STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service.	**CASE 25-E-0072**
Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Gas Service.	**CASE 25-G-0073**

Post-Hearing Statement of Independent Intervenors Roger Caiazza, Richard Ellenbogen and Francis Menton In Opposition to the Joint Proposal

Preliminary Statement

The Independent Intervenors (Roger Caiazza, Richard Ellenbogen and Francis Menton) submit this Statement as their post-hearing brief, in further opposition to the Joint Proposal (JP), and in light of the evidence developed at the December 3, 2025 hearing.

As stated in our Statement in Opposition of November 26, 2025, the Independent Intervenors oppose imposition of any costs on ratepayers for spending by Consolidated Edison (the "Company") that is wasteful and useless in that it supports goals of the Climate Leadership & Community Protection Act (CLCPA) that are "infeasible" and/or impossible to achieve. While we would like to limit our objection to only the wasteful CLCPA spending, the Company and DPS have failed and refused to break out which spending is in this category. Therefore we must object to the entire JP.

The backdrop of this proceeding is that New York is at a critical juncture with respect to its climate ambitions. The State has made little to no progress toward the CLCPA 2030 mandates of 40% reduction of GHG emissions and 70% of electricity from renewables. In an August 11, 2025 submittal in a court proceeding (Ex. 1239), the State admitted that the 2030 goals are

"infeasible" and would impose costs on New Yorkers that are "extraordinary and damaging" and "unaffordable for consumers." The August 11 Letter quotes from the State's Draft Energy Plan of July 2025, where the incremental costs of the CLCPA goals are explicitly broken out, to demonstrate the infeasibility and excessive costs of those goals.

In these circumstances, we submit, the DPS cannot just continue to proceed as if the emperor is wearing clothes. If DPS has one job, it is to push back against the regulated utility when it proposes spending that is wasteful and useless. Here, DPS has abjectly failed. The JP should be rejected.

Statement of Additional Facts

The Independent Intervenors will refer in this Statement of Additional Facts to the transcript of the December 3, 2025 hearing (Tr.), and in particular to the portions of the transcript that represent the cross-examination of Mssrs. Ellenbogen and Menton, at pages 189 to 262.

1. **Both DPS and Company witnesses unanimously disclaimed any knowledge of either the August 11 Letter or the State's Draft Energy Plan (other than its mere existence)**

The August 11 Letter, marked as Exhibit 1239 at the hearing, was specifically cited, quoted at length, and relied upon in the Independent Intervenors' Statement in Opposition. The Company and DPS Staff brought some 21 witnesses to the hearing (7 from the Company and 14 from Staff as reflected at Tr. 6), specifically to be cross-examined by Mr. Ellenbogen and Mr. Menton, and not one of those witnesses was aware of the Letter or had even bothered to read it.

At Tr. 236, addressing Ex. 1239, which in turn incorporates and quotes the critical portions of the State Draft Energy Plan that establish that the CLCPA mandates are "infeasible"

and impose "extraordinary" "damaging" and "unaffordable" costs on New Yorkers, the following appears:

> "MR. MENTON: [addressing all witnesses] Are you familiar with this document?
>
> [WITNESSES] IN UNISON: No. No."

Then, at Tr. 237:

> "MR. MENTON: . . . Are any of the witnesses familiar with something called the 2025 Draft New York State Energy Plan? Anybody?"
>
> "MR. BRENNAN: No."

At Tr. 240 one witness, Mr. Maioriello of Staff, finally admits that he knows of the existence of the Draft Energy Plan, but says "It is a draft." When asked whether building the infrastructure to attempt to meet the 2030 Climate Act goals "would impose extraordinary and damaging costs upon New Yorkers," (which is what the Draft Energy Plan shows and is the exact language of the August 11 Letter, Ex. 1239) Mr. Maioriello responds "I can't answer that question." (Tr. 245). (Which proves, by the way, that Mr. Maiorello had not read the Draft Energy Plan.). When then further asked whether he is aware that the Attorney General has stated (based on information in the Draft Energy Plan that is specifically cited) that attempting to meet the CLCPA goals "would impose extraordinary and damaging costs upon New Yorkers," Mr. Maiorello responds, "I have no idea about what the Attorney General has stated." (Tr. 245)

2. The Draft Energy Plan and the testimony of the Company's own witness establish that it is completely possible to segregate the costs of projects to support futile and infeasible CLCPA compliance from the other costs of the Company's system.

At the hearing, the ALJs took administrative notice of the State's Draft Energy Plan. A chart in that document, which is copied into Ex. 1239 and then into the Independent Intervenors' Statement in Opposition at page 30, shows that the State Energy Planning Board explicitly broke out the incremental costs of two "Net Zero" scenarios under the CLCPA, over and above the other base costs of the state energy system. The chart shows that those incremental costs come to some $42 billion *per year* by 2040.

Despite the manifest ability to break out these incremental costs as demonstrated by the State's own Energy Planning Board, the Company attempted to maintain a uniform stonewall position that this just could not be done. That persisted until page 255 of the Transcript, where Ms. McLaughlan of the Company stated, "There's not a lot of projects that are only for meeting electrification or meeting certain CLCPA goals." In plain English, "not a lot" means "at least some." But then Ms. McLaughlan stated, "So I can't give you one dollar amount for clean energy." In other words, she is aware of at least some projects, but refuses to provide the information, undoubtedly because that would undermine the Company's case for approving the entire JP in its current form.

It is understandable why the Company would want to avoid breaking out these costs, because its incentive is to build as much infrastructure as the PSC and DPS will allow it to build. But the DPS Staff's main job is to push back to prevent the imposition of wasteful costs upon the ratepayers. Which makes the testimony of Mr. Cully of Staff completely inexplicable and unacceptable. From Tr. 255:

"MR. CULLY: . . . I'll add that we did not calculate that breakout. It's not something that we feel we can provide."

Perhaps DPS Staff couldn't figure out on their own which projects were the wasteful ones (although they are supposed to be the experts here), but they were the one party in this matter with the full ability to get this information out of the Company, and they failed to do it. DPS Staff had one main job in this proceeding, which was to identify unneeded and wasteful spending by the Company to prevent excessive costs from being imposed on the ratepayers; and in this respect the Staff abjectly failed. They are complicit not only in agreeing to support spending money on wasteful projects, but also in hiding the costs of same from the public.

3. All witnesses for both the Company and Staff conceded total lack of awareness of the failure of the El Hierro Island demonstration project, basic knowledge of which is essential to identifying which spending by the Company is wasteful and should not be allowed.

From page 256 of the Transcript:

"MR. MENTON: Is anybody here from Con Edison or the Department of Public Service staff familiar with a project in Spain called 'El Hierro'?

ALJ KERSEY: . . . So are you familiar with it?

IN UNISON: No"

The failure of the El Hierro wind/storage electricity project, and its direct relevance to the situation in New York, and to this proceeding, had been laid out in detail in the Independent Intervenors' Statement in Opposition at pages 33-35. Indeed, understanding the El Hierro project and why it failed is fundamental to having basic competence in understanding New York's

energy transition plans and whether they are possible. Yet of 21witnesses testifying at the hearing, not a single witness for either the Company or Staff had any familiarity at all.

4. A time bomb directed at ratepayers has been inserted into the JP in the form of special rate SC1-4

On Page 54 of the JP it specifically states the following:

> "The Company will make the following modifications to special provision (H) of SC 1 in the tariff. First, a customer who takes service under Rate III or Rate IV of SC 1 for the first time during the term of the rate plan in Case 25-E-0072 may be eligible to receive a price guarantee for one year. This represents an extension of the existing price guarantee for Rate IV and adds Rate III to the list of eligible rate classes for which the price guarantee applies."

It does not document what happens to those customers after the twelve-month period expires. Documents presented by Mr. Ellenbogen and objected to by the Company and DPS clearly showed using simple math that any gas customers that switched to electric heat pumps would pay between 40% and 118% more to run an air source heat pump on the Company system. This is one reason that the NYSERDA Report (Tr. 192 link at https://www.nyserda.ny.gov/-/media/Project/Nyserda/Files/Publications/PPSER/NYSERDA/18-44-HeatPump.pdf) that was presented clearly shows in its abstract that air source heat pumps should only be used for sites with oil heat or radiant electric heat. The Company is offering cheap rates for air source heat pumps as a loss leader to induce ratepayers to switch from gas with a very high negative downside on the back end after the "carrot" expires.

5. At a public meeting of the Energy Planning Board held December 1, 2025, a NYSERDA presenter conceded that there was no pathway for the State to meet the 2030 targets of the CLCPA before 2037-38 at the earliest.

At Transcript p. 240, Mr. Maioriello of DPS Staff states as to the State Energy Plan that "I am aware that they actually recently had a meeting to discuss the draft." That meeting occurred on December 1 (simultaneously with the pre-hearing conference in this matter), and the transcript was released to the public soon thereafter. The transcript of that meeting can be found at this link: https://nyserda.wistia.com/medias/eau66h9gbg The Independent Intervenors ask the ALJs in this matter to take administrative notice of that transcript.

There is much of relevance to this proceeding in the transcript of the December 1 EPB meeting. Of the approximately 1.5-hour meeting, the first half consisted of a presentation by Nick Patane, Assistant Director for Policy Analysis at NYSERDA. A quote from the transcript can be associated with a time stamp in the accompanying video. The following appears in Mr. Pantane's presentation at approximately the 40:15 time stamp:

> "As we saw in the draft [Energy Plan], no case is achieving a forty percent economy wide emission reduction in two thousand and thirty, and instead our current policies and additional action case are achieving a forty percent reduction in the two thousand and thirty seven to two thousand and thirty eight time horizon."

The years 2037 to 2038 are a full decade after the rate period under consideration in the current case, thus further emphasizing the futility and waste of compelling Company ratepayers to pay for installation of delivery infrastructure for the non-existent renewable electricity during the coming three-year rate period.

ARGUMENT
The Joint Proposal Cannot Comply With Multiple Criteria of the Commission for Approval of a Settlement Proposal

Among the criteria of the Commission for approval of a settlement proposal such as the JP are (1) that it "fairly balance[] the interests of ratepayers, investors and the long-term soundness of the utility," and (2) that the proposal "provides a rational basis for the Commission's decision." This JP fails to meet these criteria.

The very essence of a fair balancing of the interests of the ratepayers with those of the Company and its investors is that the ratepayers be protected from wasteful spending with no real purpose other than to enrich the Company. Identifying and disallowing wasteful spending is Job Number One for the DPS Staff. Meanwhile, disallowance of wasteful spending is no detriment to the Company or its investors, because they have no legitimate interest in building wasteful projects to make money for themselves.

Here the Summary of Joint Proposal, which was marked as Ex. 1214 at the hearing, clearly admitted that the JP contained "provisions or funding" to support various goals of the CLCPA now known and admitted to be "infeasible" and wasteful, including "the green energy transition" and "building and vehicle electrification." The Summary of Joint Proposal would not have said that there was "funding" in the JP for these matters if there was no funding. And yet all of the witnesses for both Staff and the Company resolutely refused to provide any quantification or breakout of the amount of funding at issue. The Independent Intervenors made a clear record by asking for this breakout both in discovery, and also on cross-examination, and they had explicitly signaled in their pre-hearing Statement in Opposition that they intended to ask about this topic. And yet of 21 witnesses who appeared, none would address this topic on the merits.

A fair inference is that DPS finds itself caught in a whipsaw between on the one hand activists who insist on approving spending to pursue the CLCPA goals no matter how expensive or infeasible, and on the other hand Company ratepayers (among them two of the Independent Intervenors) who are squeezed by rising costs and think that rate increases should be minimized. So Staff has adopted the strategy of approving excess costs to appease the activists and then agreeing with the Company to hide and conceal those costs from the broader public to minimize the blowback. This strategy is not legitimate and should not be countenanced by either the ALJs or the Commission.

The same problems preclude any finding that there is a rational basis for the JP. Although the State Energy Planning Board demonstrated to the public that the incremental costs of the CLCPA mandates could be broken out and isolated, Staff in this proceeding completely failed to demand and obtain such a breakdown from the Company or to come up with its own methodology to do such a breakdown. So Staff finds itself in the position of greenlighting a JP that hides and conceals from the ratepayers how much they will be paying to chase CLCPA goals that the State itself now concedes are "infeasible" and impose "excessive" and "damaging" and "unaffordable" costs on the public. There can be no excusing DPS for failing to obtain the breakout of the excessive costs. Either they were trying to avoid political blowback from revealing inconvenient costs, or they were just too lazy to do Job Number One. Neither provides the requisite "rational basis."

Meanwhile, the El Hierro project in Spain easily demonstrates to anyone willing to spend ten minutes why New York's energy plans are not just "infeasible" (as the State itself has admitted in Ex. 1239) but impossible. El Hierro has intermittent wind generation capacity of about 12.5 MW, more than double its average electricity usage of under 6 MW in a climate

where heating is not an issue, and energy storage in a pumped-storage hydro facility of 270 MWh, which is about 45 hours of average use. As Exhibit 1236 shows, with those large facilities relative to its population, the El Hierro system was only able to provide 45% of the electricity for the island in 2024. For comparison, New York State has average demand of about 20 GW. To have renewable facilities proportional to those of El Hierro, New York would need about 40 GW of intermittent generation and backup batteries or other storage of 900 GWh. The bigger limiting factor is actually the backup batteries. New York is currently building, at great expense, grid battery storage of about 24 GWh – barely more than *one hour* of average use. As soon as you look at the El Hierro statistics, you realize how completely pathetic this is. As El Hierro shows, New York would need something like *40 times* as much storage as it is currently building to get to even half its electricity from the intermittent wind and sun. And that would still be far short of the CLCPA mandates. Forty-five hours of battery storage would cost New York State in the hundreds of *billions* of dollars.

The unfamiliarity of all witnesses at the hearing with the El Hierro failure is stunning.

At this point it is incumbent upon everyone working for New York State to speak up. The DPS and its Staff – and the Commission itself -- cannot just watch the naked emperor walking in the parade and say he is wearing magnificent clothes and expect anyone to think this is rational. It is not rational.

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