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July 15, 2013

Hon. Jeffrey C. Cohen
Acting Secretary
NYS Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Hon. Paul Agresta
Hon. Julia Bielawski
Hon. Eleanor Stein
Administrative Law Judges
NYS Department of Public Service
Three Empire State Plaza
Albany, New York 12223-1350

Re: Motion to Reconsider July 9th Ruling in Cases 13-E-0030 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, Gas and Steam Service.

Dear Acting Secretary Cohen and Judges Agresta, Bielawski and Stein:

The Utility Intervention Unit ("UIU") of New York State Department of State's Division of Consumer Protection, Consumer Power Advocates and the Public Utility Law Project ("Joint Advocates") agree with the motion submitted jointly by New York City and the New York State Office of Attorney General ("Movants") to reconsider the July 9, 2013 Ruling ("Ruling") of the presiding Administrative Law Judges ("ALJs") ("Motion"). As discussed below, the Joint Advocates agree with the Movants' reasoning in support of their conclusions that the Ruling is (1) not supported by statutes, regulations or court decisions, (2) is based on incorrect suppositions and (3) is inconsistent with Commission precedent. Further, if allowed to stand, the Ruling would set an unfortunate precedent allowing ALJs on their own motion to decide that parts of rate case filings, although prepared and submitted pursuant to the Public Service Law, Commission rules and consistent, well-established practice as well as substantively addressing the provision of reliable utility service at just and reasonable rates, should be excluded from the litigated record.

In the Joint Advocates' opinion, moreover, the Ruling would impede the development of sound public policy by delaying probing analyses of the various arguments put forth by the witnesses directly affected by the Ruling. From our perspective, litigation does not preclude

collaboration. Instead, cross examination would provide a focused, careful look at the intricacies of the Company's and other parties' storm hardening/resiliency proposals that will enhance rather than detract from future discussions.

On July 1, 2013, the Commission issued a "Notice of Collaborative Meeting Concerning Storm Hardening and Resiliency Issues" in which it advised the parties that a Collaborative would be convened to address issues associated with Consolidated Edison's pre-filed testimony on proposed storm hardening/resiliency measures and programs as well as the pre-filed responsive testimonies of the parties. These issues include Consolidated Edison's storm hardening and resiliency plans for 2013, 2014 (i.e., the rate year) and future years, the impact of climate change on those plans and their underlying design standards, the nature and elements of the design standards, cost/benefit analyses and activities such as distributed generation, microgrids and energy efficiency that could help improve grid performance during extreme weather events and grid resiliency thereafter.

At the first meeting of the Collaborative on July 8, 2013, there was general agreement that such a process is a useful vehicle to address the complicated scientific, economic and engineering issues associated with preparing Consolidated Edison's system over the next several years to handle extreme weather events and, therefore, the Collaborative should be ongoing. However, it was also agreed that there was not sufficient time before the start of the scheduled hearings to make any progress toward developing a consensus on any aspect of the issues assigned to the Collaborative. With these two understandings, the parties indicated their preference that their respective testimonies, which contain disagreements with each other (in some cases, significant disagreements), become part of the litigated case record through the technique of parties having the opportunity to cross examine the pre-filed testimony of other parties, and that the Collaborative continue after the evidentiary hearing process concludes.

Despite this general consensus, finding that the issues discussed during the Collaborative meeting "will most likely impact infrastructure investment after 2014" and, apparently, have no impact on planning and activities for 2014, the ALJs held in their Ruling that "we will not consider these issues at the July hearing and we will not entertain cross examination of [certain] submissions or the statements in other testimony related to [those] submissions." The reasoning is procedurally and factually flawed.

The Movants appropriately explain on page 1 of the Motion that the Ruling is contrary to established law:

> The Public Service Law ("PSL") unequivocally provides that when a regulated utility seeks a major change in its revenues, the Public Service Commission ("Commission") must hold a hearing on the utility's request. See PSL § 66(12) (f). The Courts have held that the parties' rights in such a hearing include the ability to "call and cross-examine witnesses and to rebut adverse claims." In the Matter of N.Y. Tel. Co. v. Public Serv. Commn., 59 A.D.2d 17, 19 (3d Dep't 1977), app. den. 42 N.Y.2d 810 (1977).

The Joint Advocates also agree with the Movants' observation on page 6 of the Motion regarding expectations and responsibilities associated with the practice of administrative law:

> The United States Supreme Court has held that a critical feature of a fair administrative hearing is "a reasonable opportunity to know the claims of the opposing party and to meet them." Morgan v. United States, 304 U.S. 1, 18 (1938). The New York Court of Appeals has held that this fundamental right provides that "the party whose rights are being determined must be fully apprised of the claims of the opposing party and of the evidence to be considered, and must be given the opportunity to cross-examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal." Matter of Hecht v. Monaghan, 307 N.Y. 461, 470 (1954) (citations omitted).

Additionally, the factual basis upon which the Ruling rests is incorrect. Contained in Consolidated Edison's January filing is support for the proposal to recover from customers approximately $1 billion in incremental capital investments for what it describes as "storm hardening projects." The Movants note (Motion, page 7):

> In testimony and discovery, Con Edison has stated that it plans to construct these projects, during the rate year, using a design standard that does not take into account the latest available information on flooding, flood zones, and storm surges in New York City. Movants and other parties [including the UIU] filed direct and rebuttal testimony challenging Con Edison's plans and asking the Commission to require Con Edison to include the latest available information in its design plans and for the capital projects undertaken during the rate year. Movants submitted extensive testimony on the information Con Edison should be required to use, and the City submitted additional testimony disputing certain of Con Edison's capital projects proposed for the rate year, and advocating for other projects or for expanding existing and proposed resiliency projects to be undertaken during the rate year. Movants' positions are premised, in part, on the testimony that the ALJs seek to preclude.

The UIU's witness Johnson similarly testified that the Company's capital programs must be designed using the latest available scientific and economic information, not only for the long term but also beginning in 2014. That is, all aspects of storm hardening/resiliency are inextricably intertwined. The Movants point out on that same page that the Ruling did not strike the Company's testimony on the issues contained in the struck testimony of other parties and that, therefore, it appears that the Ruling would allow Consolidated Edison to proceed with its plans starting the next rate year to rely on outdated information in its design standards but preclude the parties from mounting effective challenges to those plans.

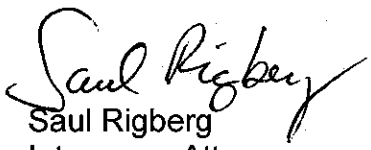
In addition to its flawed due process approach, the Ruling is also contrary to the development of sound public policy. The Joint Advocates agree with the Ruling's observation that the complicated scientific, economic and engineering issues associated with preparing Consolidated Edison's system over the next several years to handle extreme weather events "are best considered on a collaborative basis rather than in litigation, and on a somewhat longer timeline than that afforded by a one-year rate case." This is also the case involving

many program and policy issues contained in a typical rate filing; most parties view joint proposals as useful vehicles for addressing complicated issues based on informed judgment.

However, using the "best" approach does not mean that traditional litigation must be precluded. That is, the two processes are not mutually exclusive. Indeed, the cross examination of the various witnesses with disparate views will actually jump start the discussions when the Collaborative resumes after the hearing. In contrast, the only downside associated with allowing cross examination of all of the testimony is to lengthen the hearing while the upsides are protecting the parties' due process rights and allowing a probing airing of differing opinions.

For all of these reasons, the Movants' challenge to the Ruling should be granted.

Respectfully submitted,



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Cc: Active Parties (By Email Only)