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March 14, 2011

Hon. Jaclyn A. Brillling
Secretary
Public Service Commission
Three Empire State Plaza
Albany, NY 12223

Re: Case 008678
The Boulevard Towers Condo
119-49 Union Tpke, Flushing, NY 11375

Dear Secretary Brillling:

Consolidated Edison Company of New York, Inc. (“Con Edison” or the “Company”) submits this appeal in response to the March 1, 2011 Informal Review Decision (“Informal Hearing Decision” or “Decision”) issued in the captioned matter. Although the Company generally agrees with the analysis and findings in the Informal Review Decision, for the reasons described below, the Company takes issue with the Decision’s application of a 5% “fast meter” adjustment. The Company requests that the Commission modify the Informal Review Decision to eliminate this adjustment.

BACKGROUND

The Company relies upon the background, as set forth in the Informal Hearing Decision, as well as the facts provided by the Company in its December 8, 2010 position paper and rebuttal.

BASIS FOR APPEAL

The Informal Review Decision is incorrect and should be modified insofar as it directs the Company to apply a 5% fast meter adjustment to the complainant’s account.

This error stems from mistakes in the facts and/or in the application of the relevant regulations and Commission precedent.

In explaining the basis for applying the 5% adjustment, the Decision notes that during the disputed billing period of January 26, 2006 to April 24, 2008, the Company's billing system had rejected the demand readings reported on June 23, 2006, and July 25, 2006 before backbilling the account on August 17, 2006. In addition, the complainant made two high bill inquiries in 2007. The Hearing Officer concedes that it may have seemed reasonable for the Company's customer service representatives to have concluded at the time of these inquiries that the complainant's usage was in line with previous months and was, therefore, accurate. Nevertheless, the Hearing Officer concludes that the customer's 2007 inquiries warranted further scrutiny. The Hearing Officer opines that if comparisons had been made to the complainant's billing from the same period in the prior year, significantly higher demands for the disputed period would have been revealed. This, in turn, might have led to a request for a meter test. Consequently, the Hearing Officer concluded that the complainant is entitled to some remedy due to the Company's "failure" to test its meter in response to the 2007 high bill inquiries.

The Hearing Officer's contentions fail to establish that the Company did not comply with applicable procedures and protocols for meter testing or that the Company otherwise acted unreasonably. In fact, the Hearing Officer makes no claim that the Company failed to comply with any applicable procedures or protocols for meter testing. The Hearing Officer merely asserts that rejected bills in 2006 and bill inquiries in 2007 warranted further inquiry which *might* have resulted in a meter test. However, In a

Commission determination in Case 98-G-1982, the Commission rejected a similar argument:

[w]e reject complainant's argument that the utility should have tested the meter on its own initiative during or immediately after the backbilled period, since there was no reason to suspect that the meter was inaccurate.¹

Similarly, in this case, there was no reason for the Company's customer service representative to suspect an issue with the customer's meter, particularly since the customer's increased demand had been consistent over an eight to thirteen month period prior to the customer's call. Indeed, even while seemingly finding fault with the Company for not further investigating the high bill inquiries, the Hearing Officer recognizes that the response of the Company's customer service representatives "seemed reasonable." Thus, in the absence of evidence that the Company failed to follow procedures or protocols for meter testing or that it otherwise acted unreasonably, the Hearing Officer's claim that the Company failed to test the customer's meter should be rejected.

The Hearing Officer also asserts that the Commission's determination in Case 95-G-1006² suggests a 5% adjustment is appropriate in this case. Contrary to this assertion, however, this determination clearly indicates that applying the adjustment is inappropriate in this case. In describing the circumstances under which the 5% adjustment should be applied, the Commission states as follows:

Only because the meter was not tagged for a PSC inspection, and the Commission was not afforded the opportunity to test the gas meter, as it should have been in this case, did staff

¹ Case 98-G-1982, *Appeal by Ms. Cynthia Lowney of the Informal Decision Rendered in Favor of the Brooklyn Union Gas Company*, Commission Determination (issued April 27, 1999).

² Case 95-G-1006, *Appeal by Marilyn Sullivan of the Informal Hearing Decision Rendered in Favor of the Long Island Lighting Company*, Commission Determination, (issued November 13, 1997).

direct the company to adjust the customer's account with a 5% fast meter adjustment for a six month period. This adjustment was directed pursuant to *a longstanding policy to apply the 5% fast meter adjustment to cases where the appropriate testing protocol is not done, because the meter is lost, discarded, or because applicable procedures were not followed.*³ (emphasis added)

In the present case, there is no evidence that the Company has failed to comply with any applicable meter testing procedures or protocols.

CONCLUSION

For the reasons provided herein, the Informal Hearing Decision should be modified to eliminate the application of a 5% fast meter adjustment.

Respectfully submitted,

/s/ Enver Acevedo

cc: John P. Thompson
Douglas DiCeglio, URAC

³ *Id.*, pp. 3-4.