: 1, 2, and 3, as far as
22 I've found so far.

23 A.L.J. COSTELLO: 1, 2, and 3?

24 MR. MENTON: Yes.

25 A.L.J. COSTELLO: When you say as far

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2 as you found so far, are there further documents
3 that -- further footnotes that you haven't?

4 MR. MENTON: It's more complicated
5 than I could do in ten minutes. I'm sorry. I don't
6 know of others right now.

7 A.L.J. COSTELLO: Okay.

8 MR. MENTON: So many of the documents
9 that are exhibits that we selected for purposes of
10 cross-examination. We selected them because they
11 have a nice one-page chart for cross --

12 A.L.J. COSTELLO: All right. Do you
13 understand --

14 MR. MENTON: -- that establishes the
15 same information from another document that's cited
16 in the statement.

17 A.L.J. COSTELLO: All right. Do you
18 understand, though, that you can ask your questions,
19 but the documents, you may not be able to cross-
20 examine -- even though the documents are in evidence,
21 it may not be appropriate to cross-examine these
22 witnesses based on those documents. Because they
23 have to be familiar with the information, and they
24 have to be -- have relied on that information.

25 Just because it's in evidence doesn't

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2 mean it's appropriate for cross-examination.

3 MR. MENTON: I'll leave that to Your
4 Honor's ruling. We did submit and circulate exhibits
5 1 to 19 at the same time as our statement.

6 A.L.J. COSTELLO: That's not what --
7 the deciding factor. In any event, if you cannot
8 point out, other than Exhibits 1, 2, and 3, we'll go
9 through and just hear what people have to say about
10 the documents.

11 And again, Mr. Lang, because we do not
12 know what documents are in the statements in
13 opposition, we're not prepared to go on that basis.
14 So we'll hear from counsel with respect to each
15 document.

16 A.L.J. KERSEY: So again, I believe
17 we're on item -- the article study showing heat-
18 related deaths rose in Florida nursing homes after
19 Hurricane Irma. I believe that Con Ed had said that
20 they objected on relevance ground. Is that correct,
21 Mr. Konecni?

22 MR. KONECNI: It is, yeah.

23 A.L.J. KERSEY: Okay. And I believe
24 that DPS staff said that as well.

25 MR. KRAMER: Correct, Your Honor.

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2 A.L.J. KERSEY: Correct?

3 MR. KRAMER: Yes.

4 A.L.J. KERSEY: Okay.

5 MR. LANG: And Your Honor, the City
6 also objected on relevance grounds, and we did not
7 see this in the statement. So to my earlier point,
8 if it's in the statement, it's one thing, but if it's
9 not in the statement it shouldn't come in.

10 A.L.J. KERSEY: Okay. We're going to
11 sustain on Con Edison and DPS, and Mr. Lang, the City
12 of New York's objections as to relevance on this
13 item.

14 Next item is, number 9, that they've
15 identified as number 9. Heat pump costs in the Con
16 Ed billing area.

17 Counsel for Con Ed, please.

18 MR. SHERWIN: This is Edward Sherwin
19 for the Company. The Company objects on three
20 principal grounds, the first being lack of relevance
21 to the Court's proposal, and the questions whether
22 it's fair and reasonable in the public interest.

23 Secondly, this document, or this court
24 exhibit is not relied on by the Independent
25 Intervenors in their statements in opposition.

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2 And third, the first two pages of this
3 exhibit are basically testimonial. This looks like
4 an attempt to bring in testimony or argument through
5 the form of an exhibit. The third page is an excerpt
6 of a larger document and so we don't have -- so we
7 don't even know if these are from the same documents,
8 so this lacks reliability. We just don't have a
9 complete exhibit that underlying document for the
10 third page.

11 Finally, we do have issues with the
12 substance of the calculations done by the Independent
13 Intervenors. Those we would -- if this is admitted
14 in any part, we would address those on the paper
15 rather than in this hearing.

16 A.L.J. KERSEY: Thank you.

17 Counsel for Staff?

18 MR. CORYER: Department Staff also
19 mirrors these concerns with the Company, but also
20 objects, potentially, unless there is further
21 characterization of the first two pages of data as to
22 its source as it is not provided anywhere that we are
23 aware of, other than these.

24 A.L.J. COSTELLO: Just as a reference,
25 do you have a copy of the affidavit that was provided

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2 by the Independent Intervenors?

3 MR. CORYER: Not in front of me.

4 A.L.J. COSTELLO: Did you provide the
5 affidavit to Counsel?

6 MR. CORYER: Yes, I did. Yes, I
7 dropped everybody --

8 A.L.J. COSTELLO: Hard copy here
9 today. Okay.

10 MR. CORYER: Yeah. And there's a
11 bunch up there and --

12 A.L.J. COSTELLO: And I would look at
13 Exhibit 9 referenced on the second page. It just
14 says a calculation I prepared, which is by Mr.
15 Ellenbogen?

16 MR. CORYER: Yes, perhaps I'm not
17 being -- yes, sorry, I've been looking at it this
18 whole time. Sorry for that. Maybe I could state
19 this better. I am not sure. It looks like this is a
20 screenshot or a whole. Like, I am not sure on the
21 source of the numbers in the first two pages itself.

22 A.L.J. COSTELLO: Okay.

23 MR. ELLENBOGEN: Richard Ellenbogen.
24 The page --

25 A.L.J. COSTELLO: Yeah. But the

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2 document has to, I mean, stand by itself. You can't
3 explain. I mean, go ahead. This is an argument.

4 MR. ELLENBOGEN: Okay.

5 A.L.J. COSTELLO: So we'll hear what
6 you're saying, but.

7 MR. ELLENBOGEN: Page 2 is spreadsheet
8 that I created to do the calculations. Page 3 is my
9 Con Ed bill from last February. Con Ed has access to
10 that. And page 1 is when I went out and did research
11 on what the -- how the heat pumps performed in cold
12 climates. We can provide sources for it. I'm sure
13 that there's nothing in there that runs afoul of
14 standard knowledge.

15 MS. MURPHY: Your honors, EDF would
16 also like to register an objection to this exhibit
17 whenever appropriate.

18 A.L.J. KERSEY: Go ahead, Ms. Murphy.

19 MS. MURPHY: Thank you. I think we
20 agree with the concerns expressed by Company and
21 Staff and want to just further note on the
22 reliability point that in addition to the lack of
23 source information or explanation for where the
24 information comes from. Just visually, it does look
25 very similar to AI-generated outputs, and I don't

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2 know if there's a policy on that, but that feels
3 important to acknowledge and discuss whether AI
4 outputs are admissible and reliable.

5 MR. LANG: And Your Honor, this is
6 Kevin Lang from the City. We join in all the cases
7 of objections (indiscernible) by Counsel.

8 A.L.J. COSTELLO: Okay. What we're
9 going to do is not -- we're not going to admit it
10 based on the affidavit. To the extent you'll -- you
11 have additional exhibits as well, which we're going
12 to -- we'll give you an opportunity to get on the
13 stand for the limited purpose of testifying to try to
14 get those documents in, as well as this document.

15 And again, subject to cross-
16 examination by other parties if they want, or if they
17 don't, subject to objections by the parties at that
18 time. Okay. So we're going to put that Exhibit 9
19 off, and we'll address that later on.

20 A.L.J. KERSEY: Okay. Exhibit 10 is
21 New York City Local Law 97. That is, we don't need
22 to hear any argument on that. It's a local law, so
23 there's administrative notice of that.

24 MR. MENTON: Right. Francis Menton,
25 Independent Intervenor. We're not seeking to have

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2 that introduced in evidence. We thought it might be
3 useful to have it marked for identification if we
4 were to cross a witness.

5 A.L.J. KERSEY: Okay. Thank you.
6 Exhibit 11 is a report from Inside Climate News,
7 dated November 19th, 2025.

8 Counsel for Con Ed?

9 MR. KONECNI: Yes, Your Honor. So I'm
10 looking at the article here, and I think we have two
11 objections to this. First, again, the relevance.
12 This article appears to be about a coop building
13 converting to a heat pump, and not clear how that's
14 relevant to the just and reasonableness of the rates
15 in the Joint Proposal.

16 Also, to the extent not stated in the
17 affidavit, the purpose for which this is being
18 asserted, in the statements and the article are being
19 asserted as factual, we would have concerns about
20 that as well.

21 MR. KRAMER: A.L.J. KERSEY: Okay.
22 Counsel for DPS Staff.

23 MR. KRAMER: Thank you, Your Honor.
24 Frankly, similar objections. You know, the one thing
25 I would point out though, in addition is that this

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2 isn't some sort of study, it's just some examples.
3 So it's relevance or (indiscernible) here is very
4 questionable.

5 A.L.J. KERSEY: Okay. Any other
6 entities?

7 Mr. Lang?

8 MR. LANG: Thank you, Your Honor.
9 Kevin Lang for the City. We join in the same basis
10 of objection. And also based on our review, it
11 doesn't appear to be mentioned at all in their
12 statements. So it's not something we can comment on
13 that basis.

14 A.L.J. KERSEY: Mr. Menton?

15 MR. MENTON: Yeah. I don't think this
16 one is specifically measured -- mentioned in the
17 statement.

18 A.L.J. KERSEY: Okay.

19 MR. MENTON: As to the issue of
20 relevance, the question that's relevant in the
21 proceeding is why Con Edison, the Company is
22 putting -- getting revenue to support various things.
23 One of those is a specific thing that's called out in
24 the summary of the Joint Proposal, is to encourage
25 and support heat pump adoption, and this goes to the

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2 question of whether that is a waste, and therefore
3 the ratepayers should not be charged for it. That is
4 the fundamental issue in this proceeding.

5 MR. ELLENBOGEN: The other issue in
6 there is if you read the article, one of the big
7 things about this it's called nonpipe -- in the rate
8 case it's called "nonpipe alternatives". And if you
9 read that article, the owner of the building says
10 that they could not remove their gas service because
11 they have to run it on cold days. So that's why that
12 was included specifically.

13 And I'm not testifying, I'm just
14 making an observation as to why we included it,
15 because it shows that what -- the policy they're
16 taking does not support their nonpipe alternative
17 projects.

18 A.L.J. COSTELLO: Okay. Can I just
19 ask you? According to your affirmation, it says,
20 "This discusses the cost for buildings within New
21 York City to convert to electric heat in order to
22 comply with Local Law 97".

23 MR. ELLENBOGEN: Um-hum.

24 A.L.J. COSTELLO: Local Law 97 is what
25 it is.

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2 MR. ELLENBOGEN: Um-hum.

3 MR. MENTON: And whether the cost. or
4 whatever costs are included in the -- if it's
5 required by Local Law 97 for them to do these things.
6 I don't see the relevance of this exhibit, and I
7 don't see any way the relevance of simply the costs
8 for buildings to convert to electric heat to comply
9 with the law. So that document --

10 MR. ELLENBOGEN: Your Honor?

11 A.L.J. COSTELLO: Yeah. Go ahead.

12 MR. ELLENBOGEN: If Local Law 97
13 states that they have to comply with certain metrics
14 and get below certain metrics by 2025 and 2030 --

15 A.L.J. COSTELLO: You can you can ask
16 questions on cross-examination about this.

17 MR. ELLENBOGEN: Okay. But one of our
18 arguments is that the metrics in Local Law 97 are not
19 based upon physical reality, which was the purpose of
20 the --

21 A.L.J. COSTELLO: That is irrelevant.
22 The local law is the local law. So you can ask
23 questions on cross-examination to the extent you want
24 to. You can try to ask these questions. Again, all
25 questions are subject to objection, but this document

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2 is not going to be admitted into evidence.

3 MR. ELLENBOGEN: All right.

4 MR. MENTON: Okay. Your Honor,
5 Francis Menton, the relevance to this proceeding is
6 there's revenue in this Joint Proposal for Con Ed to
7 support the electrification.

8 A.L.J. COSTELLO: Again, you can raise
9 this on cross-examination. The document itself is
10 not coming into evidence.

11 MR. ELLENBOGEN: Okay.

12 MR. MENTON: Okay.

13 A.L.J. KERSEY: Exhibit Number 12
14 consists of some printout information from DPS draft
15 biannual report, July 2024.

16 MR. MENTON: I believe this one is
17 mentioned and cited in the Statement of Opposition.

18 A.L.J. KERSEY: Counsel for Con Ed?

19 MR. KONECNI: Your honors, we are
20 unaware whether the draft has been superseded by a
21 final report and would ask the Department to weigh in
22 on that.

23 MR. KRAMER: Yeah. Thank you, Your
24 Honor, and Mr. Konecni.

25 A.L.J. KERSEY: Counsel for Staff.

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2 MR. KRAMER: So upon information and
3 belief, I do believe that there is a final version of
4 this document. So we would object to the use of this
5 document in these proceedings. The other issue is,
6 it's an excerpt which we, of course, have problems
7 with. And finally, this is something that Your
8 Honors can take administrative notice of.

9 A.L.J. KERSEY: Mr. Lang, or any other
10 counsel?

11 MR. LANG: This is Kevin Lang. We
12 agree with Staff.

13 A.L.J. KERSEY: Mr. Menton, can you
14 give us your thoughts on us taking administrative
15 notice of the final report? I can't say that we know
16 whether or not this this information is in the final
17 report. I believe that the objections would be
18 sustained with respect to this item as it is a draft
19 to the extent a final -- we would take administrative
20 notice of the final report, but I don't know if what
21 is -- what you're looking for here is in it?

22 MR. MENTON: Okay. Your Honor, I
23 think we have no problem with substituting the final
24 for this. I am sorry, compared to the other one, we
25 didn't track down the final in time for this

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073
2 proceeding. Would we to leave to go out and get it
3 tonight?

4 A.L.J. COSTELLO: We'll have to see
5 where we are at the end of the --

6 MR. MENTON: Okay.

7 A.L.J. COSTELLO: -- at the end of the
8 day. Okay?

9 MR. MENTON: Okay.

10 A.L.J. KERSEY: Okay. So this item
11 though is not coming in as -- being marked as
12 evidence or coming in as evidence.

13 Item 13 is a Con Ed document. It's
14 delineated as a Con Edison document, Con Ed's total
15 electric system line loss with respect to 2007. It's
16 two pages and -- but again, it's sort of identified
17 as Con Ed's total electricity system line loss for
18 2007. It provides certain mathematical figures. And
19 then in the back it says, "From a Con Ed presentation
20 to PSC, July 17, 2008", and it looks like a
21 PowerPoint slide.

22 Mr. Menton, are -- Mr. Menton, what --

23 MR. ELLENBOGEN: There was a
24 conference --

25 A.L.J. KERSEY: -- Mr. Ellenbogen,

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073

2 what are we looking at?

3 MR. ELLENBOGEN: There was a
4 conference on line loss, a DPS conference on line
5 loss that I attended. It was actually initiated
6 based upon a paper that I wrote for the State. And
7 the presentation from one of the VPs of Con Ed
8 included that slide that documented line loss. When
9 I looked online to find a later version, the last
10 line loss calculations Con Ed did and publicly
11 released was in 2007.

12 A.L.J. KERSEY: So is this -- is the
13 first page of this item --

14 MR. ELLENBOGEN: Which exhibit is
15 that?

16 A.L.J. KERSEY: -- are those your --

17 MR. ELLENBOGEN: Which exhibit is
18 that?

19 A.L.J. KERSEY: -- is this your
20 compilation of the data?

21 MR. ELLENBOGEN: Hang on. 13? Let
22 me --

23 A.L.J. KERSEY: Sure. Take a second.

24 MR. MENTON: This is Francis Menton.
25 To make it clear, the line loss data is part of the

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073
2 calculation of why substituting electric heat pump --
3 heat for combustion of natural gas on site increases
4 rather than decreases emissions and is contrary to
5 the climate goal --

6 A.L.J. KERSEY: So it appears as -- it
7 sounds as though -- I apologize -- it sounds as
8 though what you're saying is this is part of Mr.
9 Ellenbogen, and Mr. Menton, your argument, in favor
10 of what you're arguing. But I think something you
11 put together to back up your argument. What I'm
12 trying to understand, is this Con Ed material? Did
13 this come -- where did this come from?

14 MR. ELLENBOGEN: Okay. The images for
15 Con Ed, I put the text in to explain -- some of the
16 text is theirs. I put some of the text in to explain
17 to people what they were looking at, because a lot of
18 people don't understand what they're looking at.

19 A.L.J. KERSEY: Okay.

20 MR. ELLENBOGEN: And then the part on
21 the first page, I did, as an analysis of it.

22 A.L.J. KERSEY: Okay. Got it.

23 MR. ELLENBOGEN: And to explain how it
24 works.

25 A.L.J. KERSEY: Okay. Understood.

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2 MR. KONECNI: So several objections,
3 honor. First, with respect to the first page, it's
4 essentially, it purports to be Con Ed's information,
5 but it's essentially testimonial information.
6 Second, with report -- with respect to the slide, it
7 is an excerpt not the full presentation, so we object
8 on those grounds. Also, slide is noted as having
9 notations added, I guess September 2009, not clear of
10 the authorship of those notations. So we have
11 concerns in that respect.

12 And then finally, this is 2007 data,
13 well I suppose it's purported in the affidavit as
14 being 2007, but this slide says 2008 with notations
15 added, 2009. But either way, almost twenty years
16 ago, we don't think that that's reliable material to
17 the Joint Proposal before Your Honors today.

18 A.L.J. KERSEY: Thank you, Mr.
19 Konecni.

20 DPS Staff Counsel?

21 MR. KRAMER: Nothing to add here to
22 the Company's objections. Thank you, Your Honor.

23 A.L.J. KERSEY: Okay. Mr. Lang?

24 MR. LANG: Nothing to add, Your Honor.

25 A.L.J. KERSEY: Okay. Anyone else?

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2 MS. MURPHY: Erin Murphy for EDF. We
3 do support the objection raised by the Company.

4 A.L.J. KERSEY: Okay. Mr. Ellenbogen,
5 and Mr. Menton?

6 MR. ELLENBOGEN: I will take ownership
7 of what is on the first page. Those were my
8 calculations based upon information provided on the
9 graph.

10 A.L.J. KERSEY: Okay. So we going to
11 sustain the objections of the various parties.

12 MR. MENTON: Your Honor, excuse me.

13 A.L.J. COSTELLO: Just let us finish
14 the ruling. Okay?

15 MR. MENTON: Yes. You finish. I'm
16 sorry to interrupt.

17 A.L.J. COSTELLO: And we're not going
18 to revisit the ruling. The rulings aren't subject to
19 just -- so you had your opportunity to speak. Let us
20 finish the ruling.

21 A.L.J. KERSEY: All right. So we're
22 going to -- we are going to sustain the objections on
23 the grounds of relevance and reliability. Relevance
24 as this is, information that is, going back a number
25 of years and not, on point with respect to -- we

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073
2 don't consider it relevant with respect to the rate
3 case. Also, its reliability is document -- it's not
4 evident that the document stands on its own. And
5 also as it appears to be testimonial info and an
6 analysis.

7 Next document is item 14, Exhibit 14,
8 this was the draft -- so item number 14 it appears to
9 be the -- there was a draft clean energy standard
10 biennial review in case 15-E-0302, proceeding on
11 motion of the Commission to implement a large-scale
12 renewable program and a clean energy standard.

13 Again, I will let the parties speak to
14 this, but I believe we'll take -- we would take
15 administrative notice if there's a final version. I
16 cannot speak to whether there is a final version,
17 however, but we would not allow the draft to be
18 included as evidence.

19 Staff Counsel, do we have any idea if
20 there is a final?

21 MR. KRAMER: We're going to have to
22 double-check that. I'll say that I recall reviewing
23 one in the last six-or-so months, but I could wrong
24 about that.

25 A.L.J. KERSEY: So we would accept the

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073
2 final for administrative notice, but perhaps we can
3 circle back on that.

4 MR. KRAMER: Okay.

5 A.L.J. KERSEY: That would be great.
6 Yeah. Okay. Item 15. Item 15 is entitled, "What
7 surcharges in addition to rates are included in the
8 attached document?" And it says, "Perplexity AI
9 search". I'm going to go to Counsel or the party
10 first, the Company.

11 MR. LANG: Excuse me, Your Honor. I'd
12 like to just add to the record.

13 A.L.J. KERSEY: Certainly.

14 MR. LANG: On the last document, the
15 PSC issued an order on May 15th, 2025, in case 15-002
16 as adopted, the Biennial Review is final. Just so
17 you know what it is.

18 UNIDENTIFIED SPEAKER: Thank you.

19 A.L.J. KERSEY: Perfect. Then we
20 will -- thank you, and then we will take
21 administrative notice of that final report, so that
22 rule --

23 Item number 15, as I just mentioned,
24 the Perplexity AI Search. I'd like to hear from
25 Company counsel, please?

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2 MR. KONECNI: Thank you, Your Honor.

3 We object on the grounds of reliability. We have no
4 confidence that this AI document is correct and no
5 way to verify that it is.

6 A.L.J. KERSEY: Okay. Staff counsel?

7 MR. KRAMER: Thank you, Your Honor.

8 Similar objection. Yeah. That's it. Thank you.

9 A.L.J. KERSEY: Thank you. Mr. Lang?

10 MR. LANG: Yes. The same objection.

11 And we'd also add, we didn't see a reference in the
12 statement.

13 A.L.J. KERSEY: Okay. Any other

14 counsel?

15 MS. MURPHY: The EDF has the same

16 objection.

17 A.L.J. KERSEY: Okay. Mr. Menton, Mr.

18 Ellenbogen?

19 MR. ELLENBOGEN: Yeah. Your Honor,

20 not being an attorney, I was not aware of these

21 things. However, the way the AI searches work, is

22 you can actually feed the document into it. So it's

23 not like it's doing a broad search over the whole

24 internet, and it will isolate anything you want to

25 find. And then I went and I personally looked for

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073
2 those occurrences based upon what it found. Had I
3 known the terminology was not correct, I would not
4 have used it. But I'm an engineer, and not a lawyer.

5 A.L.J. KERSEY: No, it's as --

6 MR. KONECNI: Your Honors, we would
7 also raise a best evidence objection to this exhibit.

8 A.L.J. COSTELLO: Yeah, you would be
9 able to reference -- I mean those types -- the
10 information, evidently, is in the record elsewhere,
11 right? Is that correct, the underlying information?

12 MR. ELLENBOGEN: It's actually in the
13 JP.

14 A.L.J. COSTELLO: All right, so you
15 have the JP --

16 MR. ELLENBOGEN: Because what I did is
17 I just fed the JP --

18 A.L.J. COSTELLO: -- to reference.

19 MR. ELLENBOGEN: -- right into the --

20 MR. MENTON: You have the JP to
21 reference.

22 MR. ELLENBOGEN: Okay.

23 A.L.J. COSTELLO: We're not going to
24 accept AI document.

25 MR. ELLENBOGEN: Okay. That just

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073
2 isolates the locations of everything so you can find
3 it easily.

4 A.L.J. COSTELLO: That's fine, but we
5 won't add it in --

6 MR. ELLENBOGEN: Okay. That's fine.
7 That's fine.

8 A.L.J. COSTELLO: -- as an evidentiary
9 exhibit.

10 A.L.J. KERSEY: Okay. So we're going
11 to sustain all three of the Company's objections on
12 that item as to reliability as to -- actually as
13 to -- I'm sorry -- as to reliability and on the
14 grounds for the best evidence objection.

15 And also, I'm sorry, I believe Mr.
16 Lang's, that we didn't see it referenced in the
17 materials, but as was noted by Judge Costello, we
18 simply note that the joint -- it appears the Joint
19 Proposal contains much of that information.

20 Item 16 is the summary of the Joint
21 Proposal. I'm just going to speak to that one. We
22 are not going to let that in because that is already
23 admitted as an exhibit, or will be admitted once we
24 get there.

25 Item number 17 is a letter dated

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073
2 August 11, 2025, submitted by the New York State
3 Attorney General on behalf of DEC, in a court
4 proceeding matter, of Citizen Action of New York, v.
5 DEC.

6 Company Counsel?

7 MR. KONECNI: We think it's
8 appropriate for you to take notice of this, Your
9 Honors.

10 A.L.J. KERSEY: DPS Staff?

11 MR. KRAMER: Thank you, Your Honor,
12 Staff agrees with that position. Thank you.

13 A.L.J. KERSEY: Mr. Lang?

14 MR. LANG: We do agree with that.

15 A.L.J. KERSEY: Any other thoughts?

16 Mr. Menton? Mr. Ellenbogen?

17 A.L.J. KERSEY: No objection to taking
18 in --

19 MR. MENTON: Your Honor, I don't know
20 why putting it in evidence is a problem, but if
21 notice is what it is, we'll take it.

22 A.L.J. KERSEY: Okay. So we will take
23 a judicial -- I'm sorry, administrative notice of
24 this letter. Okay.

25 Item 18 is a document of graphs and

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073
2 mathematical information. It is in another language.
3 While it is identified -- while it is identified in
4 the affirmation provided by Mr. Ellenbogen and Mr.
5 Menton with more specifics, that information is not
6 readily ascertainable from the exhibit itself.

7 Thoughts from Con Edison Counsel?

8 MR. KONECNI: We object on the grounds
9 of relevance, first. Second, that it's not in the
10 Statement of Opposition. And then third, as Your
11 Honors mentioned, it's in Spanish. We have no way
12 right now to understand what this information is.

13 A.L.J. KERSEY: Okay. Counsel for
14 DPS?

15 MR. KRAMER: Your Honor, the same
16 objections. Thank you.

17 A.L.J. KERSEY: Okay. Mr. Lang?

18 MR. LANG: Yeah. We would note, Your
19 Honor, this one is referenced in their statement,
20 it's at page 33. But we agree that it's not
21 relevant.

22 A.L.J. KERSEY: Any other?

23 MR. DIAMANTOPOULOS: Your Honors,
24 George Diamantopoulos from NYECC. To the extent that
25 a foreign language exhibit has been submitted in

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073
2 (indiscernible) file, or the party submitting it
3 could have provided a translation, and which has not
4 been provided, and I also subscribe to the additional
5 objection that the other parties' gave.

6 A.L.J. KERSEY: Okay.

7 MR. DIAMANTOPOULOS: Thank you.

8 A.L.J. KERSEY: Mr. Menton, Mr.
9 Ellenbogen, any response?

10 MR. MENTON: Yes. Francis Menton.
11 Let me address, relevance.

12 A.L.J. KERSEY: Well, I want to
13 actually -- let me just back you up for a second. I
14 think that the -- the translation issue is possibly
15 the number 1 issue. It is not something that I think
16 is -- the information is not readily understood by
17 those here. And so I think as mentioned by Mr.
18 Diamantopoulos, before we get to relevance, I
19 understand that this was reflected in your statement
20 in opposition, but if you could -- the Commission is
21 not going to be able to rely on that based on the
22 language issue.

23 MR. MENTON: Can I provide a
24 translation? I mean, it's a handful of words. It's
25 literally a handful of words. I'd be happy to

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073
2 provide a translation. If you need me to get a
3 certified one, which I'll pay for with my own money?
4 These are performance statistics of the El Hierro
5 Wind Storage project that has totally failed, and
6 it's documented --

7 (Cross-talk)

8 A.L.J. KERSEY: I'm going to let
9 you -- no, no, I'm going to let you speak to the
10 relevance issue because perhaps the issue -- we may
11 be able -- you may be able to correct the language
12 issue. So if you would speak to the relevance issue
13 that's been raised, please?

14 MR. MENTON: Okay. This document is a
15 fundamental document that anybody -- it's fundamental
16 to the competence of understanding an energy system
17 is how this system works in El Hierro Island. And if
18 the Department of Public Service claims not to know
19 about this and not to understand it, it is shocking,
20 shocking. This is a failed --

21 A.L.J. KERSEY: But its relevance with
22 respect to this rate proceeding, so.

23 MR. MENTON: The relevance with
24 respect to this rate proceeding is that the El Hierro
25 experience has proved why it is impossible to have a

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073
2 electricity system powered by intermittent renewables
3 and storage. It has proved why, therefore, the
4 revenues included for Con Ed in this rate proceeding
5 to support such an energy system are a waste, which
6 is our fundamental objection.

7 A.L.J. KERSEY: Okay. So let me just
8 stop you there. We will give you a time frame for
9 which we would like a translation of this. And then
10 we will mark it as an exhibit right now because -- so
11 we are overruling the objections to the -- with
12 respect to relevance. We are going to allow this in
13 as it was referenced in your papers.

14 However, please note that the parties
15 will be able to address this in the post-hearing
16 briefs, and it will come in for whatever weight it
17 eventually is recorded. So we're going to mark this
18 as exhibit -- I believe we're on 1234. Is that
19 correct? No. Hang on a minute.

20 Okay. We're marking this as Exhibit
21 1236 for identification.

22 Okay. Item, 19 --

23 MR. SHERWIN: Your Honor.

24 A.L.J. KERSEY: Yes. We'll be
25 admitting this as Exhibit 1236. And we'll also be

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073
2 admitting (indiscernible).

3 MR. SHERWIN: Your Honor?

4 A.L.J. KERSEY: Yes.

5 MR. SHERWIN: Exhibit 19 that you're
6 about to get to.

7 A.L.J. KERSEY: Yes.

8 MR. SHERWIN: Is just, again, it's
9 another scan of the JP, so it can --

10 A.L.J. KERSEY: Okay.

11 MR. SHERWIN: -- go the way of the
12 other one.

13 A.L.J. KERSEY: Okay. So Exhibit --

14 MR. SHERWIN: Because it's going to --
15 just for expediency.

16 A.L.J. KERSEY: Thank you. So Exhibit
17 19, we are going to --

18 MR. SHERWIN: Okay. Now, we're
19 getting into --

20 A.L.J. KERSEY: We're not going to
21 identify that. We're not going to allow that to be
22 marked for identification, we are at this AI
23 analysis, we do note, however, and so the
24 reliability -- sufficient reliability can't be
25 afforded to it, but we do note that it appears to

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073
2 reflect material in the JP.

3 Okay. At this time, are there any
4 additional corrections to the exhibit list?

5 With respect to the remaining exhibits
6 that not been provided to any parties, which I
7 believe are Exhibits 20 through 33, we will address
8 those later in the proceeding when we address the
9 Independent Intervenors full case. Okay?

10 All right. So as I said, any
11 additional corrections to the exhibit list?

12 At this time, we are going to move the
13 exhibits that were previously marked into
14 identification and that we just identified into the
15 record.

16 A.L.J. KERSEY: As we said, we'll
17 address any additional exhibits as necessary if
18 someone seeks to have them admitted into evidence.
19 Turning to the management and operations audit
20 testimony before turning to the witnesses, we want to
21 have the testimony regarding the Company's compliance
22 with recently completed management and operations
23 audits admitted into the record.

24 We previously admitted into evidence
25 the affidavits from Con Edison and DPS Staff adopting

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073
2 their respective testimony on management operations
3 audits.

4 At this point, the court reporter
5 should move into the record as though given orally
6 here today, the section of direct testimony of Con
7 Edison's accounting panels, pre-filed testimony
8 regarding management and operations audits, page 128
9 at lines 14 to 20 and page 129, and the Department of
10 Public Services prepared testimony of the staff
11 management and operations audit panel.

12 I will forward the testimony -- I'll
13 forward that testimony to the court reporting service
14 for inclusion in the transcript.

15 **INSERT TESTIMONY HERE**

16

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1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073

2 BEFORE THE
3 STATE OF NEW YORK
4 PUBLIC SERVICE COMMISSION

5

6

7 In the Matter of
8 Consolidated Edison Company Of New York, Inc. Cases 25-
9 E-0072 and 25-G-0073

10

11 May 2025

12

13 Prepared Testimony of:

14

Staff Management and
Operations
Audit Panel

15

16

Jeremy Routhier
Chief Utility Accounting and
Finance

17

18

Angela Morina
Utility Analyst 2
Office of Accounting, Audits
and
Finance

19

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State of New York
Department of Public Service
Three Empire State Plaza
Albany, New York 12223-1350

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1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073

2 Members of the Staff Management and Operations Audit Panel
3 (SMOAP or Panel) please state your names, employer,
4 and business address.

5 A. Our names are Jeremy Routhier and Angela Morina. We
6 are employed by the New York State Department of
7 Public Service, referred to as the Department, at
8 Three Empire State Plaza, Albany, New York 12223.

9 Q. Jeremy Routhier, what is your position at the
10 Department?

11 A. I am employed as a Chief Utility Accounting and
12 Finance in the Office of Accounting, Audits and
13 Finance.

14 Q. Please describe your educational background and
15 professional experience.

16 A. I hold a Bachelor of Arts in Sociology from the State
17 University of New York at Albany, a Master of Public
18 Administration from Marist College, and a Certificate
19 in Business Contracts from Cornell University. I
20 have been employed by the Department since April
21 2008. I supervise the Finance Policy and Management
22 and Operations Audit Units within the Office of
23 Accounting, Audits and Finance. Of relevance to this
24 Panel's testimony, the Management and Operations
25 Audit unit oversees management and operations audits,

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073
2 reviews the implementation of the resulting
3 recommendations, and analyzes management and
4 executive incentive compensation programs. I have
5 supervised more than a dozen management and
6 operations audits of investor-owned utilities in New
7 York, including Case 21M-0193, referred to as the
8 2021 Management Audit, which was a comprehensive
9 management and operations audit of Consolidated
10 Edison Company of New York, Inc. (Con Edison or the
11 Company) and Orange and Rockland Utilities, Inc.
12 (O&R).
13 Q. Have you previously testified before the Commission?
14 A. Yes. I testified in the rate proceedings for Keyspan
15 Gas East Corporation and The Brooklyn Union Gas
16 Company in Cases 16-G-0058 and 16-G-0059,
17 respectively, and the rate proceeding for National
18 Fuel Gas Distribution Corporation in Case 23-G-0627.
19 Q. Angela Morina, what is your position at the
20 Department?
21 A. I am employed as a Utility Analyst 2 in the
22 Management and Operations Audit unit of the Office of
23 Accounting, Audits and Finance.
24 Q. Please describe your educational background and
25 professional experience.

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073

2 A. I hold a Bachelor of Science in Business
3 Administration from Russell Sage College. I have
4 been employed by the Department since March 2016.

5 Q. Please briefly describe your responsibilities at the
6 Department.

7 A. I am responsible for the oversight of management and
8 operations audits, as well as the implementation of
9 the resulting recommendations. I am also responsible
10 for analyzing incentive compensation in rate
11 proceedings.

12 Q. Have you worked on management and operations audits
13 of New York State utilities?

14 A. Yes. I have worked on multiple management and
15 operations audits of electric and gas utility
16 companies. Of relevance to these rate proceedings, I
17 am the Project Manager for the 2021 Management Audit
18 and the Assistant Project Manager in Case 18-M-0013,
19 referred to as the Income Tax Accounting Audit, which
20 is an operations audit to investigate the income tax
21 accounting of the Company, O&R, New York State
22 Electric and Gas Corporation (NYSEG), and Rochester
23 Gas and Electric Corporation (RG&E). I previously
24 worked on Case 13-M-0314, which was a review of the
25 accuracy and effectiveness of certain reliability and

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073
2 customer service systems at multiple gas and electric
3 utilities, including Con Edison, that provide
4 statistics to the Commission.

5 Q. Have you previously testified in a proceeding before
6 the Commission?

7 A. Yes. I testified before the Commission in the
8 previous rate proceedings for Con Edison, Cases 22-E-
9 0064 and 22-G-0065. I also testified in the rate
10 proceedings for O&R in Cases 24-E-0060 and 24-G-0061
11 and Cases 21-G-0073 and 21-E-0074, and NYSEG and RG&E
12 in Cases 19-E-0378, 19-G0379, 19-E-0380, and 19-G-
13 0381.

14 Q. Will the Panel refer to any information Con Edison
15 provided during the discovery phase of this
16 proceeding in your testimony?

17 A. Yes, we will refer to, and have relied upon, the
18 Company's responses to information requests, referred
19 to as IRs. These responses are contained in
20 Exhibit____(SMOAP-1). We will refer to these
21 responses by the designation the trial staff
22 assigned, e.g., DPS-123.

23 Q. What is the purpose of your testimony?

24 A. Our testimony will discuss Con Edison's
25 implementation efforts related to recent management

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073
2 and operations audits and respond to the Company's
3 cost recovery requests for conducting audits.

4 Q. What is a management and operations audit?

5 A. Management and operations audits review a utility's
6 construction program planning process, operational
7 efficiency, and other matters. The Commission
8 conducts comprehensive management and operations
9 audits of large, investor-owned utilities, including
10 Con Edison, on a five-year cycle. The Commission
11 also conducts focused operations audits of specific
12 topics as needed.

13 Q. What specific audits will you discuss in your
14 testimony?

15 A. We will discuss three audits in our testimony. They
16 are the comprehensive management and operations audit
17 of Con Edison and O&R in Case 14-M-0001, referred to
18 as the 2014 Management Audit, the Income Tax
19 Accounting Audit, and the
20 2021 Management Audit. The 2014 Management Audit, the
21 Income Tax Accounting Audit, and the 2021 Management
22 Audit were open audits at the time of the previous
23 rate proceedings for the Company in Cases 22-E-0064
24 and 22-G-0065.

25 Q. What is the status of the 2014 Management Audit?

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073

2 A. The audit is complete. On January 13, 2023, Staff
3 filed a letter with the Secretary to the Commission
4 stating that Con Edison had satisfactorily
5 implemented all recommendations.

6 Q. What is the status of the Income Tax Accounting Audit
7 for Con Edison?

8 A. The Income Tax Accounting Audit is ongoing for Con
9 Edison.

10 Q. What is the background and status of the 2021
11 Management Audit?

12 A. The Commission initiated this audit on May 13, 2021,
13 in its Order Initiating a Management Audit in Case
14 21-M-0193. On October 9, 2021, in its Order
15 Directing Utilities to Enter Into Contract with
16 Selected Independent Auditor, the Commission selected
17 NorthStar Consulting Group, which we will refer to as
18 NorthStar, to conduct the audit. The Commission
19 released NorthStar's Final Report on February 16,
20 2023, in its Order Releasing Audit Report. On
21 October 12, 2023, in its Order Approving
22 Implementation Plan with Modification and Denying
23 Deferral Authority, which we will refer to as the
24 Implementation Order, the Commission approved Con
25 Edison and O&R's plan to implement the audit

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073
2 recommendations. Con Edison and O&R filed their most
3 recent implementation update on March 28, 2025. In
4 the update, Con Edison and O&R indicate they have
5 completed 32 of the 42 recommendations.

6 Q. Is the Company on track to complete the remaining ten
7 recommendations according to the implementation steps
8 and schedules detailed in the Commission-approved
9 implementation plan?

10 A. No. Three of the recommendations remain on track,
11 but seven have been delayed. The Company has sought
12 approval for schedule extensions for each of them
13 from the Director of the Department's Office of
14 Accounting, Audits and Finance, per the process
15 detailed in the Implementation Order.

16 Q. Did the Department approve these schedule extensions?

17 A. Yes, though one recent request related to
18 Recommendations VIII-10, VIII-11, VIII-13, and VIII-
19 14 remains under review. These four recommendations
20 pertain to the Company's Personal Services Group,
21 which conducts meter and billing investigations in
22 response to customer complaints. Specifically, these
23 recommendations require Con Edison to perform a
24 workload analysis for the Personal Services Group,
25 cross-train call center customer service

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073
2 representatives to assist the Personal Services
3 Group, develop a formal plan to reduce the Personal
4 Services Group's backlog of investigations, and
5 modify Company policies regarding the timing of
6 shared meter investigations. Con Edison indicated in
7 the implementation plan approved and modified by the
8 Commission that it would complete these four
9 recommendations by December 31, 2024. In November
10 2024, the Company submitted a request for a timeline
11 extension to June 30, 2025, which Staff granted. On
12 May 16, 2025, Con Edison submitted a request for a
13 second timeline extension to February 28, 2026,
14 citing delays in training and the need for increased
15 staffing as the reasons. Further, the Company's
16 March 28, 2025, implementation update noted that the
17 backlog in Personal Services cases has increased as a
18 result of the Company's transition to a new customer
19 billing system and that the Company has only reduced
20 the backlog of cases by 20 percent to date. Staff is
21 currently reviewing the Company's request for
22 additional time to complete these recommendations.

23 Q. Did the Company reflect any costs or savings in the
24 Historic Test Year (HTY) resulting from the
25

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073

2 implementation of any of the recommendations from the
3 2021 Management Audit?

4 A. No. According to Con Edison's response to DPS256 the
5 recommendations applicable to the Company are
6 qualitative, and a cost-benefit analysis is not
7 easily quantifiable. The Company also states that
8 any savings resulting from the implementation of a
9 recommendation will be reflected in the HTY data.

10 Q. Were there any recommendations from these audits that
11 are relevant to these proceedings?

12 A. Yes, there are two recommendations from the 2021
13 Management Audit that are relevant to these rate
14 proceedings: Recommendations VII-2 and IX-3.

15 Q. Please describe Recommendation VII-2.

16 A. As noted on page A-41 of NorthStar's Final Report,
17 Recommendation VII-2 is that Con Edison perform an
18 assessment of estimating accuracy for large capital
19 projects to identify potential improvements. In the
20 Company's December 31, 2024, Implementation Plan
21 update, Con Edison reported that it completed
22 implementing this recommendation on November 30,
23 2024.

24 Q. Why is Recommendation VII-2 relevant to these rate
25 proceedings?

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073

2 A. Con Edison has been developing a standard estimating
3 process since the 2014 Management Audit. During the
4 audit, NorthStar found that Con Edison reviewed
5 project cost performance but focused on project
6 management, oversight, and funding, rather than
7 estimating accuracy. Con Edison indicated that it
8 was planning to perform a quantitative review of
9 project estimating data to assess budget, estimate,
10 and forecast versus actual comparisons. Because
11 Recommendation VII2 was implemented near the end of
12 the HTY, any resulting changes to estimating cost
13 assumptions, associated improvements, and resulting
14 benefits or savings would not be reflected in the
15 HTY.

16 Q. Please describe Recommendation IX-3.

17 A. As noted on page A-64 of NorthStar's Final Report,
18 Recommendation IX-3 is that Con Edison develop a
19 process for identifying, measuring, and tracking
20 actual benefits and savings achieved from information
21 technology projects. In the Company's March 31,
22 2025, Implementation Plan update, Con Edison reported
23 that it continues to consider whether to adopt the
24 resulting process more widely.

25

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073

2 Q. Why is Recommendation IX-3 relevant to these
3 proceedings?

4 A. During the audit, NorthStar found that Con Edison was
5 implementing a methodological approach to more
6 accurately tracking the value realized from system
7 implementation. NorthStar states that a formal
8 process such as the one being implemented by Con
9 Edison would enable more accurate estimates,
10 tracking, and reporting of savings and benefits from
11 capital projects. Because Recommendation IX-3 will
12 be implemented during the bridge period between the
13 HTY and the RY, any resulting changes, associated
14 improvements, and resulting benefits or savings would
15 not be reflected in the HTY.

16 Q. How should these recommendations be considered in
17 these proceedings?

18 A. We believe these recommendations should be considered
19 in the context of the labor productivity adjustment,
20 which is discussed in the Staff Accounting Panel
21 testimony. Given the timing of implementation, we
22 would expect the efficiency gains under
23 Recommendations VII-2 and IX-3 to materialize during
24 the RY. However, these improvements are difficult to
25 identify and quantify with precision, and are,

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073
2 therefore, more appropriately captured by a
3 productivity adjustment.

4 Q. Is Con Edison requesting recovery of any costs
5 associated with conducting management and operations
6 audits?

7 A. The Company proposes to defer the actual cost
8 incurred of any management and operations audit that
9 the Commission might conduct during the rate plan for
10 recovery in Con Edison's next base rate cases.

11 Q. Do you agree with the Company's proposed treatment of
12 management and operations audit costs?

13 A. Yes, but with some limits. We agree that the
14 Commission should allow Con Edison to defer the cost
15 of comprehensive management and operations audits
16 should the Company incur such costs during its rate
17 plans. However, we recommend that the recovery of
18 any deferral be limited to the costs allowed pursuant
19 to the contract.

20 Q. Does this conclude your testimony at this time?

21 A. Yes.

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BEFORE THE 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 and Gas
Service.

25-E-XXXX;25-G-XXXX

January 2025

Prepared Testimony of:

Accounting Panel

Joseph Miller	Wenqi Wang
4 Irving Place	4 Irving Place
New York, New York 10003	New York, New York 10003

Kelly McLaughlin-Martini	Anthony Barretta
4 Irving Place	4 Irving Place
New York, New York 10003	New York, New York 10003

XVIII. MANAGEMENT AND OPERATIONS AUDITS

**Q. Please discuss any developments
in Commission-initiated management and
operations audits since the Company's
last base rate cases.**

**A. At the time of the Company's last
base rate filings, the Company had three open 18**

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073
2 management and operation audits.

3 First, Case 14-M-0001 was a
4 comprehensive management and operations audit of 20
5 Con Edison and O&R pursuant to Public Service
6 Law §66(19). At the time, the
7 Company had completed 35 of 36
8 recommendations and Staff had accepted and 2
9 closed 35 of 36 recommendations. Staff closed
10 this audit on January 13, 2023.

11 Second, Case 18-M-0013 was an income
12 tax accounting audit. The audit report
13 was pending at the time of the
14 Company's last base rate filing. The report is 5
15 currently still pending.

16 Third, Case 21-M-0193 was a
17 comprehensive management and operations audit
18 of Con Edison and O&R pursuant to
19 Public Service Law §66(19). At the time, the
20 audit report was pending. The Company
21 has now completed 32 of 42
22 recommendations and DPS Staff has
23 reviewed and closed 16 recommendations.

24 Q. Has the Commission commenced any
25 new management and operations audits

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073

2 **since the Company's last base rate**

3 **cases?**

4 **A. No.**

5 **Q. Does that conclude your direct**

6 **testimony?**

7 **A. Yes, it does.**

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1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073

2 A.L.J. KERSEY: I just want to give a
3 reminder on the standard. The issue for a proposed
4 settlement is whether that settlement is in the
5 public interest. While opposing parties are able to
6 seek information from the sponsoring parties on
7 individual provisions of a settlement, the Commission
8 considers the agreement as a whole, aware that the
9 proposal is the product of negotiation among
10 different interests and concerns.

11 The burden of supporting a proposed
12 settlement is on the settling parties, and so those
13 parties are able to define the witnesses that they
14 choose to use sponsor a Joint Proposal.

15 In addition, sponsoring parties may
16 put forward witnesses as one panel, or they may
17 choose to have their witnesses appear as an
18 individual party.

19 As a final reminder, cross-examination
20 on legal conclusions, interpretation, and theory is
21 improper. Such clearly legal material is for
22 briefing and argument only. Even where a witness
23 makes a claim that a response is based on the advice
24 of counsel, the legal opinion of witnesses have no
25 evidentiary value for a number of reasons, including

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073
2 at a minimum, hearsay and lack of foundation to
3 provide a legal opinion.

4 We plan to proceed first with
5 UtiliSave, then with the Company and Staff's witness
6 panels, and then with Mr. Ellenbogen and Mr. Menton.
7 So we're going to move with respect to UtiliSave's,
8 excuse me, witness.

9 Mr. Steifman, you can stay in your
10 seat if you'd like to. My understanding, we
11 previously asked the parties if they intended to do
12 cross-examination of Mr. Steifman, and they said no.

13 As you are here, Mr. Steifman, we're
14 not going to rely on the affidavit submitted. We're
15 going to ask you a few questions.

16 So to begin, I would like to swear you
17 in. Mr. Steifman, please --

18 MR. STEIFMAN: And can I just, Your
19 Honor, if it's possible to have a five-minute break
20 before we begin.

21 A.L.J. KERSEY: Sure.

22 MR. STEIFMAN: Thank you so much.

23 A.L.J. KERSEY: Sure. We're going
24 to -- we're going to get going. Does anyone have a
25 thought on when they'd like to break for lunch?

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073

2 What I would what I would propose is
3 we come back in five minutes. We wrap up UtiliSave
4 and then we take a break from lunch before we start
5 cross-examination of Con Ed and DPS Staff.

6 Does that work for everybody? We just
7 take a five-minute break and come back at noon.
8 Okay?

9 A.L.J. KERSEY: All right, we're off
10 the record.

11 (Off the record)

12 (On the record)

13 A.L.J. KERSEY: We are on the record.
14 Folks, we are back on the record. So if you could
15 cease your conversations, thank you very much. Okay.
16 We are on the record.

17 Mr. Steifman, please state your name
18 and business address for the record. We're going to
19 square you in.

20 MR. STEIFMAN: Michael Steifman, 2
21 Eastway Drive, Southampton, New York.

22 A.L.J. KERSEY: Please stand and raise
23 your right hand.

24 MICHAEL STEIFMAN (UTILISAVE); Sworn

25 A.L.J. KERSEY: Thank you. You may be

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073
2 seated.

3 THE WITNESS: Thank you.

4 A.L.J. KERSEY: Mr. Steifman, do you
5 adopt the factual statements in the UtiliSave LLC
6 statement in opposition to approval of the Joint
7 Proposal filed on November 26th, 2025, as your sworn
8 testimony in this proceeding?

9 THE WITNESS: I do, Your Honor.

10 A.L.J. KERSEY: Mr. Steifman, do you
11 have in front of you a document entitled The
12 Testimony of Michael Steifman, Esq., for UtiliSave
13 LLC, in Opposition to Approval of the Joint Proposal
14 which was filed with the Commission on November 26th,
15 2025?

16 THE WITNESS: I do, Your Honor.

17 A.L.J. KERSEY: Was that document
18 prepared by you or under your supervision?

19 THE WITNESS: It was, Your Honor.

20 A.L.J. KERSEY: Do you have any
21 changes or corrections to that testimony?

22 THE WITNESS: I do not, Your Honor.

23 A.L.J. KERSEY: And if I ask you the
24 same questions today, would your responses be the
25 same?

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073

2 THE WITNESS: With regard to this
3 document, you mean?

4 A.L.J. KERSEY: With respect to your
5 testimony?

6 THE WITNESS: Yes, Your Honor.

7 A.L.J. KERSEY: And Mr. Steifman, do
8 you adopt this as your sworn testimony in this
9 proceeding?

10 THE WITNESS: I do, Your Honor.

11 A.L.J. KERSEY: And are you asking
12 that this testimony, the testimony of Michael
13 Steifman, Esq., of UtiliSave LLC, in opposition to
14 approval of the Joint Proposal be copied into the
15 record as if given orally today?

16 THE WITNESS: I do, Your Honor.

17 A.L.J. KERSEY: Are there any
18 objections?

19 MR. SHERWIN: No, Your Honor.

20 A.L.J. KERSEY: Okay. The request is
21 granted and the testimony of Michael Steifman,
22 Esquire, for UtiliSave LLC, in opposition to approval
23 of the Joint Proposal which was filed with the
24 Commission on November 26, 2025, is entered into the
25 record as if orally given today.

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073

2 THE WITNESS: Thank you, Your Honor.

3 A.L.J. KERSEY: Thank you. At this
4 point, the court reporter should move into the record
5 as though given orally such testimony.

6 **INSERT TESTIMONY HERE**

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1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073

2 **NEW YORK STATE**

3 **PUBLIC SERVICE COMMISSION**

4

5 **Proceeding on Motion of the Commission as to the**
6 **Rates, Charges, Rules and Regulations of Consolidated**
7 **Edison Company of New York, Inc. for Electric Service.**
8 **Case 25-E-0072**

9

10 **Proceeding on Motion of the Commission as to the**
11 **Rates, Charges, Rules and Regulations of Consolidated**
12 **Edison Company of New York, Inc. for Gas Service.**
13 **Case 25-G-0073**

14

15

16 **TESTIMONY OF MICHAEL STEIFMAN, ESQ. FOR UTILISAVE, LLC**

17 **IN OPPOSITION TO APPROVAL OF THE JOINT PROPOSAL**

18

November 26, 2025

19

Michael Steifman, Esq.
UtiliSave, LLC
2 Eastway Drive
Southampton, NY 11968

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1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073

2 **INTRODUCTION**

3 **Q. Please state your name, business address, and identify**
4 **for whom you are presenting testimony in these**
5 **proceedings.**

6 Michael Steifman 2 Eastway Drive Southampton NY
7 11968. I represent UtiliSave as its CEO and in my capacity
8 as an agent for the utility bill auditing customers being
9 served by Con Edison that UtiliSave represents. Q. Please
10 describe UtiliSave and your relationship to the
11 organization. I am the Founder and CEO of UtiliSave.
12 UtiliSave is a utility auditing company. UtiliSave has
13 used its proprietary systems and specialized knowledge to
14 identify utility overcharges for its clients.

15 **Q. What is your educational background, your professional**
16 **qualifications, and employment history?**

17 **Employment History:**

18 **Steifman, LLP**, New York, NY - admitted in New York,
19 Texas and Massachusetts

20 Managing Partner, September 2020 -Present

21 **UtiliSave, LLC**, New York, NY

22 *Founder, Managing Member and CEO*, November 1991 -
23 Present

24 • Manage 30+ person firm to achieve annual multi-
25 million dollars in revenue.

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073

2 • Provision utility bill auditing services

3 resulting in energy and cost reductions for

4 clients.

5 • Secured over \$700 million in savings for large

6 commercial, industrial and institutional property

7 owners of 16,000 buildings nationwide over 35

8 years.

9 • Well practiced in legal research, issue spotting

10 and legal writing.

11 • Successfully engaged in all phases of rate case

12 litigation with various utility companies resulting

13 in awards of millions of dollars to clients.

14

15 **Starrett Housing Corporation, New York, NY**

16 *Vice President, June 1986 - April 1992*

17 • Implemented and monitored all phases of real

18 estate development projects.

19 • Responsible for site negotiation and

20 acquisition, design, financing, construction

21 management, marketing and leasing of projects.

22 • Youngest corporate Vice President in the

23 Company's 100 year history.

24 **Education**

25 **New York Law School, New York, NY**

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073
2 LLM Tax candidate, May 2028
3 *Juris Doctor*, Graduated December 2019, Cum Laude
4 Honors: Dean's List, High Honors

5
6 **The Wharton School, University of Pennsylvania,**
7 Philadelphia, PA *Bachelor of Science in Economics*,
8 1986

9
10 **Q. Have you previously testified before the New York**
11 **State Public Service Commission?**

12 I have not testified before the Public Service
13 Commission in a rate case, but I have presented
14 cases in the Informal Hearing setting on behalf of
15 clients of UtiliSave.

16 **Q. What is the purpose of your testimony?**

17 To advocate for the PSC to mandate that Con Ed be
18 required to provide all the data and formulas
19 related to each charge and component of a customer's
20 bill, such that there is full transparency as to the
21 method of formulation and calculation with
22 provisioning of all bill inputs which are utilized
23 to derive every billing component.

24 **Q. What are the major findings of your testimony in**
25 **these proceedings?**

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2 My testimony examines and provides evidence that the
3 Joint Proposal fails to take into account that Con
4 Edison's billing strategy and policies are not as
5 transparent as they should be in order to protect
6 ratepayers' interests. The Joint Proposal only
7 provides for a limited expansion in billing
8 transparency, that being related to taxation (see
9 Joint Proposal at 93). Based on my 35years of
10 experience in the industry, and my interactions with
11 multiple utilities, much more in the way of
12 informational transparency is required to fulfill
13 the needs of the public in this critical area. My
14 testimony will also highlight examples where the
15 lack of data transparency inhibits the ability of a
16 customer to determine the accuracy of the bills
17 provided to them by Con Edison.

18 **Q. Is greater information transparency and greater**
19 **transparency in the billing process in the public**
20 **interest?**

21 Yes.

22 **Q. Why is it important that the information you are**
23 **requesting be made available?**

24 There are a number of reasons:

25 A. There should be a sustained practice of

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073
2 transparency. If a charge is being assessed, then
3 all the billing components should be made available
4 as a matter of course. This approach fosters a
5 relationship of trust between the utility and a
6 customer,

7 B. Given all the variables that go into a correct
8 bill, it is very possible for there to be a mistake
9 on how an input is allocated. Once example is in the
10 calculation of the BTU heating factor, there are 5
11 zones that serve all customers, the billing does not
12 disclose which zone the customer has been placed on,
13 how can the customer check if he is in the correct
14 zone?

15 C. Customers should have the ability to confirm
16 each component of their bill and all the related
17 inputs should be provided so that this is possible.
18 If there is a charge the support/backup for this
19 charge should be available. Why should anyone be
20 required to pay for charges that are not verifiable?
21 There is really no aspect of commerce where it would
22 be acceptable to be presented with a bill by a
23 vendor, and if you as the customer wanted to verify
24 the accuracy of any component of the bill, would not
25 be able to do so, yet you would still be expected to

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073
2 pay the bill. Why should utility service not operate
3 on the same concept? Yet today the requirement for
4 such a level of information and transparency is not
5 an obligation of the utilities. This needs to
6 change.

7 **Q. Why isn't the current treatment by Con Edison**
8 **sufficient?**

9 Because even when asked, Con Edison does not provide
10 the reasonable information requested. I detail
11 specific excerpts below from Con Ed
12 dialogues that illustrate this point.

13 **Q. Does the Joint Proposal adequately consider the**
14 **issue of bill transparency in order to provide**
15 **ratepayers with sufficient information to understand**
16 **all the charges on their bill and to permit**
17 **ratepayers, should they wish to, to confirm the**
18 **accuracy of the charges assessed by Con Edison for**
19 **utility service?**

20 No.

21 **Q. Are there specific examples where greater**
22 **informational transparency would enhance a**
23 **ratepayer's ability to confirm the charges assessed**
24 **by Con Edison?**

25 Yes. The examples I will give are not all inclusive,

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073
2 but just illustrative. Gas Cost Factor: The
3 Company's Gas Cost Factor is made up of the average
4 variable cost and the average fixed cost of gas both
5 of which have multiple sub-components. These
6 components are set out in Con Edison's gas tariff at
7 Leaves 155.1, 156, 157, 157.1, 158, 159, 160, 161.
8 The values, data and formulas used to derive these
9 sub-components are not disclosed to ratepayers. When
10 UtiliSave filed an Information Request seeking
11 information on Con Edison's policy regarding
12 disclosure of these subcomponents, Con Edison
13 replied that it did not propose to change its
14 policy. Con Edison replied that such information was
15 confidential, and without proof, alleged that
16 disclosure of such data " could impair the Company's
17 position in any future negotiations with gas
18 suppliers and service providers with respect to
19 hedge-based gas transactions."
20 Market Supply Charge: The price of the Market
21 Supply Charge (MSC) for non-Rider M customers is
22 based on Con Edison's forecast of NYISO market
23 energy prices plus a defined 'Hedging Impact.' The
24 cost per kWh is reconciled monthly via the
25 Adjustment Factors - MSC, with true-ups reflected in

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073
2 the following month's billing statements. While the
3 tariff specifies each input to the MSC, Con Edison
4 does not publish granular forecast or real-time
5 hedging data, nor provide the raw input for analysis
6 by customers or their representatives. Additionally,
7 the charge components and adjustment factors are
8 updated and filed publicly each month, but full
9 calculation workpapers are not published, and so the
10 final information cannot be independently calculated
11 and verified by the customer. When UtiliSave filed
12 an Information Request seeking if Con Edison was
13 entertaining a policy change, Con Edison again
14 replied, without evidence, that the confidentiality
15 of this information was required so as not to
16 "impair the Company's position in future
17 negotiations with counterparties." BTU Factor: The
18 tariff permits Con Ed to charge for gas based on the
19 BTU content of the gas, as opposed to the volume of
20 gas, such that for the same volume of gas, one ccf
21 of gas with a higher BTU content, will cost more
22 than a ccf of gas with a lower BTU content. The
23 following information is not made available to the
24 ratepaying public by Con Edison:

25 1. The method, process or other calculation the Con

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2 Edison uses to calculate the Gas Therm for each city
3 gate, as taken hourly throughout the year on each
4 day.

5 2. The method, process or other calculation the
6 Company uses to calculate the quantity of gas being
7 passed through each city gate as taken hourly
8 throughout the year on each day.

9 3. The method, process or other calculation the
10 Company uses to calculate the quantity of gas that
11 is being taken from each city gate into each thermal
12 zone as taken hourly throughout the year on each
13 day.

14 In the Information Request, UtiliSave requested
15 information on how this data could be accessed. Con
16 Edison replied for each "Current technology systems
17 do not have the capability to publish this data as
18 described to customers. There are currently no
19 projects in the current technology roadmap that
20 would provide this functionality."

21 What is being requested is the raw data. This can be
22 presented in Excel spreadsheets, nothing fancier is
23 required. A data dump in excel can certainly be made
24 available.

25 **Q. Is the information detailed in the example above**

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073

2 **important for a ratepayer to access?**

3 Yes.

4 **Q. What is the importance of this information?**

5 Access to this information would permit an
6 interested ratepayer to evaluate the accuracy of the
7 charges Con Edison assessed for utility service.

8 **Q. Do you believe that it is in the public interest if**
9 **access to this information, or protocols established**
10 **to make this information accessible were contained**
11 **in the Joint Proposal and made part of the Joint**
12 **Proposal?**

13 Yes. There is proposed legislation currently pending
14 before the New York State legislature that supports
15 the critical need for utility transparency.

16 S8530, entitled "The Utility Transparency And Fair
17 Billing Protection Act" seeks to prevent consumers
18 from being overcharged due to misclassified utility
19 rates by mandating proactive account reviews,
20 automatic adjustments, and ensuring clear
21 communication between utilities and customers.

22 S8128 entitled the "Ratepayer Transparency Act"
23 which requires bills utilized by public and private
24 gas corporations, electric corporations and gas and
25 electric corporations in levying charges for service

1 12/3/2025 - Consol. Edison - 25-E-0072, 25-G-0073
2 to include separate categories for certain charges.
3 There is also legislation related to utility
4 transparency that has been recently signed by the
5 Governor and that is now in effect:
6 S9188 entitled "AN ACT to amend the public service
7 law, in relation to information required to be
8 published prior to a major rate change by a public
9 gas or electric utility" became effective on
10 November 24, 2025. This Act requires the public
11 service commission to publish certain information
12 prior to a major rate change by a public gas or
13 electric utility including an explanation of why the
14 rate change is requested and a summary of how the
15 proposed revenue will be spent. The bill, now law,
16 specifically requires the Public Service Commission
17 to "within ten days of the commencement of any
18 matter involving a major change in a rate for
19 electric or gas service, publish, in a readily
20 accessible location on the department's website,
21 a summary in plain language, not to exceed one
22 page or five hundred words..." containing information
23 related to the rate change proceeding so that
24 ratepayers can evaluate the potential effect on
25 their utility costs, among others.

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2 S6710 entitled "AN ACT to amend the public service
3 law, in relation to false material statements
4 related to a public utility" amends the Public
5 Service Law to permit the assessment of a fine for a
6 false statement and became effective on September
7 25, 2024:

8 ...any public utility company or
9 corporation, and the officers,
10 agents or employees thereof that
11 knowingly makes a false material
12 statement, representation or
13 certification to the commission
14 in any rate proceeding shall
15 forfeit to the state of New York
16 a sum not to exceed two hundred
17 fifty thousand dollars. Each
18 false material statement,
19 representation or certification
20 shall constitute a separate and
21 distinct offense for purposes of
22 this section.

23 **Q. Do you support Con Edison's proposal related to**
24 **billing transparency?**

25 Not as proposed.

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2 **Q. What do you recommend instead?**

3 I recommend that DPS consider requiring Con Edison
4 to specifically list and detail individually each
5 and every component of all charges assessed to a
6 ratepayer for utility service, including commodity,
7 delivery, tax and every component of the bill, as I
8 have illustrated in my testimony above.

9 **CONCLUSION**

10 **Q. Does this conclude your testimony?**

11 Yes.

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3 A.L.J. KERSEY: I will forward that
4 testimony to the court reporting service for
5 inclusion in the transcript.

6 (Cross-talk)

7 A.L.J. COSTELLO: I just want to make
8 sure we also grant any motion with respect to the
9 Statement in Opposition to Factual Statements. Does
10 anyone have any objection to the factual statements
11 in his opposition being entered as sworn testimony?

12 MR. SHERWIN: No, Your Honor.

13 MR. KRAMER: No, Your Honor.

14 A.L.J. COSTELLO: Thank you. Okay.
15 So that also will be entered in the -- well, it's
16 entered into the record. It's going to be entered in
17 the record, as an exhibit, basically. But we're
18 adopting the factual statements as given here orally
19 today.

20 A.L.J. KERSEY: Okay. You're excused
21 as a witness, Mr. Seifman.

22 THE WITNESS: Thank you, ma'am.

23 A.L.J. KERSEY: One other item we just
24 wanted to note, Mr. Dichter with the Westchester
25 Municipal Consortium had stated that he wanted to

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2 enter some items into the record. Mr. Seifman -- I'm
3 sorry -- Mr. Dichter, could you speak to that?

4 MR. DICHTER: Yes, Your Honor. We had
5 identified in our exhibit list which is now under the
6 new list, 1191, which consists of Company's responses
7 to information requests submitted by WMC to Con
8 Edison. These documents are relevant in that the
9 Joint Proposal on page 52 makes reference to, and I'm
10 quoting, "Consistent with the responses to WMC-4, and
11 so the document that we're trying to admit are
12 responses to WMC-4". So responding to provide some
13 light on the Joint Proposal provision of the
14 document. The Company --

15 A.L.J. KERSEY: Mr. Dichter, I'm
16 sorry. You identified those as what number on the
17 exhibit list?

18 MR. DICHTER: 1191.

19 A.L.J. KERSEY: Thank you.

20 MR. DICHTER: As on the updated list
21 from -- I received from Judge Costello.

22 A.L.J. COSTELLO: Okay. And did you
23 also want to indicate you had -- off the record
24 indicated that you had received consent by Con Edison
25 with respect to a number of those interrogatory

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2 responses?

3 MR. DICHTER: I'll let Con Edison
4 speak to that, but yes, Your Honor, they did request
5 that I remove two of the responses which were
6 objections, which is 110 and 111, which I've done --
7 now removed, and have a copy as amended that I can
8 hand up to you at any time. But otherwise, they have
9 indicated they have no objections.

10 A.L.J. COSTELLO: Okay. Please hand
11 those up to us. So what we're going to do, just for
12 clarity of everything we have, the exhibit list which
13 contains all of them, so what we're going to do is
14 just strike --

15 MR. LANG: Your Honor, before you make
16 your own, may we be heard?

17 A.L.J. COSTELLO: Yes, sir.

18 MR. LANG: So we do have an objection
19 here, so.

20 A.L.J. COSTELLO: You have? Okay.
21 I'm sorry. We're jumping the gun. Go ahead. Let's
22 hear it.

23 MR. LANG: All right. Yeah. So Mr.
24 Johnson did not rely on any of these exhibits. He
25 actually has in his testimony which has been marked

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2 an exhibit which is the discovery that he relied
3 upon, and it doesn't include any of these, and these
4 were all discoveries that was available to him.

5 So to bring it in and say this is
6 stuff that was relied upon, and it wasn't, the fact
7 that the Joint Proposal makes reference to it, so be
8 it. It makes reference to a number of things that
9 aren't necessarily in the record either. We don't
10 think that there is any basis to bring his discovery
11 responses into the record.

12 And this instance, this party has
13 stated in its statement that it is not opposed to the
14 Joint Proposal, so it's not an adversarial position,
15 and we don't think it does anything, and it's
16 necessary.

17 A.L.J. COSTELLO: Okay. Let me, with
18 respect to that, I know we sent out an email
19 yesterday requesting that you address that. What is
20 the purpose of getting these in when Westchester
21 Municipal Consortium does not have any objection to
22 the Joint Proposal? Why do you need these documents
23 then?

24 MR. LANG: Your Honor, there was the
25 position of the Westchester Municipal Consortium not

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2 to oppose the Joint Proposal, it's based on a number
3 of factors. There was the reduction in the amount,
4 but there were also some provisions that were
5 included in the Joint Proposal, and if they weren't
6 there, we might take a very different position. One
7 of those was the Company's agreement in its next
8 embedded cost of service study to provide data on
9 certain information related to the cost of providing
10 service for overhead radio systems versus
11 underground.

12 This is integral to our position here,
13 and the Joint Proposal provides that they will
14 conduct that study consistent with WMC-4. So for the
15 record to be complete as to what it is they were to
16 do upon the Joint Proposal, it makes perfect sense,
17 and is logical and relevant, to admit into evidence
18 the responses to WMC-4.

19 A.L.J. COSTELLO: Where in the Joint
20 Proposal? Can you just point that out so we can --

21 MR. LANG: That is on page 52, in the
22 first full paragraph, the first -- yeah, just the
23 five -- first sentence.

24 A.L.J. COSTELLO: Okay. Before we
25 move on, so Mr. Konecni, your position?

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2 MR. KONECNI: Mr. Dichter was correct
3 about our position. We have no objections with his
4 revised submission.

5 A.L.J. COSTELLO: Mr. Kramer or DPS
6 Staff?

7 MR. KRAMER: Thank you, Your Honor.
8 Based on Mr. Dichter's explanation, Staff does not
9 object to the entry of this material into the record.

10 A.L.J. COSTELLO: Does any other party
11 want to be heard on this?

12 MR. LANG: Your Honor, this is Mr.
13 Lang. I would just note that the Westchester
14 Municipal Consortium filed comments on the Joint
15 Proposal, and in those comments while they did
16 reference the Joint Proposal language, they did not
17 reference the discovery, they did not indicate that
18 the discovery was necessary. They're trying to do so
19 today, but they had an opportunity to at least
20 reference it and they didn't do that.

21 MR. DICHTER: Your Honor, so these
22 references, I mean it's been recorded, and quite from
23 the JP, those records which have been entered before.

24 A.L.J. COSTELLO: Given that it is
25 referenced specifically in the Joint Proposal, we do

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2 note that with the deletion of two interrogatories
3 that contained a legal objection, the Company is
4 not -- does not object to that. I understand Mr.
5 Lang's objection, however, because it is something
6 that is referenced in the Joint Proposal, and
7 something that the Commission may wish to be aware of
8 given that it's referenced in the Joint Proposal, we
9 are going to admit as evidence -- as exhibits, or as
10 an exhibit the response to -- the updated response to
11 IR's -- it would be just -- it would just be WMC-4
12 that we are going to admit.

13 A.L.J. KERSEY: Mr. Dichter,
14 everything that you've brought up to us right now, is
15 that just WMC-4?

16 MR. DICHTER: No.

17 A.L.J. KERSEY: Okay. So --

18 MR. DICHTER: WMC-4, responses to
19 questions 48 to 109 and in addition, there are two
20 responses to WMC-3 which relates to projects that Con
21 Edison proposed in their initial filing that was in
22 fact, is referenced in our comments. So to complete
23 the record as to the projects for New York City
24 versus Westchester, we've asked to include them here
25 as well. In our comments, we specifically referenced

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2 those two responses to the discovery.

3 A.L.J. COSTELLO: All right. So let's
4 deal first with WMC-4. Those documents will be
5 admitted as exhibits.

6 A.L.J. KERSEY: We'd be very specific
7 again, though, to which interrogatories that you
8 provided to us are you looking to have admitted for
9 the respective WMC-4?

10 MR. LANG: Yes. Questions 48 through
11 109. The responses for Con Ed.

12 A.L.J. KERSEY: Okay. So those are
13 what is being admitted at this point into evidence as
14 Exhibit 1237.

15 I know, Mr. Dichter, that what you
16 provided us here, or what I have are one, question 48
17 through -- I have through 109, which have just been
18 admitted. What is also here is question number 43
19 and 44 with respect to WMC-3. And so we still need
20 to deal with those.

21 So again, you're saying that these go
22 to your comments, correct?

23 MR. LANG: That's correct.

24 A.L.J. KERSEY: And you would like
25 them admitted.

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2 MR. LANG: That's correct.

3 A.L.J. KERSEY: Do any of the other
4 parties have thoughts on those? I'll start with
5 objections.

6 Con Edison's Staff, please?

7 MR. SHERWIN: Okay.

8 A.L.J. KERSEY: No objections to that?

9 MR. SHERWIN: No objections.

10 A.L.J. KERSEY: Okay. DPS counsel?

11 MR. KRAMER: Your Honor, we do have --
12 we do object to have this information put into the
13 record. Understand that the WMC-4 material, the
14 responses, are pertinent to the Joint Proposal, we
15 just don't see it here for the rest of the material.
16 But that's our objection. Thank you.

17 A.L.J. KERSEY: Mr. Lang.

18 MR. LANG: Yes, Your Honor. I guess
19 I'm also confused because -- and maybe it's just the
20 numbering has changed, but in their statement, they
21 referred to those two as already being part of
22 another exhibit. So if they're already part of
23 another exhibit, why do they need to be marked twice?

24 A.L.J. KERSEY: Mr. Dichter?

25 MR. DICHTER: It's the same exhibit,

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2 Your Honor. The numbers were changed in Judge
3 Costello's updated exhibit list from his initial one
4 and with the reference in the comments as to the
5 initial exhibit on the master exhibit list.

6 A.L.J. COSTELLO: So basically, of all
7 of these documents are already in the record. No?

8 MR. DICHTER: No. These two documents
9 are not already in the record.

10 A.L.J. COSTELLO: Okay. Which
11 documents are already in the record with an updated
12 exhibit list -- on the updated exhibit, which ones?

13 MR. DICHTER: Your list is -- these
14 two are not on the updated exhibit list, WMC-4 is on
15 the exhibit list.

16 A.L.J. KERSEY: My understanding is
17 that WMC-4 --

18 A.L.J. COSTELLO: WMC-4 is already in.

19 MR. DICHTER: That's correct.

20 A.L.J. COSTELLO: That's fine. And we
21 understand that the -- what we're going to do is
22 modify that. We're going to strike that exhibit and
23 we're going to admit these documents because they
24 don't include the two interrogatories that deal with
25 legal objection.

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2 A.L.J. KERSEY: And so to be very
3 clear then, while we had marked it and admitted it as
4 Exhibit 1237 --

5 A.L.J. COSTELLO: That's going to come
6 out because that includes other documents there.
7 Okay.

8 A.L.J. KERSEY: Okay. It will remain
9 so, Exhibit 1237.

10 A.L.J. COSTELLO: Now, that's with
11 respect to WMC-4.

12 A.L.J. KERSEY: Correct.

13 A.L.J. COSTELLO: Now, we're dealing
14 with WMC-3. That was not something you referenced in
15 your opposition statement?

16 MR. LANG: I did reference it in my
17 opposition statement.

18 A.L.J. COSTELLO: You referenced
19 the --

20 MR. LANG: WMC-3, questions 43 and 44,
21 specifically, are referenced in our comments on the
22 exhibit. And now we're seeking to have them admitted
23 into evidence to provide the Commission with their
24 backup exhibits, and statements (indiscernible) and
25 comments.

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2 A.L.J. KERSEY: All right. And so
3 I -- Mr. Lang, can you again give your substantive
4 objection to admitting this into the record?

5 MR. LANG: No, I was just expressing
6 confusion while I don't -- like this, I believe they
7 shouldn't come in.

8 A.L.J. KERSEY: Okay. Thank you.

9 And DPS Staff counsel, Mr. Kramer, do
10 you maintain your objection to them coming into the
11 record?

12 MR. KRAMER: They're fine to go into
13 the record, Your Honor.

14 A.L.J. KERSEY: Okay.

15 MR. KRAMER: Thank you.

16 A.L.J. KERSEY: So we are admitting
17 WMC-3, also as Exhibit 1237.

18 A.L.J. KERSEY: And just to be clear,
19 those are questions Number 43 and question Number 44
20 of the IRs, and identify as WMC-3. Okay.

21 MR. DICHTER: Thank you, Your Honors,
22 and thank you (indiscernible).

23 A.L.J. KERSEY: You're welcome. Thank
24 you.

25 Folks, we're going to take lunch.

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2 It's 12:15. Can everybody be back here at 2 o'clock
3 so that we can -- that the witness can also --

4 I'm sorry?

5 MR. KRAMER: How much time? Is it
6 1:30?

7 A.L.J. KERSEY: 12:15, I was saying we
8 start back at 2:00, if that's too late?

9 MR. KRAMER: I see. It might be a
10 little too late. Depending on how things go today.

11 A.L.J. KERSEY: That's fine. We can
12 start back at 1:30 as well. What is the preference?

13 MR. KRAMER: I like 1:30.

14 A.L.J. KERSEY: Okay.

15 MR. KRAMER: He'll prefer earlier as
16 well

17 A.L.J. KERSEY: Great. Okay.

18 A.L.J. COSTELLO: So 1:30?

19 MR. KRAMER: 1:30 is fine.

20 A.L.J. KERSEY: We'll be back. We are
21 going to go off the record. We'll be back at 1:30.
22 Thank you.

23 (Off the record)

24 (On the record)

25 A.L.J. KERSEY: All right, we are on

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2 the record. We are going to turn to, the witnesses
3 for cross-examination. UtiliSave, Richard Ellenbogen
4 and Francis Menton have indicated they would like to
5 cross-examine the Company, and Department of Public
6 Service witnesses. Is that still correct? Mr.
7 Steifman?

8 MR STEIFMAN: Yes, right.

9 A.L.J. KERSEY: And Mr. Ellenbogen?

10 MR. ELLENBOGEN: Yes, that's correct.

11 A.L.J. KERSEY: Mr. Menton?

12 MR. MENTON: That is correct.

13 A.L.J. KERSEY: Okay. We are now
14 going to start with cross-examination of the Company
15 and DPS staff, which have identified witnesses to be
16 on a panel in support of the Joint Proposal. I'd
17 like to confirm from counsel for the Company that the
18 witness panel still includes the following
19 individuals. If I may, let me just go through the
20 list and then you can correct and make any
21 corrections. Kelly McLaughlin from accounting,
22 Wenqui Wang from accounting, Yan Flishenbaum,
23 electric and gas rate, Shakira Wilson, electric
24 infrastructure and operations, James Brennan,
25 electric infrastructure, Rebecca Roberts, customer

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2 operations, and Dennis Brady, municipal
3 infrastructure support. Is that correct?

4 MS. SU: No, Your Honor. Wenqui Wang
5 from accounting or accounting panel was not able to
6 remain for the rest of the hearing.

7 A.L.J. KERSEY: Okay. And otherwise
8 the list is correct.

9 MS. SU: Otherwise the list is
10 correct.

11 A.L.J. KERSEY: Okay. Thank you. And
12 for staff confirming that the witness panel consists
13 of following individuals: Jerry Shang on the
14 accounting panel, David Warnock, finance panel,
15 Robert Cully, market and innovations panel, Alexander
16 Yodashkin and Stephan Smith, electric and gas rates
17 demand and cost of service panels. Philipose Philip,
18 Daniel Roszko, Mohammed Hasan, Christopher Moquete,
19 Nicholas DeLuca, the EIOP, David Marioriello, the
20 GIOP, Emmanuel Alexis for the ERRPM panel, Craig
21 Carroll for the customer operations panel, Jack
22 Hamant and Daniel Roszko for the municipal
23 infrastructure and support panel, and Caitlyn
24 Edmondson and Robert Cully for the CLCPA panel. Is
25 that correct? Are there any corrections?

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2 MR. KRAMER: One correction, Your
3 Honor.

4 A.L.J. KERSEY: Sure.

5 MR. KRAMER: Nicholas DeLuca is not
6 available today and is not on the panel.

7 A.L.J. KERSEY: Thank you so much.
8 And otherwise -- other than Mr. DeLuca, the panel is
9 correct?

10 MR. KRAMER: It is correct. Yes.
11 Thank you.

12 A.L.J. KERSEY: Wonderful. Thank you.
13 Are there any witnesses on the panel that I have not
14 named? Okay.

15 I will now swear in the witness, so
16 I'll ask you to stand and raise your right hands.
17 I'm going to give you the oath and then I'm going to
18 read out the names again, and when I do, you can
19 respond to the oath by saying yes or no

20 KELLY MCLAUGHLIN (Con Edison); Sworn

21 YAN FLISHENBAUM (Con Edison); Sworn

22 SHAKIRA WILSON (Con Edison); Sworn

23 JAMES BRENNAN (Con Edison); Sworn

24 CHRISTINE CUMMINGS (Con Edison); Sworn

25 REBECCA ROBERTS (Con Edison); Sworn

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2 DENNIS BRADY (Con Edison); Sworn

3 A.L.J. KERSEY: You may be seated.

4 Thank you.

5 Now, turning to the DPS staff

6 witnesses.

7 JERRY SHANG (DPS staff); Sworn

8 DAVID WARNOCK (DPS staff); Sworn

9 ROBERT CULLY (DPS staff); Sworn

10 ALEXANDER YODASHKIN (DPS staff); Sworn

11 STEPHAN SMITH (DPS staff); Sworn

12 PHILIPOSE PHILIP (DPS staff); Sworn

13 DANIEL ROSZKO (DPS staff); Sworn

14 MOHAMMED HASAN (DPS staff); Sworn

15 CHRISTOPHER MOQUETE (DPS staff); Sworn

16 DAVIDE MAIORIELLO (DPS staff); Sworn

17 EMMANUEL ALEXIS (DPS staff); Sworn

18 CRAIG CARROLL (DPS staff); Sworn

19 JACK HAMANT (DPS staff); Sworn

20 CAITLYN EDMONDSON (DPS staff); Sworn

21 A.L.J. KERSEY: Did I mention Daniel

22 Roszko?

23 MR. ROSZKO: Yes. I'm on two panels,

24 Your Honor.

25 A.L.J. KERSEY: Oh, yes. Okay. I got

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2 you. I thought I got you, but I wasn't sure. All
3 right. Thank you. You may be seated. Thank you
4 very much.

5 Let the record reflect that the panel
6 members have all been sworn in.

7 I'm going to look at Company counsel
8 right now to note if the witnesses adopted factual
9 statements.

10 MS. SU: Can they do it as a group, or
11 would you like --

12 A.L.J. KERSEY: Do it as a group?
13 Yes. Yes. Absolutely.

14 MS. SU: Okay. Can the witnesses
15 please confirm that your credentials are included in
16 the pre-filed direct testimony?

17 WITNESSES: Yes.

18 MS. SU: Company witnesses, do you
19 accept the factual statements in the Company's
20 statement in support of your sworn testimony, and
21 support of the Joint Proposal in this proceeding?

22 WITNESSES: Yes.

23 MS. SU: Your Honor, the Company
24 witnesses are open for cross-examination.

25 A.L.J. KERSEY: Thank you very much.

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2 And Department of Public Service

3 counsel.

4 MR. KRAMER: Thank you, Your Honor.

5 Staff of Department of Public Service,

6 do you adopt the staff Department of Public Service

7 services statement in support of the Joint Proposal

8 in these proceedings?

9 WITNESSES: Yes. We do.

10 MR. KRAMER: Thank you.

11 I believe they're ready for cross-

12 examination, Your Honor.

13 A.L.J. KERSEY: Okay. Mr. Steifman,

14 we are going to start with cross-examination by you.

15 Please provide us with the documents you intend to

16 use for cross-examination. Please provide those to

17 Counsel, and us if you are able to. I believe I --

18 MR. STEIFMAN: I will not be using any

19 documents.

20 A.L.J. KERSEY: Okay.

21 MR. STEIFMAN: And just clear up my

22 issues. My questions are going to be directed to the

23 Company operations person, and only within the

24 Company.

25 A.L.J. KERSEY: Okay.

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2 MR. STEIFMAN: (Indiscernible)

3 somewhere.

4 A.L.J. KERSEY: Okay. Please proceed.

5 MR. STEIFMAN: Thank you, Your Honors.

6 And good afternoon, everyone.

7 Does the Company agree that clear
8 communication with your customers is reported?

9 MR. SHERWIN: Your Honors, this is
10 Edward Sherwin for the Company. We object to that
11 question as argumentative in that it's asking the
12 witness to accept a conclusion, not to state a fact,
13 and that it's vague about what the questioner means
14 by clear communication and importance in other terms.

15 A.L.J. KERSEY: What's the basis for
16 it being vague? It's really a clear question. Can
17 you state it again, Mr. Steifman?

18 MR. STEIFMAN: Sure. Thank you, Your
19 Honor. Does the Company agree that clear
20 communication with your customers is important?

21 A.L.J. KERSEY: You said you were --
22 excuse me, you were -- the Company objected to it as
23 being argumentative and vague, correct?

24 MR. SHERWIN: Yes.

25 A.L.J. KERSEY: How is it

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2 argumentative?

3 MR. SHERWIN: It's asking for a fact.
4 It's asking for the Company to adopt a conclusion,
5 not to state a fact.

6 A.L.J. KERSEY: We're going to
7 overrule the objections and let them answer.

8 Please answer the question.

9 MS. ROBERTS: This is Rebecca Roberts.
10 Yes.

11 MR. STEIFMAN: Thank you. Clear
12 communication refers to information that is accurate
13 and understandable to the average customer, correct?

14 MS. ROBERTS: Can you repeat the
15 question please?

16 MR. STEIFMAN: Sure. By clear
17 communication, I'm referring to information that is
18 accurate and understandable to the average customer.
19 Do you agree with that?

20 MS. ROBERTS: Yes, though it depends
21 on the context.

22 MR. STEIFMAN: Thank you. In the
23 past, Con Edison has engaged, designed, implemented
24 programs related to customer communication designed
25 to determine the best way to get information to

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2 customers. An example of this would be the SC --
3 rate SC 1-4 rate roll out. Is that correct?

4 MR. SHERWIN: Your Honor, I object to
5 the question that's being compound.

6 A.L.J. KERSEY: Yeah. Can you break
7 it down, Mr. Steifman?

8 MR. STEIFMAN: Yeah, absolutely.

9 A.L.J. KERSEY: Thank you.

10 MR. STEIFMAN: Absolutely.

11 In the past, Con Edison has engaged,
12 designed, implemented programs related to customer
13 communication; is that correct?

14 MS. ROBERTS: Yes.

15 MR. STEIFMAN: These programs were
16 designed to determine the best way to get information
17 to customers, as an example, the SC rate 1-4 rollout;
18 is that correct?

19 MR. SHERWIN: Object on the basis of
20 being a compound question. The question, break it
21 down, please.

22 MR. STEIFMAN: An example of this --
23 these communications were designed in a manner to
24 determine the best way to give information to
25 customers, correct?

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2 MR. SHERWIN: I would object on the
3 basis of it being vague. It's not clear what
4 communications the question is asking about.

5 A.L.J. KERSEY: Can you be more
6 specific --

7 MR. STEIFMAN: Sure.

8 A.L.J. KERSEY: -- Mr. Steifman?

9 MR. STEIFMAN: Sure.

10 Communications that are related to
11 informing the customer of a matter that's relevant to
12 a customer. So anything to which the Company has
13 been asked to or directed to provide communication?

14 A.L.J. KERSEY: I'm going to ask you
15 to -- I'm going to ask you to restate that question.

16 MR. STEIFMAN: I'm referring to
17 communication programs which were meant to deliver
18 information to customers under the direction of the
19 Public Service Commission.

20 A.L.J. KERSEY: Yes, but I think
21 I'm --- we're missing the question part now. So
22 you've -- you've answered what -- you kind of spoken
23 to what directly you're looking for. What's the
24 question that you're asking of the witness?

25 MR. STEIFMAN: The purpose of those

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2 communications in that context of informing the
3 customer.

4 MR. SHERWIN: Your Honor, I'm going to
5 object on the basis of vagueness. We're not sure
6 what communications, even now, not sure what
7 communications he's talking about.

8 MR. STEIFMAN: Well, as an example, I
9 mentioned the SC rate 1-4 rollout, when that was
10 created, and there was a process to inform customers
11 in advertising and in mailing and inserts as an
12 example. Concern the example that you're seeing.

13 A.L.J. KERSEY: Can the witness answer
14 the question?

15 MS. ROBERTS: Yes, as it relates to
16 that example.

17 MR. STEIFMAN: Thank you. And these
18 programs have been designed to evaluate how to make
19 information understandable to the average customer,
20 correct?

21 MS. ROBERTS: Yes.

22 MR. STEIFMAN: Thank you. And Con
23 Edison has relied on them in deciding how to
24 communicate with its customers, correct?

25 MR. SHERWIN: Object. It's not clear

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2 what kind of reliance the question is asking about.
3 It's very unclear. I don't know.

4 MR. STEIFMAN: In conforming the
5 reason of these communications, as an example, SC
6 rate 1-4 rollout, was designed was because Con Edison
7 could rely on them to communicate appropriately to
8 the customers.

9 A.L.J. KERSEY: Mr. Steifman, I'm
10 going to ask you -- I'm going to ask you questions.
11 Two things. Number one, you keep bringing up the
12 example of SC rates --

13 MR. STEIFMAN: 1-4.

14 A.L.J. KERSEY: -- SC 1-4, excuse me,
15 1-4. Can we just use that? I mean, if you could
16 pose the question with respect to that, why don't you
17 try to pose it specifically?

18 MR. STEIFMAN: Certainly. Thank you,
19 Your Honor.

20 In -- in designing the SC rate 1-4
21 rate rollout, which as you answered appropriately,
22 was designed to evaluate how to make information
23 understandable to the average customer. Con Edison
24 has relied on these communication -- has relied on
25 these processes to design its communications with its

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2 customers.

3 MR. SHERWIN: Your Honor, the Company
4 will object again. We're not sure on relevance
5 grounds what the SC 1 rate for customer communication
6 rollout has to do with the Joint Proposal in this
7 proceeding, or -- and it's beyond the scope of the
8 witnesses direct testimony.

9 A.L.J. KERSEY: Mr. Steifman?

10 MR. STEIFMAN: I'm happy to answer
11 that. The rate 1-4 serves as an example of an
12 instance where information was made available. It
13 has to do with billing transparency. The point is
14 that there are instances where it's been done, and
15 I'm establishing the standard of conduct the Company
16 has operated under to present information. And
17 ultimately, that same standard should be applied to
18 any context of it, not just this one example that
19 we're focused on.

20 A.L.J. KERSEY: I'm going to let the
21 Company answer the question.

22 MS. ROBERTS: Could you repeat the
23 question, please?

24 MR. STEIFMAN: I will try. Maybe --

25 MS. ROBERTS: Okay.

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2 MR. STEIFMAN: -- these can be read
3 back.

4 A.L.J. COSTELLO: We have -- this is
5 being -- it's being recorded.

6 MR. STEIFMAN: Okay. No problem.

7 In using the SC 1-4 rate roll out as
8 an example -- that's the example, would you agree
9 that the information that the way that product
10 program was defined, that you've already
11 affirmatively said was to make the information
12 understandable to average customers, is the process
13 that Con Edison relies on in establishing how to
14 communicate with its customers. That that
15 represented the model that would be used to
16 communicate with its customers.

17 MR. SHERWIN: I would object on the
18 basis, again, that this is vague, what he means by
19 processes and reliance and models. There's no
20 foundation for any of this, and it's beyond the scope
21 of the witnesses' testimony.

22 A.L.J. COSTELLO: Are you -- are you
23 limiting your question now to the SC 1-4?

24 MR. STEIFMAN: I am.

25 A.L.J. COSTELLO: Okay. If the

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2 witness can answer it, the witness can -- can respond
3 whether she can answer it or not.

4 MS. ROBERTS: I --

5 A.L.J. COSTELLO: You know you can
6 respond --

7 MS. ROBERTS: -- it's as it relates to
8 SC 1-4 only. I -- different programs are run in
9 different manners, so I can't answer that across the
10 board.

11 MR. STEIFMAN: Okay. Thank you. In
12 fact, Con Edison has a responsibility and a duty to
13 communicate clearly and completely with its
14 customers. Some examples are 16 NYCRR 11.16, which
15 requires that residential customers provide clear --
16 provide clear and understandable bills in their
17 foreign language. 16 NYCRR 271.2, implying that late
18 payment charges provide all the information relating
19 to all such charges, and 16 NYCRR 143.9 and 16 NYCRR
20 275.9.

21 A.L.J. KERSEY: Mr. Steifman, is there
22 a question?

23 MR. STEIFMAN: The question is these
24 are examples of Con Edison --

25 MR. STEIFMAN: If they're -- if

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2 they're in regulations, the regulations speak for
3 themselves. So the witness doesn't have to respond
4 with respect to what's in the regulations.

5 MR. STEIFMAN: Okay. I'll follow-up.
6 Thank you, Your Honor.

7 Are you aware that the New York State
8 Legislature is also considering implementing clear
9 and complete communication requirements between the
10 utility and customers?

11 MR. SHERWIN: Your Honor, I object.
12 Lack of foundation. Assumes facts not in evidence.
13 Beyond the scope.

14 MR. STEIFMAN: Yeah. Mr. Steifman, it
15 also isn't relevant to the -- to the extent that what
16 the legislature is considering. If you have a bill
17 that has been enacted by the Governor, that's a
18 different story. If it's simply something that's for
19 the legislature for consideration, that is not
20 relevant to this proceeding. If it eventually gets
21 passed, then the Company would have to comply to the
22 extent that it applies to the Company.

23 So we're going to sustain the
24 objection on that question.

25 MR. STEIFMAN: Okay. Thank you, Your

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2 Honor. I'll move on.

3 Would you agree that the one area of
4 utility customer communication that is critical to
5 get right is billing?

6 MR. SHERWIN: Your Honor, I object
7 that the question is argumentative, and it's also
8 vague and ambiguous as to what the question means by
9 one area and critical. These are vague, meaningless
10 terms that makes it impossible for the witness to
11 answer.

12 A.L.J. KERSEY: Mr. Steifman?

13 MR. STEIFMAN: Is it important that
14 the utility bill be accurate?

15 A.L.J. KERSEY: We're going let the
16 witness answer that question.

17 MS. ROBERTS: Yes, to the extent
18 systems and data can produce an accurate bill.

19 MR. STEIFMAN: Are you saying that
20 there are systems and data that can't produce an
21 accurate bill?

22 MS. ROBERTS: No. What I'm saying
23 there could be data missing on rare instances.

24 MR. STEIFMAN: Well, when data's
25 missing, do you issue a bill?

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2 MS. ROBERTS: We issue estimated
3 bills.

4 MR. STEIFMAN: Okay. Those estimated
5 bills ultimately are corrected, correct?

6 MS. ROBERTS: Yes.

7 MR. STEIFMAN: In every instance?

8 MS. ROBERTS: I -- I am not certain.

9 MR. STEIFMAN: Okay. I'll move on.
10 Do you agree that the Company has a
11 duty, responsibility to assist its customers with
12 billing inquiries?

13 MR. SHERWIN: Your Honor, I object to
14 the extent this calls for a legal conclusion about
15 what the Company has a duty to perform.

16 MR. STEIFMAN: In the -- I'm sorry.
17 I'll wait for you. My apologies.

18 A.L.J. KERSEY: Can you repeat your
19 question again, Mr. Steifman?

20 MR. STEIFMAN: Does the Company have a
21 duty -- does the Company have a responsibility to
22 assist its customers with billing inquiries?

23 MR. SHERWIN: Again, object to the
24 extent it calls for a legal conclusion.

25 A.L.J. KERSEY: We're going to --

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2 we're going to overrule that objection. The witness
3 can answer.

4 MS. ROBERTS: Yes.

5 MR. STEIFMAN: Thank you. What about
6 the -- what about with regard to inquiries concerning
7 service classification?

8 MS. ROBERTS: Yes.

9 MR. STEIFMAN: What about inquiries
10 related to addressing and understanding the cost that
11 they pay for their gas and electric service?

12 MR. SHERWIN: I'm going to object that
13 it's vague as to what the question means by -- what
14 the question means by cost and --

15 A.L.J. KERSEY: Mr. Steifman, is your
16 question to the witness that you are asking whether
17 the Company -- whether the bill should be
18 understandable -- the costs that are accrued to the
19 customer should be understandable, or if they have a
20 question they should be able to ask that of the
21 Company?

22 MR. STEIFMAN: Correct, Your Honor.

23 A.L.J. KERSEY: We're going to allow
24 it.

25 MS. ROBERTS: The bill should be

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2 understandable in compliance with regulations. And
3 customers may ask questions to the Company.

4 MR. STEIFMAN: What do you mean by
5 compliance and regulations?

6 MS. ROBERTS: Those regulations,
7 through the Public Service Commission, under which
8 the Company is obligated to comply.

9 MR. STEIFMAN: So are you saying there
10 are instances where a bill can be rendered, and the
11 customer doesn't have to understand all the
12 components of the bill?

13 MR. SHERWIN: Your Honor, I object in
14 that calls for speculation about what customers may
15 or may not understand.

16 MR. STEIFMAN: I think we're talking
17 about the average customer.

18 MR. SHERWIN: Again, in that case --

19 A.L.J. KERSEY: Can you ask the
20 question again, Mr. Steifman?

21 MR. STEIFMAN: Sure. I -- I don't
22 know if this is the exact question.

23 A.L.J. COSTELLO: I mean she was
24 saying that to the extent --

25 MR. STEIFMAN: Right.

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2 A.L.J. COSTELLO: -- if regulations
3 required (indiscernible), that's what they provide.

4 MR. STEIFMAN: Right, right, exactly.

5 A.L.J. COSTELLO: All right?

6 MR. STEIFMAN: So --

7 A.L.J. COSTELLO: So that's -- again,
8 the regulations speak for themselves. Are you saying
9 are there some bills that are not covered by any
10 regulations?

11 MR. STEIFMAN: You're asking me?

12 A.L.J. COSTELLO: I'm asking you're
13 your question is. Is that -- is that what you're
14 trying to get at, or is there something -- because
15 otherwise they're providing bills that comply with
16 the regulations they're saying.

17 MR. STEIFMAN: Well, I'm asking are
18 there bills that comply with the regulations, which
19 aren't understandable by the average customer.

20 A.L.J. COSTELLO: That's -- that's not
21 something that they should be able to testify about.
22 That's something that the individual customers are --
23 it's their understanding. And they have no basis for
24 determining the customer's understanding.

25 MR. STEIFMAN: I will move on. Thank

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2 you, Your Honor.

3 Do you agree that providing this
4 assistance is in the public interest?

5 A.L.J. KERSEY: What assistance, Mr.

6 Steifman? Can you be clear?

7 MR. STEIFMAN: The question is
8 regarding the assistance in customers being able
9 to -- addressing customer billing inquiries,
10 questions relating to the service classification, and
11 to understanding the costs in their bills.

12 A.L.J. KERSEY: I'm going to -- I'm
13 going to ask you to break that question down.

14 MR. STEIFMAN: Okay. All right.

15 Thank you.

16 Do you agree that providing assistance
17 with billing inquiries, questions about service
18 classification, and charges on their bills --
19 customer charges on the bills, is in the public
20 interest?

21 MR. SHERWIN: Your Honor, to the
22 extent that public interest is a legal standard
23 applied by the Commission, I would object that it
24 calls for a legal conclusion.

25 A.L.J. KERSEY: We're going to sustain

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2 that objection.

3 MR. STEIFMAN: Would you agree that
4 those items of felony fees and service
5 classifications and charges is something that's
6 fundamentally the job of Con Edison?

7 MR. SHERWIN: I would, again, object
8 to the vagueness of the phrase fundamentally the job
9 of Con Edison. This is asking for characterizations.
10 It is not asking for facts.

11 MR. STEIFMAN: I'll rephrase it. I'll
12 rephrase it.

13 A.L.J. KERSEY: If you could rephrase
14 it, that would be great.

15 MR. STEIFMAN: In your role in
16 customer service group, is one of the main
17 responsibilities assisting customers with billing
18 inquires, questions about their service
19 classifications, and explaining charges on their
20 bills?

21 MS. ROBERTS: Yes.

22 MR. STEIFMAN: Okay. Thank you. In
23 the JP, in section 7, part 14, page 93 of the JP.

24 A.L.J. KERSEY: Can you repeat that,
25 Mr. Steifman? Just page -- what page it was? You

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2 just said it.

3 MR. STEIFMAN: Page 93.

4 A.L.J. KERSEY: Thank you.

5 MR. STEIFMAN: Of the JP. It is
6 titled billing transparency. That section contains a
7 single paragraph related to bill transparency. This
8 is the only section discussing the Con Edison's
9 responsibility to billing transparency in the JP, in
10 the Joint Proposal, correct?

11 MR. SHERWIN: I would again object to
12 the witness testifying, and to compound questions.
13 Ask individual questions.

14 A.L.J. KERSEY: I believe Mr. Steifman
15 just asked if the paragraph on bill transparency was
16 the only paragraph in the Joint Proposal that
17 addressed bill transparency. Is that correct?

18 MR. STEIFMAN: Yes, Your Honor.

19 A.L.J. KERSEY: I think that the
20 witness can answer that question.

21 MS. ROBERTS: As the only paragraph
22 with the title bill transparency. I cannot speak to
23 the entirety of the Joint Proposal, and anything that
24 might be interpreted as bill transparency that's
25 mentioned.

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2 MR. STEIFMAN: And this section
3 involves only information related to taxes, correct?

4 MS. ROBERTS: Yes.

5 MR. STEIFMAN: And these taxes --
6 sorry. Are these taxes a billing component of the
7 customer's bill, meaning a direct charge based on the
8 rate or usage for an individual customer?

9 MS. ROBERTS: They are a component of
10 the customer's bill. I'm -- I'm not sure about the
11 latter half.

12 MR. STEIFMAN: Thank you. Wouldn't it
13 be in the public interest to provide customers with
14 the breakdowns and details of all the charges that
15 comprise their work?

16 MR. SHERWIN: Your Honor, I object on
17 the grounds that it is speculative, and that it calls
18 for a legal conclusion about what it is or is not in
19 the public interest, a legal standard applied by the
20 Commission.

21 A.L.J. KERSEY: We're going to sustain
22 that. It calls for an interpretation of legal
23 standard.

24 MR. STEIFMAN: In referring to what
25 you said earlier that was one of the main purposes of

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2 your bill to provide various types of information,
3 would providing a breakdown, in detail, of all the
4 charges that comprise a customer's bill to be part of
5 that responsibility?

6 MR. SHERWIN: Your Honor, I will
7 object in that I believe that mischaracterizes the
8 witness's testimony. The witness did not testify, to
9 my recollection, about the purposes of the bill or
10 the role of any breakdown on the bill.

11 MR. STEIFMAN: What -- I'm waiting for
12 your order.

13 A.L.J. COSTELLO: No. Go ahead. Do
14 you have response to that?

15 A.L.J. KERSEY: Do you have a
16 response, Mr. Steifman?

17 MR. STEIFMAN: Yeah. I'm not asking
18 her to -- for any opinion other than to answer a
19 question about this particular type of information
20 which is the breakdown in detail that would be part
21 of answering questions on billing inquiries and rate
22 questions and charge questions.

23 MR. SHERWIN: But that was not the
24 question asked.

25 A.L.J. COSTELLO: That was not. So

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2 reframe your question.

3 MR. STEIFMAN: My apologies.

4 Would be -- would providing a detailed
5 breakdown, or providing a breakdown and the details
6 of all the charges that comprise their bill, be in
7 keeping with your focus of assisting customers with
8 billing inquiries, questions about their service
9 classifications, and general questions about their
10 charges?

11 MR. SHERWIN: Your Honor, I object in
12 that it calls for speculation. I also object in that
13 it is vague as to what the question means by a
14 breakdown of bills because the Company already
15 provides a breakdown pursuant to Commission
16 regulations.

17 A.L.J. KERSEY: Mr. Steifman, the
18 Company has already stated that they are in
19 compliance with Commission regulations when it comes
20 to their billing. Are you -- you're asking
21 whether --

22 MR. STEIFMAN: Well, is it their
23 position - this is a question that's among that.
24 Every line aspect can only be addressed and provided
25 if it's directed from -- by the Commission. There

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2 isn't information that the customer can ask for to
3 understand their bill unless it's directly required
4 by the Commission, it doesn't have to be provided?

5 A.L.J. COSTELLO: No, I don't think
6 that's -- let me just clarify something, so -- and
7 we'll move forward with this. The -- the question
8 is, if they -- they said they can respond -- you're
9 asking two different things. You're asking about
10 what's provided on a bill, and you're asking about
11 what is information that can be provided by customer
12 service representatives on the phone. So those are
13 two different things.

14 MR. STEIFMAN: Then, I wasn't clear,
15 Your Honor. Let me rephrase the question.

16 My question is, in keeping with what
17 you've already said are the responsibilities of the
18 customer service unit, wouldn't a breakdown in detail
19 of all the charges be in line with those
20 responsibilities? I'm not saying that they are
21 available, but they should be made available or that
22 they would be relevant to answering those questions.
23 I'll -- I'll change that. Let me repeat that. Given
24 what you've said are the responsibilities of the
25 customer service unit, should a breakdown and details

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2 of all the charges be available to a customer?

3 MR. SHERWIN: Your Honor?

4 A.L.J. COSTELLO: Available in what
5 way?

6 MR. STEIFMAN: Either --

7 A.L.J. COSTELLO: Line billing for the
8 bill, information sent with the bill, or through
9 customer service inquiries?

10 MR. STEIFMAN: In any manner that they
11 chose as long as they're available. Meaning, on the
12 bill, or on a website, or sent directly to a customer
13 upon request, but that they be made available to the
14 customer to clarify a billing charge.

15 MR. SHERWIN: Your Honor, the Company
16 objects that this is speculative, it's argumentative,
17 and it's vague in that we don't know what information
18 we're talking about, and we don't know what billing
19 situation, and we don't know what a customer may or
20 may not find useful in any unspecified situation.
21 It's too vague to be answerable.

22 MR. STEIFMAN: Your Honor, before you
23 rule? I have examples, so we could do on the
24 specific examples when I get to it in a moment
25 specifically.

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2 A.L.J. COSTELLO: Okay. Yeah. So I
3 would -- yeah, that's I would suggest is do a
4 detailed -- specific information that you're seeking
5 to find out.

6 MR. STEIFMAN: Yes, Your Honor, I will
7 do that. Okay. I'm going to skip to that and then
8 I'll come back to where I was going continue from
9 there.

10 As an example, the gas cost factor,
11 data, values, and the formulas that are used in its
12 calculation are not disclosed. And the proposed --

13 MR. SHERWIN: Your Honor, I object to
14 the testimony.

15 A.L.J. COSTELLO: I didn't finish my
16 question.

17 A.L.J. COSTELLO: Yeah,
18 that -- basically, you'd have to find out if
19 that's -- if they agree to that. I mean, you're just
20 saying that it's not disclosed.

21 MR. STEIFMAN: No, they've
22 already --

23 A.L.J. COSTELLO: You have to
24 establish for the witnesses that they agree that it's
25 not disclosed. So just do it --

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2 MR. STEIFMAN: Yeah, that's fine.

3 A.L.J. COSTELLO: -- do it that way
4 first.

5 MR. STEIFMAN: Yes, I understand.
6 Yes. Thank you, Your Honor.

7 With regard to the gas cost factors,
8 are the data, values, and formulas used in that
9 calculation currently disclosed to customers?

10 MR. SHERWIN: Your Honor, I object on
11 the grounds that this is not relevant to the Joint
12 Proposal. The gas cost factor is a supply-related
13 charge. This is a proceeding to establish delivery
14 rates. And there's nothing in the witness's
15 testimony regarding disclosure of components of the
16 gas cost factor. So this goes well beyond anything
17 to which the witness has testified.

18 MR. STEIFMAN: And I'd like to address
19 that --

20 A.L.J. KERSEY: Mr. Steifman?

21 MR. STEIFMAN: -- before you decide,
22 Your Honor.

23 A.L.J. COSTELLO: Yeah.

24 A.L.J. KERSEY: Go ahead.

25 MR. STEIFMAN: It is my understanding

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2 that the Joint Proposal is a process by which parties
3 agree to what should be in there. And to the extent
4 things aren't in there, that's the reason why there's
5 an opportunity to be in the opposition. There is a
6 section on building transparency which I read to mean
7 that the issue of building transparency is a real
8 issue, is a known issue. And by the fact that the
9 real estate tax issue was addressed in it
10 demonstrates that at least that is. And it's my
11 contention that there are others, and those are
12 omitted. And that's exactly why I'm in opposition to
13 the Joint Proposal.

14 MR. SHERWIN: Your Honor, if I may be
15 heard? Property taxes are a component or a factor
16 into the delivery charges that the Company charges.
17 They were also the subject of testimony in this
18 proceeding from interested parties unlike the gas
19 cost factor components.

20 A.L.J. COSTELLO: Can I just clarify
21 with you? Is there any information in the -- well,
22 let me ask the witness.

23 Is there anything -- any information
24 in bills that deal with supply charges?

25 MS. ROBERTS: Yes.

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2 A.L.J. COSTELLO: There are? Okay.

3 So his position is that there's other information
4 regarding supply charges, at least with respect to
5 this question, that should be included in the bills.
6 It's not addressed in the Joint Proposal. To the
7 extent there's -- I don't know that -- what -- it was
8 raised, but I think it's actually fair game for a
9 question at this point. So let's hear the question
10 again, and we can take it from there.

11 MR. STEIFMAN: Well, have they
12 acknowledged that those data and values and formulas
13 are not disclosed?

14 A.L.J. COSTELLO: You may have to
15 repeat your question because we've got a little --

16 MR. STEIFMAN: Okay. Well, my
17 question is with regard to the gas cost factor, are
18 the data values and the formulas that are used in
19 this calculation disclosed to customers?

20 MR. FLISHENBAUM: The Company files --
21 I'm sorry. Yan Flishenbaum for the --

22 A.L.J. COSTELLO: Oh, go ahead. I was
23 just saying you could answer.

24 MR. FLISHENBAUM: Thank you.

25 MR. STEIFMAN: Go ahead.

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2 MR. FLISHENBAUM: The Company files
3 monthly statement -- statements with the Commission
4 and as well as available on their website that show
5 the information behind the gas cost factor.

6 MR. STEIFMAN: The question I had
7 asked was is that made available to the customer?

8 MR. FLISHENBAUM: The customer can
9 access those statement both on the Company and the
10 Commission's website.

11 MR. STEIFMAN: To clarify, you're
12 saying that that information that I just referenced
13 is available with regard to the customer's individual
14 bill?

15 MR. FLISHENBAUM: The rates that are
16 seen on the customer bill are -- the customer is able
17 to look them up on the Company's website or the
18 Commission website related to that month statement.

19 MR. STEIFMAN: I'm not talking about
20 their rates. I'm talking about the gas cost factor.
21 Is that what you're referring to?

22 MR. FLISHENBAUM: Yes.

23 MR. STEIFMAN: And that all the data,
24 values, and formulas are located there and
25 accessible? Is that what you're saying?

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2 MR. FLISHENBAUM: What I'm -- what I'm
3 saying is that the Company provides information
4 related to the development of gas cost factor as
5 following Commission regulations.

6 MR. STEIFMAN: Again, I don't believe
7 that information is available to customers.

8 Your Honor, I just point out --

9 A.L.J. COSTELLO: Let me just? He
10 asked a specific question about, and you just
11 specified the specific information you're looking for
12 about the gas cost factors. Is that provided to the
13 public, or not? I mean, I understand you're saying
14 the information is provided pursuant to regulations
15 that it's available on the website. It's available
16 on DPS website, or DPS. It can be looked up by the
17 public. So there was specific information he was
18 referring to underlying the gas cost factor.

19 And if you would just clarify what
20 that specific information was again?

21 MR. STEIFMAN: The data, values, and
22 formulas that are used in calculating the gas cost
23 factors for each customer.

24 A.L.J. COSTELLO: Now, is that
25 information available on the website or on DPS's

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2 website?

3 MR. SHERWIN: Your Honor, I would
4 object to the statement of gas cost factor for each
5 customer as implying that each -- different customers
6 have different gas cost factors which I don't know to
7 be factually accurate.

8 MR. STEIFMAN: They absolutely do,
9 Your Honor.

10 A.L.J. COSTELLO: Well, you can't --
11 you can't establish that. You have to have to
12 establish this. This is an objection. You're not
13 testifying about it. You have to establish that
14 that's in fact the case, and they under -- they know
15 that. So go ahead. Try to do that through the
16 witness.

17 MR. STEIFMAN: Well --

18 A.L.J. COSTELLO: You can try to do
19 that through the witness.

20 MR. STEIFMAN: Okay. Is the
21 information regarding the data, values, and formulas
22 that are used in calculating the gas cost factor
23 provided to the individual customer?

24 A.L.J. COSTELLO: And I think you can
25 say whether it's provided. But that doesn't -- that

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2 doesn't -- that's not a response saying it, you know,
3 it's available. You can -- whatever it is the
4 response is, he just wants to know if that is
5 information that's provided.

6 MR. FLISHENBAUM: Your Honor, can I
7 clarify that which is we don't develop gas cost
8 factor for individual customers. They're developed
9 on a service class basis.

10 A.L.J. COSTELLO: Okay. Explain that.
11 Explain it. Sure.

12 MR. FLISHENBAUM: So as the Company
13 develops monthly gas cost factor rates, they're
14 developed on a service cost basis, and the customer
15 is able to look that up on the Commission website or
16 the Company website. I understand that not all
17 granular details behind those calculations are
18 available on the website. Is that what you're asking
19 about?

20 MR. STEIFMAN: Yes. Absolutely.
21 Granular details.

22 MR. FLISHENBAUM: But they're not
23 related to an individual customer.

24 MR. STEIFMAN: Well, however they're
25 related to customers, whether in groups or

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2 individually, is the relevant question. But I think
3 you already answered the question. I will --

4 A.L.J. COSTELLO: I believe he did.

5 MR. STEIFMAN: I will move on.

6 A.L.J. COSTELLO: And I just want to
7 clarify that. So you're saying that granular type
8 information is not available whether it's for, you
9 know, for the whole thing and overall?

10 MR. FLISHENBAUM: There's a level of
11 granular detail that is not available, but it is
12 provided to DPS staff on a monthly basis for them to
13 verify on behalf of customers.

14 MR. STEIFMAN: Are you aware that
15 we've asked the Department of Public Service
16 Commission for that information, and they told us
17 that they don't have that information?

18 MR. SHERWIN: Your Honor, I object to
19 the statement, the Department of Public Service
20 Commission's.

21 MR. STEIFMAN: He doesn't know them.

22 MR. SHERWIN: Being two different
23 things.

24 A.L.J. COSTELLO: How would how would
25 they be aware that you've --

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2 MR. STEIFMAN: Right. So didn't say,
3 no, I guess, but.

4 Con Edison and --

5 A.L.J. KERSEY: I'm just going to
6 break in for a second. The witness was just saying
7 that you filed that information with the Commission.
8 Is it filed on DMM? Is it publicly available? I'm
9 sorry, with the Department of Public Service. My
10 apologies. Is it publicly available or do you find
11 it --

12 MR. FLISHENBAUM: Are you referring to
13 the granular level of detail?

14 A.L.J. KERSEY: Yes, yes.

15 MR. FLISHENBAUM: No, that is not
16 publicly available.

17 A.L.J. KERSEY: Okay. Thank you very
18 much.

19 MR. STEIFMAN: Are you aware that when
20 we requested this information from Con Edison, they
21 replied that this information is confidential?

22 MR. FLISHENBAUM: I am.

23 MR. STEIFMAN: Thank you. Why is the
24 data confidential?

25 MR. FLISHENBAUM: At that more

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2 granular level of detail, there is information
3 related to the Company's forecasting, hedging
4 practices, as well as in the case of the gas cost
5 factor data related to pipeline contracts which is
6 confidential.

7 MR. STEIFMAN: The information that
8 I'm asking about are the final values. They have
9 nothing to do with strategy or asking for contracts
10 or hedges. It's what is the number used in the
11 calculation?

12 A.L.J. KERSEY: Well, Mr. Steifman,
13 actually, you asked for data, values, and formulas,
14 correct? So it wasn't just as simple as the value?

15 MR. STEIFMAN: Right.

16 A.L.J. KERSEY: Or are you changing
17 your questioning because --

18 MR. STEIFMAN: No, no. I'm addressing
19 what he's trying to say. I believe I want to clarify
20 is that there are components that are proprietary
21 because they would give away some strategy.

22 A.L.J. COSTELLO: Okay.

23 MR. STEIFMAN: And what I'm asking
24 is --

25 A.L.J. COSTELLO: This is not an

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2 appropriate forum to address confidentiality of
3 documents. There are other ways to address
4 confidentiality of documents, not through a witness
5 to -- on the stand to ask about why they -- the
6 Company maintains that it's confidential.

7 MR. STEIFMAN: Okay. Your Honor,
8 thank you. I'll move on to the market supply charge.

9 While the tariff specifies each input
10 to the market supply charge, Con Edison does not
11 publish granular forecasts or provide the raw inputs
12 for analysis by customers or their representatives.
13 Additionally, the charge components and the --

14 A.L.J. COSTELLO: Again, you'd have
15 to --

16 A.L.J. KERSEY: Is there a question?

17 A.L.J. COSTELLO: You have establish
18 that through the witness.

19 MR. STEIFMAN: Okay.

20 Does --

21 My apologies.

22 A.L.J. KERSEY: Okay.

23 MR. STEIFMAN: Does Con Edison publish
24 the granular forecasts and the raw input data used in
25 calculating the market supply charge?

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2 MR. FLISHENBAUM: No, for the same
3 reason as we talked about on the gas cost factor.

4 MR. STEIFMAN: So the charge
5 components and adjustment factors are updated and are
6 filed publicly, but the calculation of how those
7 numbers were calculated is not provided. Can you
8 explain what's confidential about that?

9 MR. SHERWIN: Your Honor, objection as
10 being compound, as being testimonial, and as being
11 argumentative.

12 A.L.J. KERSEY: I think this -- Mr.
13 Steifman, this issue is going against the basis of
14 the confidentiality.

15 MR. STEIFMAN: Okay. I'll continue
16 then.

17 A.L.J. KERSEY: We're going to sustain
18 the objection.

19 MR. STEIFMAN: Last example, because
20 it touches a different aspect of confidentiality.
21 BTU factor. In calculating the BTU factor, are the
22 method, process, or other calculations Con Edison
23 uses to calculate the gas burned for each city gate
24 that's taken hourly throughout the year and each day
25 provided to the customer?

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2 MR. SHERWIN: Your Honor, I will
3 object again on relevance grounds. The BTU factor is
4 not an issue that is in the Joint Proposal. It's not
5 an issue that's been in the witness's testimony, and
6 goes far afield from the witness's direct examination
7 here.

8 A.L.J. KERSEY: Mr. Steifman, your
9 response?

10 MR. STEIFMAN: So this example, first
11 of all, doesn't touch on confidentiality. Con Edison
12 didn't imply that he couldn't make it available
13 because of confidentiality. Con Edison said that
14 current technology systems do not have the capability
15 to publish this data as described to customers. And
16 I'd like to ask --

17 A.L.J. COSTELLO: Where is that
18 information? Where did Con Edison --

19 MR. STEIFMAN: In a request that we
20 made. This is the response that we got.

21 A.L.J. COSTELLO: Okay. But the
22 request that you made, it has to be --

23 MR. STEIFMAN: Your Honor, I will --

24 A.L.J. COSTELLO: -- use the response
25 to the request.

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2 MR. STEIFMAN: Yes. Okay. So what
3 prevents that information -- what prevents that
4 information from being made available to the
5 customer?

6 MS. ROBERTS: As stated, it's not in
7 the existing systems.

8 MR. STEIFMAN: All right. Could you
9 explain that? I don't understand that question --
10 that answer.

11 MS. ROBERTS: Could you repeat the
12 detail so I can answer you correctly?

13 MR. STEIFMAN: The answer was given
14 that this information relating to the BTUs.

15 A.L.J. COSTELLO: Okay. First of all,
16 again, the answer is not in the record. You're
17 reading something, you're reading an answer, or
18 you're referring to an answer that's not in the
19 record. If you have an interrogatory response that
20 contains that response, then you have to show it to
21 the witness. You can ask questions about it as long
22 as they are familiar with it. Or otherwise, it comes
23 into the evidentiary record.

24 MR. STEIFMAN: Well, I think she was
25 answering the question.

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2 A.L.J. COSTELLO: I don't care if she
3 was answering the question.

4 MR. STEIFMAN: Okay.

5 A.L.J. COSTELLO: You have to provide
6 the interrogatory for them to look at.

7 MR. STEIFMAN: I have that here. Can
8 I give?

9 A.L.J. COSTELLO: You can, and you'd
10 have to provide it to counsel, provide me a copy,
11 provide the judges a copy. You can't just read
12 something as if it's in evidence if it's not in
13 evidence.

14 MR. STEIFMAN: I don't have a copy.
15 So I'm precluded from in any way introducing this
16 letter?

17 A.L.J. COSTELLO: Well, don't testify,
18 or don't specify what's in the response. If you want
19 to ask a question, a general question, you can't rely
20 on what was responded to that's not -- you're not
21 providing us.

22 MR. STEIFMAN: Yes, Your Honor. I was
23 trying to go in that direction by asking follow-up
24 questions.

25 A.L.J. COSTELLO: Okay. Go ahead.

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2 I'm sorry. I'm just try --

3 MR. STEIFMAN: It's okay. I just
4 wanted to clarify --

5 A.L.J. COSTELLO: -- just trying to
6 keep the record clear.

7 MR. STEIFMAN: -- that I took your --
8 I'm taking your advice to heart.

9 With regard to the methods that we --
10 and processes and information that I'd asked about
11 with regarding the BTU factor, the response was it's
12 not made available to customers, correct?

13 MR. FLISHENBAUM: Correct.

14 MR. STEIFMAN: Can you explain what
15 prevents it from being made available?

16 MR. FLISHENBAUM: Does the response
17 speak for itself?

18 MR. STEIFMAN: No. Is it because it's
19 confidential? Does --

20 MR. FLISHENBAUM: I don't have the
21 interrogatory response, but I believe you mentioned
22 that response was to the current systems are not able
23 to produce the information.

24 MR. STEIFMAN: Okay. So that's your
25 answer. The current systems aren't able to produce

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2 the information. I just want to clarify. That is
3 your answer?

4 MR. FLISHENBAUM: As the Company
5 responding to that interrogatory.

6 MR. STEIFMAN: Okay. Thank you. So
7 what exactly about the technology makes it
8 unavailable to the public? Because I'll even ask --
9 well, answer that question, please?

10 MS. ROBERTS: We don't have the
11 information.

12 MR. STEIFMAN: Who has the
13 information?

14 MS. ROBERTS: I'd have to see who
15 responded to that interrogatory and learn more of the
16 details.

17 MR. STEIFMAN: But this information is
18 used to produce billing to oil and gas customers,
19 correct?

20 MR. FLISHENBAUM: The BTU factor is
21 used to produce billing.

22 MR. STEIFMAN: Right.

23 MR. FLISHENBAUM: That's right.

24 MR. STEIFMAN: So to produce that
25 billing, all the underlying information would have to

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2 be under Con Edison's control and processed in
3 whatever fashion is used to derive those factors to
4 then include it in the bill, correct?

5 MS. ROBERTS: Yes.

6 MR. STEIFMAN: Okay. So you just said
7 a moment ago that the reason that information, which
8 you just said Con Edison analyzes and produces for
9 its billing, cannot be made available because of some
10 technologies, and I had asked what is that
11 technologies?

12 MS. ROBERTS: I think we've made it
13 clear that we are not familiar with the details of
14 the interrogatory. But we support if the Company
15 submitted it, the accuracy of the information. So to
16 the extent that you informed us --

17 MR. STEIFMAN: Okay.

18 MS. ROBERTS: -- that we said it was
19 about the systems, we agree, but we don't have
20 further information.

21 A.L.J. COSTELLO: All right. They've
22 now responded that they're relying on interrogatory.
23 Without it being in the evidence, we're going to stop
24 this line of questioning.

25 MR. STEIFMAN: Well, can I ask one

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2 follow-up question?

3 A.L.J. COSTELLO: Try it.

4 MR. STEIFMAN: This information is
5 basically a grouping of data collected that's
6 presented to you from the various sources that are
7 then used in some calculation for the BTU factor,
8 correct?

9 MS. ROBERTS: It seems so, yes.

10 MR. STEIFMAN: So why can't that be
11 presented in an Excel spreadsheet?

12 MS. ROBERTS: I don't have familiarity
13 with the details of that data --

14 MR. STEIFMAN: Correct.

15 MS. ROBERTS: -- to know if it can
16 be --

17 MR. STEIFMAN: I'll move on.

18 MR. FLISHENBAUM: -- presented in an
19 Excel spreadsheet.

20 MR. STEIFMAN: I'll move on. This is
21 my final question. In light of all the billing
22 information that the Company doesn't provide, at
23 least the information we're able to touch upon now,
24 is it your position that the single four-sentence
25 paragraph on page 93 of the joint -- of the JP

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2 addressing bill transparency in the whole 134-page
3 Joint Proposal constitutes all the relevant bill
4 transparency that's relevant to a customer's billing?

5 MR. SHERWIN: Your Honor, objection.
6 It's argumentative.

7 A.L.J. COSTELLO: That's sustained.

8 A.L.J. KERSEY: Mr. Steifman, that's a
9 statement.

10 A.L.J. COSTELLO: You can make
11 arguments based on what the JP says, but that's not
12 something for them to respond to.

13 MR. STEIFMAN: Thank you very much,
14 Your Honor. I am finished.

15 A.L.J. KERSEY: You want to redirect
16 staff for Con Edison? Any redirect?

17 MR. SHERWIN: Give us one second?

18 A.L.J. KERSEY: Sure.

19 A.L.J. COSTELLO: Yup.

20 A.L.J. KERSEY: Yeah. Absolutely.

21 MR. KONECNI: No redirect from the
22 Company, Your Honor.

23 A.L.J. KERSEY: Okay.

24 A.L.J. COSTELLO: Thank you.

25 A.L.J. KERSEY: Thank you very much.

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2 Next, we move to the cross-examination
3 of the witness panel by Mr. Ellenbogen.

4 MR. ELLENBOGEN: Thank you.

5 A.L.J. KERSEY: Mr. Ellenbogen, you
6 can start.

7 MR. ELLENBOGEN: Yes, Your Honor,
8 Judge Costello, U.S. Interrogatory Number 6 are all
9 of the capital programs and projects proposed in the
10 JP necessary for Con Edison to provide safe and
11 reliable service. If not, explain why those programs
12 and projects are included in the JP? Okay. Now, on
13 Monday at the pre-trial hearings, everybody was
14 objecting to my exhibit. So this is one of my
15 exhibits. It is page 66 of the JP. All right. So I
16 have to recalibrate a little bit from what --

17 A.L.J. KERSEY: I'm good. I've got a
18 copy. So you can hand those out to other people.
19 Yes.

20 (Cross-talk)

21 MR. ELLENBOGEN: Okay. I have the same
22 thing.

23 A.L.J. KERSEY: Thank you very much.

24 MR. ELLENBOGEN: Okay. Did anyone
25 else wants one?

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2 A.L.J. COSTELLO: Yeah, I believe
3 people -- most people should have copies of the Joint
4 Proposal.

5 MR. ELLENBOGEN: Okay. All right.

6 A.L.J. COSTELLO: So just -- what the
7 ALJ question is is relevant, but you can ask your
8 question with respect to page 68.

9 MR. ELLENBOGEN: Okay. The JP on page
10 68 says, "The engagement plan will include promoting
11 SC1 Rate IV in the Company's Clean Heat Program
12 literature marketing an outreach targeting heat pump
13 customers, educational initiatives for contractors
14 and industry stakeholders, and materials and guidance
15 to help stakeholders access tools and resources."
16 Did I read that correctly? It's in the middle of
17 page 68.

18 A.L.J. COSTELLO: That's fine.

19 MR. ELLENBOGEN: Okay.

20 A.L.J. COSTELLO: That was a direct
21 quote.

22 MR. ELLENBOGEN: Now, I'd like to ask
23 the Company or the PSC or anybody if they could
24 please define clean heat to me?

25 MR. KRAMER: Your Honors, I just want

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2 to have the record reflect that Commission is not
3 here testifying today.

4 A.L.J. COSTELLO: Right.

5 MR. KRAMER: This is staff --

6 MR. ELLENBOGEN: Oh.

7 MR. KRAMER: -- of the Department of
8 Public Service.

9 MR. ELLENBOGEN: Okay.

10 A.L.J. COSTELLO: But Mr. Ellenbogen,
11 the Clean Heat Program is something that was
12 established by the Commission.

13 MR. ELLENBOGEN: Yes, I agree. I'm
14 not questioning that. I'm just asking for the
15 definition of what they're calling clean.

16 A.L.J. COSTELLO: They can't provide a
17 definition what the Commission has determined is part
18 of the Clean Heat Program.

19 MR. ELLENBOGEN: Okay.

20 A.L.J. COSTELLO: Is this part of the
21 Clean Heat Program? That you can ask them.

22 MR. ELLENBOGEN: Well, this is where
23 Exhibit 21 came in, which was additional. It is an
24 NYSERDA document, and I will -- I printed one full
25 copy, but there's only one particular clause in the

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2 abstract that's relevant. Can I read from that?

3 A.L.J. COSTELLO: All right. Hold --

4 A.L.J. KERSEY: Hang on just a second.

5 A.L.J. COSTELLO: Yeah, a second.

6 MR. ELLENBOGEN: It's an NYSERDA

7 document. It's official.

8 A.L.J. KERSEY: Right. But we --

9 A.L.J. COSTELLO: Are you providing?

10 You're providing? You have it?

11 MR. ELLENBOGEN: I have a bunch of

12 copies for people.

13 A.L.J. COSTELLO: Okay. Wait a

14 second. We'll have to --

15 (Cross-talk)

16 A.L.J. KERSEY: So for the record,

17 this is identified as Exhibit 21 on your --

18 MR. ELLENBOGEN: Yes.

19 A.L.J. KERSEY: in your --

20 MR. ELLENBOGEN: Yes.

21 A.L.J. KERSEY: -- proposed

22 affirmation of the NYSERDA analysis of residential

23 heat pump potentials --

24 MR. ELLENBOGEN: Yeah.

25 A.L.J. KERSEY: -- and economics. The

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2 final report from January 2019.

3 MR. ELLENBOGEN: Uh-huh.

4 A.L.J. KERSEY: Okay. This is another
5 document that we can take administrative notice of,
6 so we will do so.

7 And you are referring to -- I believe
8 you said you're referring to?

9 MR. ELLENBOGEN: Exhibit 21.

10 A.L.J. KERSEY: No, what page of
11 the -- what page of the analysis of --

12 MR. ELLENBOGEN: Of this?

13 A.L.J. KERSEY: -- residential heat
14 pump?

15 MR. ELLENBOGEN: I'm only looking at
16 the abstract, which is on page ii.

17 A.L.J. KERSEY: Okay.

18 A.L.J. COSTELLO: Okay. And have you
19 provided that to the witnesses?

20 MR. ELLENBOGEN: I put a whole --
21 where did they all go? Who do I give it to?

22 A.L.J. COSTELLO: We had indicated the
23 number of copies that were needed.

24 MR. ELLENBOGEN: No, I know. I
25 thought I brought them.

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2 A.L.J. COSTELLO: Okay. So just --

3 MR. ELLENBOGEN: I brought twenty of
4 each. I just don't know who I'm supposed to give
5 them TO.

6 A.L.J. KERSEY: Oh, just -- yeah, just
7 put them on the table. They'll distribute them. I'm
8 not sure what the question is yet, so.

9 A.L.J. COSTELLO: Yeah, mark it for --
10 just say mark it for identification so that we
11 have --

12 A.L.J. KERSEY: You want to give it a
13 number?

14 A.L.J. COSTELLO: Yeah.

15 A.L.J. KERSEY: Well, wait. I thought
16 we weren't doing that for certain things. We're
17 taking administrative notice of them.

18 A.L.J. COSTELLO: We're going to mark
19 it for identification. It's being used in the
20 transcript.

21 A.L.J. KERSEY: Gotcha.

22 A.L.J. COSTELLO: So we'll mark it
23 for --

24 A.L.J. KERSEY: Okay. We are going to
25 mark this for purposes of identification as for

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2 purposes of the transcript. Let's see. Just trying
3 to make sure where we're at.

4 A.L.J. COSTELLO: I think we're on
5 1238.

6 A.L.J. KERSEY: Yeah. As Exhibit
7 1238.

8 Mr. Ellenbogen, do you have a question
9 with respect to this?

10 MR. ELLENBOGEN: Yes, I do. If you
11 read the abstract, I've highlighted it on the last
12 page of your document. It says,

13 "This report describes NYSERDA's analysis of the costs, benefits,
14 and adoption opportunities for small-scale residential heat
15 pumps in New York State over the period to 2025. The report
16 concludes that based on conservative application of constraint
17 assumptions, heat pumps could serve approximately half of the
18 thermal energy load in the small residential sector with potential
19 to increase this estimate as barriers such as landlord-tenant
20 constraints or availability of hydronic heat pump systems are
21 overcome. Achievable adoption potential for small-scale
22 residential heat pumps is assessed to be around 7.5 trillion BTUs
23 of incremental site energy savings from oil and resistance
24 heating replacements by 2025."

25 My question is to the Company, did
I -- first of all, did I read that correctly? Does
anybody have any issue?

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2 MR. LANG: Can I object at this point,
3 Your Honor? Well, you may be able to take judicial
4 notice?

5 A.L.J. COSTELLO: They haven't laid a
6 foundation for a cross-examination.

7 MR. STEIFMAN: Yeah. Exactly.

8 MR. LANG: There is no foundation the
9 witness is familiar with this document or is
10 appropriate to ask questions.

11 A.L.J. COSTELLO: That's right, so.

12 MR. ELLENBOGEN: Well, I just have one
13 simple question.

14 A.L.J. COSTELLO: Well, the question,
15 you have them first.

16 MR. ELLENBOGEN: Okay.

17 A.L.J. COSTELLO: You have to ask --
18 explain -- are they familiar with it?

19 MR. ELLENBOGEN: Okay.

20 A.L.J. COSTELLO: Is this something
21 they would rely upon --

22 MR. ELLENBOGEN: Okay.

23 A.L.J. COSTELLO: -- in determining
24 the rate plan? So that's what you have to find out
25 from the witnesses. If they're not familiar with

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2 this and they don't -- it's not something -- a
3 document that they rely on in making the rate plan,
4 that's -- it's not something you can cross-examine
5 them on. Just ask the question.

6 MR. ELLENBOGEN: Okay. Well, the
7 question is --

8 A.L.J. COSTELLO: The question about
9 their familiarity.

10 MR. ELLENBOGEN: Okay. Is anybody
11 familiar with this, with this document?

12 A.L.J. COSTELLO: With the specific
13 provision that you're -- not the document.

14 MR. ELLENBOGEN: Oh. Well, the
15 question I'm asking is where does it say natural gas
16 on it? That's the question.

17 A.L.J. COSTELLO: That doesn't matter.

18 MR. ELLENBOGEN: Okay.

19 A.L.J. COSTELLO: You have -- you have
20 to. You can make that argument --

21 MR. ELLENBOGEN: Okay.

22 A.L.J. COSTELLO: -- that it doesn't
23 say natural gas.

24 MR. ELLENBOGEN: Okay.

25 A.L.J. COSTELLO: You -- in order for

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2 them to -- you want them to say that it doesn't say
3 natural gas. I mean, I --

4 MR. ELLENBOGEN: Okay.

5 A.L.J. COSTELLO: -- you have to show
6 that this is something that they are familiar with,
7 the document itself, the provision that you were
8 quoting, and something that they would rely upon --
9 or something that they would rely upon in making
10 rates.

11 MR. ELLENBOGEN: Well, are -- are you
12 aware that NYSERDA never stated that natural gas was
13 included in part of their savings?

14 UNIDENTIFIED SPEAKER: Yes.

15 A.L.J. COSTELLO: Did they -- did --
16 are they familiar with this document?

17 MR. ELLENBOGEN: Are you familiar with
18 the document?

19 A.L.J. COSTELLO: And are they
20 familiar -- okay. First, are they familiar with the
21 document?

22 Go ahead.

23 A.L.J. KERSEY: Is anyone on the
24 witness panel for the Company familiar with this
25 document?

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2 IN UNISON: No.

3 A.L.J. KERSEY: You have to --

4 UNIDENTIFIED SPEAKER: No. No.

5 (Cross-talk)

6 A.L.J. COSTELLO: The document that --
7 the witnesses have only been provided with an excerpt
8 of the document --

9 MR. ELLENBOGEN: Okay.

10 A.L.J. COSTELLO: -- so they don't
11 have the complete document in front of them. And
12 we're referring to that specific highlighted
13 provision that you read out into the record --

14 MR. ELLENBOGEN: Yeah.

15 A.L.J. COSTELLO: -- correctly.

16 MR. ELLENBOGEN: Yeah.

17 A.L.J. COSTELLO: So that is what we
18 need to know are they familiar with.

19 MR. ELLENBOGEN: Are they familiar
20 with the -- the document or just this provision?

21 A.L.J. COSTELLO: Well, they don't
22 have the document in front of them.

23 MR. ELLENBOGEN: Okay. Are you -- is
24 anybody familiar with this provision from the NYSEDA
25 heat pump report?

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2 UNIDENTIFIED SPEAKER: No.

3 UNIDENTIFIED SPEAKER: No.

4 UNIDENTIFIED SPEAKER: No.

5 UNIDENTIFIED SPEAKER: Nope.

6 A.L.J. COSTELLO: Okay. That is the

7 end of that line of questioning on that document.

8 MR. ELLENBOGEN: Well, has --

9 A.L.J. COSTELLO: That's the end of
10 the line of questioning on the document. They're not
11 familiar with it.

12 MR. ELLENBOGEN: Can I ask a different
13 question?

14 A.L.J. COSTELLO: With respect to this
15 document?

16 MR. ELLENBOGEN: No.

17 A.L.J. COSTELLO: No. You can ask --
18 sure.

19 MR. ELLENBOGEN: Okay. Has anybody
20 calculated the emissions profile of heat pumps in the
21 downstate area? Air source heat pumps in particular;
22 not ground source.

23 MR. HEDEMAN: I'm going to object.

24 Heat pumps were not a part of this panel's issue.

25 Heat pumps were only addressed through rates for heat

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2 pumps.

3 A.L.J. COSTELLO: So who -- who are --
4 so the -- are there witnesses that dealt with rates
5 that would have that information?

6 MR. HEDEMAN: Not present. We
7 consulted what the Independent Intervenors indicated
8 they would be questioning us on and what they've
9 provided, and that was not.

10 A.L.J. COSTELLO: And that's fair
11 because this document was provided for the first time
12 here today in reference to cross-examination. So you
13 can ask them if -- ask the question. If they
14 don't -- can't answer it, they can't answer it. And
15 that's --

16 MR. ELLENBOGEN: Your Honor, it was
17 actually provided in some of the other documents that
18 they objected to in the calculations that were part
19 of the exhibits. The calculations regarding the
20 emissions and things like that.

21 A.L.J. COSTELLO: You can ask the
22 witness panel that we have up here --

23 MR. ELLENBOGEN: Um-hum.

24 A.L.J. COSTELLO: -- if they can
25 answer the question. If they can, fine.

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2 MR. ELLENBOGEN: Can you answer the
3 question as to whether anyone has calculated the
4 emissions profile for heat pumps -- air source heat
5 pumps in the downstate service area, in your service
6 area?

7 MR. HEDEMAN: I'm going to object.
8 That's a compound question.

9 A.L.J. KERSEY: Can you rephrase the
10 question, please? Has any -- I believe you said --

11 MR. ELLENBOGEN: Okay.

12 A.L.J. KERSEY: -- had anyone
13 calculated -- go ahead.

14 MR. ELLENBOGEN: Okay. Okay. If a
15 customer in the Con Ed territory replaces on-site
16 natural gas combustion heat with heat from an air
17 source heat pump powered with Con Ed electricity,
18 will that increase or decrease overall GHG emissions?

19 MR. HEDEMAN: I'm going to object.
20 That calls for speculation.

21 MR. KONECNI: Additionally, Your
22 Honor, we'll object from the grounds of relevance.
23 The clean heat program exists outside of this Joint
24 Proposal. As my colleague mentioned, all this does
25 is have the rates for the proposal. It doesn't have

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2 funding for the clean heat program.

3 A.L.J. COSTELLO: Okay. So since the
4 rates don't include funding for the heat clean --
5 clean heat program and this provision deals only with
6 the engagement plan, including promoting SE-1 rate 4
7 in the Company's clean heat program literature,
8 marketing, and outreach targeting heat pump
9 customers, educational initiatives for contractors
10 and industry stakeholders, and materials and guidance
11 to help stakeholders access tools and resources.

12 You would have to limit your
13 questioning to what's in the Joint Proposal if they
14 can answer that. It doesn't go beyond because
15 there's fundings outside of the Joint Proposal. It's
16 done through the clean heat program. So that's --
17 that's where you are -- where we're at.

18 MR. MENTON: Your Honor, if I might
19 speak to that?

20 A.L.J. COSTELLO: Sure.

21 MR. MENTON: Summary of Joint Proposal
22 page 2. The Joint Proposal contains numerous
23 provisions that are intended to further New York
24 State's ability to meet the goals of the CP -- CLCPA,
25 including provisions of funding that will --

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2 A.L.J. COSTELLO: Okay.

3 MR. MENTON: -- series of bullets --

4 A.L.J. COSTELLO: So why -- so why

5 don't you ask --

6 MR. MENTON: -- enhance electric

7 system --

8 A.L.J. COSTELLO: -- why don't you ask

9 a question about that?

10 MR. MENTON: Okay.

11 MR. ELLENBOGEN: You can ask it.

12 MR. MENTON: No, no. It's your turn.

13 Your turn.

14 MR. ELLENBOGEN: No. Go ahead.

15 Finish the question. Finish the question. You're

16 the lawyer.

17 (Cross-talk)

18 A.L.J. COSTELLO: And you have to

19 reference what you're specifically referring to.

20 Allow the witnesses to get there.

21 MR. ELLENBOGEN: Okay. If -- well,

22 I -- can I just reask the same question? Did they --

23 A.L.J. COSTELLO: We're not talking

24 about the summary for the Joint Proposal. They're

25 saying that something includes -- there's funding

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2 included. There was a statement in the summary. Ask
3 them about that. What funding are they referring to?

4 MR. MENTON: My colleague is asking me
5 to pose this question, so I'll -- so I'll take a
6 crack.

7 The summary of the Joint Proposal,
8 which I believe we have an exhibit number for. I
9 believe it is Exhibit Number 1214, page 2.

10 And there is a paragraph at the bottom
11 of page 2 which reads, "Climate leadership and
12 Community Protection Act goals. The Joint Proposal
13 contains numerous provisions that are intended to
14 further New York State's ability to meet the goals of
15 the health CPA, including provisions for funding that
16 will", and there are several bullet points, but I'm
17 going to emphasize "enhance the --

18 A.L.J. COSTELLO: Okay. Just let
19 me -- let me just stop you just for a question. It
20 says "including funding". So that doesn't mean that
21 everything here, at least my reading of it, is --
22 says there's funding in there. So establish with the
23 witnesses whether there is funding, to the extent
24 they know, for the heat pump that you're referring
25 to.

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2 MR. MENTON: Okay. The question is,
3 is there funding in the Joint Proposal to enhance the
4 electric system in anticipation of transportation and
5 building electrification?

6 MR. HEDEMAN: Your Honor, I'm going to
7 object that the Joint Proposal speaks for itself.

8 A.L.J. COSTELLO: Well, I think it's
9 just to get to a question -- some questions.

10 So if you want -- first of all, you
11 can ask the questions; they can answer it. To the
12 extent they can answer it, that's fine. And then
13 we'll see what your follow-ups are.

14 MS. ROBERTS: There is no
15 transportation-related representative present in this
16 panel.

17 MR. MENTON: How about building? Does
18 anyone on the witness stand know whether there --
19 there's funding for -- for that in there?

20 UNIDENTIFIED SPEAKER: Can you repeat
21 the question?

22 MR. MENTON: I'm going to ask it this
23 way. I'm going to read from the summary of Joint
24 Proposal, and I'm going to ask you if that statement
25 in the summary of Joint Proposal is correct or not.

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2 A.L.J. COSTELLO: Now, again, what --
3 I have a problem with it because your reading of it
4 is -- takes it that the provision for funding
5 provides to all things, and I'm not sure. It says
6 "including provisions for funding".

7 Okay. Go ahead. You can ask -- just
8 ask the question. We'll go line by line with the
9 provisions.

10 MR. MENTON: Okay. I'm not going to
11 ask about every one, but my question is, does --

12 A.L.J. COSTELLO: Yeah. I'm so sorry.

13 MR. MENTON: -- the Joint Proposal --

14 A.L.J. COSTELLO: It says "provisions
15 or funding". So it doesn't apply to all, right?
16 Provisions or funding.

17 MR. MENTON: Okay.

18 A.L.J. COSTELLO: It's not "for
19 funding". "Provisions or funding."

20 MR. MENTON: Okay. Does --

21 A.L.J. COSTELLO: So that -- so you
22 can find -- you can ask the questions to find out --

23 MR. MENTON: Okay.

24 A.L.J. COSTELLO: -- whether there's
25 funding for the specific or they're aware of it.

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2 MR. MENTON: Does the Joint Proposal
3 contain provisions for funding of --

4 A.L.J. COSTELLO: Not for funding.

5 MR. MENTON: I'm asking him for
6 funding.

7 A.L.J. COSTELLO: Okay. Okay.

8 MR. MENTON: Does the Joint Proposal
9 contain provisions for funding enhancement of the
10 electrical system in anticipation of building
11 electrification, yes or no?

12 MR. KRAMER: Your Honor, I'm going to
13 object. This is a -- this may not be a yes or no
14 question. The panelists should be free to answer the
15 questions as they see fit. All the questions posed
16 to them today.

17 A.L.J. COSTELLO: Okay. So to the
18 extent you can answer the question, somebody on the
19 panel can answer the question.

20 MR. BRENNAN: The Joint Proposal
21 includes funding to enhance the electric system in
22 support of safe and reliable service that may also
23 support building transportation and electrification.

24 MR. MENTON: Does the Joint Proposal
25 contain funding to facilitate the clean energy

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2 transition?

3 MR. HEDEMAN: I'm not going to object
4 to that as compound. It asks for speculation. Ask
5 him to rephrase the question.

6 A.L.J. COSTELLO: Just ask your
7 question again. I don't -- I don't have any problems
8 with the question, and I just want to hear it one
9 more time.

10 MR. MENTON: Yes. Does the Joint
11 Proposal contain funding to facilitate the clean
12 energy transition?

13 MR. HEDEMAN: Okay. And that's
14 contained in the summary of the Joint Proposal, which
15 is part of the -- has been included as an exhibit
16 here.

17 MR. KONECNI: And Your Honors, we're
18 going to object on the grounds of vagueness. What
19 does "clean energy transition" mean in the context of
20 the question?

21 MR. HEDEMAN: It means whatever you
22 meant it to say.

23 MR. MENTON: This is your document, my
24 friend.

25 MR. KONECNI: Where does it say that

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2 in the document?

3 A.L.J. COSTELLO: It says -- page 2.

4 MR. KONECNI: I thought we were
5 talking to the CLCPA.

6 A.L.J. COSTELLO: Bullet proof --
7 bullet point 4.

8 MR. KONECNI: I see. So you're asking
9 about bullet point 4?

10 MR. MENTON: Yes.

11 MR. KONECNI: Thank you.

12 MR. MENTON: Does it or doesn't it?

13 A.L.J. KERSEY: Hold up a second.

14 A.L.J. COSTELLO: Just give them --
15 give them a moment --

16 MR. MENTON: Okay.

17 A.L.J. COSTELLO: -- to review it.
18 And when they're ready, just let us know.

19 MR. BRENNAN: The Joint Proposal
20 provides funding for infrastructure required to
21 deliver safe, reliable service that will also enable
22 the clean energy transition.

23 MR. MENTON: Does all of the funding
24 that enables the clean energy transition, is all of
25 it necessary to support safe and reliable service, or

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2 is there some that is and some that is not?

3 MR. BRENNAN: All of the funding for
4 electric infrastructure is required to support safe
5 and reliable service.

6 MR. MENTON: So -- so if, for
7 example -- if, for example, I went to a conference
8 last week where a Mr. Raghu (phonetic) spoke --

9 A.L.J. COSTELLO: Let me stop you
10 there. He answered your question, and what you
11 learned in a conference is not something that's in
12 front of us.

13 MR. MENTON: Okay. Okay.

14 Is Con Edison, with funding from this
15 Joint Proposal, proposing to build a new
16 infrastructure in the South Bronx to support
17 electrified trucks at the Hunts Point Market, yes or
18 no?

19 MR. BRENNAN: The Joint Proposal
20 includes funding to build electric infrastructure to
21 meet growing customer demand, some of which may or
22 may not be electrification of transportation.

23 MR. MENTON: So is -- is
24 infrastructure to support electrified trucks in the
25 South Bronx, is that necessary for safe and reliable

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2 service in Con Ed territory?

3 A.L.J. COSTELLO: They -- they did not
4 respond that that was included. Is there a specific
5 project that's listed in appendix 11 that you want
6 to -- that you can refer to?

7 MR. MENTON: Well --

8 MR. ELLENBOGEN: When you did your --

9 A.L.J. COSTELLO: Wait. One
10 question --

11 MR. ELLENBOGEN: Okay.

12 A.L.J. COSTELLO: We're not asking --

13 MR. ELLENBOGEN: Okay.

14 A.L.J. COSTELLO: They have not
15 responded that that was the case, that that was a
16 project that was included. So you're now asking
17 whether it's necessary, and they haven't -- you
18 haven't established that it's included.

19 MR. MENTON: Okay. Is that project
20 included?

21 MR. BRENNAN: Yes.

22 A.L.J. COSTELLO: Now you can ask your
23 question.

24 MR. ELLENBOGEN: Okay. Is that
25 project necessary for safe and reliable service?

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2 MR. BRENNAN: Yes.

3 MR. KRAMER: Your Honor, I'm going to
4 object. Asked and answered.

5 A.L.J. COSTELLO: No, it actually
6 wasn't asked and answered. This is a specific
7 question as to that project which he just identified
8 as part of the Joint Proposal, so we're going to
9 allow the response.

10 MR. BRENNAN: Yes.

11 MR. MENTON: Well, I think I'm going
12 to turn this back over to Mr. Ellenbogen because I'm
13 taking up his time.

14 MR. ELLENBOGEN: That's okay.

15 MR. MENTON: But I -- I will have my
16 questions when the time comes.

17 MR. ELLENBOGEN: Did your safety
18 analysis stop at the Con Ed borders when you did the
19 analysis? I recall --

20 MR. KRAMER: Objection, Your Honor.

21 (Cross-talk)

22 A.L.J. COSTELLO: What safety analysis
23 are you referring --

24 MR. ELLENBOGEN: Well, they -- when --
25 during the thing, there was, like, a security --

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2 like, a -- an analysis of --

3 A.L.J. COSTELLO: During what -- what
4 thing?

5 MR. ELLENBOGEN: During the -- during
6 the hearings that we sat through.

7 A.L.J. COSTELLO: What hearings?

8 MR. ELLENBOGEN: The -- the rate case
9 hearings. Settlement discussions.

10 MR. KRAMER: I believe those were
11 settlement discussions, Your Honor. And we're going
12 to object to any --

13 A.L.J. COSTELLO: Settlement
14 discussions. That's -- that's confidential.

15 MR. KRAMER: Thank you.

16 A.L.J. COSTELLO: It's not appropriate
17 to bring up --

18 MR. ELLENBOGEN: All right.

19 A.L.J. COSTELLO: -- during this.
20 It's all confidential.

21 MR. ELLENBOGEN: Sorry. Has anyone
22 taken into account the availability of electricity to
23 support these programs?

24 MR. HEDEMAN: Your Honor, we're going
25 to object. Who is "anyone"?

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2 MR. ELLENBOGEN: Anyone for the
3 Company, anyone for the PSC.

4 A.L.J. COSTELLO: Well --

5 MR. ELLENBOGEN: Because the -- if you
6 look at document number --

7 A.L.J. COSTELLO: It's not the PSC,
8 Department of Public Service.

9 MR. ELLENBOGEN: Department of Public
10 Service. If you look at document number 4 from the
11 NYISO, it shows extremely rapidly declining safety
12 margins on the downstate system.

13 A.L.J. COSTELLO: Okay. You can --
14 you can --

15 MR. ELLENBOGEN: Okay.

16 A.L.J. COSTELLO: Again, that's
17 something that you can make arguments about.

18 MR. ELLENBOGEN: Okay.

19 Has -- has anybody reviewed the NYISO,
20 our Exhibit 4, regarding the declining generation and
21 energy margins on the downstate system?

22 MR. BRENNAN: The Joint Proposal
23 covers investment required to deliver electricity to
24 meet customer demand in accordance with safe and
25 reliable service.

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2 MR. ELLENBOGEN: But has anyone
3 bothered to consider how you're going to deliver
4 electricity that doesn't exist?

5 MR. HEDEMAN: Objection, Your Honor.
6 Argumentative.

7 A.L.J. COSTELLO: Sustained.

8 MR. ELLENBOGEN: How can I ask that?

9 MR. MENTON: Accept it.

10 MR. ELLENBOGEN: All right. I'm
11 running out of questions because --

12 MR. MENTON: Oh. Okay.

13 MR. ELLENBOGEN: Go ahead. Do your
14 thing.

15 MR. MENTON: Oh.

16 MR. ELLENBOGEN: Because everything's
17 going to get an objection to it.

18 MR. MENTON: No. It's -- a sustained
19 objection is -- is an asset to us on the appeal. So
20 collect -- collect a bunch of them.

21 MR. ELLENBOGEN: Regarding -- has --
22 has anybody reviewed the NYISO document in terms of
23 the amount of zero emissions energy available on the
24 downstate system?

25 MR. HEDEMAN: Objection, Your Honor.

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2 He's stating a conclusion of what the report says
3 without establishing that they're familiar with the
4 report.

5 MR. ELLENBOGEN: Okay.

6 A.L.J. COSTELLO: But also let me ask
7 you this. Did anyone consider with respect to the
8 Joint Proposal --

9 MR. ELLENBOGEN: Okay.

10 A.L.J. COSTELLO: -- and did this
11 document come out before the Joint Proposal was --

12 MR. ELLENBOGEN: The draft was out
13 earlier.

14 A.L.J. COSTELLO: What about the final
15 document?

16 MR. ELLENBOGEN: The final document
17 came out a week and a half ago.

18 A.L.J. COSTELLO: Okay. And we're not
19 asking that the -- we said we would -- we said we
20 would take judicial or administrative notice of the
21 final document.

22 MR. ELLENBOGEN: Okay.

23 A.L.J. COSTELLO: So you can ask --
24 you don't even have to tie it right directly to the
25 document. So what it seems to me you're trying to

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2 ask is whether they considered emissions, some part
3 of it is emissions from -- from the --

4 MR. ELLENBOGEN: Yes.

5 A.L.J. COSTELLO: -- factory or the
6 plants?

7 MR. ELLENBOGEN: Have you -- have you
8 considered the emissions of the downstate electrical
9 system and the age of the generating plants on the
10 downstate system? Are you -- are you aware of the
11 age of the generating plants on the downstate system,
12 and particularly in New York City?

13 A.L.J. KERSEY: Mr. Ellenbogen, so you
14 just asked a number of questions --

15 MR. ELLENBOGEN: Okay.

16 A.L.J. KERSEY: -- in one question.

17 MR. ELLENBOGEN: Okay.

18 A.L.J. COSTELLO: So please ask --

19 MR. ELLENBOGEN: Okay. I'll go one at
20 a time.

21 A.L.J. KERSEY: -- one -- one part of
22 that question individually.

23 MR. ELLENBOGEN: Okay. Okay.

24 Are you aware of the emissions profile
25 of the downstate system and how much renewable energy

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2 is actually on the downstate system relative to
3 fossil fuel generation?

4 A.L.J. COSTELLO: Objection. It's
5 still a compound question.

6 MR. ELLENBOGEN: Okay. Are you aware
7 of the level of renewable generation on the downstate
8 system?

9 MR. BRENNAN: I'm aware of the NYISO
10 report you're referring to.

11 MR. ELLENBOGEN: Okay. You're aware
12 that it's only five percent as they put in? Are you
13 aware of that figure?

14 MR. BRENNAN: I am aware of the
15 report. I am not familiar with the details of the
16 report.

17 MR. ELLENBOGEN: This was on page 8 in
18 the draft.

19 A.L.J. COSTELLO: Mr. Ellenbogen.

20 MR. ELLENBOGEN: It got -- it got
21 moved to page 16. Can --

22 A.L.J. COSTELLO: This is a different
23 line of questioning?

24 MR. ELLENBOGEN: No, it's just -- I'm
25 just going to inform him of --

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2 A.L.J. COSTELLO: He's not familiar
3 with it.

4 MR. ELLENBOGEN: All right.

5 A.L.J. COSTELLO: You can show it to
6 him and say, is this -- is this something that you're
7 familiar with? But again, you can't ask questions
8 about it if they're not familiar with it.

9 MR. ELLENBOGEN: Is this something
10 you're familiar with? The page numbers are on now
11 page 16 in the final. Okay.

12 MR. BRENNAN: No.

13 UNIDENTIFIED SPEAKER: Your Honors,
14 could --

15 UNIDENTIFIED SPEAKER: Can you -- can
16 you --

17 UNIDENTIFIED SPEAKER: -- copies,
18 please, be provided --

19 A.L.J. COSTELLO: Yeah.

20 UNIDENTIFIED SPEAKER: -- to all
21 parties?

22 MR. ELLENBOGEN: Yeah. Here. I have
23 plenty.

24 A.L.J. COSTELLO: And you also have to
25 indicate what document you're handing them.

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2 MR. ELLENBOGEN: This -- this is page
3 16. It was -- says page 8. That was in the draft.
4 It's page 16 from the final document that came out a
5 week and a half ago. They moved the page numbers
6 around.

7 Do you guys want more of these? Here.
8 Anybody else want one?

9 (Cross-talk)

10 UNIDENTIFIED SPEAKER: You know, we
11 need one. We're staff counsel.

12 MR. ELLENBOGEN: Okay.

13 UNIDENTIFIED SPEAKER: We need a copy.

14 (Cross-talk)

15 MR. ELLENBOGEN: I got copies for
16 everybody. I just don't know --

17 A.L.J. KERSEY: Mr. Ellenbogen, I
18 believe you asked the witness a question. I believe
19 the witness responded, but we did not catch it up
20 here. What was the question? Was it whether you
21 were familiar with it, or I --

22 MR. ELLENBOGEN: Okay. Are you now
23 familiar with the level of emissions --

24 A.L.J. KERSEY: No. No. Are you
25 familiar with the document?

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2 MR. ELLENBOGEN: Are you familiar with
3 the level of emissions of renewable energy going
4 to --

5 A.L.J. COSTELLO: No. Are you
6 familiar with the document? It's not are you
7 familiar with --

8 MR. ELLENBOGEN: Are you familiar with
9 the document?

10 A.L.J. COSTELLO: -- what's in the
11 document as far as --

12 MR. ELLENBOGEN: Are you familiar with
13 the document?

14 MR. BRENNAN: I'm aware of this piece
15 of paper you put in front of me. I'm not familiar
16 with the document that you cited as the source of
17 this --

18 MR. ELLENBOGEN: Okay.

19 MR. BRENNAN: -- piece of paper.

20 MR. ELLENBOGEN: That's from the NYISO
21 2025 to 2034 reliability analysis. The draft came
22 out in --

23 MR. MENTON: September.

24 MR. ELLENBOGEN: -- September. The
25 final document was published on November 21st. It's

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2 page 8 there. It's page 16 in the final document.

3 A.L.J. COSTELLO: And you have a
4 question?

5 MR. ELLENBOGEN: No. He said he was
6 not aware of it.

7 A.L.J. COSTELLO: Well, this document
8 is fairly critical.

9 Is anybody at the Company familiar
10 with this NYISO --

11 MR. MENTON: I think he said --

12 A.L.J. COSTELLO: -- report? Anybody?

13 MR. MENTON: Did you say you were
14 familiar with it or you were not familiar?

15 MR. BRENNAN: I said I am aware of the
16 report. I'm not familiar with it. The electric
17 infrastructure operation and operations panel within
18 the Joint Proposal covers the investments in delivery
19 infrastructure to meet customer demand.

20 The NYISO process covers identifying
21 generation and transmission solutions at a state
22 level, and we are part of that process, but that is
23 separate and apart from this joint report.

24 MR. SHERWIN: Your Honor, I would ask
25 what the whole relevance of this line of questioning

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2 is. We run a transmission and distribution company,
3 not a generation company.

4 MR. MENTON: Yes.

5 A.L.J. KERSEY: Please respond to
6 that.

7 MR. MENTON: The relevance is Con
8 Edison, and I can't say I blame them. I would -- I
9 would love --

10 A.L.J. KERSEY: No. Just --

11 A.L.J. COSTELLO: Just say what the
12 relevance is.

13 MR. MENTON: The relevance is that
14 we're giving them a lot of revenue to dig holes and
15 fill them back in for useless things because the --
16 the electricity doesn't exist. They provide for
17 customer demand where there is no electricity to
18 provide.

19 A.L.J. COSTELLO: Okay. So you want
20 them to testify about what is available on the system
21 that NYISO information provides?

22 MR. MENTON: Well, we want to find out
23 whether Con Ed is aware that the infrastructure
24 they're proposing to build and stick to the
25 ratepayers is infrastructure that has no electricity

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2 behind it and therefore is wasted.

3 A.L.J. COSTELLO: That's -- that --
4 that is -- that's argumentative. So I think, you
5 know, if you want to ask them the question about what
6 they're aware of. And it may go -- it's beyond -- it
7 may be beyond what they're able to testify to --

8 MR. MENTON: Maybe they don't know.

9 A.L.J. COSTELLO: -- because they're
10 not --

11 MR. MENTON: I mean --

12 A.L.J. COSTELLO: -- and they may not
13 know because that's not part of what they do. This
14 is the NYISO that provides this information, so.

15 MR. MENTON: Frankly, Your Honor,
16 on -- on the appeal of this matter, the fact that Con
17 Edison doesn't seem to know that it's building
18 infrastructure for electricity that doesn't exist is
19 a rather important fact.

20 A.L.J. KERSEY: I'm not clear -- I'm
21 not sure that that's what's been testified to, Mr.
22 Menton.

23 MR. MENTON: Okay.

24 A.L.J. KERSEY: That has not -- that
25 has not been established.

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2 MR. MENTON: Okay.

3 A.L.J. KERSEY: So --

4 MR. KONECNI: Your Honor, and I would
5 also -- Your Honors, I would also point out that the
6 Company serves demand. It builds infrastructure to
7 serve demand. It doesn't build resources. It builds
8 infrastructure to serve demand, customer demand. So
9 I really don't understand the relevance of this
10 questioning.

11 A.L.J. COSTELLO: And -- and so I
12 guess the question is, in determining the resources
13 that you -- is part of that determining what the
14 electricity supply is, or available supply at the
15 time? That's -- the witness can answer that if -- is
16 part of the process in determining what projects to
17 include consider the electricity supply?

18 And I understand we're talking about
19 NYISO and all of that, but the electricity supply
20 that exists to support the planned projects. Or is
21 that a separate -- you know, taken care of separately
22 by either someone else in the Company, by different
23 companies, or the NYISO? And I know that I just gave
24 you a big compound question, so to the -- to the
25 extent you can answer.

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2 MR. BRENNAN: Within the scope of the
3 Joint Proposal, generation supply is not
4 contemplated.

5 A.L.J. COSTELLO: Okay.

6 MR. BRENNAN: The Joint Proposal
7 covers the infrastructure required to deliver
8 electricity in accordance with demand within our
9 service territory.

10 MR. MENTON: Okay.

11 A.L.J. COSTELLO: That's your answer.

12 MR. MENTON: Okay. So I want to ask
13 that question to the Department of Public Service
14 staff.

15 A.L.J. KERSEY: Well, Mr. Menton, I
16 want to hold up for a second. Just is Mr. -- how are
17 we doing it?

18 MR. MENTON: Okay.

19 A.L.J. KERSEY: Mr. Ellenbogen, are
20 you finished with your cross-examination, and now
21 we're moving to Mr. Menton?

22 MR. ELLENBOGEN: Well, it's --

23 MR. MENTON: All right. Let him go.
24 Let him go. You know, unfortunately, he's not a
25 lawyer and --

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2 MR. ELLENBOGEN: Yeah. I'm not a
3 lawyer. I'm an --

4 MR. MENTON: -- I'm trying to help him
5 out. That's all --

6 A.L.J. KERSEY: Okay. But I mean --

7 MR. MENTON: -- that's going on.

8 A.L.J. KERSEY: -- if you're done with
9 your cross-examination that's -- that's fine.

10 MR. MENTON: Okay.

11 A.L.J. KERSEY: Or are you doing it
12 together?

13 MR. ELLENBOGEN: We'll do it -- we'll
14 do it together.

15 MR. MENTON: I'm just trying to help
16 it. He should finish --

17 MR. ELLENBOGEN: We'd like to --

18 MR. MENTON: -- and then I'll go.

19 MR. ELLENBOGEN: -- do it together.

20 MR. MENTON: No, no. I want you to
21 go, and then -- and then I'll go.

22 MR. ELLENBOGEN: Is Department staff
23 aware of the age of the downstate generation and the
24 fact that, according to the NYISO, 90 percent of the
25 generation in the -- in the New York City area is

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2 over sixty years old?

3 MR. KRAMER: Objection, Your Honor.

4 It's a compound question. Please --

5 MR. ELLENBOGEN: Okay.

6 MR. KRAMER: -- split it up.

7 MR. ELLENBOGEN: Okay. Is -- is
8 DPS -- is DPS staff aware of the age of the downstate
9 generation, in particular, the New York City
10 generation? Has state --

11 MR. KRAMER: And again, I'm -- now I'm
12 going to object on relevance, Your Honor. The
13 awareness of staff as to generation is not the
14 subject of the Joint Proposal. Generation is not
15 addressed in the Joint Proposal. It's a delivery
16 case. Both of these cases, the gas and the electric.

17 MR. ELLENBOGEN: Your Honor, you can't
18 deliver what doesn't exist.

19 A.L.J. COSTELLO: You know --

20 MR. KRAMER: No one's going to ask for
21 delivery of something that doesn't exist. What are
22 we talking about?

23 MR. MENTON: They're asking for money
24 for delivery of something that doesn't exist.

25 MR. KRAMER: You missed -- you missed

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2 the -- well, we'll -- we'll -- we'll let the record
3 speak for itself.

4 A.L.J. KERSEY: Yeah. We're going to
5 sustain that objection.

6 Mr. Ellenbogen, ask another question,
7 please.

8 MR. ELLENBOGEN: Go ahead, friend.

9 MR. MENTON: Oh, no. No.

10 MR. ELLENBOGEN: Nope. I'm done.

11 MR. MENTON: You have to finish.

12 MR. ELLENBOGEN: I'm done.

13 MR. MENTON: Oh. He's saying he's
14 finished. Okay. It's my turn.

15 A.L.J. KERSEY: Okay. You are --

16 Mr. Ellenbogen, you're done with your
17 cross-examination?

18 MR. ELLENBOGEN: Yes. For now, yes.

19 A.L.J. COSTELLO: Not for now. You're
20 done.

21 MR. ELLENBOGEN: Okay. I'm done.

22 MR. MENTON: Could you move over this
23 way a little bit?

24 A.L.J. KERSEY: Okay. So now we're
25 moving -- I'm sorry?

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2 (Cross-talk)

3 A.L.J. COSTELLO: Let me just ask
4 counsel for the Company and DPS staff to the extent
5 they answer questions on cross, do you want to see
6 about redirect witness by witness or do you want to
7 wait for Mr. Menton to finish his cross-examination
8 and then you can determine as to both whether you're
9 going to do redirect?

10 MR. KONECNI: The Company would prefer
11 the latter approach.

12 A.L.J. COSTELLO: Okay. So that's
13 what we'll do. So let's continue with Mr. Brennan.

14 That's okay?

15 MR. KONECNI: It is. Yes, Your Honor.
16 Thank you. I shouldn't just shake my head. Thank
17 you.

18 A.L.J. KERSEY: Thank you.

19 Mr. Menton, you can proceed with
20 cross-examination.

21 MR. MENTON: Okay. Thank you very
22 much.

23 This is Francis Menton, Independent
24 Intervenor. When Mr. Ellenbogen was just finishing
25 up, he had asked the question to Con Edison if -- if

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2 they were aware that they were building
3 infrastructure to deliver electricity that doesn't
4 exist, and they said that's not part of their job.

5 So I want to address that to the
6 Department of Public Service staff because is that
7 part of your job to understand --

8 A.L.J. KERSEY: Mr. Ellenbogen -- or
9 I'm sorry. Mr. Menton, can you break down the
10 question and -- and have it be a question?

11 MR. MENTON: Okay. Is it part of the
12 job of the staff of the Public Service Commission to
13 determine whether the electricity exists before
14 approving a rate increase to deliver the nonexistent
15 electricity?

16 MR. BRENNAN: They don't approve it.
17 They propose the rate -- propose the Joint
18 Proposal --

19 A.L.J. KERSEY: These are witnesses --

20 MR. BRENNAN: -- so was it part of
21 their --

22 MR. KRAMER: It's also argumentative,
23 Your Honor. The question's argumentative.

24 A.L.J. COSTELLO: Just ask -- ask it
25 one more time.

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2 MR. MENTON: Is it part of the
3 staff -- of the job of the staff of the Public
4 Service Commission before signing on to a settlement
5 proposal for a rate increase for delivery of
6 electricity to be sure that the electricity exists?

7 A.L.J. KERSEY: Someone answer the
8 question?

9 A.L.J. COSTELLO: Department of Public
10 Service witnesses, is there anyone that can answer --
11 respond to that question?

12 MR. KRAMER: I think they're
13 conferring, Your Honor.

14 A.L.J. COSTELLO: Okay. I'm sorry.

15 A.L.J. KERSEY: No problem.

16 A.L.J. COSTELLO: It's a -- it's set
17 up --

18 MR. KRAMER: Yeah.

19 A.L.J. KERSEY: It's not ideal.

20 MR. PHILIP: Yes. What we do actually
21 as part of our -- okay. Sorry. Yeah. As part of
22 our review of the rate proposal, what we do is we
23 look at everything, but we have a separate section
24 where we deal with the NYISO regarding this
25 generation deficiencies and water transmission

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2 reliability and all those stuff.

3 So they are not part of the rate
4 proceedings, and we don't specifically look at the
5 generation requirements, whatever is coming, but
6 based on the forecast from Con Ed and the demand for
7 the customers, we have to build the infrastructure to
8 provide supply to the people, supply to the
9 customers.

10 Our separate group is the
11 (indiscernible) who does the -- who does this, what
12 do call, the evaluation of the load and the
13 generation and the transmission and delivery, all
14 those stuff.

15 MR. MENTON: Okay. I want to use a
16 document. The document was Exhibit 17 of the ones we
17 proposed, so it was submitted on November 26th with
18 our --

19 A.L.J. COSTELLO: Was that document
20 already admitted into evidence?

21 MR. MENTON: I think you said, Your
22 Honor, that you would take administrative notice of
23 it.

24 A.L.J. KERSEY: It's a letter.

25 MR. MENTON: It's one of those. It's

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2 a -- it's a letter from the Attorney General in a
3 court proceeding. And I have a lot of copies to pass
4 out if people want.

5 A.L.J. COSTELLO: Okay. Well, pass it
6 out to counsel. Give the counsel copies.

7 A.L.J. KERSEY: And then you can lay a
8 foundation, Mr. Menton.

9 A.L.J. COSTELLO: And then, well,
10 also --

11 MR. MENTON: And would Your Honors
12 like the copies for --

13 A.L.J. COSTELLO: Yes, please.

14 MR. MENTON: -- to follow the
15 testimony?

16 A.L.J. COSTELLO: And with counsel and
17 then give some to the witnesses. And you're going to
18 have to lay a foundation for cross-examination.

19 (Cross-talk)

20 A.L.J. KERSEY: I've got one, Mr.
21 Menton. Thank you.

22 MR. MENTON: You do? Okay. Move on.

23 (Cross-talk)

24 MR. MENTON: Okay.

25 (Cross-talk)

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2 MR. MENTON: I'll had out a few.

3 Could you pass them up and down --

4 UNIDENTIFIED SPEAKER: Thank you.

5 MR. MENTON: -- wherever it's
6 appropriate, please. Thank you.

7 A.L.J. KERSEY: Okay. For purposes of
8 the transcript, we're going to mark the August 11th,
9 2025, letter to Justice Trimon (phonetic) in the
10 matter of Citizen Action of New York v. New York
11 State Department of Environmental Conservation as --
12 it's marked for identification as Exhibit 1239.

13 You may proceed, Mr. Menton.

14 MR. MENTON: Okay. Thank you.

15 So this is a letter that was sent by
16 the Attorney General of the State on behalf of the
17 State Department of Environmental Conservation to a
18 court. Are any of the witnesses familiar with this
19 document?

20 IN UNISON: No. No.

21 MR. MENTON: Okay.

22 A.L.J. COSTELLO: That's -- that's it.
23 You're done.

24 MR. MENTON: Can I ask questions
25 that -- okay.

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2 A.L.J. COSTELLO: No.

3 MR. MENTON: I'm going to ask them --

4 A.L.J. COSTELLO: If they're not
5 familiar with it, this is not something they rely
6 upon, no. You can make arguments about it because
7 we're taking judicial -- administrative notice of it.

8 MR. MENTON: Okay.

9 A.L.J. COSTELLO: But if the -- if the
10 witnesses aren't familiar with it, you can't cross-
11 examine them on it.

12 MR. MENTON: Okay. I'll just -- I'll
13 just ask questions without referring to the document.

14 A.L.J. COSTELLO: That's okay.

15 MR. MENTON: Okay.

16 A.L.J. COSTELLO: You can do that.
17 But don't refer to the document while you're do that.

18 MR. MENTON: Okay. Are any of the
19 witnesses familiar with something called the 2025
20 Draft New York State Energy Plan? Anybody?

21 MR. BRENNAN: No.

22 MR. MENTON: Do any of the witnesses
23 know what the New York State Energy Planning Board is
24 that put out the New York State draft Energy Plan?

25 A.L.J. COSTELLO: Can I -- can I ask a

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2 question about this?

3 MR. MENTON: Yes.

4 A.L.J. COSTELLO: Does this go to
5 supply -- or that you're referring to? Does this
6 go -- the information you're talking about now trying
7 to go to supply? Or is it going to generation by --
8 by generation of it?

9 MR. MENTON: Well, it -- it goes to
10 the question of building infrastructure to deliver
11 electricity which the State itself says is not going
12 to exist.

13 A.L.J. COSTELLO: Okay. You can --
14 you -- the thing is you can make these arguments in
15 your brief. It's not something that you have to
16 bring through cross-examination if they're not
17 familiar with it. Do you -- do you understand what
18 I'm saying?

19 MR. MENTON: I -- I understand what
20 you're saying. I'm having to say I'm sitting here
21 stunned that nobody on the Public Service staff or
22 Con Edison has ever heard of --

23 A.L.J. COSTELLO: That's not on --

24 MR. MENTON: -- the State Energy Plan?

25 A.L.J. KERSEY: But this is on -- we

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2 have witnesses --

3 A.L.J. COSTELLO: Dealing with the

4 joint --

5 A.L.J. KERSEY: specific --

6 A.L.J. COSTELLO: -- proposal.

7 A.L.J. KERSEY: -- specific

8 witnesses --

9 MR. MENTON: Okay.

10 A.L.J. KERSEY: -- dealing with the

11 Joint Proposal.

12 MR. MENTON: Okay. And the State

13 Energy Plan --

14 A.L.J. KERSEY: Not any employee here.

15 MR. MENTON: -- has said that the

16 Joint Proposal is infeasible.

17 MR. BRENNAN: No, it hasn't.

18 A.L.J. COSTELLO: Again --

19 A.L.J. KERSEY: No.

20 A.L.J. COSTELLO: -- again, again.

21 UNIDENTIFIED SPEAKER: No, it hasn't.

22 A.L.J. COSTELLO: -- you can make your

23 argument. It may not be appropriate to get that

24 information through them.

25 MR. MENTON: Okay. Okay.

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2 Does anybody on the panel know that
3 one of the members of the State Energy Planning Board
4 is Rory Christian, the chairman of the Public Service
5 Commission?

6 MR. KRAMER: Objection.

7 MR. MENTON: Does anybody know this?

8 A.L.J. COSTELLO: Sustained.

9 MR. KRAMER: Relevancy and a bunch of
10 other things.

11 MR. MAIORIELLO: Your Honor, this is
12 David Maioriello. I am aware of the State Energy
13 Plan draft. It's a draft. I am aware that they
14 actually recently had a meeting to discuss the draft.
15 But --

16 MR. MENTON: Okay. Okay. I'll
17 address this next question to you.

18 Does the draft plan show that a 40
19 percent greenhouse gas reduction from 1990 levels by
20 2030 is infeasible under the Climate Act's accounting
21 methodology?

22 MR. KRAMER: Objection. The plan
23 speaks for itself.

24 A.L.J. COSTELLO: Sustained.

25 A.L.J. KERSEY: The objection's

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2 sustained.

3 MR. MENTON: That sentence does not
4 appear in the plan.

5 MR. KRAMER: The plan speaks for
6 itself. Whether your sentence is in there or not has
7 nothing to do with the plan and its contents.

8 MR. MENTON: Okay. I take note that
9 the Department of Public Service does -- does not
10 want this information --

11 A.L.J. KERSEY: It's also just --

12 MR. MENTON: -- in the record.

13 A.L.J. KERSEY: -- you're also
14 referring to --

15 A.L.J. COSTELLO: No, the infor -- the
16 information --

17 A.L.J. KERSEY: -- a draft plan.

18 A.L.J. COSTELLO: -- the
19 information -- what information are you talking
20 about? Because the information that you -- the
21 underlying information is in.

22 MR. MENTON: The underlying --

23 A.L.J. COSTELLO: Or we can take
24 notice of it. Go ahead.

25 MR. MENTON: What's not in is that the

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2 Public Service Commission staff is signing --

3 A.L.J. COSTELLO: It's not the Public
4 Service Commission staff. It's the Department of
5 Public Service.

6 MR. MENTON: Department of Public
7 Service.

8 A.L.J. COSTELLO: I'm sorry. There is
9 a distinction.

10 MR. MENTON: I thank you, Your Honor.
11 I apologize. The Department of Public Service staff
12 is signing on to rate increases without knowing about
13 this. That's the important thing.

14 A.L.J. COSTELLO: You can argue that.

15 MR. MENTON: I can't find out that
16 they don't know about it unless they'll answer that
17 question that they don't know.

18 A.L.J. COSTELLO: You asked people --
19 there's only one person that you had asked.

20 And the name of you?

21 MR. MAIORIELLO: David Maioriello.

22 A.L.J. COSTELLO: Sorry. So let's
23 hear the question again. Let's see if he can respond
24 to it. And let's -- well, go ahead.

25 MR. MENTON: Okay. Is the Department

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2 of Public Service staff aware that a 40 percent
3 greenhouse gas reduction from 1990 levels by 2030 is
4 infeasible under the Climate Act's accounting
5 methodology? Are they aware of that?

6 MR. KRAMER: Objection. Again, this
7 is argumentative. There's no citation to anything
8 where this assertion is contained.

9 A.L.J. COSTELLO: And let me ask you
10 this question. You -- just to clarify, you're saying
11 under the Climate Act methodology?

12 MR. MENTON: Yes.

13 A.L.J. COSTELLO: Climate Act which
14 is -- is law?

15 MR. MENTON: Yes.

16 A.L.J. COSTELLO: Okay. What is
17 infeasible under -- the Climate Act is what it is.

18 MR. MENTON: Okay.

19 A.L.J. COSTELLO: Your argument is
20 that it's infeasible, right? It's not --

21 MR. MENTON: The Attorney General's
22 statement is that it's infeasible.

23 A.L.J. COSTELLO: You can argue that.

24 MR. MENTON: Okay.

25 A.L.J. COSTELLO: They're not familiar

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2 with this Attorney General's statement.

3 MR. MENTON: Okay. Well, but fact
4 that they're not familiar with the position of the
5 State of New York is -- is an --

6 A.L.J. COSTELLO: You know --

7 MR. MENTON: -- incredibly important
8 fact.

9 A.L.J. COSTELLO: -- do you know
10 everything that's going on with everything? I mean,
11 these people have jobs that -- they do a lot of work
12 that's not -- you know, they don't have to know
13 everything about everything.

14 MR. MENTON: Okay.

15 Do you agree --

16 (Cross-talk)

17 MR. MENTON: -- do you agree that
18 building the infrastructure to attempt to meet the
19 2030 Climate Act goals would impose extraordinary and
20 damaging costs upon New Yorkers? Do you agree with
21 that?

22 MR. KRAMER: Your Honor, I'm going to
23 have to object. It's --

24 A.L.J. COSTELLO: Let -- let them
25 respond. Let's let them respond.

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2 MR. MAIORIELLO: I can't answer that
3 question.

4 MR. MENTON: Do you know that the
5 Attorney General has taken that position?

6 MR. MAIORIELLO: I have no idea --

7 MR. MENTON: Okay.

8 MR. MAIORIELLO: -- about what the
9 Attorney General has stated.

10 MR. MENTON: And as -- as a member of
11 the staff of the Department of Public Service, are
12 you okay with imposing extraordinary and damaging
13 costs --

14 MR. KRAMER: Objection.

15 A.L.J. COSTELLO: That's sustained.
16 You're -- you're putting in extraordinary and --
17 that's your characterization.

18 MR. MENTON: No. That is the word of
19 the Attorney General of the State of New York.

20 A.L.J. COSTELLO: They're not familiar
21 with that.

22 MR. MENTON: Are you not fam -- is it
23 true what the judge just said, that you're not
24 familiar that the Attorney General has said that?

25 MR. MAIORIELLO: Yes.

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2 A.L.J. COSTELLO: He just said they
3 were not familiar.

4 MR. MENTON: Okay.

5 A.L.J. COSTELLO: And why don't -- why
6 don't -- you know, you can ask them if -- if it's
7 their view --

8 MR. MENTON: Okay.

9 A.L.J. COSTELLO: -- not whether they
10 agree. Whether it's their view, and they can respond
11 to that.

12 MR. MENTON: Okay. Is it -- is it
13 your view that report -- that imposing extraordinary
14 and damaging costs upon New Yorkers would be required
15 by trying to meet the Climate Act goals?

16 A.L.J. KERSEY: Mr. Menton, I'm going
17 to ask you to rephrase that question.

18 MR. MENTON: I thought that's what he
19 told me to say.

20 A.L.J. COSTELLO: It's all right. Let
21 them -- let them -- just let them respond if you can.
22 Let them respond.

23 MR. KRAMER: So Your Honor, I mean --

24 A.L.J. KERSEY: I would ask you --

25 MR. KRAMER: -- Your Honor, please.

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2 A.L.J. KERSEY: -- that was a
3 different -- I'm sorry. That was --

4 MR. KRAMER: It is a different
5 question.

6 A.L.J. KERSEY: That was a different
7 question --

8 MR. MENTON: Okay.

9 A.L.J. KERSEY: -- then the quest
10 that -- I want you to rephrase that question, and
11 we'll deal with --

12 MR. MENTON: Okay.

13 A.L.J. KERSEY: -- whatever question
14 you now posit.

15 MR. MENTON: Now you've confused me.
16 Hang on a second.

17 MR. KONECNI: Your Honors, I'd like to
18 ask what -- what the relevance of this -- whether the
19 State can or cannot meet its climate goals are?
20 First of all, it's speculative as to whether what
21 will happen in the next -- over the three years of
22 the next rate plan, but I -- the relevance to whether
23 the Joint Proposal is just and reasonable and in
24 public interest, I don't think, it's been
25 established.

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2 A.L.J. KERSEY: Mr. Menton, I would
3 like you to speak to that issue.

4 MR. MENTON: Okay.

5 A.L.J. KERSEY: Of the relevance of
6 the climate -- these climate goals with respect to
7 the rate proceeding that is in front of us for the
8 net -- for the three-year rate plan.

9 MR. MENTON: Okay. The summary of
10 Joint Proposal contains a list of funding provided in
11 the Joint Proposal for --

12 MR. KONECNI: We've been over this.

13 MR. MENTON: Yes, we have. Well, he
14 just said he doesn't know about it.

15 A.L.J. COSTELLO: Right. So it
16 doesn't -- and again, that state -- what's in the --
17 what's in the summary doesn't say it contains
18 funding. It doesn't specify what funding is
19 provided.

20 MR. MENTON: Actually --

21 A.L.J. COSTELLO: It says --

22 A.L.J. KERSEY: Includes provisions or
23 funding.

24 A.L.J. COSTELLO: -- includes
25 provision or funding.

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2 MR. MENTON: Okay.

3 MR. KONECNI: Your Honors, may I also
4 say it's not -- the Company is not responsible for
5 meeting the climate -- the CLCPA goals. It's not as
6 if this document was drafted with the purpose of kind
7 of having a legal obligation under the CLCPA.

8 A.L.J. COSTELLO: Right. So what --
9 the way that CLCPA is considered, it's considered by
10 the Commission in determining whether the Joint
11 Proposal is consistent with the CLCPA goals under --
12 so we look at Section 7.2 for that.

13 That's -- that's where we are. That's
14 what the -- what they'll look at. But you can't talk
15 about funding from the summary when you haven't
16 established what -- what's -- what funds are in there
17 and what -- what's not in there.

18 MR. MENTON: Good. Let's do that.
19 Thank you, Your Honor.

20 So are -- does everybody still have
21 copies of the summary of Joint Proposal, which was
22 Exhibit -- if I got a number for that. Exhibit 1214.

23 MS. MURPHY: Excuse me. Your Honors,
24 this is Erin Murphy with EDF. I'd just like to
25 interject with a point of clarification. The Joint

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2 Proposal speaks for itself and is a document that was
3 carefully negotiated by the signatory parties.

4 The summary of the Joint Proposal --
5 well, perhaps the summary is -- is not -- was not
6 negotiated or signed on to by all of the signatory
7 parties to the chief.

8 MR. MENTON: Okay. So can I ask a
9 preliminary question about that?

10 Do any of the witnesses disavow the
11 summary of Joint Proposal?

12 A.L.J. KERSEY: That's -- we're not
13 going to allow that question.

14 A.L.J. COSTELLO: Yeah. It's -- the
15 witnesses -- the witnesses didn't provide this.
16 There's no indication that the witnesses provided
17 this document, okay? A summary of Joint Proposal is
18 prepared. It doesn't necessarily -- I don't know.
19 You can ask if -- if the witnesses themselves
20 prepared the document, but I would find it unlikely
21 that the witnesses on the panel prepared it.

22 MR. MENTON: Okay.

23 A.L.J. COSTELLO: Their information
24 may have been --

25 MR. MENTON: Well, and --

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2 A.L.J. COSTELLO: Go ahead.

3 MR. MENTON: -- here's questions I'm
4 going to ask. So on that paragraph at the bottom of
5 page 2 where it says, "The Joint Proposal contains
6 numerous provisions that are intended to further New
7 York State's ability to meet the goals of the CLCPA,
8 including provisions or funding that will" and a list
9 of bullets. So I want to take the second bullet.
10 Enhance the electric --

11 A.L.J. COSTELLO: That question was
12 already -- with respect to transportation and
13 electrification, that question was asked and
14 answered.

15 MR. MENTON: Not this question.

16 A.L.J. COSTELLO: Okay. Let's see.

17 MR. MENTON: This question is -- the
18 second bullet, enhance the electric system in
19 anticipation of transportation and building
20 electrification.

21 My question is, how much funding in
22 the Joint Proposal for that bullet point?

23 MR. HEDEMAN: Your Honor, we're going
24 to object. The Joint Proposal has some details. If
25 Independent Intervenors want to add up those

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2 categories, they're free to do that, but I'm not even
3 sure if our witnesses would be able to do that
4 quickly now.

5 MR. MENTON: Okay. May I address
6 that, Your Honor?

7 A.L.J. COSTELLO: You can respond to
8 it.

9 MR. MENTON: We've spent a lot of time
10 with the full Joint Proposal and the summary of Joint
11 Proposal and also the answer provided -- or the
12 nonanswer provided to our interrogatories, and we can
13 find nothing that segregates out how much of the
14 funding in the Joint Proposal is for this purpose.

15 A.L.J. COSTELLO: Okay. And when I
16 say the question was asked and answered, everything
17 that was earlier with Mr. Ellenbogen, I believe, was
18 asked if there was things that were only with respect
19 to CLCPA goals, electrification. And the witness
20 responded on behalf of the Company that they are for
21 both safe and reliable service as well as -- maybe
22 they'd be referring further to CLCPA goals. So that
23 was your answer, and that's why I'm sustaining the
24 objection.

25 MR. MENTON: So is it the position of

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2 the Company that no breakout can be made -- and by
3 the way, why are we asking this? Because we don't
4 want to object to the whole Joint Proposal. We only
5 want to object to the part that's for useless things.
6 But if they won't break it out, we have to object to
7 the whole thing. That's why we're asking the
8 question.

9 A.L.J. COSTELLO: Well, your objection
10 is -- the time to submit something in opposition
11 is --

12 MR. MENTON: We did. We submitted it.

13 A.L.J. COSTELLO: You did.

14 MR. MENTON: That's discovered.

15 A.L.J. COSTELLO: In other words,
16 you're not going back and saying, oh, now we object
17 to the whole thing. Nobody has the opportunity to
18 brief -- brief --

19 MR. MENTON: Our document says exactly
20 what I just said.

21 A.L.J. COSTELLO: Okay.

22 MR. MENTON: We object to the whole
23 thing --

24 A.L.J. COSTELLO: That's fine. Your
25 document is what document is.

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2 MR. MENTON: Yes.

3 A.L.J. COSTELLO: Okay.

4 MR. MENTON: Yes. But I'm trying to
5 find out if they can break it out.

6 A.L.J. KERSEY: But --

7 A.L.J. COSTELLO: Ask -- ask your
8 question one more time. Go ahead.

9 MR. MENTON: Can anybody for either
10 the Company or the Department of Public Service
11 provide me a breakout of how much of the spending in
12 the Joint Proposal is for things in the bullet points
13 that are specifically listed under meeting the CLCPA
14 goals? How much? That's my question. We asked an
15 interrogatory. We got only objection, no answer.

16 MS. MCLAUGHLAN: I'll try that one.
17 Kelly McLaughlan for the Company. Similar to what
18 was --

19 A.L.J. KERSEY: Please -- yeah. Thank
20 you.

21 MS. MCLAUGHLAN: Similar to what was
22 just mentioned before, our projects and programs in
23 the Joint Proposal, they satisfy multiple purposes.
24 So it's meeting safe and reliable energy delivery,
25 and there might be a byproduct of clean energy

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2 transformation embedded in there.

3 There's not a lot of projects that are
4 only for meeting electrification or meeting certain
5 CLCPA goals. It's all multi-value projects.

6 MR. MENTON: Okay.

7 MS. MCLAUGHLAN: So I can't give you
8 one dollar amount for clean energy.

9 MR. CULLY: I'll add from -- Robert
10 Cully from DPS staff. I'll add that we did not
11 calculate that breakout. It's not something that we
12 feel we can provide.

13 MR. MENTON: Okay. Are you aware that
14 in the State draft Energy Plan they actually break
15 out what the increment cost to the system of
16 complying with the CLCPA is so they can do it?

17 MR. KRAMER: Objection. It's
18 irrelevant to these proceedings. That question's
19 irrelevant.

20 A.L.J. COSTELLO: It has nothing to do
21 with the Joint Proposal. It has -- really, it's --
22 you can make your arguments based on what that says.
23 But again, it's not something for these witnesses to
24 respond on cross-examination.

25 MR. MENTON: Is it possible to break

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2 out how much incremental spending is in this Joint
3 Proposal to pursue CLCPA goals? Is it possible to
4 break that out?

5 MR. KRAMER: Objection. Asked and
6 answered.

7 A.L.J. COSTELLO: Yeah. Sustained.

8 MR. MENTON: Is anybody here from Con
9 Edison or the Department of Public Service staff
10 familiar with a project in Spain called "El Hierro"?

11 MR. HEDEMAN: Your Honor, objection.
12 Relevance.

13 A.L.J. KERSEY: Just they could ask if
14 they're familiar with it.

15 So are you familiar with it?

16 IN UNISON: No.

17 A.L.J. KERSEY: Okay.

18 MR. MENTON: Anybody at Department of
19 Public Service staff familiar with it?

20 MR. CULLY: I think I would quibble
21 that I'm sure there's probably someone at Department
22 of Public Service that --

23 A.L.J. COSTELLO: No. I think he's
24 asking -- he's asking the witnesses.

25 MR. CULLY: Not this panel.

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2 MR. MENTON: Is any witness here aware
3 that the attempt on El Hierro Island to
4 demonstrate --

5 A.L.J. KERSEY: They've already --

6 A.L.J. COSTELLO: No, they've already
7 answered they're --

8 A.L.J. KERSEY: That they're not --

9 A.L.J. COSTELLO: -- not familiar with
10 it, so move on from that line of questioning.

11 MR. MENTON: Okay. Has -- has anybody
12 from Con Edison here or Public Service staff looked
13 into evaluating the question of whether a solar and
14 wind-plus storage electrification system is possible
15 to do? Has anybody looked into it?

16 MR. KRAMER: Objection.

17 A.L.J. COSTELLO: That has nothing to
18 do with this Joint Proposal, so we're going to
19 sustain. Let me hear what the objection is.

20 MR. KRAMER: Yeah. It's just beyond
21 the scope of these proceedings, Your Honor. I don't
22 under -- I'm getting -- yeah.

23 MR. MENTON: Just so I have --

24 A.L.J. COSTELLO: Go ahead.

25 MR. MENTON: -- my response on the

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2 record --

3 A.L.J. COSTELLO: Yes.

4 MR. MENTON: -- our objection is to
5 spending ratepayer money on doing things that are not
6 possible, and therefore, the money will be wasted.
7 That's -- that is our objection. And the wasted
8 money is in the Joint Proposal. They won't tell us
9 how much.

10 A.L.J. COSTELLO: They explained to
11 you that they cannot.

12 MR. MENTON: Oh, no. No. That's --
13 that's --

14 A.L.J. COSTELLO: Yes.

15 MR. MENTON: -- their argument --

16 A.L.J. COSTELLO: That's what their
17 response was.

18 MR. MENTON: That's their
19 argumentative answer.

20 A.L.J. COSTELLO: But that was their
21 answer.

22 MR. MENTON: Okay. Well --

23 A.L.J. COSTELLO: That was their
24 answer.

25 MR. MENTON: Okay.

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2 A.L.J. COSTELLO: You can make
3 whatever arguments about that on the record that you
4 want to make.

5 MR. MENTON: Okay.

6 A.L.J. COSTELLO: We're moving the
7 provision.

8 MR. MENTON: Do you understand that
9 Chairman Christian in the --

10 A.L.J. COSTELLO: I do understand
11 who --

12 MR. MENTON: -- State's Energy Plan
13 broke out those costs?

14 A.L.J. COSTELLO: -- who Chairman
15 Christian is.

16 MR. MENTON: That's -- that's
17 wonderful. Okay.

18 MR. KONECNI: Your Honors, I would
19 just point out, too, I think this whole line of
20 questioning is a little bit confusing and confused.
21 The cost of compliance with the CLCPA are not the
22 same as the cost of meeting demands on Con Edison's
23 system.

24 So when we're talking about building
25 in anticipation of expected load, whether it be from

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2 new business or from transportation electrification
3 or building electrification, that's not synonymous
4 with building to meet, you know, the CLCPA's goals of
5 having a certain amount of renewable energy, a
6 certain amount of solar and wind. So this whole line
7 of questioning is just off base.

8 A.L.J. COSTELLO: And can I just, for
9 clarification purposes, with respect to the summary
10 of the Joint Proposal, it's referenced to the CLCPA.
11 Is that -- is that more -- is that a factual
12 statement, or is that -- is that something that you
13 would say it's something that you're proposing for
14 the Commission's consideration?

15 MR. KONECNI: I would say the latter,
16 Your Honor. I would also point out that, again,
17 we've been harping on anticipation of transportation
18 and building electrification, our counsel has been
19 harping on that. That's a demand issue for the
20 Company. We take demand as it comes, regardless of
21 what the source of that demand is.

22 Customers make decisions about whether
23 they want to electrify their building. We don't get
24 involved in that and force them to do that. We
25 have -- you know, we get load letters, and we --

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2 according to -- that's different than the State's --
3 the mandates to have a certain amount of renewable
4 energy under the CLCPA. Those are -- there's apples
5 and oranges decisions there. They're not the same
6 thing.

7 MR. MENTON: If I might speak to that,
8 Your Honor. I com --

9 A.L.J. COSTELLO: We've finished --
10 we've taken -- let's just move on with the questions,
11 okay? That -- this is argue -- this is not -- that's
12 not testimony.

13 MR. MENTON: That's his argument,
14 right?

15 A.L.J. COSTELLO: So what I'd like you
16 to do, though, is move on to your next question.

17 MR. MENTON: Well, I think -- I think
18 my questions are gradually getting -- getting
19 disallowed here, although I think I maybe have made
20 my points. I would like to ask whether -- Con Edison
21 made a statement that they -- they don't -- they
22 don't deal with whether the electricity exists. They
23 just meet demand as it exists.

24 The question is, is that the position
25 of the Department of Public Service? We don't have

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2 to be concerned with whether the electricity exists
3 or not?

4 MR. KRAMER: Objection. That's --
5 that's argumentative. It's beyond the scope of these
6 proceedings. We've already heard testimony from the
7 staff members of this panel that there are people who
8 do these -- look at these issues, but they're not
9 here. This is a delivery rate case, particularly
10 talking about electric since that's what we're
11 focused on here.

12 A.L.J. KERSEY: Mr. Kramer, we're --

13 MR. KRAMER: Thank you.

14 A.L.J. KERSEY: -- we are sustaining
15 the objection on those grounds.

16 MR. KRAMER: Thank you. Thank you.

17 A.L.J. KERSEY: Next question, Mr.
18 Menton.

19 MR. MENTON: Okay. No, I think I'm
20 concluded. Thank you.

21 A.L.J. KERSEY: Okay. So you are all
22 set with your cross-examination.

23 Is there any redirect?

24 MR. KONECNI: Not from the Company.

25 A.L.J. KERSEY: Okay. No redirect.

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2 Any other parties?

3 MR. KRAMER: No. None here, Your
4 Honor.

5 A.L.J. KERSEY: Okay.

6 MR. KRAMER: Thank you.

7 A.L.J. KERSEY: All right. Hold for
8 just one moment. Okay. We are going to move to the
9 ALJ questions for the witness panel now.

10 Although we may refer to Con Edison's
11 or DPS staff's respective statements since the
12 Court --

13 (Cross-talk)

14 A.L.J. KERSEY: Anyone on the panel
15 can respond who's appropriate to these questions.

16 The Con Ed statement in support of
17 page 2 and the Joint Proposal page 10. Can someone
18 explain what "unbilled revenue" refers to?

19 MS. MCCLAUGHLAN: Kelly McLaughlan with
20 the Company. "Unbilled revenue" is the revenue
21 that's reported under U.S. GAAP accounting principles
22 that is from after the meter is read, the meter still
23 runs. So we have a meter-reading schedule, right?

24 So for accounting purposes, we need to
25 record revenue on a monthly basis. So the unbilled

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2 revenue is the period from after the meter -- the
3 customer's meter is read until the end of the
4 accounting month.

5 A.L.J. KERSEY: So -- so in the
6 statement in support on page 24, can you explain why
7 the amounts are being listed as an offsetting
8 regulatory asset in electric and gas rate base?

9 MS. MCCLAUGHLAN: Sure. So back in
10 2009, I think was the case where we -- 2008, sorry.
11 Where we had filed -- prior to 2008, we did not
12 record this unbilled revenue. We kind of followed
13 the regulatory model for Con Ed accounting purposes.

14 In 2008, we petitioned the Commission,
15 and we -- this order was received that allowed us to
16 accrue for this unbilled revenue. When we adopted
17 that accounting change, it resulted in a one-time
18 increase in revenue for that period. And we agreed,
19 and that was issued as part of the order of what we
20 were going to do.

21 What we did was set aside that -- that
22 basically increased revenue as a reg liability to
23 customers to be used for future rate mitigation. So
24 it's been sitting on our accounting books, and now
25 we're using it to offset a portion of the rate

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2 increase.

3 A.L.J. KERSEY: So that is the same --
4 that is the -- that that same amount has been sitting
5 on the books?

6 MS. MCLAUGHLAN: So we're required
7 monthly to update our unbilled revenue. So it's kind
8 of an accrual reversal. Each month, we evaluate
9 based on the usage, based on what the accounting
10 would be. So it's kind of -- it changes each month
11 based on usage, but it's --

12 A.L.J. KERSEY: Understood. But it's
13 the same monies that were --

14 MS. MCLAUGHLAN: It represents the
15 same thing.

16 A.L.J. KERSEY: From -- from 2008 --

17 MS. MCLAUGHLAN: Correct.

18 A.L.J. KERSEY: -- order. Thank you.

19 So I just want to clarify that the net
20 credits listed in appendix 3 to the JP are separately
21 being applied, and as applied, reduce the rates by
22 those stated amounts per rate year. And if not, what
23 are the impacts on the revenue requirements?

24 MS. MCLAUGHLAN: So if you look at
25 appendix 3 -- sorry. I'm just trying to find which

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2 amount credit page.

3 A.L.J. KERSEY: No, that's okay. so
4 in appendix 3 --

5 MS. MCLAUGHLAN: On page 1 of 2?

6 A.L.J. KERSEY: Yeah. That's correct.
7 And then the unbilled. See the net credits and net
8 debits -- net -- I'm sorry. the net debit and the
9 net credit amounts at the bottom of the these pages?

10 MS. MCLAUGHLAN: Like, the 62 million
11 882, for example, in rate year one in 2026?

12 A.L.J. KERSEY: Yes, exactly.

13 MS. MCLAUGHLAN: So that's different
14 than the net unbilled. So what we do as part of each
15 rate agreement is we'll go through, and we'll look at
16 the reg assets and reg liabilities that we've
17 accumulated during the past, you know -- the current
18 case that we would have been working in, and we net
19 those amounts together. And then we'll set up an
20 amortization schedule that we agree on with staff.
21 So that's what this particular appendix refers to.

22 A.L.J. COSTELLO: So how is -- how --
23 how does that affect the rates? Are they -- because
24 according to the JP, they're being applied.

25 MS. MCLAUGHLAN: Yes.

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2 A.L.J. COSTELLO: And so how -- how is
3 it? Are they being applied to reduce rates or being
4 applied -- how -- what's the effect from this?

5 MS. MCLAUGHLAN: So this particular
6 year, they were -- there were more reg liabilities
7 than reg assets, which means they're reducing rates.

8 A.L.J. COSTELLO: Okay. So that --

9 MS. MCLAUGHLAN: So that -- that
10 credit at the bottom in the parentheses are
11 reductions to rates.

12 A.L.J. COSTELLO: Okay. And that's --
13 that's already -- that's included as part of the
14 rate's structural ready. It's not something that
15 you're saying separately doing to mitigate rates?

16 MS. MCLAUGHLAN: That's correct. This
17 is in normal course of business.

18 A.L.J. COSTELLO: Okay.

19 MS. MCLAUGHLAN: Okay.

20 A.L.J. KERSEY: Thank you. In the
21 ConEd statement and support, page 9 refers to minor
22 changes to the electric RDM. The JP at page 8 says
23 the modifications are outlined in sections G.7, which
24 refers to a seasonal rate study and appendix 4. Does
25 this refer to the delivery revenues?

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2 A.L.J. COSTELLO: So in appendix 4, if
3 you look at appendix 4, what in appendix 4 deals
4 with? Where can we -- what are the minor changes to
5 the RDM? What specifically are you referring to in
6 appendix 4? In other words, we couldn't tell what
7 the minor changes were. They -- so I wanted to find
8 out if it's -- if the JP section G.7 refers to the
9 seasonal rate study in appendix 4, whether it's the
10 delivery revenues listed in appendix 4, page 1; is
11 that what you were trying to?

12 MR. FLISHENBAUM: Sorry, Your Honor,
13 can you point me to the page in the JP?

14 A.L.J. COSTELLO: Yes.

15 A.L.J. KERSEY: It's P -- let's see,
16 it's page 8.

17 A.L.J. COSTELLO: So --

18 (Cross-talk)

19 A.L.J. COSTELLO: All right. Page --

20 A.L.J. KERSEY: Yeah, it's page 8.

21 A.L.J. COSTELLO: So it's page 8 of
22 the Joint Proposal. It's the first paragraph under
23 revenue decoupling mechanisms. So it says "The
24 modifications recommended in this proposal as
25 outlined in section G.7 and in appendix 4". So we're

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2 just trying to find out what the modifications, where
3 we can find it because appendix 4 has -- it's
4 multiple pages. And section G deals with --

5 A.L.J. KERSEY: The seasonal rates.

6 A.L.J. COSTELLO: -- seasonal rates.

7 MR. FLISHENBAUM: Your Honor, I
8 believe it refers to the new RDM targets?

9 A.L.J. COSTELLO: So section G.7?

10 MR. FLISHENBAUM: Yes.

11 A.L.J. COSTELLO: G.7, Joint Proposal,
12 looks like it says the seasonal rate study?

13 A.L.J. KERSEY: It's on page 55?

14 MS. SU: Your Honor, I believe that's
15 the incorrect -- accurate cross-reference. So the
16 appendix that he's talking about has the updated RDM
17 targets. The reference should be the G.10, which has
18 the tariff changes and G.10(d) talks about --

19 A.L.J. COSTELLO: Okay.

20 MS. SU: -- updating the RDM.

21 A.L.J. COSTELLO: This doesn't refer
22 to G.10, so is that a correction --

23 MS. SU: Yes.

24 A.L.J. COSTELLO: -- that should be
25 made to --

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2 MS. SU: Yes. That should be -- the
3 cross reference should be the G.10, not G.7.

4 A.L.J. COSTELLO: Okay. And if we
5 look at appendix 4, can I -- we're just trying to --

6 MS. SU: Yeah.

7 A.L.J. COSTELLO: -- figure that out.

8 MS. SU: That has the updated RDM
9 targets in it, believe.

10 A.L.J. COSTELLO: Let me just get
11 that. Bear with me.

12 MS. SU: So if you go to G.10(d), it
13 talks about the RDM update. And then appendix 4 has
14 the updated RDM targets.

15 A.L.J. COSTELLO: Okay. So and which
16 page on appendix 4 are you referring to here? So
17 you're saying that every item on appendix 4 -- where
18 are the minor modifications? That's what I'm trying
19 to find out. Which --

20 MS. SU: It's just the updated RDM
21 targets. So the numbers that are the new RDM targets
22 are reflected in appendix 4.

23 A.L.J. COSTELLO: Updated. Okay.
24 Okay. Thank you. Sorry, I'm a little dense
25 sometimes.

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2 MR. LANG: Your Honor, I would just
3 note that if you turn to page 12 of the Joint
4 Proposal, you're going to see the same issue for
5 gas --

6 A.L.J. COSTELLO: Yes.

7 MR. LANG: And there's --

8 A.L.J. COSTELLO: There's -- we were
9 going to get to that.

10 MR. LANG: Yeah. There's a typo
11 there, too. I believe there is no page 8, so I think
12 it should be page 6.

13 A.L.J. KERSEY: So next question, Mr.
14 Lang.

15 MR. LANG: Okay. And you'll see in
16 page 6 under letter N, it's the reverse
17 (indiscernible) adjustment.

18 A.L.J. KERSEY: My apologies, just
19 confirm for us again where the revision is with
20 respect to the gas?

21 MS. SU: Page 8 should --

22 A.L.J. KERSEY: Yeah.

23 MS. SU: -- be page 6.

24 A.L.J. KERSEY: 6. Got it. Thank
25 you. Okay. Okay.

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2 For DPS staff, statement and support
3 pages 18 to 19 and page 21 refers to the impact of
4 the make-whole based on when the Commission decides
5 these rate cases. Do the percentage increases refer
6 to the total bill? For example, I'm sorry, for
7 example, on page 18 of the statement in support, does
8 the reference to the 3.9 percent impact if rates go
9 into effect as of February 1st, 2026, mean the total
10 bill impact for the make-whole would bring the total
11 bill percentage increase from 2.8 percent to 3.9
12 percent?

13 MR. YODASHKIN: Yes, that is correct.

14 MR. LANG: I'm sorry, but I don't
15 think that answer is correct. The 2.8 percent isn't
16 across the board for all customers, and this 3.9 is
17 specific to SC-1.

18 UNIDENTIFIED SPEAKER: Sorry.

19 A.L.J. COSTELLO: So it's not on the
20 total bill. Total --

21 MR. LANG: No --

22 A.L.J. KERSEY: -- total bill for SC-
23 1?

24 MR. YODASHKIN: Yeah, it's the total
25 bill for -- that the customer stated in the section

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2 of the statement and support that we're talking
3 about.

4 A.L.J. COSTELLO: Okay.

5 MR. YODASHKIN: So it's the total bill
6 for a typical SC-1 residential customer as stated.

7 MR. LANG: Right. But the 2.8 percent
8 total bill impact wasn't across the board total. It
9 wasn't -- that wasn't a class-by-class percentage.
10 The class-by-class percentages were different.

11 A.L.J. COSTELLO: So I believe I
12 understand, and thank you for the clarity.

13 MR. YODASHKIN: Yeah. I'm sorry I
14 mis -- the 2.8 which is not stated here was not
15 something -- that's --

16 A.L.J. COSTELLO: Right.

17 MR. YODASHKIN: -- the 3.9 should
18 be -- is referring to a typical SC-1 residential
19 electric customer. The 2.8 that you said earlier is
20 not, that's an across-the-board impact that's
21 different from what is stated here for the typical
22 customer specifically.

23 A.L.J. COSTELLO: Okay. Thank you.
24 Yeah.

25 And let me just ask, is either the

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2 Company or DPS staff, do they have available the
3 impact to the delivery portion of the bill for those
4 customers?

5 MR. YODASHKIN: We did make those
6 calculations, so those could be made available.

7 A.L.J. COSTELLO: Yes. Would you
8 provide the documents to all the parties, whatever it
9 is, the information of parties and us in an email?
10 And we'll deal with them as far as a ruling if we're
11 going to have them admitted into evidence.

12 MR. YODASHKIN: Okay. That's
13 something that staff can do. I don't want to speak
14 for the Company in terms of --

15 A.L.J. COSTELLO: No, that's fine. We
16 don't need both. The staff would be fine. So again,
17 email it us and to all parties.

18 Is that okay, Mr. Kramer?

19 MR. KRAMER: Yes. They'll send it to
20 me first, and we'll get it --

21 A.L.J. COSTELLO: Right.

22 MR. KRAMER: -- back to you. Yes.

23 A.L.J. COSTELLO: Okay.

24 MR. KRAMER: Thank you, Your Honor.

25 A.L.J. KERSEY: So in section, and

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2 again, this is the -- in the statement in support
3 regarding additional capital reporting, and referring
4 specifically to page 39 --

5 MR. LANG: Your Honor, DPS or the
6 Company?

7 A.L.J. KERSEY: This is -- it's
8 directed to DPS.

9 A.L.J. COSTELLO: Okay. On page 39,
10 the second sentence of the first full paragraph, and
11 let me just -- bear with me one second. And this is
12 just to see if it needs to be corrected so.

13 So are you on page 39, whoever's --
14 okay. So if you look at the first full paragraph,
15 and then the second sentence starting with "The
16 budget for projects within the IT portfolio"; if you
17 go down, there's a "As discussed in section FB", and
18 I just want to clarify that should be F.1.B? And --
19 because I didn't see an update. I believe it is
20 F.1.B, I just want to clarify.

21 So now, I'm sorry, F.1.B in the Joint
22 Proposal, right? If you look at F.1.B in the Joint
23 Proposal, I believe that's the reference. And that's
24 page 66, starting on page 66 of the Joint Proposal.
25 I don't think there's a subdivision FB. I believe

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2 the reference should be the subdivision F.1.B, and I
3 just wanted to clarify that.

4 A.L.J. KERSEY: Relating, I think to
5 productivity; is that correct?

6 A.L.J. COSTELLO: Yeah. Yeah. And --

7 A.L.J. KERSEY: I think --

8 A.L.J. COSTELLO: -- Mr. Kramer --

9 A.L.J. KERSEY: -- page 46.

10 A.L.J. COSTELLO: -- I'll -- if
11 you're --

12 A.L.J. KERSEY: Page 46.

13 A.L.J. COSTELLO: -- able to answer
14 the question, we'll -- and if you're not, that's fine
15 too.

16 MR. KRAMER: I believe you're
17 absolutely right, but I want to make sure these folks
18 do as well because --

19 A.L.J. COSTELLO: Do you understand --
20 do I -- should I point something out to you or that
21 you need me to point out?

22 MR. ROSZKO: So Daniel Roszko from
23 staff. We get the concern. It's just the two folks
24 that would have worked on the common IT stuff are not
25 here, Brian Fisher and Andrew Carpenter, so we can't

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2 definitely say.

3 A.L.J. COSTELLO: Okay. All right.

4 But if you notice the reference --

5 MR. ROSZKO: Yeah.

6 A.L.J. COSTELLO: -- based in context
7 and that I understand. Since the statement in
8 support, I'm sorry, page 39 of your statement in
9 support refers to "Supports efficiency productivity
10 as discussed in section FB of the JP". My reading,
11 there is no subdivision FB --

12 UNIDENTIFIED SPEAKER: But there is --

13 A.L.J. COSTELLO: -- and productivity
14 is addressed in subdivision F.1.B, F1B.

15 MR. SMITH: Your Honor, as Mr. Roszko
16 mentioned, staff witness that work on this section of
17 the --

18 A.L.J. COSTELLO: Oh, okay.

19 MR. SMITH: -- are not here.

20 MR. KRAMER: Your Honor, but --

21 A.L.J. COSTELLO: We'll --

22 MR. KRAMER: -- you're correct.

23 A.L.J. COSTELLO: Yeah.

24 MR. KRAMER: You're correct.

25 A.L.J. COSTELLO: Okay. So I just --

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2 then we'll just note that for the record so.

3 MR. KRAMER: Thank you.

4 A.L.J. COSTELLO: And then it's one
5 other question.

6 MR. KRAMER: Is there a concern that
7 it's not correct?

8 MR. SMITH: So we -- yes. And we
9 believe that this section is referring to Section F8
10 instead of FB. So F --

11 MR. KRAMER: F8?

12 MR. SMITH: Yeah. F --

13 MR. KRAMER: The IT reporting --

14 MR. SMITH: On page 71.

15 MR. KRAMER: And it starts --

16 MR. SMITH: -- of staff statement --

17 MR. KRAMER: -- here is --

18 MR. SMITH: -- in support.

19 MR. KRAMER: -- is that --

20 A.L.J. COSTELLO: Page 71.

21 MR. SMITH: Page 71 of staff --

22 MR. KRAMER: Yeah.

23 MR. SMITH: -- statement --

24 MR. KRAMER: Yeah.

25 MR. SMITH: -- in support.

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2 MR. KRAMER: I see your point now.

3 Okay. So --

4 A.L.J. COSTELLO: Well, Mr. Kramer, I
5 just ask you to go back and confirm that --

6 MR. KRAMER: We'll confirm it.

7 A.L.J. COSTELLO: -- send me an --

8 MR. KRAMER: Yes.

9 A.L.J. COSTELLO: -- email with the --

10 MR. KRAMER: Yeah.

11 A.L.J. COSTELLO: -- corrected version
12 of the page.

13 There's also -- okay. Also for
14 clarification purposes, this is still on page 39 of
15 the Joint Proposal? And it's the following sentence,
16 which says "The JP also includes the modifications of
17 the BEUP Project recommended by New York City"? And
18 then it references section Joint Proposal in a
19 footnote 124, Joint Proposal section I3, which deals
20 with the gas infrastructure removal or replacement.
21 So what I would just ask if one of the witnesses can
22 specify, is that -- if you're aware --

23 And Mr. Lang, you could also tell us
24 if you're aware that if the information of the -- if
25 the modifications recommended by New York City are

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2 all of those modifications in your testimony -- pre-
3 filed testimony?

4 MR. WHITE: This is Mr. White. Yes,
5 the modifications are in our testimony. I do think
6 the reference to section I3 is incorrect in the
7 footnote (indiscernible) correct.

8 A.L.J. COSTELLO: And I would just
9 ask, Mr. Kramer, if you, again, with that, if you can
10 correct the reference, and we're aware.

11 Are all the modifications contained in
12 your testimony, the modifications that are
13 referenced, referred to, or tend to be referred to in
14 the Joint Proposal? Mr. Lane, you're aware?

15 MR. LANG: I'm sorry, could you
16 repeat?

17 A.L.J. COSTELLO: All of the
18 modifications that are recommended in your testimony,
19 have all of those modifications, to your awareness,
20 been adopted as part of the Joint Proposal?

21 MS. TRINSEY: Well, yes, they're --
22 Your Honor, there is a description of the project in
23 the Joint Proposal, but it's our understanding that
24 that project will be going forward. And it is listed
25 in appendix 9 and, yeah, 9 schedule 1 as a project

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2 so --

3 A.L.J. COSTELLO: And those --

4 MS. TRINSEY: -- yeah.

5 A.L.J. COSTELLO: -- that includes

6 your --

7 MS. TRINSEY: Yeah.

8 A.L.J. COSTELLO: -- modifications?

9 MS. TRINSEY: I believe so. Yeah.

10 A.L.J. COSTELLO: Appendix 9?

11 MR. KRAMER: Your Honor, when you have

12 a moment?

13 A.L.J. COSTELLO: Go ahead, Mr.

14 Kramer.

15 MR. KRAMER: Okay. Thank you. Just

16 a --

17 MS. TRINSEY: Excuse me, your Honor,

18 appendix 11, not 9.

19 MR. KRAMER: Just need a little help

20 on the correction. There was -- I think there was a

21 footnote on I3? I'm not sure which footnote, or

22 maybe I've got that mistaken.

23 A.L.J. COSTELLO: So it's -- yes, it's

24 footnote 124 on page 39.

25 MR. KRAMER: 124. Thank you, Your

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2 Honor.

3 A.L.J. COSTELLO: And if you could
4 just, when you update, if there's a specific
5 provision that you can point to, but we also know
6 where it's available on.

7 MR. CULLY: Your Honor?

8 A.L.J. COSTELLO: Yes.

9 MR. CULLY: I think we can provide
10 that correction right now.

11 A.L.J. COSTELLO: Okay. Great.

12 MR. CULLY: It should be section J3 --

13 A.L.J. COSTELLO: J --

14 MR. CULLY: -- which includes the
15 Customer Energy Solutions Projects. And J3 does
16 refer to the building energy usage platform -- or B.

17 A.L.J. COSTELLO: All right. Thank
18 you.

19 MR. CULLY: Just one other thing --

20 A.L.J. COSTELLO: Sure.

21 MR. CULLY: -- we do have a section,
22 beginning on page 106, that describes that project
23 and the testimonial positions of the various parties
24 on it in our statement in support that's a little --
25 a little more fleshed out.

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2 A.L.J. COSTELLO: Yeah. I just -- I
3 was just making -- I just wanted to make sure that we
4 were aware that it could have been some of the
5 modifications, all of the modifications, just as long
6 as we can tell what it is.

7 A.L.J. KERSEY: One final question in
8 the statement in support page 69 it discusses the
9 electric and gas depreciation reserve deficiency and
10 it states that "Other than the electric amortization
11 established in the current rate plan of 3.8 million
12 for the Hudson Avenue Station and for the purposes of
13 reducing the incremental revenue requirements, there
14 will be no other reserve deficiency amortization for
15 either electric or gas for the duration of the three-
16 year rate plan."

17 What, if any, impact will that have on
18 Con Edison's future rate plans?

19 A.L.J. COSTELLO: And that would be
20 the Con Edison's --

21 A.L.J. KERSEY: Yes.

22 A.L.J. COSTELLO: -- does it have any
23 effect, or is it just simply you're just going to be
24 amortizing it over a different period of time?

25 MS. MCCLAUGHLAN: Right. So it'll

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2 extend out the time to recover the cost of that plan.

3 A.L.J. COSTELLO: Okay. So you're
4 just basically putting it on hold, and it will --

5 MS. MCLAUGHLAN: Correct.

6 A.L.J. COSTELLO: -- probably maybe --

7 MS. MCLAUGHLAN: We'll have a bigger
8 balance to -- we're kind of kicking the can down the
9 road a little bit --

10 A.L.J. COSTELLO: Okay.

11 MS. MCLAUGHLAN: -- if you will.

12 A.L.J. COSTELLO: So there'll be an
13 increase in the balance that has to be amortized?

14 MS. MCLAUGHLAN: So not necessarily
15 direct increase, but we're not decreasing it for
16 these three years --

17 A.L.J. COSTELLO: Right.

18 MS. MCLAUGHLAN: -- so it's not going
19 up, but it's not going down either. So we'll --

20 A.L.J. COSTELLO: So actually --

21 MS. MCLAUGHLAN: -- eventually need
22 to --

23 A.L.J. COSTELLO: -- just could be --

24 MS. MCLAUGHLAN: -- recover it.

25 A.L.J. COSTELLO: Right. Okay.

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2 MS. MCLAUGHLAN: Correct.

3 A.L.J. COSTELLO: Got it. Thank you.

4 MR. SHANG: Excuse me, Your Honor.

5 Jerry Shang, staff, ConEd panel. I want to add a
6 little clarification on your earlier question on bill
7 revenue adjustment. You asked about the -- how it
8 impacted really in the revenue department, right? So
9 if you turn page -- to page -- start at FIS, page 73,
10 we talk about this issue too. Echoing Company's
11 accounting panel witness, Ms. Kelly's point that in
12 the 2008 case, Commission kind of adopt authorized
13 Company to accrue this unbilled revenue.

14 Before this order, the Company account
15 this revenue on the cash basis, not on the accrue
16 basis. But after this order, Company's authorized to
17 accrue the revenue. So that basically create
18 additional revenue, as you can see on page 74, that
19 based on the accounting -- on the gap requirement,
20 the Company accrued this revenue.

21 But the -- I mean, more revenue means
22 less rate increase. So that's a benefit to customer.
23 That's why the Company has to book a regulatory
24 liability. But that regular liability haven't been
25 passed back to customer. It's a rate modifier.

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2 But in this rate case, to reduce the
3 rate for customer, the Company proposed to use this
4 regulatory liability. That's why if you turn to the
5 JP appendix, appendix 1, page 4 of 11, that's the
6 electric side of the amount, how is it reflected into
7 revenue coming on rate, right, you see there's a line
8 in the middle, "Net unbilled revenue electric";
9 there's an annual rate allowance of \$43 million
10 dollars. So each year, over the three years, for
11 electric, there's a pass-back of \$83 million dollars
12 in other operating revenue.

13 On the other side of the coin is that
14 because this is just a gap accrual, the Company
15 didn't really collect the money, it's the revenue
16 that it's a regular liability, but in order to make
17 them whole, because they now here pass the cash to
18 customer, in order to make the whole in cash, for the
19 cash purpose, the Company requests that the cash
20 effect of this pass through also. Because they
21 haven't collect that in rates, they now pass back.
22 So that creates a record asset offsetting as we
23 explained in page 74.

24 A.L.J. COSTELLO: Yeah. That's the
25 part that I didn't get just from reading.

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2 MR. SHANG: Yes.

3 A.L.J. COSTELLO: I didn't quite
4 understand it. So I -- that's -

5 MR. SHANG: So now --

6 A.L.J. COSTELLO: -- I appreciate

7 (Cross-talk) --

8 MR. SHANG: -- the Company passed the
9 cash. It's reflect as one of the offsetting record
10 asset in the rebate.

11 If you turn to page -- it's exhibit --
12 same for electric, appendix 1, page 9 of 11, there's
13 a line in the middle called "Net deferral or credit".
14 So the RAC assets, the \$83 million dollars each year,
15 the RAC assets is embedded in that total amount of
16 375 annually. I mean, for Region 1, 375. That's the
17 net of the RAC assets and credit. So the 83 is a
18 piece of this --

19 A.L.J. COSTELLO: That amount.

20 MR. SHANG: -- amount. That's how the
21 whole picture, the whole rate-making revenue
22 requirement flows.

23 A.L.J. KERSEY: Thank you.

24 A.L.J. COSTELLO: Thank you very much.

25 A.L.J. KERSEY: Thank you.

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2 Any of the parties want to have any
3 issues with respect to anything that we raised,
4 any -- anyone want to say anything with respect to
5 the ALJ questions?

6 MR. KONECNI: Nothing from the
7 Company.

8 MR. KRAMER: Nothing here, Your Honor.

9 A.L.J. KERSEY: Okay. Hearing none,
10 at this time, I want to thank and excuse the
11 witnesses. And we will discuss further procedures.
12 We're going to speak --

13 So the witnesses are excused.

14 Mr. Menton, just before we take a
15 break, let me ask, is Mr. Ellenbogen here to be --

16 MR. MENTON: Oh, he departed.

17 A.L.J. KERSEY: He left for the day?

18 MR. MENTON: Yes. I'm sorry. Did
19 somebody want to redirect him?

20 A.L.J. KERSEY: No. I -- no.

21 A.L.J. COSTELLO: No. We had
22 indicated that we would address that additional
23 documents. We tried to get them in through whatever
24 documents, but cross was fine. We were going to give
25 you an opportunity.

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2 MR. MENTON: I think he used one of
3 them. And I think --

4 A.L.J. COSTELLO: Okay. That's --

5 MR. MENTON: -- he gave you copies.

6 A.L.J. COSTELLO: -- that's -- okay.

7 No. That's fine.

8 MR. MENTON: Okay?

9 A.L.J. COSTELLO: So that's -- wo
10 we're done with --

11 MR. MENTON: I think so.

12 A.L.J. KERSEY: With the individual
13 intervenors, then.

14 Cross-examination is done, and --

15 MR. MENTON: Well, cross-examination
16 is done.

17 A.L.J. KERSEY: Yes.

18 MR. MENTON: I mean, I do want to --

19 A.L.J. KERSEY: Yes.

20 MR. MENTON: -- address, I'm sure you
21 will, the subject of whether there's going to be a
22 post-hearing --

23 A.L.J. KERSEY: Hearing date --

24 MR. MENTON: -- submission of some
25 kind?

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2 A.L.J. KERSEY: -- we'll do that.

3 Yeah. So we're going to take a break until 10
4 minutes, to 4:10, and then we're going to go back on
5 the record and discuss post-hearing briefs and
6 closing matters. Thank you.

7 (Recess from 3:59 p.m. until 4:15
8 p.m.)

9 A.L.J. KERSEY: We are on the record.
10 Just a couple housekeeping issues.

11 Mr. Menton?

12 MR. MENTON: Yes, ma'am.

13 A.L.J. KERSEY: With respect to the
14 affirmation of Mr. Ellenbogen --

15 MR. MENTON: Yes.

16 A.L.J. KERSEY: -- we will request --
17 we are not going to accept this. We're going to
18 request, though, that you provide a new one by close
19 of business Friday.

20 MR. MENTON: Um-hum.

21 A.L.J. KERSEY: With respect to
22 paragraph number 2, the way it's drafted, it says
23 "The facts stated in the statement are true to the
24 best of my knowledge, information, and belief"; we're
25 looking for the statement to provide that Mr.

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2 Ellenbogen adopts the factual statements in the
3 statement in opposition --

4 MR. MENTON: Um-hum.

5 A.L.J. KERSEY: -- as his sworn
6 testimony in the proceeding.

7 MR. MENTON: Okay.

8 A.L.J. KERSEY: If that's something
9 that he's willing to do. And I do -- and then if you
10 could just take out the rest of it. We don't need
11 reference to the exhibits.

12 MR. MENTON: Oh. So just that one
13 line?

14 A.L.J. KERSEY: Yup. Yup.

15 MR. MENTON: I think we can do that.

16 A.L.J. KERSEY: Okay.

17 MR. MENTON: If I provided -- do you
18 need hard copies, or this is something I could send
19 in by email?

20 A.L.J. KERSEY: This can be file --

21 A.L.J. COSTELLO: Email -- no, it's
22 email because we're going to have to put it in by
23 ruling and (indiscernible).

24 A.L.J. KERSEY: Email will be fine
25 because we'll put it in by ruling. That's right.

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2 Email --

3 A.L.J. COSTELLO: So to all -- yeah --

4 A.L.J. KERSEY: But email --

5 A.L.J. COSTELLO: -- email to --

6 A.L.J. KERSEY: -- to all parties,

7 please.

8 A.L.J. COSTELLO: Email to the ALJs --

9 A.L.J. KERSEY: Yes.

10 A.L.J. COSTELLO: -- and, yeah, copy

11 to all parties.

12 A.L.J. KERSEY: Now, I do want to note

13 one thing for the record, though, because when we get

14 that affirmation, as we look at it to the extent we

15 look at it -- and we put in the ruling and evidence,

16 it --

17 A.L.J. COSTELLO: There's one part --

18 A.L.J. KERSEY: -- we will --

19 A.L.J. COSTELLO: -- we have to --

20 A.L.J. KERSEY: -- add it to the to

21 the evidence. However, we are doing this on the

22 record right now. We are striking on page 23 of such

23 statement of the Independent Intervenors Roger

24 Caiazza, Richard Ellenbogen, and Francis Menton in

25 opposition to the Joint Proposal filed on November

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2 26, 2025, the following words, "There is a
3 significant inconsistency between these numbers and
4 DPS estimates in the confidential JP settlement
5 documentation that the Independent Intervenors have
6 been unable to reconcile. The main issue and the
7 likely reason for the discrepancy is that" --

8 Those words will be stricken as
9 those -- that statement goes to settlement, things
10 that came up during settlement --

11 MR. MENTON: Okay.

12 A.L.J. KERSEY: -- and that is --

13 MR. MENTON: Okay. We --

14 A.L.J. KERSEY: -- not permissible.

15 MR. MENTON: -- we understand that.

16 We were trying not to actually disclose confidential
17 information, but --

18 A.L.J. COSTELLO: But you're saying
19 that -- it's in -- so kind of -- we're just -- I
20 think your argument flows with --

21 MR. MENTON: I think it stands --

22 A.L.J. COSTELLO: -- strike --

23 MR. MENTON: -- on its own --

24 A.L.J. COSTELLO: Yeah.

25 MR. MENTON: -- without that.

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2 A.L.J. KERSEY: Okay. Okay. Please
3 be reminded that the ALJ interrogatories and document
4 request deadline for response is December 10th. We
5 will accept post-hearing briefs with respect to
6 issues raised at the evidentiary hearing and to reply
7 to the statements in support or opposition to the
8 Joint Proposal, not to any new material, but to those
9 issues. We are wondering, we want to --

10 A.L.J. COSTELLO: Yeah, it's new
11 issues raised that came up and that need to be
12 addressed in the hearing. Those can be briefed.

13 And I'm sorry, I didn't mean to
14 interrupt.

15 A.L.J. KERSEY: No, that's okay.

16 Does anyone have any questions on
17 that, what's acceptable?

18 A.L.J. COSTELLO: Yes, and the
19 reply --

20 MR. KRAMER: So yeah, just so I
21 understand --

22 A.L.J. COSTELLO: Yeah, and the reply
23 to -- as far as -- I was trying to just say it's not
24 every issue that was raised at the hearing. It's
25 specifically things that were new, that are on the

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2 record, they're new, they were allowed, the questions
3 were allowed, were answered. That type of stuff is
4 fair game for the post-hearing brief as is your reply
5 to the statements in support or opposition.

6 MR. KRAMER: Thank you, Your Honor.

7 A.L.J. KERSEY: And we want to ask, we
8 obviously are on a limited type -- a time frame here,
9 but we are going to ask if anyone has thoughts on
10 when they would like those due.

11 MR. KRAMER: We would --

12 A.L.J. KERSEY: They may or may not be
13 granted, but we're going to throw that out at the
14 moment.

15 MR. KRAMER: -- we would say December
16 12th.

17 A.L.J. KERSEY: Okay. And that's from
18 the Company.

19 DPS staff? Counsel for ConEd said
20 the 12th.

21 MR. KRAMER: Yes. I think the 12th is
22 great under the circumstances, yes. Thank you.

23 A.L.J. KERSEY: Okay. Mr. Menton, any
24 thoughts as to 12th?

25 MR. MENTON: Well, we are unpaid,

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2 retired people, but I think --

3 A.L.J. KERSEY: 12th would work --

4 MR. MENTON: -- we'll do it.

5 A.L.J. KERSEY: -- for you?

6 MR. MENTON: We'll do it.

7 A.L.J. KERSEY: Mr. Lang?

8 MR. LANG: No objection, Your Honor.

9 A.L.J. KERSEY: Okay. Mr. Dichter and
10 Mr. Musich and Mr. --

11 MR. DIAMANTOPOULOS: Your Honor --

12 A.L.J. KERSEY: -- Diamantopoulos --

13 MR. DIAMANTOPOULOS: -- quick

14 question, when can we expect a transcript?

15 A.L.J. COSTELLO: Okay. With the
16 court reporting service we have, because it's an
17 evidentiary hearing, we have a two-business day
18 turnaround.

19 Once we get the transcript, however,
20 we have to -- it takes a day or two for us to --
21 we'll review it, and then it's reviewing it and
22 having the corrections, if any, made by the
23 transcription service. So it's not going to be
24 within two days, but hopefully shorter than a week.
25 We'll get it out as soon as we can.

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2 MR. DIAMANTOPOULOS: So will we have
3 it to review for the brief? I obviously, want to
4 make some quotes from what people said.

5 A.L.J. COSTELLO: Well, we're -- we'll
6 get it out as soon as we can. All I can tell you is
7 we're supposed to get it within two business days.
8 We review it for any type of errors. It has to go
9 back for the error correction, and then we can get it
10 out from that point. So I really can't tell you
11 exactly what day it will be.

12 A.L.J. KERSEY: So any --

13 MR. DIAMANTOPOULOS: Because a week --

14 A.L.J. KERSEY: -- other thoughts?

15 MR. DIAMANTOPOULOS: -- week from
16 Friday --

17 A.L.J. KERSEY: Right now we're --

18 A.L.J. COSTELLO: But I can't tell
19 you. I just don't know.

20 A.L.J. KERSEY: So right now we're
21 hearing a bit of a consensus on December 12th. So we
22 are setting the acceptance of post-hearing briefs to
23 be served and filed by Friday, December 12th close of
24 business.

25 As far as page numbers --

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2 A.L.J. COSTELLO: I'm sorry to
3 interrupt. Also what we can do so you have the
4 transcript, if we get it back within two business
5 days, we can send you what we have with the
6 understanding that there may be errors that we're
7 going to correct. And we're only going to correct
8 errors that were actually, like, misspellings, if
9 witnesses are not identified correctly.

10 MR. DIAMANTOPOULOS: Sure.

11 A.L.J. COSTELLO: So we can get you
12 those transcripts, but there may be corrections to
13 them that are made subsequent to it. And that will
14 give you --

15 MR. DIAMANTOPOULOS: Understood.

16 A.L.J. COSTELLO: Okay?

17 MR. DIAMANTOPOULOS: Thank --

18 A.L.J. COSTELLO: Is that -- is
19 everybody --

20 MR. DIAMANTOPOULOS: Much appreciated.

21 A.L.J. COSTELLO: -- okay with if I
22 send those out that way? Okay?

23 MR. DIAMANTOPOULOS: Yes.

24 UNIDENTIFIED SPEAKER: Yes.

25 A.L.J. COSTELLO: All right. Good.

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2 A.L.J. KERSEY: Thank you.

3 As opposed -- I mean, with respect to
4 page limits, does anyone have any thoughts they would
5 like to bring up to us about that?

6 I'll ask Company counsel first.

7 MR. KONECNI: We propose a ten-page
8 limit.

9 A.L.J. KERSEY: Okay. DPS staff?

10 MR. KRAMER: Yeah, I think ten is
11 probably sufficient, Your Honor, yes.

12 A.L.J. KERSEY: Mr. Minton?

13 MR. MENTON: I appreciate not having
14 to write more.

15 A.L.J. KERSEY: Okay. Mr. Lang?

16 MR. LANG: Fine with us.

17 A.L.J. KERSEY: Mr. Musich, Mr.
18 Dichter, Mr. Diamantopoulos?

19 MR. DIAMANTOPOULOS: Ten is fine.

20 MR. DICHTER: Ten is fine, Your Honor.

21 A.L.J. KERSEY: Mr. Musich?

22 MR. MUSICH: That's fine.

23 A.L.J. KERSEY: Okay. So we are
24 limiting the post-hearing brief to ten pages.

25 Are there any other issues that the

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2 parties wish to address at this time?

3 MR. KRAMER: Not from the Company.

4 UNIDENTIFIED SPEAKER: So Your Honor,
5 it's 10 pages at a 6 font.

6 A.L.J. KERSEY: 10 pages at a 24 font.
7 Wow. Are there any other issues?

8 I think, Mr. Menton, you had a
9 question.

10 MR. MENTON: Yeah, I just want to
11 check if I can make sure I got the exhibit numbers
12 right for things we're going to refer to. But can I
13 check that with the court reporter or you? It
14 doesn't have to be on the record, I don't think. I
15 just want to be sure --

16 A.L.J. COSTELLO: We can do that
17 afterwards.

18 MR. MENTON: We can do that
19 afterwards.

20 MR. MENTON: Okay.

21 A.L.J. KERSEY: Okay. So if there are
22 no other issues the parties wish to address, thank
23 you very much. We are concluded and off the record.
24 We are adjourned.

25 (Proceedings concluded)

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2 STATE OF NEW YORK

3 I, ILDIKO NYARI, do hereby certify that the foregoing
4 was reported by me, in the cause, at the time and
5 place, as stated in the caption hereto, at Page 1
6 hereof; that the foregoing typewritten transcription
7 consisting of pages 1 through 300, is a true record
8 of all proceedings had at the hearing.

9 IN WITNESS WHEREOF, I have
10 hereunto subscribed my name, this the 5th day of
11 December, 2025.

12

13 ILDIKO NYARI, Reporter

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