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05-M-0858
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March 14, 2006

Hon. Jaclyn A. Brillling,
Secretary
State of New York Public
Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

RE: Case 04-E-0572 Con Edison Electric Rate Case
Case 03-G-1671 Con Edison Gas Rate Case
Case 05-M-0858 ESCO Referral Program Guidelines

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Dear Secretary Brillling:

Staff has requested that Consolidated Edison Company of New York, Inc., ("Con Edison" or the "Company") make a supplemental filing in these proceedings. The filing is (1) to spell out the specific sections of the Commission's Uniform Business Practices ("UBP") relating to retail access programs that are inconsistent with the ESCO Referral Program Guidelines ("Guidelines") adopted by and set forth in Appendix B of the Program Order¹ and as to which the Company requests the Commission to waive application to PowerMove, its ESCO referral program, (2) to clarify that the introductory period of retail access service, for which participating customers will pay a commodity rate equal to the supply component of the utility's rate discounted by 7%, will be 60 days, and (3) to request the Commission to modify the deadline by which ESCOs must provide their sales agreements to enrolling customers from five days to three calendar days. The Company responds as follows to these requests:

1. The UBP as currently written outline various procedures and requirements applicable to those instances when an ESCO is soliciting and enrolling a new customer in a retail access program. For instance, Section 5 of the Commission's Uniform Business Practices, which provides guidelines for ESCO enrollment of customers in retail access, does not provide a procedure applicable to utility enrollment of new retail access customers. The Guidelines revolve around the utility's enrollment of customers in retail access "on behalf of," but not as agent for, ESCOs. Arguably, since these and other UBP provisions are explicitly applicable to ESCOs and not to utilities, the Company should not require a waiver of them from the Commission. Other UBP provisions are

¹ Case 05-M-0858, *In the Matter of State-Wide Energy Services Company Referral Programs*, Order Adopting ESCO Referral Program Guidelines and Approving an ESCO Referral Program Subject to Modifications (issued December 22, 2005) ("Program Order").

ambiguous and could be construed to be inconsistent with the terms of the Guidelines. The Company requests a waiver for the provisions that are set forth on Attachment A.

2. The Company agrees that customers enrolling in PowerMove should have an introductory period of 60 days, to the extent reasonably practicable. While in most instances providing an introductory period of two billing cycles for electric and two months for gas (gas switching occurs at the first of the month at Con Edison) will provide the customer with an introductory period equal to 60 days, in some instances the introductory period will be somewhat shorter. For example, for gas service where the introductory period includes the month of February, the introductory period may be less than 60 days. Conversely, there will be introductory periods that may be longer than 60 days, such as for gas service when a period includes a month consisting of 31 days, or for electric service where a cycle period runs over 30 days.

3. In the Company's February 17, 2006 filing, the Company included a timeline reflecting the various tasks associated with the enrollment of a customer through the ESCO referral program. As demonstrated by the timeline, with the inclusion of the five-day period provided by the Program Order for the ESCO to send the customer its sales agreement and consideration of mailing time, the enrollment timeline exceeds 12 days. Since the UBP requires a three-day lock-out period (i.e., the three days prior to the cycle date when no changes in enrollment may be made), the enrollment timeline can jeopardize the ability of the customer to timely rescind the ESCO sales agreement and terminate the enrollment process. Specifically, customers who enroll 15 days in advance of their cycle date risk having to take ESCO service even if they decide to decline it after seeing the ESCO's sales agreement.²

To rectify this, the Company proposes that the five-day period provided to the ESCO for mailing the sales agreement be shortened to three calendar days. The shorter deadline for the ESCO to send the sales agreement should provide the customer with the opportunity to take advantage of the entire three-day cancellation period. Additionally, the Commission should waive the UBP requirement that the sales agreement be sent within three business days. In some instances, this would be too long, given that the three-day period may encompass a weekend, thus extending the time again to five days.

Please contact me if you have any questions regarding the matters discussed in this letter.

Sincerely,



c: Service Lists in Case 05-M-0858 (US Postal Service)
Service Lists in Cases 04-E-0572 and 03-G-1671(email)

² The Company notes that, even if this occurs, these customers will not be economically disadvantaged because they will have the benefit of the 7% discount on the supply portion of their bills for the period before the ESCO can effectuate the customer's return to bundled service.

Inapplicable and Inconsistent UBP Provisions

Section 4 Customer Information

B.1 provides that an ESCO must obtain customer authorization to obtain customer information from the utility.

B.2 requires the ESCO to have submitted "a valid information request" in order to receive customer information.

B.3 obligates the ESCO to retain proof of customer authorization for two years.

Relief Requested:

The ESCO ordinarily obtains customer authorization in the context of obtaining the customer's consent to be enrolled in retail access. Under ESCO referral programs, because the customer's consent to be enrolled will be given to the utility, and the utility is not the agent of the ESCO for this purpose, the Commission should grant several waivers. Specifically, the customer's consent given to the utility shall be deemed the customer's authorization to provide the ESCO with customer usage information. Whatever method the customer uses to give consent to enrollment under the utility's program shall be deemed sufficient to constitute the customer's consent to release of its information to the ESCO, even without the ESCO's express request and before the ESCO has provided the customer with the sales agreement. Evidence of the customer's consent to enrollment shall be deemed adequate proof of the customer's consent to the release of its customer information to the ESCO even without receipt of the sales agreement and even if the proof is retained only six months, as provided in the ESCO referral program details.

Section 5 Changes in Service Providers

B.1 requires the ESCO to obtain the customer's agreement to take retail access service from that ESCO and the customer's authorization to have the utility release information about the customer's account to the ESCO.

Relief Requested:

Since the utility will be obtaining customer consent to enrollment in retail access service, B. 1 is inapplicable and should be waived. As described in the cover letter, the timing for the ESCO sending the customer a written agreement needs to be modified.

B.2 requires the ESCO to permit residential customers to cancel the sales agreement within three days of receiving it.

Relief Requested:

The ESCO referral program order extends to all customers, not just residential customers, the opportunity to cancel their participation within three days of receiving the sales agreement. The Company should be permitted to accept and act on non-residential customers' requests to be withdrawn from the program without the ESCO's intervention.

D.1 establishes the ESCO's obligation to transmit enrollment requests to the utility.

D.4 provides that the enrollment request may not be submitted until the customer has been provided the sales agreement and, for residential customers, the cancellation period has elapsed.

D.5 requires the utility to acknowledge receipt of enrollment requests from the ESCO and reply with acceptance or rejection information.

Relief Requested:

These provisions discuss enrollment with respect to ESCOs performing the enrollment. To the extent that the utility performs these functions, these provisions should be waived.

E.1 obligates the utility to notify the customer of the enrollment request within one calendar day after accepting the enrollment request.

Relief Requested:

This provision relates to notice by utility to customer of enrollment - the time frame (one day) for sending verification letter is shorter than under ESCO referral program (three days) and therefore should be waived.

K.3 requires ESCOs to retain proof of customers' consent to enroll for two years, and the documentation constituting proof must satisfy the requirements in Attachments 1, 2 or 3.

Relief Requested:

Since the two-year record retention period has been replaced by a six-month period for ESCO referral enrollments, this provision should be waived as to ESCO referral enrollments only.

Section 5, Attachments 1, 2, and 3 set out the requirements for the three different methods for ESCOs to obtain customer consent and what information ESCOs must provide and how they must provide it in each context, and **Attachment 4** lists the information the ESCO must provide the utility for enrollment and drop requests.

Relief Requested:

Attachments 1 through 4 are specific to ESCO enrollment methods and therefore inapplicable to utility enrollment processes under the ESCO referral program model. The Commission should waive these attachments, and corresponding EDI protocols, to the extent necessary.

Although a revised draft version of the EDI 814 Enrollment Request and Response has been posted for comment, the currently approved EDI 814 Enrollment Request and Response issued March 22, 2004, does not provide for an 814 Enrollment Accept Response transaction to be generated unless an 814 Enrollment Request is sent by the ESCO. The Commission should permit the Company to implement the revised transaction set prior to Commission action.

Section 9 Billing and Payment Processing

B. 2 and **B.3** allow the customer to select a billing option through the ESCO.

B. 7 restates that customer information will be released, on the customer's authorization, in accordance with Section 5.

D.1, D.5 and **G.5** set forth requirements relating to consolidated billing, including the ESCO providing rate information to utility.

Relief Requested:

ESCO referral programs require that customers take utility consolidated billing and that the utility will calculate the ESCO rate and the ESCO charges for the introductory period service. Accordingly, the Commission should waive these provisions during the introductory period since the utility will determine the rates during those billing periods.