

November 30, 2017

**VIA ELECTRONIC FILING**

Hon. Kathleen H. Burgess  
Secretary  
New York State Public Service Commission  
Agency Building 3  
Albany, NY 12223-1350

Re: Case \_\_\_\_\_ - Complaint of CityBridge, LLC Regarding Application of Consolidated Edison Company of New York, Inc.'s Electric Tariff

Dear Secretary Burgess:

On behalf of CityBridge, LLC ("CityBridge"), and pursuant to 16 NYCRR § 12.1(a), attached please find the *Complaint of CityBridge, LLC Regarding Application of Consolidated Edison Company of New York, Inc.'s Electric Tariff*. As described herein, CityBridge is willing to discuss informal resolution of this *Complaint* and therefore respectfully requests that the Office of Consumer Services initiate the informal hearing process set forth in 16 NYCRR § 12.5 as expeditiously as possible.

Respectfully submitted,

COUCH WHITE, LLP

*Adam T. Conway*

Adam T. Conway

ATC/glm  
Attachment

cc: Hon. John Rhodes (via email; w/att.)  
Michael Corso (via email; w/att.)  
Peter McGowan (via email; w/att.)  
David Warner, Esq. (via email; w/att.)

S:\DATA\Client19 17201-17600\17436\Complaint Cover.v2.docx

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

---

**Complaint of CityBridge, LLC, Regarding  
Application of Consolidated Edison Company  
of New York, Inc.'s Electric Tariff**

---

Case \_\_\_\_\_

**COMPLAINT OF CITYBRIDGE, LLC**

**Dated: November 30, 2017**

**COUCH WHITE, LLP  
540 BROADWAY  
P.O. BOX 22222  
ALBANY, NEW YORK 12201-2222  
518-426-4600**

**TABLE OF CONTENTS**

**PRELIMINARY STATEMENT** ..... 1

**FACTUAL BACKGROUND**..... 2

**ARGUMENT**..... 6

**POINT I** .....8

        EACH LINKNYC STRUCTURE IS RECEIVING PERMANENT SERVICE ON AN INDIVIDUAL “PREMISES” ..... 8

            A. The LinkNYC Structure Locations Are Premises ..... 8

            B. Service To The LinkNYC Structures Cannot Be Classified As Temporary Service..... 10

**POINT II**.....13

        THE TARIFF REQUIRES CON EDISON TO BEAR THE COSTS OF INSTALLING A SERVICE LINE TO EACH LINKNYC STRUCTURE..... 13

**POINT III** .....17

        OCS SHOULD DIRECT CON EDISON TO PROVIDE UNMETERED SERVICE TO LINKNYC STRUCTURES AT REASONABLE RATES..... 17

            A. The LinkNYC Structures Satisfy Tariff Requirements for Unmetered Service..... 17

            B. Con Edison’s Proposal to Meter LinkNYC Structures Is Wasteful and Imposes Unnecessary Costs ..... 18

            C. Unmetered LinkNYC Structures Should be Charged a Reasonable Rate Based on Average Structure Consumption ..... 20

**POINT IV** .....21

        OCS SHOULD DIRECT CON EDISON TO DEVELOP A CUSTOMER CHARGE THAT APPROPRIATELY REFLECTS COSTS TO SERVE EACH LINKNYC STRUCTURE ..... 21

**CONCLUSION** ..... 26

**EXHIBIT A – LINKNYC STRUCTURE INFORMATION**

**EXHIBIT B – EMPLOYMENT REPORT**

**EXHIBIT C – CORRESPONDENCE**

## **PRELIMINARY STATEMENT**

CityBridge LLC (“CityBridge”) hereby files this complaint with the New York State Public Service Commission’s (“Commission”) Office of Consumer Services (“OCS”) pursuant to 16 NYCRR § 12.1(a) to contest the improper application of Consolidated Edison Company of New York, Inc.’s (“Con Edison”) Schedule for Electric Service, P.S.C. No. 10 – Electricity (“Tariff”) to CityBridge’s “LinkNYC” program. This dispute arises from Con Edison’s misapplication of the Tariff by insisting that the LinkNYC structures can only qualify for temporary service. Additionally, Con Edison has incorrectly asserted that the LinkNYC structures do not qualify for unmetered service under the Tariff and, therefore, meters have to be installed at a cost of millions of dollars to both CityBridge and ratepayers. These positions are not supported by the express language of the Tariff and, to date, have forced CityBridge to bear nearly \$17 million in costs to self-perform connection work related to the construction of 1,400 LinkNYC structures over the past two years that rightfully should have been borne by Con Edison. Moreover, Con Edison’s wrongful application of its Tariff continues and could result in over \$110 million in unjustified costs for CityBridge over the lifetime of the LinkNYC program.

CityBridge respectfully requests the Commission rule that: (i) the LinkNYC structures receive permanent service to a “premises” under the Tariff; (ii) Con Edison must absorb certain costs associated with connecting the LinkNYC structures to the Con Edison electric system, pursuant to General Rule 5.5 of its Tariff, and reimburse CityBridge for any such costs it already has paid for LinkNYC structures installed to-date; (iii) consistent with General Rule 6.9, Con Edison must provide unmetered service to the LinkNYC structures and charge an unmetered rate based on average LinkNYC structure usage, and reimburse CityBridge for overpayments made as a result of Con Edison’s assumption for billing purposes to-date that each LinkNYC structure permanently operates at full demand; and (iv) the S.C. 2 Customer Charge as applied to CityBridge

by Con Edison is unjust and unreasonable and S.C. 2 Special Provision D should be modified to accommodate customers such as CityBridge, with a commensurate refund to CityBridge for all Customer Charge overpayments made to date. CityBridge is willing to discuss informal resolution of this Complaint with Con Edison and thus further requests that OCS initiate the informal hearing process set forth in 16 NYCRR § 12.5 as expeditiously as possible.

### **FACTUAL BACKGROUND**

CityBridge is implementing the “LinkNYC” program pursuant to a 15-year franchise agreement (“Franchise Agreement”) with the City of New York (“City”).<sup>1</sup> The program calls for constructing at least 7,500 LinkNYC structures throughout the five boroughs by July 23, 2022. To date, 1,400 LinkNYC structures have been erected throughout the five boroughs.

The LinkNYC structures serve as Wi-Fi hotspots providing free internet access to the public at speeds far in excess of those available to home users, helping to bridge the digital divide. The LinkNYC structures also provide touchscreen tablets providing public access to important City services and maps; phone calls to anywhere in the United States; USB charging; and direct access to the City’s police and fire departments and other first responders for the City’s 8.4 million residents and 56 million annual visitors. At each LinkNYC structure all of these benefits are provided for free, 24 hours per day, 365 days per year. All the LinkNYC structures relevant to this Complaint have been or will be installed within the Con Edison service territory. Technical information regarding the LinkNYC structures, including a photograph showing a representative LinkNYC structure, is attached to this Petition as **Exhibit A** for reference.

---

<sup>1</sup> The Franchise Agreement’s initial term is 10 years, with an option for five additional years extending to June 24, 2031. A copy of the Franchise Agreement is available at <http://www1.nyc.gov/site/doitt/business/linknyc-franchises.page>.

The LinkNYC structures also promote public safety. The sides of each LinkNYC structure are equipped with 55-inch advertising displays, and these displays plus the tablet interface can be used to immediately display emergency messaging as directed by the City. These messages can target specific locations to provide information relevant to people in that area, which can improve public communications in all manner of emergency situations. The LinkNYC structures are also equipped with security cameras, which may be activated upon permission granted by the City.

The LinkNYC network, the fastest and largest municipal Wi-Fi network in the world, is a critical component of the State's efforts to expand affordable access to broadband for all New Yorkers. As previously recognized by the Commission, "access to the Internet is essential to participation in modern society... [y]et, while one of the greatest potential benefits of the Internet is to facilitate the acquisition and dissemination of information to all individuals at a low cost, physical ability to connect to the Internet does not provide any benefit to customers who cannot afford it."<sup>2</sup> Similarly, the Commission has acknowledged the "substantial public interest" in establishing "policies and practices that adapt to the public's evolving demands for faster broadband speeds, better quality of service, and universal access, while also driving innovation in the communications technology markets."<sup>3</sup>

---

<sup>2</sup> Case 15-M-0388, Joint Petition of Charter Communications and Time Warner Cable for Approval of a Transfer of Control of Subsidiaries and Franchises, Pro Forma Reorganization, and Certain Financing Arrangements, Order Granting Joint Petition Subject to Conditions (issued January 8, 2016) at 55.

<sup>3</sup> Case 15-M-0647, Joint Petition of Altice N.V. and Cablevision Systems Corporation and subsidiaries for Approval of a Holding Company Level Transfer of Control of Cablevision Lightpath, Inc. and Cablevision Cable Entities, and for Certain Financing Arrangements, Order Granting Joint Petition Subject to Conditions (issued June 15, 2016) at 3. The City of New York also has highlighted the critical importance of the LinkNYC initiative: "LinkNYC is the Wi-Fi network New Yorkers deserve: the largest, fastest municipal Wi-Fi network in the world – and you won't need to insert a quarter in the slot, because it's completely free...LinkNYC

In furtherance of this public policy objective of making broadband available to all New Yorkers, over the first two years of the LinkNYC program, CityBridge has prioritized areas outside of the midtown Manhattan core for distribution of Wi-Fi services to underserved neighborhoods. As of the date of this Complaint, there are nearly 600 structures (almost 40% of the total) deployed in the outer boroughs and hundreds more in Upper Manhattan.

The LinkNYC program has also generated tremendous economic benefits. Through 2016, LinkNYC was responsible for 350 full-time equivalents working specifically on LinkNYC efforts. These direct jobs in turn generated 265 additional indirect support jobs through multiplier effects. In total, the LinkNYC program was responsible for over \$68 million in labor income and nearly \$129 million in economic output within New York State in 2016 alone.<sup>4</sup>

In addition to the numerous public benefits created by the LinkNYC structures, they are generating significant new Pure Base Revenue for Con Edison.<sup>5</sup> Each LinkNYC structure is estimated to consume approximately 630 kWh of electricity each month. Applying Rate I of S.C. 2, each LinkNYC structure generates approximately \$791 per year in new Energy Delivery

---

brings us a couple steps closer to our goal of leveling the playing field and providing every New Yorker with access to the most important tool of the 21st century.” Office of the Mayor – <http://www1.nyc.gov/office-of-the-mayor/news/184-16/mayor-de-blasio-public-launch-linkny-program-largest-fastest-municipal/#/0>

<sup>4</sup> See CityBridge, LLC, LinkNYC Employment Report (January-December 2016), attached hereto as **Exhibit B**.

<sup>5</sup> “Pure Base Revenue” is defined on Tariff Leaf No. 17, in relevant part, as “revenue attributable to Demand Delivery Charges, Energy Delivery Charges, the Reactive Power Demand Charge, and the Customer Charge, if applicable under the Customer’s Service Classification....”

Charges for Con Edison based on 2017 rates.<sup>6</sup> Furthermore, assuming OCS directs the minimum relief from the full Customer Charge requested in Point IV below, each LinkNYC structure would generate \$156.06 per year in new Customer Charges.<sup>7</sup>

Originally, CityBridge anticipated it would receive treatment for the LinkNYC structures similar to how, upon information and belief, Con Edison previously connected public pay telephones without charge. However, at a meeting on November 24, 2015, a month before the initial roll-out was due to start, Con Edison notified CityBridge that it would have to bear all expenditures related to connecting each LinkNYC structure to the grid because the LinkNYC structures are not situated on a “premises” under the Tariff. In subsequent correspondence, Con Edison expanded on its flawed position by stating that, because the LinkNYC structures are not situated on a “premises,” they must take temporary service under the Tariff which, according to Con Edison, requires the customer to pay in advance all costs associated with the new service. Additionally, Con Edison originally agreed the LinkNYC structures did not need individual meters because there was no revenue meter available that would fit within the structure itself. Con Edison later reversed course and maintained that the LinkNYC structures do not qualify for unmetered service under the Tariff and, therefore, meters had to be installed. Since 2015, the parties have met several times and exchanged several letters to discuss their disagreements on the interconnection costs and metering requirements, but those issues have not been resolved, thus necessitating this Complaint.

---

<sup>6</sup> This amount was calculated by summing the results of: (A) 630 kWh per month times: (B) (i) 11.72 cents per kWh for the months of June through September, inclusive; and (ii) 9.84 cents per kWh for all other months. *See* Tariff at Leaf No. 397.

<sup>7</sup> This amount was calculated by multiplying the \$26.01 S.C. 2, Rate I Customer Charge times 50% times 12.



## ARGUMENT

Based on the express language of the Tariff, Con Edison is obligated to bear certain of the costs necessary to connect each of these LinkNYC structures to the grid. Con Edison is seeking to evade application of this Tariff language by insisting that the LinkNYC structures can only qualify for temporary service pursuant to General Rule 5.2.7 of the Tariff. This position has no basis in the Tariff. By refusing to acknowledge the plain language of the Tariff Con Edison has, with construction of 1,400 LinkNYC structures over the past two years, required CityBridge to self-perform connection work and fund the costs associated with the new service that should rightfully be borne by the utility. Worse, Con Edison intends to persist with this posture through the entirety of construction of at least 7,500 LinkNYC structures. Con Edison also has adopted the unreasonable position that the LinkNYC structures do not qualify for unmetered service under the Tariff and, therefore, meters have to be installed at a cost of millions of dollars to both CityBridge and ratepayers. These disputes arising from Con Edison's unjustifiable refusal to acknowledge CityBridge's rights under the Tariff could result in an unjustified shift of over \$110 million in costs onto CityBridge over the life of the Franchise Agreement.<sup>8</sup>

Section 12.1 of the Commission's Rules of Procedure, 16 NYCRR § 12.1(a), provides that "any utility customer may file a complaint with, or ask a question of, the commission relating to his or her electric ... service, where the customer believes he or she has not obtained a satisfactory

---

<sup>8</sup> CityBridge calculated this total as follows: (i) \$91 million in connection-related expenditures (average installation cost to date of \$12,142 times 7,500); plus (ii) \$1.5 million in potential labor costs for meter installations (7,500 unmetered LinkNYC structures times \$200 per-LinkNYC structure meter installation cost); plus (iii) \$17.6 million in excessive Customer Charges over the life of the Franchise Agreement (\$26.01 Customer Charge times 50% Special Provision D discount times 7,500 LinkNYC structures times 12 months times 15 years [CityBridge is requesting that the Customer Charge be discounted by at least 50% consistent with S.C. 2 Special Provision D]).

resolution of a dispute with a utility regulated by the commission. Complaints may involve bills for utility service, deposit requests, negotiations for deferred payment agreements, service problems, and other matters relating to utility service.” This Complaint centers around the failure of Con Edison to properly apply the express terms of its Tariff to CityBridge and the LinkNYC structures that have been erected over the last two years (and that will continue to be constructed within Con Edison’s territory over the next several years), as well as the rates and charges that will be charged to LinkNYC structures going forward. Combined, Con Edison’s wrongful application of its Tariff has resulted, and will continue to result, in significant financial harm to CityBridge.

Therefore, for the reasons set forth herein, CityBridge respectfully requests that the Commission find:

- (1) The LinkNYC structures take permanent service according to the express language of the Tariff, and Con Edison is obligated under its Tariff to install a service line from its street system up to and until the point of service termination at each LinkNYC structure;
- (2) Con Edison is obligated by its Tariff to absorb certain costs related to the installation of service lines to the LinkNYC structures, and must reimburse CityBridge for any such costs it already paid to install its currently-operational LinkNYC structures, plus interest, which payments were made under protest;
- (3) Con Edison must provide unmetered service to the LinkNYC structures pursuant to General Rule 6.9 of the Tariff and bill CityBridge based upon the average usage of a LinkNYC structure, and must refund any amounts, plus interest, overpaid by CityBridge based on Con Edison’s assumption for billing purposes to-date that each LinkNYC structure operates at maximum demand 24 hours a day, 7 days a week; and

(4) Con Edison should modify Service Classification No. 2 (“S.C. 2”) of its Tariff and create a Customer Charge that is appropriate for the service provided to CityBridge’s LinkNYC structures, similar to how the Commission previously required Con Edison to establish the reduced Customer Charge set forth in S.C. 2 Special Provision D, and refund to CityBridge the amount overpaid to date as a result of Con Edison applying the full S.C. 2 Customer Charge to already-installed LinkNYC structures, plus interest.

**POINT I**

**EACH LINKNYC STRUCTURE IS RECEIVING  
PERMANENT SERVICE ON AN INDIVIDUAL  
“PREMISES”**

**A. The LinkNYC Structure Locations Are Premises**

The electric distribution facilities needed to provide service to the LinkNYC structures are being installed underground pursuant to General Rule 5.5 of the Tariff. Under General Rule 5.5, Con Edison is obligated to “install a service line from its street system to the point of service termination.”<sup>9</sup> The Tariff defines a point of service termination, in relevant part, as “a property line of the building or premises.”<sup>10</sup> The Tariff also defines a service line as “an electric line used to connect a distribution line to an individual customer’s meter or the point of attachment to a building or a premises....”<sup>11</sup> For purposes of General Rule 5.5, the Tariff specifically defines a “premises” as “a parcel of land; or more than one building and/or parcel of land proximate to each

---

<sup>9</sup> Tariff at Leaf No. 46.

<sup>10</sup> Id.

<sup>11</sup> Id. at Leaf 34.

other if there is common use, whether or not such buildings or parcels are individually owned or leased or separated by public or private roads.”<sup>12</sup>

Clearly, a parcel of land is a “premises” under the Tariff and the LinkNYC structures are located on a parcel of land. Thus, the LinkNYC structures are on a “premises.” The LinkNYC structures (weighing approximately 1,300 lbs. and standing approximately 9.5 feet tall) are permanently affixed to individual parcels of City land through both underground foundations and above-ground bolting fixtures to ensure stability and permanence of each structure. Specifically, CityBridge’s Franchise Agreement with the City expressly recognizes and deems the LinkNYC structures CityBridge property, and it confers rights on, under and above the parcels of land occupied by the LinkNYC structures. Exclusive occupancy rights are effectively granted to CityBridge at each LinkNYC structure location for up to 15 years, with no opportunity for occupancy by others.<sup>13</sup>

The Franchise Agreement (not to mention common sense) amply demonstrates that the LinkNYC structure locations constitute a “parcel of land,” and thus are “premises,” under the Tariff. As a result, the LinkNYC structures, permanently affixed to those parcels, are entitled to a service extension to the property line and Con Edison is obligated by its Tariff to bear some or all of those costs, as discussed in more detail in Point II, *infra*.

---

<sup>12</sup> *Id.* at Leaf No. 33 (emphasis added).

<sup>13</sup> *See* Franchise Agreement at §§ 2.2, 2.3. While CityBridge’s franchise is “non-exclusive” insofar as the City could theoretically grant another franchise for similar services at other locations subject to certain conditions and possible compensation to CityBridge, the Franchise Agreement confers exclusive occupancy of each parcel on which a LinkNYC structure is situated.

**B. Service To The LinkNYC Structures Cannot Be Classified As Temporary Service**

The plain language of the Tariff itself also undercuts Con Edison’s spurious claim that service to the CityBridge LinkNYC structures is “temporary.” The service provided to LinkNYC structures – the first group of which are now entering their third year of uninterrupted service – does not remotely correspond to any of the illustrative categories of “Temporary Service” provided in General Rule 5.2.7. The LinkNYC structures are not analogous to “construction sites, fairs, celebrations” or other similar transitory “activities.” In addition, the LinkNYC structures cannot properly be classified as “non-permanent structures” because, as explained above, each LinkNYC structure is nearly one ton in weight and ten feet tall, immobile, and permanently embedded in a foundation dug beneath the sidewalk of each parcel.

Nor do there exist “circumstances where the Company has reason to believe that the facilities installed by the Company to provide service may not be used for permanent supply.”<sup>14</sup> Rule 5.2.7 does not define the term “permanent supply.” However, according to the Tariff, a “Temporary Customer” is a “non-residential Customer who requests or receives service **for a period of up to two years...**”<sup>15</sup> In other words, the Tariff contemplates a two-year period as an appropriate threshold for determining the difference between something that is temporary and something that is permanent. CityBridge is not requesting service for a period of two years or less. To the contrary, its Franchise occupancy rights and performance obligations extend more than a decade, and it is anticipated that these structures will continue to provide service even after the expiration of CityBridge’s current Franchise rights, either by extension of the current agreement

---

<sup>14</sup> Tariff at Leaf No. 37.

<sup>15</sup> Id. at Leaf No. 20 (emphasis added).

or through a successor Franchisee selected by the City. Thus, it is disingenuous for Con Edison to argue that service to the LinkNYC structures will be anything but permanent.

Even if the Commission was to accept that service to the LinkNYC structures starts out as “temporary” (which it does not), General Rule 5.2.7 directs Con Edison to refund any payments for temporary service “if circumstances change after the Customer commences to take service, and the Company has reasonable assurance that the use of the service will not be temporary and that the Company’s facilities will be used for permanent supply.”<sup>16</sup> After being installed and remaining in place for a period of two years, Con Edison would have ample assurance that the service to a LinkNYC structure is permanent, and would be obligated to refund installation costs for that LinkNYC structure to CityBridge regardless. Given that most of the initial structures are now entering their third year of uninterrupted service, surpassing the two-year touchstone set forth in the Tariff, Con Edison’s position that service is not permanent has been obviated by the facts.

Finally, and contrary to false assertions made by Con Edison in prior correspondence, the LinkNYC structures also cannot be relocated at any time. The Franchise Agreement affords CityBridge significant protections against the removal of installed LinkNYC structures, capping and otherwise limiting removal to very narrow circumstances. Thus, in many respects, the permanence of the LinkNYC structures exceeds protections afforded renters, tenants and lessees to whom Con Edison typically provides permanent service connections without a second thought. To date, with more than 1,400 LinkNYC structures erected, only three have been relocated, and CityBridge expects annual removal totals to be in the single digits. In short, potential exercise of

---

<sup>16</sup> See Tariff at Leaf No. 37.

a limited removal right under future remote circumstances is not a basis for a temporary service classification under the Tariff.<sup>17</sup>

By an April 28, 2017 letter to CityBridge (“April 2017 Letter”), Con Edison has attempted to link its treatment of CityBridge’s LinkNYC structures to 2010 Tariff revisions made, in part, based on concerns that some commercial projects imposed significant capital costs that benefitted individual customers more than the general body of ratepayers.<sup>18</sup> As an initial matter, those concerns related to customers drawing dramatic new loads requiring major distribution backbone upgrades, as opposed to incremental connections to and within capability of the existing street system. The CityBridge LinkNYC structures fall into the latter category and – in addition to providing material public benefit through the LinkNYC program – are creating significant new Pure Base and Customer Charge revenues for Con Edison using the current distribution system backbone. More fundamentally, the “premises” definition into which the LinkNYC structures clearly fit was adopted as part of the 2010 revisions, while Con Edison at the time did not expand and in fact made no change to the definition of “temporary service.”<sup>19</sup> Con Edison is now attempting to shoe-horn CityBridge into those 2010 Tariff revisions using a twisted application of the term “premises” that was not contemplated in 2010.

---

<sup>17</sup> Without prejudice and to eliminate this issue of purported concern to Con Edison, CityBridge is willing to absorb service line disconnection and reconnection costs associated with any required relocations.

<sup>18</sup> April 2017 Letter at 2, attached hereto as **Exhibit C**. In that April 2017 Letter, Con Edison erroneously avers that “[t]he CityBridge street kiosk project is a clear example of a project that raises such subsidy concerns.” For completeness of the record, **Exhibit C** also contains several additional pieces of correspondence between CityBridge and Con Edison related to the parties’ efforts to resolve the issues identified in this Complaint.

<sup>19</sup> Case 08-E-0539, 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, Order Regarding Tariff Filing (issued February 17, 2010).

There is simply no basis in the Tariff to force permanent customers such as CityBridge to self-fund their connections to the grid in this manner. Certainly, there is no basis in the Tariff to do so based on Con Edison's subjective view of customers' finances. Further, to allow Con Edison to abdicate its responsibility to CityBridge will set a dangerous precedent that Con Edison will undoubtedly seek to exploit in the future against other residential or commercial customers. As its author, Con Edison should be held to the terms of the Tariff, and should not be allowed to misapply it on an *ad hoc* basis that singles out a customer receiving permanent service for disparate and unequal treatment.

Based on the above factors, the LinkNYC installations are permanent under the Tariff. Con Edison's arbitrary attempt to treat the LinkNYC structures otherwise (*i.e.*, to classify them as, in effect, permanently temporary) denies CityBridge the right to fair and equal application of the Tariff to its LinkNYC structures, and is contrary to and an abuse of the clear terms of the Tariff. Therefore, OCS should direct Con Edison to fairly apply its Tariff as written and find that the LinkNYC structures take permanent service to a "premises" as contemplated by the Tariff.

## **POINT II**

### **THE TARIFF REQUIRES CON EDISON TO BEAR THE COSTS OF INSTALLING A SERVICE LINE TO EACH LINKNYC STRUCTURE**

When Con Edison installs underground facilities pursuant to General Rule 5.5, Con Edison is required to bear certain material and installation costs. Where, as here, the local governmental authority requires the service to be underground, Con Edison is required to bear "the material and installation costs equivalent to the cost that the Company would be required to bear if the facilities were installed overhead."<sup>20</sup> Con Edison's cost responsibility for overhead facilities is established

---

<sup>20</sup> Tariff at Leaf No. 47.



by General Rule 5.4.2, which requires the Company to bear material and installation costs for up to 500 or 300 feet of overhead line, for single-phase and three-phase supply, respectively.<sup>21</sup> Therefore, the express language of the Tariff itself requires Con Edison to determine how much it would cost to install overhead lines to a customer, and then to bear that equivalent amount in material and installation costs for underground service.

Here, CityBridge has requested that Con Edison install a service line from its street system to the property line of the premises on which the LinkNYC structures will be situated. Consistent with experience to-date with erection of the first 1,400 LinkNYC structures, CityBridge expects that most or all will be constructed near the curb line of City streets, not far from the utility street system, meaning that Con Edison should clearly absorb a sizeable portion of the material and installation costs for providing service to each LinkNYC structure (equivalent to the cost of installing overhead lines to the same structure). Given the proximity of the LinkNYC structures to the point of service termination, it is probable that the cost of installing underground facilities to some, and even a substantial portion, of the LinkNYC structures will not exceed the material and installation cost associated with 500 or 300 feet of overhead line, which CityBridge is entitled to under the Tariff.

Con Edison asserts that it is not required to bear upfront costs to install service to CityBridge's LinkNYC structures. This position is wholly inequitable and runs counter to the express language of the Tariff. As already discussed in Point I, *supra*, the Tariff itself does not support classifying service to the LinkNYC structures as temporary service. The service provided here to LinkNYC structures does not remotely correspond to any of the illustrative categories for

---

<sup>21</sup> Id. at Leaf No. 42.

temporary service set forth in General Rule 5.2.7, and there is no factual basis to conclude that electricity supply to the LinkNYC structures will be anything but permanent.

Unable to sustain a Tariff-based rationale, Con Edison claims that in the past it has extracted utility interconnection costs in connection with what it calls “street furniture” (which is not a term appearing in the Tariff) such as bus shelters, electric vehicle charging stations, public toilets and newsstands and, as a result, the LinkNYC structures must also bear these costs. CityBridge has no way of verifying this claim which, even if true, has no bearing on this Petition. For example, it is entirely possible that some types of “street furniture” may have been entitled to cost sharing similar to that requested here, but the customers either did not know of, or failed to enforce, their rights under the Tariff.<sup>22</sup> In any event, Con Edison should not be allowed to re-write the Tariff and create a new class of customers (*e.g.*, “street furniture” and/or permanently “temporary” customers ) with the transparent objective of extracting as much money as possible from CityBridge.

Not only is Con Edison obligated by the Tariff to absorb some or all of the costs to install the LinkNYC structures, but equity demands that Con Edison assume this responsibility. As noted earlier, even if CityBridge is granted partial relief from the Customer Charge as requested in Point IV *infra*, the LinkNYC structures are expected to generate approximately \$130 million in Pure Base Revenue over the 15-year term of the Franchise Agreement. Requiring CityBridge to absorb the full capital expenditures, on top of the Pure Base Revenue it will pay to Con Edison, will result in an inequitable windfall for Con Edison, **which is obligated by its own Tariff to absorb such**

---

<sup>22</sup> As noted earlier, if OCS concludes that there is ambiguity in the Tariff, which CityBridge contends there is not, Con Edison, as keeper of the Tariff, should suffer the consequences, not its customers.

**costs to install service to the LinkNYC structures.** OCS should not countenance such customer abuse.

To meet its LinkNYC structure installation schedule, CityBridge has, as of this filing, absorbed nearly \$17 million in material and installation costs to self-perform connection for approximately 1,400 LinkNYC structures to Con Edison's system. It has done so subject to a reservation of rights to challenge Con Edison's decision not to absorb any of these costs which, as already explained, the utility is obligated to bear under the Tariff. To the extent that CityBridge already funded the necessary connection costs for LinkNYC structures installed to-date, OCS should direct Con Edison to reimburse CityBridge for the amount which rightfully should have been borne by Con Edison (*i.e.*, up to the equivalent material and installation costs for up to 500 or 300 feet of overhead line, for single-phase and three-phase supply, respectively), plus interest.<sup>23</sup>

For the reasons set forth herein, OCS should direct Con Edison to: (i) bear material and installation costs necessary to provide service to the LinkNYC structures on a going-forward basis as set forth above; and (ii) reimburse CityBridge, with interest, for the connection costs already paid by CityBridge for LinkNYC structures installed to-date, which costs rightfully should have been borne by Con Edison. As noted earlier, to eliminate concerns about removal costs and

---

<sup>23</sup> As explained in Point I.B, *supra*, even if OCS were to somehow determine that service to the LinkNYC structures is temporary, CityBridge still would be entitled to a refund after two years. General Rule 5.2.7 provides for a refund of "estimated non-recoverable cost of [Con Edison's] service installation and removal (including any street reinforcement and extension required), as determined by [Con Edison] and endorsed on the agreement for service." *See* Tariff at Leaf No. 37. Consistent with the Tariff, for the purpose of determining its initial cost responsibility, "non-recoverable" costs would be calculated as: (i) the cost to interconnect an individual LinkNYC structure, minus (ii) the Pure Base Revenue associated with that LinkNYC structure in years 1 and 2 – with the balance refunded once that LinkNYC structure surpasses two years in service.

stranded assets, CityBridge is willing to absorb all relocation costs for the very few LinkNYC structures that might ultimately be relocated pursuant to the Franchise Agreement.

### **POINT III**

#### **OCS SHOULD DIRECT CON EDISON TO PROVIDE UNMETERED SERVICE TO LINKNYC STRUCTURES AT REASONABLE RATES**

##### **A. The LinkNYC Structures Satisfy Tariff Requirements for Unmetered Service**

To date, CityBridge has erected approximately 1,400 LinkNYC structures throughout the City and plans to construct thousands more over the coming years. All of the structures that have been constructed to date are unmetered. As noted earlier, Con Edison now maintains that it will not offer unmetered service indefinitely. The LinkNYC structures, however, satisfy conditions for unmetered service under the Tariff, and Con Edison's wrongful insistence on using meters stands to saddle ratepayers and CityBridge with more than \$6,000,000 in unnecessary costs.

General Rule 6.9 of the Tariff outlines the circumstances in which a customer may be supplied with unmetered service. The Tariff allows for unmetered service if the "customer's only utilization equipment consists of warning lights, electric signs or the like."<sup>24</sup> There is also a usage cap of 3,000 kWh per month and a demand of less than 10 kW on unmetered devices. Additionally, the demand must be "definitely determinable" and the equipment must operate on a fixed schedule.

Con Edison has conducted a series of tests with CityBridge and these tests, as well as CityBridge's own tests, reliably demonstrate that energy consumption for each structure is approximately 630 kWh per month, well below the usage cap, and will not exceed the 10 kW demand limit. CityBridge's testing has further demonstrated that LinkNYC structures operate on

---

<sup>24</sup> Tariff at Leaf No. 63. Upon information and belief, Con Edison currently provides unmetered service to, among others, payphones and billboards.

a fixed schedule, with advertising displays that operate 24 hours a day, 7 days a week, and that electricity usage at each LinkNYC structure is determinable within a narrow range. Specifically, in an effort to calculate LinkNYC usage, CityBridge commissioned two Con Edison-approved contractors to monitor six random LinkNYC structures for a 24-hour period. The monitoring results showed that, on average, each LinkNYC structure consumed 20.40 kWh per day, nearly identical to the 20.71 kWh of daily consumption set forth in the manufacturer's specifications. As noted earlier, the monitored daily consumption translates to approximately 630 kWh per month per structure, based on a 31-day month.

In addition, the LinkNYC structures are similar to, or "like," the warning lights or electric signs enumerated in General Rule 6.9, and closely resemble the payphones and billboards that currently receive unmetered service from Con Edison. In sum, the LinkNYC structures operate below the relevant usage thresholds, on a fixed schedule with a definitely determinable demand. As such, the LinkNYC structures satisfy the Tariff requirements for unmetered service.

**B. Con Edison's Proposal to Meter LinkNYC Structures Is Wasteful and Imposes Unnecessary Costs**

In recent discussions, Con Edison has sought installation of a metering device outside of the LinkNYC structures themselves within the trenching for the service connections. Con Edison informally estimated the cost of each such device at \$600 per unit which would be placed into the rate base and recovered from the general body of ratepayers pursuant to current cost recovery rules for electric meters, costing ratepayers approximately \$4,500,000. Further, Con Edison would charge CityBridge an incremental labor fee estimated at approximately \$200 per structure to account for the additional time it will take their laborers to install these meters, adding another \$1,500,000 to be borne by CityBridge.

Assuming these estimates do not increase, which is unlikely, Con Edison's metering proposal would add approximately \$800 per unit to each structure, for a total incremental cost of \$6,000,000 once CityBridge satisfies its Franchise Agreement obligations to install 7,500 LinkNYC structures. Under Con Edison's proposal, approximately \$4,500,000 of this incremental cost would be shouldered by ratepayers.

There is no reason whatsoever for CityBridge or Con Edison's other customers to incur these unnecessary costs. As explained above, the LinkNYC structures satisfy all Tariff-based requirements for unmetered service, and providing unmetered service would be consistent with the manner in which Con Edison treats other, similarly-situated customers. The usage of the structures has been demonstrated to be predictable, and requiring meters is simply wasteful in it forces customers (CityBridge included) to immediately shoulder up to \$6,000,000 in material and installation costs associated with the unnecessary meters.<sup>25</sup> Simply put, the Commission's goal of expanding affordable broadband access to all New Yorkers will not be achieved if Con Edison is allowed to twist its Tariff to impose wholly unnecessary costs on consumers. OCS should therefore direct Con Edison to provide unmetered service to the LinkNYC structures.<sup>26</sup>

---

<sup>25</sup> It is worth noting that Con Edison's position will allow it to improve its earnings by giving it the opportunity to earn a return on the \$4,500,000 in equipment costs that will be placed into rate base.

<sup>26</sup> At a minimum, OCS must reject any attempt by Con Edison to retroactively meter the approximately 1,400 LinkNYC structures that have already been installed without a meter. The costs associated with digging up the street and installing a meter would be prohibitively expensive, particularly considering that these existing unmetered structures have been operating without issue for up to two years.

**C. Unmetered LinkNYC Structures Should be Charged a Reasonable Rate Based on Average Structure Consumption**

As noted, to date CityBridge has installed approximately 1,400 LinkNYC structures, all of which are unmetered. Con Edison has indicated that it would charge the unmetered structures based on an assumption that the structures were operating at maximum demand 24 hours a day, 7 days a week. OCS should reject Con Edison's unreasonable assumption that the LinkNYC structures will always operate at maximum demand and instead adopt an unmetered rate based on average structure consumption. OCS should also direct Con Edison to refund to CityBridge amounts that it already has overpaid to Con Edison based on this assumption.

To allay concerns about under- or over-recoveries, CityBridge proposes to work with Con Edison to meter a representative sampling of structures and develop a rate based on the average usage of the sampled structures. In particular, CityBridge proposes to meter 20 installed structures, or such other reasonable number as determined by OCS. These metered structures then would be used as the basis for determining the average rate to be applied. Consistent with Commission regulations, the actual metering data from 20 structures will provide sufficient usage data for the full LinkNYC population and represent "the best available relevant factor[] for determining the customer's energy usage...."<sup>27</sup> Until a sufficient sampling of structures are installed and metered, average LinkNYC structure usage should be derived from tests that CityBridge already has conducted and Con Edison has monitored. In sum, CityBridge's proposed solution avoids millions of dollars in unnecessary infrastructure expenses while providing sufficient revenue protection to the Company and ensuring that the unmetered rate is based on reasonable usage assumptions.

---

<sup>27</sup> 16 NYCRR § 13.8(b)(2).

For all of the foregoing reasons, OCS should find that the LinkNYC structures satisfy the requirements for unmetered service under the Tariff and thereby reject Con Edison's attempt to spend millions of dollars on unnecessary labor and equipment costs on meters. OCS should further direct Con Edison to provide unmetered service to the LinkNYC structures at a reasonable rate based initially on prior testing and subsequently on average usage at 20 metered structures (or such other reasonable number as determined by OCS), and refund excess payments made to-date due to calculation of charges based on round-the-clock operation at maximum demand.

#### **POINT IV**

#### **OCS SHOULD DIRECT CON EDISON TO DEVELOP A CUSTOMER CHARGE THAT APPROPRIATELY REFLECTS COSTS TO SERVE EACH LINKNYC STRUCTURE**

Con Edison is currently billing each individual LinkNYC structure as a separate account, with each structure assessed the full monthly Customer Charge under the S.C. 2 small commercial customer rate category, currently \$26.01 per month.<sup>28</sup> Thus, when all LinkNYC structures are constructed, Con Edison will be imposing Customer Charges of \$2.3-\$3.1 million annually on CityBridge based on current rates, in addition to actual electric delivery revenues. This is unjust and unreasonable. Instead, CityBridge respectfully requests that OCS direct Con Edison to develop a modified monthly Customer Charge, no less favorable than Special Provision D of S.C. 2, to accommodate the LinkNYC structures and customers with similar usage characteristics.

The sheer magnitude of the potential annual Customer Charge proposed by Con Edison for CityBridge – up to \$3.1 million, unrelated to usage – highlights the inequity of the Con Edison position and the need to modify the S.C. 2 rate category. Customer Charges are applied to recover

---

<sup>28</sup> Tariff at Leaf No. 397.



fixed costs that are caused by the presence of a customer on the system, irrespective of usage. It stands to reason that one customer with 7,500 sites does not impose the same fixed costs, unrelated to demand or usage, that 7,500 discrete customers would impose. Indeed, Con Edison is only sending CityBridge one monthly bill for the 1,400 structures that are already installed, and CityBridge expects this practice to continue throughout the Franchise Agreement.<sup>29</sup>

The Commission previously has determined that there was a need for Con Edison to develop a “hybrid” S.C. 2 Customer Charge for situations strikingly similar to CityBridge’s.<sup>30</sup> In the Metricom case, the customer sought a reduced Customer Charge for the approximately 7,000 radio transceivers that it planned to deploy in New York City to establish one of the early private wireless networks in the City.<sup>31</sup> Recognizing that application of the full S.C. 2 Customer Charge at each location during each billing cycle was inappropriate, the Commission determined that a hybrid monthly S.C. 2 Customer Charge, equal to approximately 50% of the anticipated Customer

---

<sup>29</sup> Any attempt by Con Edison to impose the full S.C. 2 Customer Charge on each LinkNYC structure while also imposing full interconnection costs would represent a “heads I win, tails you lose” approach to Tariff application that should not be countenanced by OCS. Con Edison’s one-sided approach will frustrate express Commission policies to expand no-cost, high-speed Internet access to a large segment of the State’s population. On connection costs, Con Edison cites to the large, overall cost that full LinkNYC structure deployment may cause as justification for charging connection costs to the customer. It would then be inappropriate for Con Edison, for billing purposes, to treat each LinkNYC structure as a separate customer.

<sup>30</sup> See Case 99-E-1487, Petition of Metricom, Inc. for a Declaratory Ruling Regarding Rates For Electric Service from Consolidated Edison Company of New York, Inc., Order Directing Filing of a Proposed Tariff (issued June 29, 2000) (“Metricom Order”).

<sup>31</sup> In its Petition, Metricom stated that its private network was designed to provide wireless internet access to devices such as PalmPilots, at download speeds of up to 128 kilobytes per second. Metricom Order at 4-5. The LinkNYC structures, in contrast, form a public network that offers speeds up to 1 Gigabyte per second (nearly 8,000 times faster than the Metricom network), while also providing a myriad of other publicly-accessible benefits at no cost to users, as discussed herein.

Charge, was appropriate. The discounted Customer Charge in Metricom reflected the fact that a portion of the Customer Charge (*i.e.*, costs of billing) may be inappropriate to re-bill many times over to a single customer with hundreds of locations that receives a single bill.<sup>32</sup> The Commission further held that this hybrid Customer Charge should be available to all customers seeking to establish networks similar to Metricom's.<sup>33</sup>

As a result of the Metricom Order, Con Edison filed Special Provision D, which states that “when a Customer has an account for service at each of no fewer than 100 different locations, each served under Rate I of this Service Classification, the Customer Charge per account will be reduced by 50 percent,” provided that three criteria are met: (i) the service is supplied exclusively for use of radio transceivers located on street lights or utility distribution poles; (ii) service for each account is unmetered; and (iii) the usage at each location is less than 30 kWh per month.<sup>34</sup> More recently, in Con Edison's 2016 electric and gas rate case proceedings, the 100-location threshold to be eligible for Special Provision D was reduced to 40 locations. Special Provision D also was expanded to apply to devices that provide free Wi-Fi services to the public, whether or not they are directly attached to street lights or utility distribution poles.<sup>35</sup>

Similar to the Metricom case, none of Con Edison's existing tariffs precisely fit the type of customer service that CityBridge is seeking for the LinkNYC structures. The OCS should

---

<sup>32</sup> Like with Metricom, Con Edison also only issues a single bill to CityBridge for all of the LinkNYC structures.

<sup>33</sup> Metricom Order at 5-6.

<sup>34</sup> Tariff at Leaf No. 402.

<sup>35</sup> See Cases 15-E-0060 et al., 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, Joint Proposal (filed September 19, 2016) at 56.

therefore direct Con Edison to develop a new tariff that would appropriately represent the costs to Con Edison of serving the LinkNYC structures, instead of subjecting CityBridge to the full S.C. 2 Customer Charge. The LinkNYC structures are markedly similar to Metricom in some respects – there will be a large number of LinkNYC structures dispersed throughout New York City; the LinkNYC structures impose only minimal incremental load and require no additional reinforcement or upgrade of distribution infrastructure in order to receive electric service; and the usage for each LinkNYC structure is predictable and stable. Moreover, as discussed in Point III above, the type of service to the LinkNYC structure fits within the Tariff criteria for unmetered service. Accordingly, CityBridge should be treated no less favorably.

The adoption of and revisions to Special Provision D amply demonstrate the Commission’s understanding that existing Customer Charges were developed in consideration of last-generation technology and will need to be modified to adapt to next-generation technology. The world of technology is changing rapidly, and the ways that technology-based customers connect to and use the electric system are changing. It is unrealistic to think monthly customer charges developed with small commercial customers with a single location in mind, such as a store, should be equally applicable to a single customer with thousands of locations that consume only a small amount of electricity each month. As technology continues to proliferate, the Commission must ensure that new technologies are not inhibited by electricity rates developed under assumptions and customer profiles that are now obsolete, at least in part. Requiring Con Edison to accommodate customers such as CityBridge is a reasonable approach to ensure the LinkNYC program is not over-burdened

with unnecessary utility charges and will remove a barrier to growth of technology applications in New York.<sup>36</sup>

Therefore, for all of the foregoing reasons, OCS should direct Con Edison to develop a Customer Charge that appropriately represents the utility's costs to serve the LinkNYC structures, similar to Special Provision D in S.C. 2. Because CityBridge currently is paying Con Edison the full S.C. 2 Customer Charge for each individual LinkNYC structure, OCS should direct Con Edison to refund the difference between the new Customer Charge and the current S.C. 2 Customer Charge that CityBridge already has paid for LinkNYC structures installed to date, plus interest.

---

<sup>36</sup> Even if Con Edison developed a hybrid Customer Charge for CityBridge's LinkNYC structures that reflected the same 50 percent discount provided under Special Provision D, CityBridge will still pay over \$1.1 million per year in Customer Charges in addition to the millions per year in new energy delivery charges for the 7,500 LinkNYC structures contemplated by the Franchise Agreement. Thus, Con Edison will still earn substantial revenues from CityBridge to serve the LinkNYC structures (estimated by CityBridge to approximate \$130 million over 15 years).

## CONCLUSION

For all of the foregoing reasons, CityBridge respectfully requests that the Commission find that: (i) the LinkNYC structures receive permanent service to a “premises” under the Tariff; (ii) Con Edison must absorb certain costs associated with connecting the LinkNYC structures to the Con Edison electric system, pursuant to General Rule 5.5 of its Tariff, and reimburse CityBridge for any such costs it already has paid for LinkNYC structures installed to-date; (iii) consistent with General Rule 6.9, Con Edison must provide unmetered service to the LinkNYC structures and charge an unmetered rate based on average LinkNYC structure usage, and reimburse CityBridge for overpayments made as a result of Con Edison’s assumption that each LinkNYC structure permanently operates at full demand; and (iv) the S.C. 2 Customer Charge as applied to CityBridge is unjust and unreasonable and S.C. 2 Special Provision D should be modified to accommodate customers such as CityBridge, with a commensurate refund to CityBridge for all Customer Charge overpayments made to date. As noted, as an initial step towards resolving this Complaint, CityBridge requests that OCS convene an informal hearing with CityBridge and Con Edison to explore the possibility of a mutually agreeable resolution.

Dated: November 30, 2017  
Albany, New York

Respectfully submitted,

*Robert M. Loughney, Esq.*

Robert M. Loughney, Esq.  
Adam T. Conway, Esq.  
Justin J. Fung, Esq.  
COUCH WHITE, LLP  
*Counsel for CityBridge LLC*  
540 Broadway  
Albany, New York 12201-2222  
(518) 426-4600  
[rloughney@couchwhite.com](mailto:rloughney@couchwhite.com)

**EXHIBIT A**  
**LINKNYC STRUCTURE INFORMATION**

*[see attached “Structure Designs” from Exhibit 5 of the Franchise Agreement]*

EXHIBIT 5  
STRUCTURE DESIGNS







**EXHIBIT B  
EMPLOYMENT REPORT**

*[see attached "CityBridge, LLC Employment Report"]*

# CityBridge, LLC Employment Report

Submitted by CityBridge in fulfillment of a franchise agreement with DoITT for the operation, installation & maintenance of public communications structures

**Link**NYC

January – December 2016

## TABLE OF CONTENTS

<b>Table of Contents</b>	<b>2</b>
<b>Employment Reporting Expectation</b>	<b>3</b>
<b>Addendum: 2016 Employment &amp; Economic Impacts</b>	<b>4</b>
Introduction	4
Employment & Economic Impacts	5
Geography	7
Employment Characteristics	8

## EMPLOYMENT REPORTING EXPECTATION

LinkNYC is a first-of-its-kind communications network that is replacing pay phones across the five boroughs with new structures called Links. Each Link provides superfast and free public Wi-Fi, allowing users to place phone calls, charge mobile devices, and search for City services, maps and directions. On December 19, 2014, the New York City Department of Information Technology and Telecommunications (DoITT) executed a franchise agreement with CityBridge for the operation, installation, and maintenance of LinkNYC. As part of this agreement, CityBridge agreed to submit to DoITT and the New York City Franchise Concession Review Committee (FCRC) an annual employment report by January 30<sup>th</sup> of each calendar year, effective for the duration of the agreement term.

DoITT originally estimated that LinkNYC would eventually result in the creation of 100-150 new direct project jobs, with an additional 650 support positions anticipated upon full maturation of operations. Following its second full year of operations, CityBridge has already achieved this goal, employing 100 direct, full-time equivalent workers in New York City in 2016. LinkNYC is further responsible for another 250 direct, full-time equivalent support roles among the dozens of New York City-based vendors that contributed services to the consortium in 2016. This second annual employment report serves to document the consortium's continued progress in the way of local job impacts during 2016.

The succeeding section serves as an addendum to the inaugural 2015 Employment Report submitted to DoITT and the FCRC in January of last year. The 2016 Addendum describes the local impacts of CityBridge's second full year of operations, spanning January 1, 2016 through December 31, 2016. For details regarding the methodology and data collection procedures used in this Addendum, please refer to the 2015 Employment Report.

# ADDENDUM: 2016 EMPLOYMENT & ECONOMIC IMPACTS

## INTRODUCTION

### *Organization*

The CityBridge consortium is comprised of three joint-venture partners: Intersection, responsible for overseeing the development and operation of LinkNYC; CIVIQ Smartscares (“CIVIQ”), responsible for the manufacturing of Links; and Qualcomm, a telecommunications firm serving as an advisor in the development of LinkNYC’s wireless infrastructure.

### *Reporting Methodology*

Operations data of varying degrees of specificity were collected from each consortium member in order to measure local impacts:

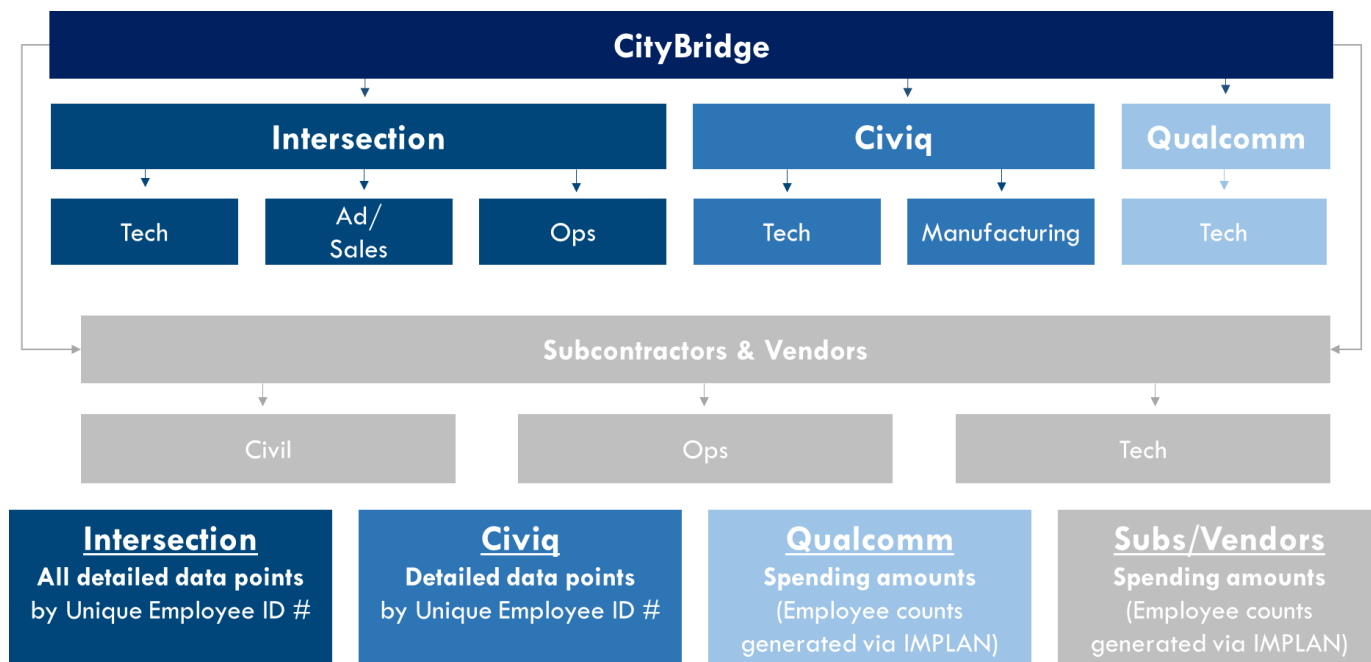
- For Intersection, the only consortium member based in New York City, detailed employee information was collected, including the number of hours allocated to LinkNYC, total compensation by department, and, where available, educational attainment, years of experience, and ZIP code of residence. For workers employed with Intersection’s Media Sales department, commissions earned from advertising sales were included as part of total compensation. Employee data further specified whether a college degree was preferred for each role, allowing for deeper insights into the types of occupations generated through LinkNYC.
- For CIVIQ, which is based in Milford, MA but has a growing New York City presence, similar information was collected for New York City-based employees, including title, educational attainment, and professional experience, in addition to hours worked and total compensation.
- Qualcomm employment was estimated from total 2016 spending, but was excluded from the modeling of local impacts since all employees were located out-of-state.
- Vendor data for companies subcontracted with CityBridge to assist in the development of LinkNYC were also collected. New York City-based vendors contribute to direct project employment, and were thus considered in the measurement of local economic impacts associated with LinkNYC.

To estimate local impacts, direct employment counts for Intersection and Civiq were converted to full-time equivalents (FTEs) based on time allocated to LinkNYC. The resultant figures were analyzed using IMPLAN, an input-output model that relies on local economic multipliers to derive total impact.<sup>1</sup> For Qualcomm and CityBridge vendors, employment estimates were obtained from total spending amounts analyzed in IMPLAN. For the purposes of determining LinkNYC’s economic impact on New York City, only CityBridge employees working in New York City and New York City-based vendors were analyzed.

---

<sup>1</sup> IMPLAN (Impact Analysis for PLANning), created by MIG, Inc. (formerly Minnesota IMPLAN Group, Inc.), is an industry standard input-output model used to conduct economic impact analyses by leading public and private sector organizations across the United States, including the federal government, New York State Department of Labor, and New York Office of the State Comptroller. IMPLAN traces the pattern of commodity purchases and sales between industries that are associated with each dollar’s worth of a product or service sold to a customer, analyzing interactions among 536 industrial sectors within the geographies under study (in this case, New York City and New York State).

## CityBridge Consortium Organizational Structure by Firm, Role, and Reporting Detail



For additional details on the reporting methodology used for this analysis, please refer to the Data Collection section of the 2015 Employment Report.

### EMPLOYMENT & ECONOMIC IMPACTS

Widespread installation of the LinkNYC network began in late 2015, with the first stations, known as Links, going live to the public on February 18, 2016. By the end of the year, more than 530 Links were active across the city, with an additional 87 units installed and in the activation pipeline.<sup>2</sup>

#### Aggregate Impacts

Economic impacts are generated by the direct, indirect, and induced employees of the CityBridge consortium and those of its vendors. As of December 31, 2016, CityBridge directly employed 180 local workers in New York City, the vast majority of them with Intersection. Direct CityBridge employees refer to those employed by a joint-venture partner in New York City in 2016.

<sup>2</sup> Active and installed Links as of 1/10/2017. For the most up-to-date information, visit <https://www.link.nyc/find-a-link.html>.

### Direct CityBridge Employment by Joint-Venture Partner, 2016

Employer	Total Employees in New York City
Intersection	170
CIVIQ	10
Qualcomm	-
<b>Total</b>	<b>180</b>

Sources: Intersection, CIVIQ, Qualcomm

Note: All employment numbers rounded to the nearest increment of 5.

Support employees refer to those hired by CityBridge vendors to assist in LinkNYC-related tasks, as determined by total spending among New York City-based vendors in 2016. Project spending among all CityBridge partners and vendors totaled \$101 million in 2016, of which 69 percent was spent in New York State and 63 percent in New York City.

Most CityBridge employees work on at least one other project in addition to LinkNYC. To account for work directly related to LinkNYC activity only, the consortium's 180 direct employees were converted to full-time equivalents (FTEs) based on the number of hours allocated to LinkNYC.<sup>3</sup> After controlling for hours allocated to non-LinkNYC activities, CityBridge directly employed 100 full-time equivalent workers in New York City in 2016, with its vendors responsible for another 250 jobs directly related to LinkNYC. Taken together, direct activity by CityBridge and its NYC-Based Vendors resulted in 350 FTEs.

These direct jobs in turn generated 265 indirect and induced support jobs through multiplier effects, for a total annual employment impact of 615 jobs – more than double the local job impact recorded in 2015 and within five percent of CityBridge's total employment goal upon full program maturity. In total, direct, indirect, and induced jobs generated more than \$68 million in compensation and nearly \$129 million in economic output in 2016. Economic output generated by CityBridge employees increased 74 percent over 2015 levels, with local vendor output increasing 80 percent year-over-year.

### LinkNYC Employment and Economic Impacts, New York City, 2016

Employer	Direct FTEs	Indirect/ Induced FTEs	Total Labor Income	Total Economic Output
CityBridge	100	70	\$18,600,000	\$27,900,000
NYC-Based Vendors	250	195	\$49,800,000	\$101,000,000
<b>Total</b>	<b>350</b>	<b>265</b>	<b>\$68,400,000</b>	<b>\$128,900,000</b>

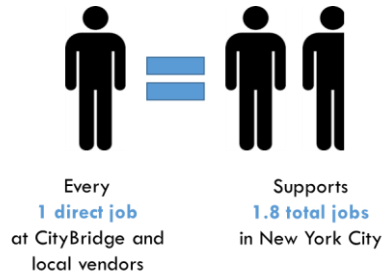
Sources: CityBridge, HR&A Advisors, IMPLAN

<sup>3</sup> The number of FTEs in 2016 was calculated based on the total number of employee hours recorded for LinkNYC tasks between January 1, 2016 and December 31, 2016, divided by total yearly hours. The latter (1,920 hours) assumes 40 hours worked per week with 4 weeks of vacation.

### LinkNYC Employment Multipliers

CityBridge employment yielded a 1.8 economic multiple, meaning that for every 1 local employee hired by the consortium or one of its vendors in support of LinkNYC, an additional 0.8 jobs are generated within the New York City economy.

#### LinkNYC Employment Multiplier, 2016



The 350 direct roles supported by CityBridge and its New York City-based vendors in 2016 in turn generated 105 indirect and 160 induced roles, for a total employment impact of 615 in 2016.

#### LinkNYC FTE Employment, New York City, 2016

Employer	Direct	Indirect	Induced	Total
CityBridge	100	25	45	170
NYC-Based Vendors	250	80	115	445
<b>Total</b>	<b>350</b>	<b>105</b>	<b>160</b>	<b>615</b>

### GEOGRAPHY

Indirect and induced employment and spending is generated in local communities where direct employees live. Two-thirds of New York City-based CityBridge employees resided within the five boroughs in 2016, with residencies recorded in at least 60 different neighborhoods throughout the city.<sup>4</sup> Much of the remainder commuted in from neighboring counties in the Tri-State Area (28 percent). Vendor firms contributing to LinkNYC in 2016 were also located throughout the city, with nearly \$10 million in contracts going to firms based in boroughs outside of Manhattan.

<sup>4</sup> Based on local CityBridge employees with known residencies. Residency information was collected across all departments in 2016, whereas the available address information used in last year's report was limited to Technology workers only. The figures above are thus not directly comparable to those cited in the 2015 Employment Report. When the 2016 sample is similarly restricted to Technology workers only, the share of New York City-based workers who are also New York City residents rises to 75 percent.



## EMPLOYMENT CHARACTERISTICS

In addition to providing a critical public service in introducing free and fast public Wi-Fi throughout the five boroughs, CityBridge, through the continued development, installation, and maintenance of the citywide LinkNYC network, is also helping advance New York City's burgeoning tech ecosystem through the employment of New Yorkers in high-wage, high-demand technology occupations. Roles related to LinkNYC range from highly-skilled engineering positions to technical roles not requiring a four-year degree.

LinkNYC employees earned an average annualized salary of \$99,800 in 2016.<sup>5</sup> Nearly 40 percent of the total hours dedicated to LinkNYC in 2016 were in roles not requiring a college degree. These roles paid, on average, between \$47,200 and \$63,000 per year, up to 62 percent more than the average annual salary among non-degree preferred occupations in New York City overall, suggesting that LinkNYC offers lesser-educated New Yorkers a critical pathway towards upward mobility.<sup>6</sup>

Wages for highly-skilled roles within the consortium are also more competitive at the occupational level, with core Tech positions, including Software Engineers and Network Architects, taking in \$116,300 per year, on average, relative to \$110,500 recorded among all such workers in New York City in 2016. Media sales agents at Intersection also out-earned their peers at other firms, with total annual incomes of \$114,700 (inclusive of commissions) compared to a citywide average of \$81,500.

Despite comprising more than half of the workforce overall, women make up just 30 percent of employees within major tech companies in the United States, a share that falls to 23 percent when only leadership roles are considered.<sup>7</sup> Women comprised more than a third of LinkNYC employment in 2016 – a share on par with local industry averages.<sup>8</sup> This ratio holds steady through to the executive level, where fully a third of Intersection chief executives are women, as compared to the U.S. average of 23 percent. In providing career opportunities to New Yorkers across a wide range of roles, LinkNYC is helping promote inclusive growth within the city's growing tech ecosystem.

---

<sup>5</sup> Reflects the average annualized salary among New York City-based Intersection and CIVIQ employees, weighted by the total number of hours allocated toward LinkNYC in 2016.

<sup>6</sup> Per EMSI, the average annual salary among all occupations not requiring a college degree was approximately \$39,000 in New York City in 2016.

<sup>7</sup> Based on an analysis of gender among major tech companies, including Amazon, Apple, Facebook, Google, Twitter, Microsoft, and Intel, as reported by c|net.

<sup>8</sup> Per EMSI, women made up 35% of all workers in the Computer Systems Design and Related Services sector in New York City in 2016.

**EXHIBIT C**  
**CORRESPONDENCE**

*See attached Correspondence between CityBridge and Con Edison:*

- *CityBridge Letter to Con Edison dated December 9, 2015;*
- *CityBridge Letter to Con Edison dated February 29, 2016;*
- *Con Edison Letter to CityBridge dated January 10, 2017;*
- *CityBridge Letter to Con Edison dated February 27, 2017; and*
- *Con Edison Letter to CityBridge dated April 28, 2017.*

CityBridge, LLC  
c/o Intersection  
100 Park Avenue  
New York, NY 10017

December 9, 2015

Mr. Robert D. Schimmenti  
Senior Vice President  
Electric Operations  
Con Edison Company of New York, Inc.  
4 Irving Place  
New York, New York 10003

VIA EMAIL

Re: LinkNYC

Dear Mr. Schimmenti:

I am writing to follow up on a meeting that my team at CityBridge, LLC had with Con Edison representatives on November 24, 2015, regarding electric service issues to support LinkNYC, which CityBridge is implementing pursuant to a franchise with the City of New York ("City"). As set forth in more detail below, LinkNYC is a transformative, consumer-friendly initiative that will provide important communication and public safety benefits to the City's residents and visitors. To date, Con Edison has been extremely supportive of our efforts. However, as we discovered at the November 24<sup>th</sup> meeting, as we move from design to implementation, some important electric service issues need to be resolved. Specifically, in this letter we ask that Con Edison: (1) confirm that it will be responsible for a certain portion of the cost of providing service to each Link kiosk; and (2) confirm that the Link kiosks will be charged as unmetered service accounts. In the alternative, we ask that Con Edison agree to provide unmetered service during a start-up period commencing December 15, 2015 and ending July 31, 2016, to be extended at mutual agreement if no metering solution has been found by the end date.

### **LinkNYC**

LinkNYC is a new progressive program developed by Mayor de Blasio's team to provide increased communications throughout the City. The program calls for installing up to 10,000 Link kiosks throughout the five boroughs by July 23, 2022. The Link kiosks will provide high-speed public internet access; touchscreen access to hundreds of City services; free phone calls to anywhere in the United States; USB charging capability; and direct access to the City's police and fire departments and other first responders, to the City's 8.4 million residents and 56 million annual visitors all for free, 24 hours per day 365 days per year. Our 55-inch advertising displays can be used to immediately display emergency messaging as directed by the City. These messages can target specific locations to provide information relevant to people in that area, which can improve public communications in all manner of emergency situations. The units may also be equipped with security cameras. Mayor de Blasio had this to say about the Link kiosks:

December 8, 2015

Page 3

throughput rates or other usage factors. Moreover, the kiosks are similar to the warning lights or electric signs enumerated in Rule 6.9. For example, the kiosks will include electric signs and will provide important public safety benefits. More practically, there is no space within or on the kiosks to accommodate a utility-grade meter. Accordingly, we request that Con Edison confirm that it will provide unmetered service to the kiosks based on a reasonable rate formula that includes proper usage estimates.

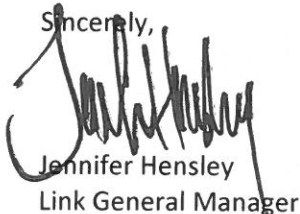
**Transition Period**

As noted earlier, the plan is to install at least 510 Link kiosks by July, 2016. In the event that, despite the information provided herein, Con Edison cannot or will not confirm its share of cost responsibility for the service connections or that the kiosks will receive unmetered service, we request that it: (1) provide service connections, at CityBridge's cost; and (2) provide unmetered service based on reasonable rate and usage estimates, during a transition period from December 10, 2015 through at least July 31, 2016. The interconnection services and electricity sales would be provided by Con Edison, and paid for by CityBridge, subject to a reservation of rights whereby either party, or both, can seek a ruling from the Public Service Commission interpreting the Tariff. This interim plan will allow both parties to see the Link kiosks in operation and provide for field observations and testing. The interim plan also is essential to allow a prompt roll out of the Link kiosks, consistent with the City's mandate.

Thank you in advance for your anticipated cooperation. Time is of the essence, so we would like to resolve these issues as soon as possible. Therefore, we hope to hear from you by December 15, 2015, and if further meetings are needed we will make ourselves available at your convenience.

Please contact me with any questions.

Sincerely,



Jennifer Hensley  
Link General Manager

cc: Robert M. Loughney, Esq.  
Matt Glasser, Con Edison  
Frances Resheske, Con Edison

CityBridge, LLC  
c/o Intersection  
100 Park Avenue  
New York, NY 10017

February 29, 2016

Mr. Robert D. Schimmenti  
Senior Vice President  
Electric Operations  
Con Edison Company of New York, Inc.  
4 Irving Place  
New York, New York 10003

Re: LinkNYC

Dear Mr. Schimmenti:

I am writing to follow up on a meeting that CityBridge, LLC had with Con Edison representatives on January 11, 2016, regarding electric service issues to support LinkNYC, which CityBridge is implementing pursuant to a franchise with the City of New York ("City"). As discussed, the plan is to install at least 510 Link kiosks by July, 2016, with the goal of installing an additional 7,000 kiosks over the next 3 to 8 years.

At the January 11, 2016 meeting, the parties could not agree on: (i) whether Con Edison should absorb part or all of the cost of connecting the Link kiosks to the Con Edison electric system; or (ii) whether Con Edison should develop an unmetered rate that would be applicable to all Link kiosks. In addition, the parties agreed that these issues would need to be resolved by the New York State Public Service Commission ("PSC").

Subsequent to the January 11, 2016 meeting, we were informed by Con Edison staff that they intend to assess an additional fee of \$1,700 per kiosk for "services". We have not received details about what this fee covers or how it is authorized under the tariff.

CityBridge intends to file a petition with the PSC to resolve these tariff-related disputes in the near future. In order to allow the installation of the Link kiosks to proceed pending a PSC decision ("Transition Period"), the parties agree as follows:

1. Con Edison will continue to assist CityBridge with interconnecting the Link kiosks to the electric system during the Transition Period at sites designated by CityBridge;
2. During the Transition Period, CityBridge will pay for all costs of interconnecting the Link kiosks, provided that Con Edison will reimburse CityBridge for a portion of those costs if the PSC determines it must shoulder cost responsibility for such installations, if any;

3. Con Edison will determine in good faith an unmetered rate that will apply to Link kiosks installed during the Transition Period without prejudice to its position that all kiosks ultimately should be metered; and
4. When the PSC issues a ruling addressing the cost responsibility for the interconnection costs for the Link kiosks, whether unmetered service should be applied to the kiosks permanently, and whether any other Con Ed charges are appropriate the parties will true up any payments made prior to the PSC ruling and implement that ruling going forward.

Please confirm your consent to these terms by signing below and returning an executed copy to me. Thank you in advance for your anticipated cooperation. Please contact me with any questions.

Sincerely,  
  
Jennifer Hensley  
General Manager, Link

**Agreed:**

**By:**

\_\_\_\_\_  
**Title**  
**Consolidation Edison Company of New York, Inc.**

cc: Robert M. Loughney  
David Warner, Esq.  
Kerri Kirshbaum, Esq.



**Robert Schimmenti**  
Senior Vice President  
Electric Operations

January 10, 2017

*Via E-mail*

Jennifer Hensley  
General Manager, Link  
100 Park Avenue, Sixth Floor  
New York, NY 10017

Dear Ms. Hensley;

This letter is in response to the CityBridge request at our December 14, 2016 meeting with PSC Staff concerning the Company's service determinations for CityBridge kiosks. This letter covers the Company's determination concerning the costs associated with the service for the CityBridge kiosks as well as the requirement that CityBridge service be metered.

As you know, since the start of the CityBridge LinkNYC project, Con Edison has provided significant support. We have a team of employees and a Project Manager that meet regularly with the CityBridge Operations groups. We have trained CityBridge contractors to work in Con Edison manholes and we have worked with CityBridge as they install their own services. And, the Company has allowed CityBridge to install nearly 600 kiosks without metering in order to keep the project on schedule.

Attached, please find a September 2015 e-mail from Matt Glasser, the Project Manager, to the CityBridge Vice President of Construction. The e-mail explains the Company's determination on service costs. During our meeting, the "application" and Company "ruling" process for new service was discussed. As you know, in the case of CityBridge, the Company does not have an individual determination for each location. There is still a case for every job, with layouts, but the process has been handled by weekly meetings between Con Edison and CityBridge in order to meet CityBridge's expedited timeline and the commitments that CityBridge has made to the City of New York. As noted above, although the Company has not provided a written service determination for each kiosk installation, the Company has explained the service cost and metering requirements numerous times during meetings with CityBridge. Counsel from Couch White was present at one of these meetings.

Based on the Company's electric tariff, the rationale for the Company's determination is as follows:

Under General Rule 5.2.1 of the electric tariff,<sup>1</sup> Con Edison provides electric service to a building or premise through a single service line (unless, in the Company's discretion additional service lines are

---

<sup>1</sup> All referenced tariff sections are attached.

required). Under General Rule 5.1, premises means a parcel of land; or more than one building and/or a parcel of land, proximate to each other, if there is common use...

A CityBridge kiosk is not a building or a premise. As a result, the alternative service available to CityBridge is temporary service.

The Company's determination that the kiosks are a temporary service is consistent with the Company's longstanding treatment of similarly situated customers including bus shelters, telephone kiosks, Wi-Fi and cable power supplies, and electric vehicle charging stations. CityBridge has asserted that the kiosks are unique and not comparable to the existing types of equipment in the Con Edison service territory, but the Company does not agree. Similar services have been installed in the Con Edison service territory for many years. For example, a CityBridge kiosk essentially provides three types of services: advertising, information/internet/entertainment, and phone service. The Company has provided electric service to each of these types of services in the past. Bus shelter and kiosks provide advertising; cable television and Wi-Fi companies provide access to the internet along with information and entertainment; and telephone companies, including Wi-Fi companies, provide phone service. All of these entities are classified as temporary service (e.g., not a building or premise) like CityBridge kiosks. Accordingly, the Company cannot provide preferential treatment to CityBridge.

Under General Rule 5.2.7, Con Edison provides temporary service to, among other things, non-permanent structures or under circumstances where the facilities installed by the Company may not be used for permanent supply.

A CityBridge kiosk is located in the City right-of-way. The kiosk can be relocated at any time and, therefore, is a temporary structure. As a result, CityBridge is required pursuant to General Rule 5.2.7 to pay in advance the costs associated with the service.

Additional factors specific to CityBridge are as follows: The CityBridge Franchise is located on the inalienable property of the City of New York and is non-exclusive (CityBridge Franchise, Section 3.1),<sup>2</sup> and; the CityBridge Structures are subject to any applicable requirements of the New York City Administrative Code (CityBridge Franchise at Exhibit 4, Siting Criteria, p. 2).<sup>3</sup>

Finally, under General Rule 6.9 of the electric tariff, CityBridge kiosks are not eligible for unmetered service. The CityBridge kiosks do not have a definitively determinable demand and do not operate on a fixed schedule. Based on our discussions, CityBridge had agreed to modify the design of its kiosks to accept a meter and move forward with the new design. Please provide Con Edison with a firm date to begin the installation of meters in the CityBridge kiosks. We believe the parties should move forward with the new design now.

---

<sup>2</sup> [http://www1.nyc.gov/assets/doitt/downloads/pdf/Franchise-Agreement-for-Public-Communications-Structures-\(REVISED-FINAL-12-10-2014\).pdf](http://www1.nyc.gov/assets/doitt/downloads/pdf/Franchise-Agreement-for-Public-Communications-Structures-(REVISED-FINAL-12-10-2014).pdf)

<sup>3</sup> <http://www1.nyc.gov/assets/doitt/downloads/pdf/Proposed-PCS-Franchise-Exhibit-4-Siting-Criteria.pdf>



Please let us know if you have any additional questions. We look forward to continuing our support of this important project.

Sincerely,

A handwritten signature in black ink, consisting of a stylized initial 'M' followed by a long, sweeping horizontal line that tapers to the right.

Att:

C: Peter McGowan (*via e-mail*)

Michael Corso (*via e-mail*)

Michael Twergo (*via e-mail*)

Joseph Lochner (*via e-mail*)

**From:** [Glasser, Matthew](#)  
**To:** [Daniel Stuart \(Daniel.stuart@citybridgellc.com\)](mailto:Daniel.stuart@citybridgellc.com)  
**Cc:** [Glasser, Matthew](#)  
**Subject:** Service requirements  
**Date:** Thursday, September 17, 2015 11:58:00 AM  
**Attachments:** [SKM\\_364e15091711380.pdf](#)

---

Dan,

As discussed, we are directed by our tariff to install services to a premise. Street furniture does not meet the definition of a premise.

If we are not required to install a service, a service is supplied at the customers cost for installation and reinforcement. This has also been the past practice with similar Wi-Fi and power supply requests.

Thanks

Matt

PSC NO: 10 – Electricity  
Consolidated Edison Company of New York, Inc.  
Initial Effective Date: 11/01/2011

Leaf: 33  
Revision: 0  
Superseding Revision:

## GENERAL RULES

### 5. Installation and Maintenance of Overhead and Underground Facilities

#### 5.1 Definitions: The terms defined below apply to this General Rule only.

- **“Applicant”** means a developer, builder, person, partnership, association, corporation or governmental agency requesting the provision of electric service either:
  - at a premises to be used as the applicant's residence (residing applicant);
  - in a residence to be used by others (non-residing applicant), provided, however, that a governmental agency applying for service on behalf of a client, who would otherwise be a residing applicant, shall be treated as a residing applicant; or
  - at a non-residential premises.
- **“Appurtenant facilities”** means the necessary and ancillary accessories to an electric line that enable the transportation and distribution of electric energy.
- **“Distribution line”** means an electric line used to distribute electric energy, which will or may reasonably be expected to provide service to more than one Customer.
- **“Multiple occupancy building”** means a structure (including row houses) enclosed within exterior walls or fire walls, which is built, erected, and framed of component structural parts and is designed to contain four or more individual dwelling units for permanent residential occupancy.
- **“New construction”** means the installation of new electric distribution lines, service lines, and appurtenant facilities on any R/W where no such electric distribution line exists, and may also include (in connection with such installation) the addition of appurtenant facilities (other than replacement facilities) to existing distribution lines. The installation of a new facility parallel to and on the same R/W as an existing underground facility also constitutes the new construction of such facility.
- **“Premises”** means a parcel of land; or more than one building and/or parcel of land proximate to each other if there is common use, whether or not such buildings or parcels are individually owned or leased or separated by public or private roads.
- **“Public right-of-way”** means the area within the territorial limits of any street, avenue, road or way that is for any highway purpose under the jurisdiction of the State of New York or of the legislative body of any county, city, town or village that is open to public use and that may be used for the placement of Company facilities.

Issued by: Robert N. Høglund, Senior Vice President & Chief Financial Officer, New York, NY

PSC NO: 10 – Electricity  
Consolidated Edison Company of New York, Inc.  
Initial Effective Date: 11/01/2011

Leaf: 34  
Revision: 0  
Superseding Revision:

## GENERAL RULES

### 5. Installation and Maintenance of Overhead and Underground Facilities - Continued

#### 5.1 Definitions – Continued

- **“Residential building”** means a structure enclosed within exterior walls or fire walls, which is built, erected, and framed of component structural parts and is designed for permanent residential occupancy.
- **“Residential subdivision”** means a tract of land divided into five or more lots for the construction of five or more new residential buildings, or the land on which new multiple occupancy buildings are to be constructed, the development of either of which, if required, has been approved by a governmental authority having jurisdiction.
- **“Right-of-way” (R/W)** means a right to pass over, occupy or use another's land for placing and maintaining Company facilities.
- **“Service line”** means an electric line used to connect a distribution line to an individual customer's meter or the point of attachment to a building or the premises; a service line, at the Company's discretion, may be connected to two or more meters at a single premises.
- **“Supply line”** means a part of a distribution line that is installed between an existing electric distribution system and an underground distribution line within a residential subdivision.

Issued by: Robert N. Hogle, Senior Vice President & Chief Financial Officer, New York, NY

PSC NO: 10 – Electricity  
Consolidated Edison Company of New York, Inc.  
Initial Effective Date: 11/01/2011

Leaf: 35  
Revision: 0  
Superseding Revision:

## GENERAL RULES

### 5. Installation and Maintenance of Overhead and Underground Facilities - Continued

#### 5.2 Common Provisions Applicable to the Installation and Maintenance of Overhead and Underground Facilities

##### 5.2.1 General

To avoid misunderstanding, the Customer shall consult the Company before starting work as to the exact location of the point of service termination and as to whether the facilities are to be installed overhead or underground.

Electric service will be supplied to a building or premises through a single service line, except where, for reasons of least cost to the Company, conditions on the Company's distribution system, improvement of service conditions, or magnitude of the Customer's load, the Company elects to install more than one service line.

The Company reserves the right to determine the location and the point of service termination of its service line.

##### 5.2.2 Change in Location of Service Line and Appurtenant Facilities

Any change requested in the point of service termination or location of the service line and appurtenant facilities, provided such change is approved by the Company, will be made at the expense of the applicant, who shall pay in advance the Company's estimated cost of such change.

##### 5.2.3 Maintenance of Overhead and Underground Facilities

Any distribution, supply, or service line which the Company is required to install and has installed, or the Customer has installed on the Company's behalf, in whole or in part, shall be maintained, repaired, and if necessary replaced by the Company at its expense, up to the service termination point, as required by 16 NYCRR Sections 98.4 and 98.5.

The Company will maintain underground service lines to 1, 2, and 3 family houses whether or not such service line has been installed by the Company.

Issued by: Robert N. Hoglund, Senior Vice President & Chief Financial Officer, New York, NY

PSC NO: 10 – Electricity  
Consolidated Edison Company of New York, Inc.  
Initial Effective Date: 02/20/2012

Leaf: 37  
Revision: 1  
Superseding Revision: 0

## GENERAL RULES

### 5. Installation and Maintenance of Overhead and Underground Facilities - Continued

#### 5.2 Common Provisions Applicable to the Installation and Maintenance of Overhead and Underground Facilities – Continued

##### 5.2.6 Easements or Rights-of-Way When Required for Line Extensions

When required by the Company, the Customer (or Customers) shall execute and deliver to the Company, free from cost, permanent easements or rights-of-way for the placing and maintaining of an extended line in so far as the line extension or subsequent additions thereto affect the property owned by the Customer (or Customers).

The Company shall not be obliged to commence construction of an extension of its electric system until the Customer (or Customers) to be served by such extension have obtained and delivered to the Company satisfactory permanent easements or rights-of-way agreements or have agreed to pay a lump sum or a surcharge in accordance with General Rule 5 for such costs as may be incurred by the Company if at the Customer's request it obtains such easements or rights-of-way.

A successor to a Customer who has agreed to pay such a surcharge shall, as a condition of receiving service, agree to assume the surcharge obligations of the predecessor.

These provisions are applicable irrespective of the length of the extension.

##### 5.2.7 Temporary Service

Where the use of service will be temporary, the Customer will be required to pay in advance to the Company the estimated non-recoverable cost of the Company's service installation and removal (including any street reinforcement and extension required), as determined by the Company and endorsed on the agreement for service. The Customer shall not be relieved of the obligation to fulfill the term and minimum charge provisions of the agreement for service. Where the applicable Service Classification has a term of 1 year or more the Customer may contract for temporary service for a lesser period but not less than 30 days.

Temporary service for the purposes hereof shall include, but shall not be limited to, use of service to non-permanent structures; or to construction sites, fairs, celebrations, and other temporary activities; or under circumstances where the Company has reason to believe that the facilities installed by the Company to provide service may not be used for permanent supply.

The Customer's payment hereunder shall be refundable if circumstances change after the Customer commences to take service, and the Company has reasonable assurance that the use of the service will not be temporary and that the Company's facilities will be used for permanent supply.

In instances where service will be used for less than 60 days for any purpose or the service installation presents difficulties as to metering, the Company may estimate the amount of the charges for such service according to the Service Classification applied for and specify, by endorsement upon the agreement for service, such amount as the charges for the service.

PSC NO: 10 – Electricity  
Consolidated Edison Company of New York, Inc.  
Initial Effective Date: 11/01/2011

Leaf: 63  
Revision: 0  
Superseding Revision:

## GENERAL RULES

### 6. Meters – Continued

#### 6.7 Seals on Meters and Other Equipment

All meters (regardless of ownership), meter equipment and other enclosures on the service side of the meter must be sealed and/or locked. No person, except a duly authorized employee of the Company or the Customer's Meter Service Provider, shall be permitted to break or replace a seal or to alter or change a meter or its connections or location; except that, when wiring changes are being made by the Customer following receipt of Company specifications as to service supply, a qualified electrician may break the meter seal and remove and remount a meter when authorized to do so by the Company or the Customer's Meter Service Provider.

#### 6.8 Testing of Meters

At such times as the Company may deem proper, or as the Public Service Commission may require, the Company will test Customer-owned meters and its meters and measuring devices in accordance with the standards and bases prescribed by the Public Service Commission. The Company may, but is not required to, test meters furnished by Meter Service Providers.

#### 6.9 Unmetered Service

Where the Customer's only utilization equipment consists of warning lights, electric signs or the like, having a total rated capacity of less than 10 kW and an estimated use of less than 3,000 kWhr per month and such equipment has a definitely determinable demand, and is operated on a fixed schedule, the Company may supply unmetered service at the applicable Service Classification rates and charges, upon the basis of the usage determined by the Company and endorsed upon the agreement for service. Unmetered service will not be supplied at any location where the Customer is supplied with metered service or to any account taking Standby Service. The Company reserves the right at any time to meter service previously supplied on an unmetered basis.

Issued by: Robert N. Hoglund, Senior Vice President & Chief Financial Officer, New York, New York

CityBridge, LLC  
% Intersection  
10 Hudson Yards, 26th Floor  
New York, NY 10001

February 27, 2017

Robert Schimmenti  
Senior Vice President, Electrical Operations  
Consolidated Edison Company of New York, Inc.  
4 Irving Place, Room 1415-S  
New York, NY 10003

Dear Mr. Schimmenti:

This is in response to your January 10, 2017 letter, in which Con Edison addresses its service determination pursuant to a request made by both CityBridge and PSC staff during our December 14, 2016 meeting. As an initial matter, we thank Con Edison for its continuing assistance since the start of LinkNYC rollout in late 2015. Since that time, however, Con Edison has required CityBridge to perform service installations with its own contractors and absorb these and other costs, which we have been doing with a reservation of rights. While constructive project-level communications have been ongoing for over one year, your letter is only the second formal Company correspondence in that time and the first that attempts to explain Con Edison's rationale for its refusal to perform and bear expenses of service connections in accordance with its Schedule for Electricity Service ("Tariff"), as well as its requirement for future use of meters. Our request for written justification dates back to December 8, 2015. Having now been finally received, we do not believe that Con Edison's rationale is reasonable or supported by the Tariff.

Specifically, Con Edison's position on installation costs is unsupported by the Tariff's plain language, as the LinkNYC kiosks are permanent structures located on a parcel of land. Moreover, contrary to Con Edison's assertions, each kiosk meets the requirements for unmetered service pursuant to the Tariff. CityBridge respectfully requests that Con Edison revisit its conclusions in its January 10, 2017 letter in order to avoid a formal petition to the PSC seeking enforcement of the relevant Tariff provisions.

**Con Edison's Electric Tariff Obligates It to Bear Material and Installation Costs**

Con Edison's Tariff analysis is incomplete and flawed. General Rule 5.2.1 cited in the letter obligates Con Edison to provide service "to a building or premises" through a service line furnished by the Company. For purposes of General Rule 5.2.1, a "premises" is defined as "a parcel of land; or more than one building and/or parcel of land proximate to each other if there is common use, whether or not such buildings or parcels are individually owned or leased or separated by public or private roads." Where, as here, the local governmental authority requires the service to be underground, Con Edison is required to bear "the material and installation costs equivalent to the cost that the Company would be required to bear if the facilities were installed



overhead.” Con Edison cost responsibility for overhead facilities is established by General Rule 5.4.2, which requires the Company to bear material and installation costs for up to 500 or 300 feet of distribution line, for single-phase and three-phase supply, respectively.

Here, CityBridge has requested that Con Edison install a service line from its street system to the premises on which the LinkNYC kiosks are situated. Most or all of the LinkNYC kiosks will be installed near the curb line of City streets, within 300 feet of the utility street system, meaning that Con Edison should clearly absorb the material and installation costs for providing service to each kiosk.

In response, Con Edison claims that the LinkNYC kiosks are neither “a building or a premises.” Con Edison’s allegation, however, is unsupported by express Tariff language. In order to constitute a premises under the Tariff, the service location must be either “a parcel of land” or “more than one building and/or a parcel of land, proximate to each other, if there is common use....” Con Edison’s letter does not address why it declines to consider a LinkNYC kiosk to be located on and serviced through a “parcel of land.”

Each kiosk, weighing nearly one ton and standing almost 10 feet tall, is permanently embedded in a foundation dug beneath the sidewalk of each kiosk location. CityBridge’s Franchise Agreement expressly recognizes and deems the kiosks CityBridge property and grants to it rights on, under and above the parcels of land on which kiosks are located. These facts amply demonstrate that the LinkNYC kiosk locations constitute a “parcel of land,” and thus are “premises,” under the Tariff. As such, the LinkNYC kiosk locations are entitled to a service connection and Con Edison is obligated by the Tariff to bear those costs. Indeed, in order to accept Con Edison’s position that the kiosks are not located on a “premises” (i.e., on a parcel of land), one would have to assume that the kiosks are not anchored to the ground. While the kiosks contain advanced and impressive technological capabilities, levitation is not one – the kiosks are firmly and permanently affixed to discrete parcels of land.

### **Con Edison’s “Street Furniture” Classification is Not Supported by the Tariff**

The Company also relies on a 2015 email, in which a Company employee deems our use to be similar to “street furniture,” which the Company says it has historically classified as temporary service. According to Con Edison, its determination for CityBridge is consistent with its previous treatment of bus shelters, telephone kiosks, Wi-Fi and cable power supplies, and electric vehicle charging stations. Again, Con Edison’s position is not supported by the Tariff.

The term “street furniture” is not included anywhere within the Tariff, although the Company is likely referring to past treatment of bus shelters and other similar structures installed pursuant to a Coordinated Street Furniture franchise agreement awarded in 2005.<sup>1</sup> However, the current Tariff definition of “premises,” which includes the obligation to provide service to a parcel of land, did not become effective until 2010.<sup>2</sup> Thus, the rules at the time that cost

---

<sup>1</sup> See <http://www.nyc.gov/html/dot/html/infrastructure/streetfurniture.shtml>.

<sup>2</sup> See Case 08-E-0539, Consolidated Edison Company of New York, Inc. – Electric Service, Order Regarding Tariff Filing (issued February 17, 2010) at 4-5, 7-8.

responsibility determinations were made for “street furniture” are no longer relevant and current realities amply demonstrate that the parcels of land on which LinkNYC kiosks are located fit within the current Tariff definition of “premises.”

### **Electric Service to the Kiosks Will Be Permanent, Not Temporary**

After declining to furnish service in accordance with the Tariff, Con Edison next posits that CityBridge can only qualify for temporary service with connection at its own cost. This too has no foundation in, and is wholly refuted by, how the kiosks operate and the Tariff itself.

As Con Edison is aware, CityBridge is now into its second year of operating LinkNYC sites. Our Franchise Agreement with the City of New York grants to CityBridge rights “on, over and under” each of the land parcels where LinkNYC kiosks are situated for the Franchise’s duration. Having made reference to the Franchise in its letter, Con Edison is also undoubtedly aware (but neglects to mention) that such duration, and CityBridge’s performance obligation, extends for at least 12 and up to 15 years with provision for successor use thereafter.

By contrast, the definition of “Temporary Customer” in General Rule 2 of the Tariff is “a non-residential Customer who requests or receives service for a period of **up to two years.**” (Emphasis added.) CityBridge has not requested service for a period of two years or less; its Franchise occupancy rights and performance obligations extend more than a decade, and within this calendar year our initial locations will have been receiving service for more than two years. Pursuant to Con Edison’s Tariff, CityBridge is not and cannot be a “Temporary Customer.”

While seeking to place CityBridge into a temporary classification, Con Edison nowhere mentions General Rule 2 and the definition referenced above. To the exclusion of this provision Con Edison relies only on General Rule 5.2.7 (entitled “Temporary Service”) – and then only selectively. Principles of rule construction require these sections be read together. When both are applied, it is clear that CityBridge does not meet the definition of a “Temporary Customer.”

The services provided here to CityBridge do not in any event fall within the definition of “Temporary Service” in Rule 5.2.7. This rule lists three illustrative categories of such service. One consists of “construction sites, fairs, celebrations” and similar transitory “activities,” which category clearly has no application here. The two others listed are “use of service to non-permanent structures,” or “under circumstances where the Company has reason to believe that facilities installed by the Company to provide service may not be used for permanent supply.” As noted earlier, each LinkNYC kiosk is nearly one ton in weight and 10 feet tall, immobile and permanently embedded in a foundation dug beneath the sidewalk of each parcel. These facts, independently or coupled with the long-term duration of the Franchise and CityBridge’s obligations thereunder, evidence a circumstance entirely different from that contemplated in Rule 5.2.7, and there is simply no basis to characterize the services as temporary under the Tariff.

Given the above, the several “additional factors” raised by Con Edison for consideration are not determinative, and neither are they compelling. Con Edison posits that because the ultimate owner of the parcels is not CityBridge but the City of New York, the services must be temporary. There is no doubt that Con Edison provides services to occupants of private and

public land (including City-owned land, both alienable and inalienable) pursuant to lease, tenancy, ground lease, concession, license and other arrangement. Accordingly, it is not correct that by virtue of not being the owner, electric services must therefore be temporary, and the Tariff provides no support for such a position. Alternatively, Con Edison asserts that because the Franchise is “non-exclusive,” service must be temporary. To be clear, while the Franchise is “non-exclusive” insofar as the City could grant another franchise for similar services subject to certain conditions and potential financial compensation to CityBridge, the Franchise Agreement confers to CityBridge exclusive occupancy of each parcel on which a LinkNYC kiosk is situated.

Con Edison also posits that because under possible future circumstances the City could potentially require CityBridge to relocate a kiosk, the kiosks are temporary structures. Possible accrual of a removal right based on remote future events is not unique to this Franchise and inherent to other property occupancy arrangements listed in the previous paragraph. To address particularly Con Edison’s assertion that a LinkNYC “kiosk can be relocated at any time and, therefore, is a temporary structure,” we note again that the structure is permanently anchored to an underground foundation and is immobile and cannot be relocated at will. To the extent Con Edison was referring to the City in the future asserting a removal right at a particular location, we note that the Franchise Agreement affords CityBridge significant protections, capping and otherwise limiting removal to narrow circumstances. To date with hundreds of LinkNYC kiosks erected, only three parcels have been relocated, and CityBridge expects annual removal totals to be in the single digits. In sum, potential exercise of a removal right under future remote circumstances is not a basis for temporary service classification under the Tariff.<sup>3</sup>

A final “additional factor” cited by Con Edison in support of a temporary service classification is that LinkNYC kiosks “are subject to any applicable requirements of the New York City Administrative Code.” The letter then fails to mention any Code provision that bears on the issues addressed in the CityBridge service request or interpretation of the tariff. It is noted however that the Administrative Code includes the Construction Code, the Electrical Code and otherwise codifies City legislation, and we assume that Con Edison requires all its customers to act in a lawful fashion. This does not give rise to temporary service classification pursuant to the Tariff.

### **LinkNYC Kiosks Satisfy Tariff Requirements for Unmetered Service**

LinkNYC kiosks meet the General Rule 6.9 criteria of “electric signs or the like” with (as already demonstrated to Con Edison) predictable demand under 10 kw and monthly usage of 800 kWh – well within the rule’s 3,000 kWh monthly cap. Accordingly the LinkNYC kiosks qualify for unmetered service. We note that at commencement of the deployment program Con Edison was unable to identify a suitably sized meter for the LinkNYC kiosks and there remain formidable technical challenges to incorporating meters in into the kiosk design which would at the minimum consume and divert significant program resources. The Tariff does not require use of meters in this application, and such use would cause undue hardship to this program.

### **Conclusion**

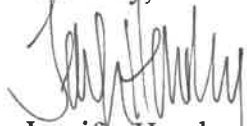
---

<sup>3</sup> Without prejudice and to eliminate this issue of apparent concern to Con Edison, as previously advised CityBridge is willing to absorb service line disconnection and reconnection costs associated with any required removals.

As CityBridge for a second year continues to fund its own service connections, Con Edison has still not articulated any lawful basis for its avoiding this responsibility. Its denial of the applicability of “premises” has no basis anywhere in the Tariff, while the facts and circumstances are inconsistent with and preclude a “Temporary Service” scenario under the Tariff’s own language. Most fundamentally (and ignored in Con Edison’s letter) CityBridge cannot be a “Temporary Customer” under any reasonable reading of the Tariff definition. Con Edison is responsible for past and future service connection costs and CityBridge again advises that it is proceeding under a reservation of rights in order not to impede progress of the LinkNYC program. The Tariff rules applied to the instant circumstances also support exemption from metering.

We would be pleased to receive Con Edison’s response to the issues identified in this letter and hopefully its reconsideration of its position in light of the fuller analysis of the Tariff provided here. Absent such reconsideration CityBridge has no choice but to seek a formal determination of the Commission. While this has never been our preference your current position provides no basis for resolution in any other fashion. Con Edison’s response is requested by March 3, 2017.

Sincerely,



Jennifer Hensley  
General Manger, Link

cc: Peter McGowan (via e-mail)  
Michael Corso (via e-mail)  
Michael Twergo (via e-mail)  
Joseph Lochner (via e-mail)



David P. Warner  
Associate Counsel  
Consolidated Edison Company of New York, Inc.  
4 Irving Place, Room 1815-S, New York, NY 10003  
(212) 460-4286 FAX: (212) 677-5850  
Email: warnerd@coned.com

April 28, 2017

*Via E-Mail*

Ms. Jennifer Hensley  
General Manager, Link  
CityBridge, LLC  
c/o Intersection  
10 Hudson Yards, 26th Floor  
New York, NY 10001

Re: Service Determinations for CityBridge Street Kiosks

Dear Ms. Hensley:

Robert Schimmenti has asked me to respond to your letter dated February 27, 2017 (“February 27 Letter”) concerning Consolidated Edison Company of New York, Inc.’s (“Con Edison” or the “Company”) service determination for the CityBridge street kiosks.

Con Edison is maintaining its determination that CitiBridge is responsible for: (1) the costs of its street kiosk service lines and installations; and (2) metering its street kiosks, for the reasons provided in its January 10, 2017 (“January 10 Letter”). Most of the information provided in the February 27 Letter is a repetition of prior CiyBridge positions to which the Company has already responded. Nevertheless, the Company is responding to the additional points raised in your February 27 Letter:

- General Rule 5.4.2 of Con Edison’s tariff, PSC NO: 10 – Electricity (“Tariff”) is not applicable to the CityBridge street kiosks. General Rule 5.4.2 governs the Company’s responsibility for overhead service requests from non-residential applicants and is inapplicable to the kiosks for two reasons: (1) the kiosks are not receiving overhead service; and (2) the kiosks are temporary services. The Tariff provisions applicable to temporary services such as the CityBridge Street kiosks are detailed in our January 10 Letter.
- The Company’s service determination for the CityBridge street kiosks does not include a determination that CityBridge is a temporary customer and Con Edison has never claimed that CityBridge is a temporary customer. General Rule 5.2.7, which is applicable to the street kiosks, governs temporary “service” and does not mention temporary customer.

- The February 27 Letter’s citation (at p. 2) to a New York City Department of Transportation (“NYCDOT”) Coordinated Street Furniture franchise agreement from 2005 is misplaced. The Company’s Tariff is submitted to and approved by the Public Service Commission. Definitions in a NYCDOT franchise agreement do not govern the applicability of the Company’s Tariff. The use of the term street furniture, used in a 2015 e-mail from Con Edison’s Project Manager, is not a defined term but is a general term used to describe customer facilities that are neither a building nor a premises, are not on a parcel of land, but in the municipal right-of-way, and are temporary structures, subject to removal pursuant to the laws, rules and regulations of the municipality.
- The weight, height and installation methods are irrelevant to a Tariff determination concerning a building or premise, or whether the CityBridge street kiosks are considered permanent.
- With respect to metering, the CityBridge street kiosks are not "electric signs or the like" as required under General Rule 6.9 of the Tariff. As stated in the Company’s January 10 Letter, the CityBridge street kiosks do not have a definitively determinable demand and do not operate on a fixed schedule. The CityBridge equipment contains high definition computer screens, advertising panels, phone chargers, cooling units for the summer and heating units for the winter. Under no reasonable interpretation can a CityBridge street kiosk meet a definition of “electric signs or the like.”

Moreover, the Company cannot treat CityBridge differently than any other similarly-situated customers. The September 2010 Tariff changes that you erroneously tried to link to 2005 NYCDOT franchise definitions, was made, in part, to address Commission and Company concerns that some commercial customer projects “impose significant capital costs on the Company that benefit the individual customer or developer more than the general body of ratepayers.”<sup>1</sup> The CityBridge street kiosk project is a clear example of a project that raises such subsidy concerns. The Company’s determination protects other customers throughout the Company’s service territory from subsidizing the costs of CityBridge’s project.

Finally, having a meter in place will benefit both Con Edison’s customers and Citibridge. The Company and Commission have long recognized the importance of customers’ paying for their actual energy usage. In metering the street kiosks, CityBridge will have the benefit of only paying for its actual electricity usage and other electric customers will not have to pay for CityBridge’s electricity use.

---

<sup>1</sup> Case 08-E-0539, Order approving tariff filing issued February 17, 2010, pp. 2-3, available at <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={8FFCD776-A9FB-4B29-B37A-6F3B79EA0B78}>.

To date, CityBridge has installed approximately 885 street kiosks without meters, which is significantly more than the Company committed to connect when CityBridge and Con Edison began working towards a re-design of the CityBridge street kiosks. The Company and CityBridge engineers determined a method for incorporating a Con Edison meter in the CityBridge street kiosks well over a year ago. As a result, the Company needs CityBridge to provide a firm date to begin the installation of meter-ready street kiosks. If CityBridge is unable to provide a date in the very near future, we will need to meet to discuss the required changes to the street kiosk design and establish a prospective schedule for service to meter-ready street kiosks.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. P. W.", is positioned below the word "Sincerely,".

c: Robert Schimmenti, Con Edison, (*via e-mail*)  
Peter McGowan, DPS Staff (*via e-mail*)  
Michael Corso, DPS Staff (*via e-mail*)  
Michael Twergo, DPS Staff (*via e-mail*)  
Joseph Lochner, DPS Staff (*via e-mail*)