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October 13, 2004

**VIA HAND DELIVERY**

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

*Orig-Files  
C 04-E-0572  
Copies:  
ALJ Lynch  
MS. K. Harriman  
MR. K. Lang*

Re: Case 04-E-0572 - 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

Dear Secretary Brilling:

Enclosed for filing on behalf of the City of New York in the above referenced proceedings are an original and five (5) copies of the Rebuttal Testimony of Mr. Paul Chernick, and the Rebuttal Testimony of Mr. Gerard McLoughlin. Copies of the aforementioned testimony are being served on the active parties list via e-mail and U.S. Mail.

Please have the extra copies of the testimony time-stamped and returned to our messenger. Please call me if you have any questions.

Very truly yours,

COUCH WHITE, LLP

*Robert M. Loughney /slg*

Robert M. Loughney

RML/slg  
Enclosures

cc: ALJ Gerald L. Lynch (via Hand Delivery; w/encs.)  
Active Parties List (via e-mail and U.S. Mail; w/encs.)

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1 **I. Introduction**

2 **Q: MR. CHERNICK, PLEASE STATE YOUR NAME, OCCUPATION AND BUSINESS**  
3 **ADDRESS.**

4 A: I am Paul L. Chernick. I am president of Resource Insight, Inc., 5 Water  
5 Street, Arlington, Massachusetts.

6 **Q: ARE YOU THE SAME PAUL CHERNICK WHO FILED DIRECT TESTIMONY IN THIS**  
7 **PROCEEDING?**

8 A: Yes.

9 **Q: WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

10 A: I respond to the testimony of Staff Witnesses William Saxonis and Michael  
11 Rieder, the Staff Consumer Service and Infrastructure Panels, as well as IPPNY  
12 Witness Joel Brainard, CPA-Pace Witness John Dowling and NYECC Witness  
13 Carl Pechman.

14 **Q: PLEASE SUMMARIZE YOUR REBUTTAL.**

15 A: For the most part, I am sympathetic to the intentions expressed in the direct  
16 testimony of the witnesses I rebut. However, in many cases, their positions omit  
17 or understate critical considerations, or could otherwise lead the Commission  
18 to make decisions that will not achieve the intended benefits.

19 The major points of my rebuttal, as discussed below, include the promotion  
20 of DSM and distributed generation, power supply, and performance incentives.

1 **II. Demand-Side-Management Programs and Distributed-Generation Issues**

2 **Q: WHICH WITNESSES DISCUSS DSM PROGRAMS AND DISTRIBUTED-**  
3 **GENERATION ISSUES?**

4 **A:** Staff Witnesses William Saxonis and Michael Rieder discuss various aspects of  
5 Con Edison's role in DSM, while CPA-Pace Witness John Dowling discusses  
6 initiatives to promote development of combined heat and power installations.

7 **Q: IS IT APPROPRIATE, AS STAFF WITNESS SAXONIS SUGGESTS, FOR THE**  
8 **COMMISSION TO REQUIRE CON EDISON TO PREPARE AND FILE AN ACTION**  
9 **PLAN FOR DEMAND MANAGEMENT?**

10 **A:** Yes. Mr. Saxonis ( Saxonis Testimony at 9 10) makes several good suggestions  
11 regarding ways that Con Edison can improve participation in existing DSM  
12 programs. His suggestion of a collaborative approach to designing Con Edison's  
13 development of its efforts is also well taken. It is certainly reasonable to require  
14 Con Edison to report to the Commission about its plans for improving end-use  
15 efficiency.

16 **Q: DO YOU HAVE ANY CONCERNS ABOUT MR. SAXONIS'S PROPOSALS?**

17 **A:** My primary concern is that the Action Plan not become a substitute for action.  
18 The Action Plan is only a beginning; approaches outlined in the plan that work  
19 should be expanded and those that do not pan out should be replaced with more  
20 effective alternatives. The Action Plan should define minimum, not maximum,  
21 actions; promising opportunities should be pursued regardless of whether they  
22 are in the original plan.

23 In directing Con Edison to submit an action plan, the Commission should  
24 clarify that it expects the Company to set out what it is going to do and when,  
25 and report back regularly on progress towards the original action items and on  
26 identifying and pursuing new opportunities. The recent settlement in the Con

1 Edison steam rate case contains very specific goals and time lines for  
2 development of an Energy Infrastructure Master Plan and a Steam Business  
3 Development Task Force, which are useful models for the detail the  
4 Commission should expect from Con Edison in a DSM Action Plan.

5 **Q: HOW DOES MR. SAXONIS PROPOSE THAT TARGETED DSM WOULD RELATE**  
6 **TO THE ACTION PLAN?**

7 A: He proposes that targeted DSM should follow a separate track from the Action  
8 Plan.

9 **Q: IS THAT RECOMMENDATION APPROPRIATE?**

10 A: Not entirely. Certainly, DSM targeted to delay or avoid near-term T&D  
11 investments should not be held up pending development of an Action Plan of  
12 territory-wide programs. But the Action Plan should focus on promotional  
13 efforts in areas in which they will have the greatest benefit. In any case,  
14 pursuing targeted DSM on a separate track should not mean giving targeted DSM  
15 lower priority than system-wide programs.

16 **Q: HOW DOES MR. SAXONIS'S ACTION PLAN RELATE TO CON EDISON'S**  
17 **PROPOSED \$3.3 MILLION "ENERGY-EFFICIENCY OUTREACH AND EDUCATION**  
18 **PROGRAM"?**

19 A: While Mr. Saxonis is critical (Direct at 12) of the lack of detail provided by the  
20 Company, he seems to accept Con Edison's energy-efficiency outreach-and-  
21 education program in concept.

22 **Q: WOULD AN ENERGY-EFFICIENCY OUTREACH-AND-EDUCATION PROGRAM BE**  
23 **LIKELY TO PROVIDE COST-EFFECTIVE REDUCTIONS IN CUSTOMER LOADS?**

24 A: That depends on the design of the program. Simply informing consumers that  
25 they can buy more efficient appliances, turn down their thermostats, and turn off  
26 lights is not likely to be effective. The outreach must bring customers into DSM

1 programs or into working relationships with DSM contractors or vendors. The  
2 Action Plan should include outreach and education efforts that can be reason-  
3 ably expected to increase end-use efficiency.

4 **Q: MR. SAXONIS SUGGESTS THAT CON EDISON BE ELIGIBLE FOR PERFORMANCE**  
5 **INCENTIVES FOR “SUPERIOR PERFORMANCE IN INCREASING PROGRAM PARTI-**  
6 **CIPATION LEVELS IN DEMAND MANAGEMENT PROGRAMS.” DO YOU AGREE?**

7 A: This suggestion may be useful in encouraging Con Edison to embrace demand-  
8 management programs with enthusiasm. Defining and measuring Con Edison’s  
9 role in increasing participation in programs run by NYSERDA, NYPA, and NYISO,  
10 and establishing appropriate incentive levels, will all be difficult. These issues  
11 should be taken up by the collaborative process, which can devote more time to  
12 them.

13 **Q: DO YOU AGREE WITH STAFF WITNESS RIEDER THAT CON EDISON SHOULD BE**  
14 **ENCOURAGED TO CONTINUE ITS EFFORTS IN TARGETED DSM?**

15 A: Yes. However, I am concerned that Mr. Rieder’s recommendations are too weak.  
16 Rather than asking the Company to “consider implementing another phase,” the  
17 Commission should require that Con Edison continue and expand its efforts.  
18 Targeted DSM should not be limited to periodic short-lead-time solicitations for  
19 third-party proposals for selected areas. Instead, Con Edison should

- 20 • identify all critical load areas well in advance of the date at which it would  
21 need to commit to T&D upgrades;
- 22 • publicly disclose the load reduction needed to defer each upgrade, the  
23 timing of that need, and the savings from that deferral;
- 24 • solicit customer proposals and third-party proposals;

- 1       • develop programs (such as those discussed by Mr. Saxonis) to bring  
2       customers into existing and enhanced DSM and distributed-generation  
3       programs, specifically targeted to the areas of Con Edison's T&D needs.

4       **Q: DO YOU HAVE ANY OTHER COMMENTS ON MR. RIEDER'S TESTIMONY?**

5       A: Yes. Mr. Rieder would only require Con Edison to report some of this informa-  
6       tion, and only to the Commission Staff. I recommend instead that the Commis-  
7       sion should require Con Edison to work on these issues with the Staff and other  
8       interested parties and report regularly to the Commission on its progress and  
9       plans. The initial filing date proposed by Mr. Rieder, "within 90 days of the  
10      Commission's decision in this proceeding," would coincide with the initial filing  
11      of the Action Plan, and might well be included with that Plan.

12      **Q: DO YOU AGREE WITH MR. RIEDER THAT SOME COST-RECOVERY ISSUES FOR  
13      DSM SHOULD NOT BE DECIDED IN THIS PROCEEDING?**

14      A: Yes. I also agree that lost-revenue adjustments should be derived from after-the-  
15      fact estimates of savings, rather than projected effects. On the other hand, I do  
16      believe that the Commission should provide reasonable assurances to Con  
17      Edison that costs prudently incurred in good-faith efforts to reduce loads, save  
18      consumers money, and delay T&D investments will be recovered, even if the  
19      recovery will be established in another proceeding.

20      **Q: DO YOU HAVE ANY COMMENTS ON CPA-PACE WITNESS DOWLING REGARD-  
21      ING STEPS CON EDISON SHOULD TAKE TO ENCOURAGE CHP?**

22      A: In general, I agree with Mr. Dowling's suggestions regarding the sharing of  
23      information with developers, including identifying networks with sufficient  
24      capacity to support new distributed generation, promptly supplying interconnec-  
25      tion-cost data, and freezing interconnection costs for a period sufficient to allow  
26      development. I have concerns about two of his proposals (Dowling Direct at 5):



1 providing funding to defray interconnection costs (which he may intend to  
2 include funding beyond the interconnection cost) and “sharing with...both  
3 supply-side and demand-side energy-efficiency developers the value of avoided  
4 transmission and distribution projects attributable to their projects.”

5 **Q: WHAT ARE YOUR CONCERNS?**

6 A: I certainly agree that it would be appropriate, under certain circumstances, for  
7 Con Edison to forgive some interconnection costs of projects that save money  
8 for Con Edison and its customers (through delay of T&D investments and  
9 reductions in market prices for energy and capacity). To the extent that projects  
10 that are cost-effective for its customers as a whole require additional funding to  
11 be cost-effective for the participants, it may be appropriate for Con Edison to  
12 provide additional incentives to implement those projects.

13 Forgiveness of interconnection costs and payments to support projects are  
14 justified, in part, by the benefits of avoided T&D costs. While it is not clear  
15 what Mr. Dowling is proposing in terms of “sharing the value of avoided  
16 transmission and distribution projects,” this concept should not be used to pay  
17 developers twice for T&D savings—once through forgiveness and incentives  
18 and again through “sharing”—or to pay developers or customers more than is  
19 likely to be necessary to facilitate cost-effective projects.

20 These issues might best be resolved in a collaborative process.

21 **III. Power-Supply Issues**

22 **Q: WHAT WITNESSES DO YOU WISH TO RESPOND TO REGARDING CON EDISON’S**  
23 **POWER-SUPPLY STRATEGY?**

24 A: On behalf of IPPNY, Mr. Joel Brainard discusses competitive procurement of  
25 wholesale power. Mr. Carl Pechman testifies for NYECC on a number of aspects

1 of Con Edison's power-supply plan, including the possibility that long-term  
2 contracts, rather than spot purchases, would reduce costs.

3 **Q: PLEASE COMMENT ON MR. BRAINARD'S PROPOSAL.**

4 **A:** While purchasing bundled power on one- to three-year contracts for at least part  
5 of Con Edison's full-service load may be useful in bringing some short-term  
6 stability to prices and encouraging efficiency in power procurement, I believe  
7 he overstates the benefits of this approach.

8 Mr. Brainard (Brainard Testimony at 3) asserts, "Adopting my proposed  
9 strategy would...strengthen forward-market price signals which may assist with  
10 the maintenance of existing generation and the potential development of supply  
11 additions." The forward-market price signals would not be any stronger with his  
12 bundled acquisition than with separate Con Edison RFPs or auctions for forward  
13 energy and capacity. No contract for one year, or even three years, can have  
14 much effect on decisions to develop new generation, which is unlikely to enter  
15 service for some years and will not repay its investment for decades. Nor can a  
16 bundled procurement contract prevent the retirement of Poletti. I am not aware  
17 of any evidence that the competitive procurements in New Jersey, Maryland, or  
18 elsewhere have strengthened price signals, reduced retirements, and increased  
19 development.

20 Nor is it clear that Mr. Brainard (Testimony at 12) is correct that Con  
21 Edison's implementation of a standardized wholesale competitive procurement  
22 process would "restrain if not reduce prices, especially in critical areas in New  
23 York City." Unless the procurement process produces new supply—either  
24 generation or transmission—prices may be less volatile but they are not likely  
25 to be any lower. Mr. Brainard's approach would not ensure that adequate supply

1 was added to meet NYISO reliability standards, let alone increase supply, increase  
2 the number of in-City suppliers (Testimony at 21), or reduce prices.

3 **Q: HOW SHOULD THE COMMISSION RESPONSE TO MR. BRAINARD'S PROPOSAL?**

4 A: I recommend that the issue of bundled power-supply procurement be deferred  
5 until the long-term supply problems facing Con Edison's service territory are  
6 addressed. As I explained in my direct testimony, experience indicates that  
7 development of major new supplies requires participation by Con Edison or  
8 NYPA. Con Edison's customers will be better off with those new supplies than  
9 with bundled power-supply procurement; to the extent that the resources of Con  
10 Edison and other parties does not allow both initiatives to be pursued simultane-  
11 ously, contracting to bring new supplies on-line must take precedence. In any  
12 case, procurement of bundled power supply should not be undertaken in any  
13 way that would limit Con Edison's ability to contract for new supplies to the  
14 City. Contracts for new transmission into the City must be a part of that future  
15 supply mix for the reasons set forth in my direct testimony.

16 **Q: WHAT COMMENTS DO YOU HAVE ON THE TESTIMONY OF NYECC WITNESS  
17 PECHMAN?**

18 A: Mr. Pechman suggests (Testimony at 13) that "a long-term contract to supply  
19 [Con Edison's] small residential customers...could enable the construction of  
20 new generation, shifting the market supply curve, increasing reliability and the  
21 competitiveness of the market while reducing market prices for customers  
22 taking competitive service." While it would be wonderful if a long-term contract  
23 would do all that, the contract would have to be very long-term by the standards  
24 of the competitive retail market in order to support the construction of new  
25 generation, from which all the other effects flow. Even a 10-year supply contract  
26 would not necessarily result in the supplier developing new supply, unless the

1 solicitation required it. Again, Con Edison customers would be better served by  
2 contracts that will get new generation and especially transmission built. As a  
3 separate matter, the Commission may wish to consider whether the type of  
4 contract advocated by Mr. Pechman should be tied to any particular class of  
5 customers.

6 **Q: DO YOU AGREE WITH MR. PECHMAN THAT THE COMMISSION SHOULD “BE**  
7 **WILLING TO PROVIDE A PRE-DECLARATION OF PRUDENCE FOR THE**  
8 **COMPANY”?**

9 A: That depends on what a “pre-declaration of prudence” means. As Mr. Pechman  
10 defines it (Pechman Testimony at 16), any pre-declaration of prudence would  
11 not mean that “the Commission should not review the Company’s power  
12 procurement practices....The Commission should maintain a vigilant stand  
13 against imprudent practices. Also, the Commission should monitor the actual  
14 power procurement practices for compliance with best industry practices.” So  
15 long as the Commission is only reassuring Con Edison of the reasonableness of  
16 general aspects of its power-procurement plan (such as in Mr. Pechman’s  
17 example of the Company’s “open position,” the percent of power to be  
18 purchased on the spot market), I do not see any problem. The same is true for  
19 findings that a power-supply plan, as presented to the Commission, would not  
20 constitute an attempt to “retain market share or to otherwise impede the  
21 development of a competitive market,” as Mr. Pechman worries (at 15). I do not  
22 see any problem with the Commission approving the general approach Con  
23 Edison takes in its RFPs, and reviewing and approving the resulting contract.  
24 Con Edison should be assured that costs prudently incurred in implementation  
25 of a strategy approved by the Commission will be recovered.

1           Mr. Pechman's "*ex ante* review of the prudence of Con Edison's plan"  
2           must not become a guarantee of future recovery of Con Edison's costs resulting  
3           from future Con Edison decisions and actions.

4   **IV. Performance Standards**

5   **Q: WHICH WITNESSES TESTIFY ON PERFORMANCE STANDARDS?**

6   A: The Staff Customer Services Panel addresses various measures of customer-  
7       service performance standards and the Staff Infrastructure Panel addresses  
8       reliability standards.

9   **Q: DO YOU DISAGREE WITH ANY OF THEIR RECOMMENDATIONS?**

10  A: My principal concern with the Staff panels is that none of their recommenda-  
11       tions be interpreted as inconsistent with the streetlighting performance incen-  
12       tives proposed in my direct testimony.

13           For the Customer Services Panel, neither its proposal to fix the maximum  
14       penalty for the measures it considers nor its proposal to reallocate penalties  
15       among measures should preclude penalties for inadequate streetlighting per-  
16       formance, which does not appear to be covered by its measures.

17           The Infrastructure Panel's proposal to fix the maximum penalty for the  
18       measures it describes should similarly not be viewed as conflicting with  
19       penalties for inadequate streetlighting performance.

20  **Q: DO YOU HAVE ANY OTHER CONCERNS REGARDING THE PANELS' PROPOSALS?**

21  A: I am concerned by the proposal of the Infrastructure Panel to replace area-  
22       specific targets with system-wide targets for network performance and radial  
23       system performance. The Panel explains, "We prefer company-wide targets  
24       because they are less volatile to minor events and more indicative of long-term

1 trends, which is our primary focus” (Infrastructure Panel Testimony at 38 39).  
2 While the Panel’s concerns are relevant, I am concerned that it has overlooked  
3 distributional concerns. The proposed penalty structure might encourage Con  
4 Edison to ignore some areas of particularly low reliability that are costly to  
5 repair or upgrade, if smaller investments elsewhere will raise the system-wide  
6 averages.

7 Any incentive system must be reviewed carefully to ensure that it will  
8 encourage the desired behavior. The proposal of the Staff Infrastructure Panel  
9 may encourage behavior the Commission and consumers would not appreciate.

10 I believe that it would be better to have some combination of system  
11 measures and more-localized measures. Such localized measures might use  
12 political jurisdictions and could also be driven by Con Edison’s ability to  
13 improve performance on the least-reliable circuits or other distributional  
14 measures. Until this issue can be fully reviewed, I suggest that the Commission  
15 maintain the system of geographic incentives.

16 **Q: IS THE ISSUE OF SYSTEM-PERFORMANCE MEASURES AND LOCAL-PER-**  
17 **FORMANCE MEASURES RELEVANT TO YOUR PROPOSED STREETLIGHTING**  
18 **INCENTIVES?**

19 **A:** Yes. I am concerned that an excessive focus on system-wide targets would be  
20 inconsistent with incentives to avoid unacceptable performance for particular  
21 customers and groups of customers, including streetlighting. While system-wide  
22 targets are useful when the performance concern is system-wide, specific  
23 performance penalties are more appropriate when specific customers experience  
24 the consequences of poor performance. Thus, some utilities pay individual  
25 customers whose power is interrupted for excessive periods, or for whom the  
26 utility misses service appointments. Enforcement of the streetlighting provisions

1 of the PASNY tariff and my proposed streetlighting performance penalties fall in  
2 the latter category.

3 **Q: DOES THIS CONCLUDE YOUR TESTIMONY?**

4 **A:** Yes, at this time.

**Before the  
New York Public Service Commission**

**Case No. 04-E-0572**

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**CONSOLIDATED EDISON COMPANY  
OF NEW YORK**

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**Rebuttal Testimony of Mr. Gerard McLoughlin**

**On Behalf of  
The City of New York**

**October 13, 2004**





1 level exceeds the load levels currently served plus estimated load growth in the rate year.

2  
3 **Q IS THIS A DIFFERENT POSITION THAN THE ONE TAKEN BY THE CITY OF**  
4 **NEW YORK?**

5 **A** Yes, it is. The City proposes to maintain the authorized level of 440 MW previously  
6 approved by Staff in the three previous rate settlements. In addition, the City contends  
7 that the level of 300 MW proposed by Staff is nearly met and to require petitions for  
8 subsequent increases would be counter-productive to the administration of the program.  
9 In addition, the mechanism suggested by Staff appears to be unduly cumbersome given  
10 that the existing system has worked well during the existing rate plan period. The  
11 availability of the total 440 MW is critical to the economic vitality of New York City,  
12 specifically for the attraction and retention of jobs in Lower Manhattan.

13  
14 **ISSUE 2- CPA'S PROPOSAL FOR AN ADDITIONAL 50 MW BIR ALLOCATION**

15  
16 **Q WHAT IS CPA'S POSITON?**

17 **A** CPA has proposed a 50 MW BIR allocation to be used exclusively by non-profit  
18 organizations.

19  
20 **Q IS THIS A DIFFERENT POSITION THAN THE ONE TAKEN BY THE CITY OF**  
21 **NEW YORK?**

22 **A** Yes, it is. The City of New York agrees with the Company, and does not favor CPA's  
23 proposal for a 50 MW allocation to be used exclusively for non-profit institutions. In

1           general, the City does not favor this allocation because it is not aligned with the general  
2           intent of the Business Incentive Rate program. There does not appear to be any need to  
3           break out such a separate market segment. Moreover, for the reasons set forth in my  
4           direct testimony, the existing BIR program is just adequate to meet existing needs as well  
5           as projected new allocations. Therefore, given the limited program resources, a special  
6           allocation to benefit non-profit institutions, if any, should not be approved unless it is  
7           additive to the existing commitment of 440 MW.

8  
9    **Q       DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

10   **A       Yes, it does.**

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