

BEFORE THE
STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of

CASE 16-E-0060 and 16-G-0061

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

Electric and Gas Rates

May 27, 2016

Prepared Testimony on Behalf of
Consumer Power Advocates

CATHERINE LUTHIN
Principal
Luthin Associates
535 Main Street
Allenhurst, New Jersey 07711

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

1 **Q. Please state your name and business address**

2 **A.** My name is Catherine Luthin, and my business address is 535 Main Street,
3 Allenhurst, New Jersey 07711.

4

5 **Q. What is your educational background and experience?**

6 **A.** I am the Principal and Founder of Luthin Associates, an energy management
7 consulting firm established in 1994. I have a Master of Business Administration
8 degree and a Bachelor of Science degree in Marketing from Fairleigh Dickinson
9 University. Over the past decade Luthin Associates has advised and
10 represented the interests of public utilities, non-profits and corporate entities on
11 issues ranging from utility deregulation to strategic energy planning and
12 management. I served as a member of Mayor Bloomberg's New York City
13 Energy Policy Task Force. I am currently a member of New York City's Energy
14 Sourcing Task Force which is in the process of developing short and long term
15 emission reduction actions to achieve New York City's 80x50 goals. In
16 addition, I am a member of BOMA NY's Energy Committee, the Association
17 of Energy Engineer's Certified Energy Procurement Board and I am the Energy
18 Policy Chairperson for the Association of Energy Engineer's Council on
19 Women and Environmental Leadership. I formerly co-chaired the Con Edison
20 Steam Business Development Group.

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

1

2 I serve as the Executive Director of Consumer Power Advocates (CPA), an
3 association of large, non-profit institutions whose primary goal is to decrease
4 the cost of energy by focusing on regulatory decisions and programs that impact
5 energy consumers in New York City. Member organizations include:

- 6 • Columbia University Medical Center
- 7 • Fordham University
- 8 • Mount Sinai Health System
- 9 • College of New Rochelle
- 10 • Memorial Sloan Kettering Cancer Center
- 11 • NYU Langone Medical Center
- 12 • New York University
- 13 • New York Presbyterian Hospital

14

15 CPA members are typically high load factor customers, most of whom receive
16 their electric service under Con Edison's SC-9 Rate II Time of Day (TOD) rate.

17

18 CPA has represented its members at the New York State Legislature, New York
19 Independent System Operator (NYISO), New York State Public Service
20 Commission and the Federal Energy Regulatory Commission (FERC) since

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

1 2002. I have filed testimony before proceedings of the Energy Committee of
2 the New York State Assembly, proceedings of FERC, and proceedings of the
3 New York City Council.

4

5 **Q. Have you previously testified before the New York State Public Service**
6 **Commission?**

7 **A.** I have presented testimony in the following Con Edison rate cases

- 8 • 04-E-0572, Gas Rates
9 • 05-S-1376, Steam Rates
10 • 06-G-1332, Gas Rates
11 • 07-E-0523, Electric Rates
12 • 08-E-0539, Electric Rates
13 • 09-E-0428, Electric Rates
14 • 09-G-0795, Gas Rates
15 • 13-E-0030, Electric Rates

16

17 **Q. What is the purpose of your testimony?**

18 **A.** I will demonstrate the impact of the non-profit Biomedical Research on the
19 New York economy, describe the competitive environment in which
20 Biomedical Research resides and advocate for the continuation of the
21 Business Incentive Rate (BIR). I will discuss the economic strength of non-
22 profit institutions in New York City and demonstrate the enormous impact

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

1 such institutions have on New York's overall economy. I will demonstrate
2 that a sub-sector of this customer class, non-profit Biomedical Research
3 institutions, contributes significantly to the economic growth of the
4 metropolitan region. I will describe how the increasing cost of electrical
5 Transmission and Distribution (T&D) has become a competitive
6 disadvantage in the national and international development of Biomedical
7 Research. CPA witness John Dowling will address the Company's proposal
8 to reduce BIR discounts. I will also discuss the Company's Advanced
9 Metering Initiative (AMI). Finally, I will make recommendations regarding
10 the Company's customer privacy and data confidentiality policies.

11

12 **NON-PROFIT BIOMEDICAL RESEARCH BIR**

13

14 **Q. Why is the Biomedical Research category of the BIR program**
15 **important?**

16 **A.** The growth and expansion of this sector will positively affect the economics
17 of the entire metropolitan region. Non-profit Biomedical Research has
18 contributed significant job and economic growth to the City, and with
19 proper financial support will continue to do so. The strong economic impact
20 of this sector provides one of the major growth engines in the New York

1 City metropolitan area. As the New York City Economic Development
2 Corporation (EDC) recently stated, “a city that prioritizes science and
3 healthcare research is not just helpful for a healthy, safe, and stable
4 workforce, is vital for a sustainable economy.”¹ Many biomedical facilities
5 – both CPA members and others – have benefitted from the BIR, and the
6 inclusion of the Biomedical BIR set aside was an important consideration
7 for CPA in the last several Joint Proposals.

8

9 **Q. Who is eligible for BIR for Biomedical Research?**

10 A. The tariff requirements are stated as follows²:

11 *Biomedical Research Program: This BIR component is available to*
12 *Customers that are not-for-profit institutions occupying newly constructed*
13 *or converted space contained within newly constructed buildings, or space*
14 *in additions to or renovations in existing buildings, where such space is*
15 *solely or predominantly used for Biomedical Research.*

16

17 **Q. How is Biomedical Research defined in the tariff?**

¹ NYCEDC’s blog posted March 26, 2015. NYC’s Growing Life Sciences Ecosystem
<http://www.nycedc.com/blog-entry/nycs-growing-life-sciences-ecosystem>

² Con Edison PSC NO. 10 Service Classification Rider J - Business Incentive Rate. Leaf 194

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

1
2 A. “Biomedical Research” is defined in Con Edison’s tariff Rider J³ –BIR as:
3 *“Biomedical Research” is defined as research and development on use of*
4 *cellular and molecular processes with a goal of creating products and*
5 *solving health-related problems. Biomedical Research includes research*
6 *and development within the following disciplines: bioscience (adapting*
7 *traditional research to commercial goals, studying the molecular, cellular*
8 *and genetic causes of disease); biomedical and biological engineering*
9 *(integrating physical, chemical, mathematical, computational science, and*
10 *engineering principles to study biology, medicine, behavior and health);*
11 *genomics (treatments based upon genetic manipulation); research*
12 *instrumentation (screening, analysis, and computing used to assist in the*
13 *research of disease and development of medicines and other treatments);*
14 *translational medicine (application of research findings to commercially*
15 *viable product development and to treatments that are directly applicable*
16 *to human diseases); drug development (including research, development,*
17 *and manufacturing of medicines and drug delivery); clinical research*

³ Con Edison PSC NO. 10 Service Classification Rider J - Business Incentive Rate. Leaf 194

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

1 *(studies of patient populations, analysis of treatments, and clinical trials);*
2 *biomedical device development (development and manufacturing of*
3 *medical instrumentation, supplies, imaging tools, and therapeutic devices);*
4 *and biopharmacology (direct application of research to development of*
5 *drug treatments).*

6 Translational medicine is defined in Rider J (leaf 194) as “...*application of*
7 *research findings to commercially viable product development and to*
8 *treatments that are directly applicable to human diseases.*”

9

10 **Q. Why is it necessary to have a BIR set-aside for Biomedical Research?**

11 **A.** A special set-aside was made for the non-profit biomedical sector because,
12 prior to 2001, BIR awards required participation in some form of tax abatement
13 program that was irrelevant to non-profit institutions. At the same time, it
14 became apparent that the biomedical industry, and the medical and educational
15 institutions developing it formed a prime source of revenue generation and one
16 of the highest growth job sectors in New York. The biomedical set aside, which
17 does not require that the City offer a tax abatement, is intended to support this
18 important economic sector.

19

20 **Q. What is the current set-aside?**

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

1 A. The current set-aside as stated in General Rule 24 (Rider J), Scope of BIR
2 Program (D), is 60 MW.⁴

3

4 **Q. How much of that remains unsubscribed?**

5 A. In response to CPA question 1, Con Edison stated that 36.3 MW has been
6 assigned, leaving 23.7 MW available. That response further states that there
7 are 3 pending applications totaling 21 MW, and that there will be no expiring
8 bio-medical awards before the start of the rate year. Thus, by the beginning of
9 the rate year, all but 2.7 MW will have been assigned.

10

11 **Q. Why Should the Non-Profit Hospital and Higher Education Sector**
12 **Continue to Receive BIR?**

13 A. According to the NYCEDC, the healthcare sector is a leading employer in
14 New York City, providing approximately 515,500 jobs. It has experienced
15 exceptional growth, having created approximately 18,500 jobs over the last
16 year. The NYCEDC has a stated goal “to strengthen New York City’s position
17 as a global capital for cutting edge medical care and promote the continued
18 growth of the vital bioscience and healthcare sectors.”⁵ To that end, NYCEDC

⁴ Con Edison PSC NO. 10 Service Classification Rider J - Business Incentive Rate. Leaf 197

⁵ *NYCEDC Press Release*, NYCEDC Announces Closing to Create New York Proton Center in East Harlem etc., July 20, 2015.

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

1 Interim President Kim Vaccari recently stated “Bringing the latest care
2 practices to New York City is both vital to the overall economy and vital to our
3 society, because creating jobs and having a healthy, safe and stable workforce
4 is vital for a sustainable and equitable City.”⁶ The Biomedical BIR and several
5 new Memorial Sloan Kettering Cancer Center (MSK) construction projects that
6 I will describe later in this testimony support these goals. These new MSK
7 facilities would be positively impacted by Biomedical BIR. BIR helps offset
8 higher operating costs and falling revenue, while also benefiting the NY
9 economy by maintaining and/or expanding job and economic growth.
10 Therefore, much of my testimony will address the financial impacts these
11 sectors have on the New York economy.

12

13 New York City’s 59 hospitals, specialty and outpatient healthcare facilities
14 employ over 190,000 workers. These large healthcare facilities rank at the top
15 of the area’s largest private employers. Five of the largest ten private employers
16 in the New York MSA are North Shore-Long Island Jewish Health System with
17 48,650 employees, Mount Sinai Health System with 32,056 employees, New

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

1 York-Presbyterian Hospital with 21,802 employees, Montefiore Health System
2 with 18,030 employees, and NYU Langone Medical Center with 17,879.⁷
3
4 The impact of higher education and healthcare on investment and job growth in
5 New York is dramatically exhibited via the ReCharge NY program. These two
6 sectors committed to a disproportionately higher level of capital investment and
7 achieved more new jobs than commercial applicants. Based on data published
8 by the New York Power Authority (NYPA), 137 MW has been awarded to 104
9 recipients in New York City. This represents 18 percent of the total MW
10 awarded (774 MW) to date. The NYC recipients included 25 non-profit colleges
11 and hospitals. These 25 institutions contributed substantially to the \$12.6
12 billion in capital investment committed to the program from 2019 to 2022. The
13 25 NYC institutional facilities also committed greatly to the 193,835 jobs (an
14 average of 7,753 per customer) committed in NYC over this period.⁸
15
16 Job growth and capital investment in the higher education and healthcare sectors
17 also surpass that of the financial services sector, the traditional growth sector of
18 New York City, and other sectors as well. In fact, the ReCharge NY program

⁷ NYEDC *Economic Research & Analysis: Industry Trends & Insights, Life Sciences in New York City*. November 2014.

⁸ NYPA Report entitled “Report on the effectiveness of ReCharge New York Power Program”, Dated: December 2015.

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

1 demonstrated how much more development is coming from the non-profit
2 sector. The initial allocation of the ReCharge NY program was made in 2012
3 and totaled 595 MW, about 76% of the total awarded to date. At that time,
4 NYPA published data that indicated the non-profit sector in NYC compared to
5 the private sector had pledged, on average, more than seven times the capital
6 investment per organization. The commitment to jobs was on average six times
7 greater by non-profits.⁹

8

9 **Q. How have public and private institutions supported research?**

10 A. New York City institutions have initiated \$2.9 billion in construction
11 projects during the first half of 2015 alone, up from \$796 million during the
12 same period in 2014, an increase of 269 percent. The value of construction
13 projects initiated in the institutional sector during the first half of 2015
14 represents the best start to a year since 2009. Public and private hospitals and
15 healthcare facilities accounted for \$7.3 billion, or 32 percent, of all institutional
16 construction starts during the seven-year period from July 2008 through June
17 2015. Institutions of higher education, which include public and private
18 colleges and universities, initiated \$3.5 billion worth of construction projects,

⁹ *Memorandum to the Trustees from the President and Chief Executive Officer - Subject: Power Allocation under the Recharge New York Program, New York Power Authority, April 24, 2012.*

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

1 or 15 percent, of the total over the past seven years. Education and healthcare
2 were responsible for each of the top ten projects by value during the first half
3 of 2015. The Memorial Sloan Kettering Cancer Center, which is the biggest
4 project thus far this year, is ranked as the third most valuable institutional start
5 over the past seven years. It is surpassed only by New York-Presbyterian's Koch
6 Center and NYU Langone's Kimmel Center, both of which commenced
7 construction in 2014. All of which conduct Biomedical Research.
8 Approximately 54 percent of the projects, as measured by total value, over the
9 seven-year period have been for ground-up construction of new facilities. The
10 remaining 46 percent were renovations and alterations to existing structures.
11 Aided by the start of the Memorial Sloan Kettering facility, the percentage
12 devoted to new construction rose to 60 percent in the first half of 2015.¹⁰

13

14 **Q. How many Biomedical Research jobs have been added?**

15 **A.** Last year, life sciences in New York accounted for more than 13,700 jobs
16 (with an average salary of \$77,000), most of them in research and development,
17 in addition to over 6,600 graduate students and post-doctorate researchers.
18 According to the New York State Department of Labor, 84 percent of jobs were

¹⁰ New York Building Congress, New York City Construction Outlook Update, NYC Institutions Steadily Investing in Capital Upgrades and Expansion September 16, 2015

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

1 in research and development, 9 percent in medical device manufacturing, and 6
2 percent in pharmaceutical manufacturing. Together, total jobs in the sector
3 within the five boroughs accounted for 0.4 percent of total private employment.
4 Across the New York-Long Island-Northern NJ Metropolitan Statistical Area
5 (MSA), life sciences employment was 101,959 (1.5 percent of total private
6 employment in the MSA). Including Westchester County, jobs totaled over
7 140,000.¹¹

8

9 **Q. How has Biomedical Research grown in New York City?**

10 **A.** The New York City life sciences industry has mounted a strong recovery
11 since the 2008 financial crisis. Life sciences employment grew 15 percent from
12 2009 to 2013. This is five times greater than the rate of growth for the private
13 sector over the same time period (3.3 percent) and is nearly seven times the rate
14 of growth nationally (2.8 percent).¹²

15

¹¹ New York City Economic Development Corporation report: Industry Trends and Insights, Life Sciences in New York City (Page 1 insert box)
http://www.nycedc.com/system/files/files/industry/Industry_Trends__Life_Sciences.pdf

¹² Bureau of Labor Statistics, Quarterly Census of Employment and Wages. Available at: <http://www.bls.gov/cew/>; New York State Department of Labor, Quarterly Census of Employment and Wages. Available at: <http://labor.ny.gov/stats/lseqew.shtm>

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

1 As previously mentioned, salaries for jobs in life sciences averaged \$77,000 in
2 2013, an increase of 9.9 percent in real terms from 2003 (compared to 3.5
3 percent for the private sector overall). The income distribution of jobs in life
4 sciences is also quite balanced from high to low, suggesting the potential for
5 upward income mobility, with the top 23.6 percent earning above \$90,000 and
6 the bottom 27.4 percent earning up to \$30,000.¹³

7

8 **Q. How does this compare to other regions?**

9 **A.** The New York MSA has higher annual operating costs than all other
10 principal Biotech hubs, including Boston, Philadelphia, San Diego, Atlanta and
11 Research Triangle Park in North Carolina. Operating costs in New York outstrip
12 Boston, the second highest city, by nearly 11 percent and are 18.2 percent higher
13 than the national average. From 2013 to 2014, overall operating expenses for
14 the top 6 New York City Hospitals increased nearly 7 percent. When compared
15 to the national average, labor costs in New York are 8.8 percent higher, electric
16 power costs are 53.7 percent higher and construction costs are 49.5 percent

¹³ NYCEDC Economic Research and Analysis, Life Sciences in New York City, Nov. 2012

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

1 higher¹⁴. During the same period and against this burdensome backdrop, New
2 York City's 6 largest hospitals created 3,097 jobs.¹⁵

3

4 **Q. Please describe how CPA members are contributing to New York's**
5 **economic growth.**

6 **A.** Collectively, our membership represents many of the most respected
7 institutions in New York City - and the world. Over the next few years, CPA
8 members plan on building over 679 thousand square feet of new biomedical
9 space, and creating 1,239 new full-time jobs and 650 construction jobs¹⁶. Their
10 commitment to maintaining jobs, even in the toughest economic downturns, is
11 well established while their ability to attract and retain world-class employees
12 is consistent with the City's employment goals.

13

14 CPA members include both major universities and medical centers. Four of our
15 members are among the ten largest regional health organizations in New York

¹⁴ The Boyd Company, Inc., A comparative Biotechnology Industry Operating Cost Analysis
April 2016

¹⁵ Luthin Associates analysis based upon data derived from *Crain's New York Business*, "2016
Book of Lists" and "2015 Book of Lists"

¹⁶ Source: Luthin Associates' CPA member surveys. 2016

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

1 City. CPA members have over 7.9 million square feet of facility space dedicated
2 to Biomedical Research – 22 percent of the total area of those institutions.¹⁷
3 CPA members have four out of the five largest New York City hospital
4 operating budgets. Two of our members are among New York City’s five
5 largest employers employing 54,017 full time employees.¹⁸ Seven CPA
6 members have annual budgets in excess of \$2 billion. Collectively, CPA
7 members’ operating budgets total over \$21.67 billion. They spend over \$128
8 million on electricity and nearly \$200 million on energy. Newly planned
9 Biomedical Research projects will add 768 jobs, totals 554,815 square feet and
10 9.8 MW of load in the Con Edison service territory over the next few years.¹⁹
11 Clearly, the economic and social impacts of such institutions are enormous.

12

13 **Q. What positive impacts do you see from creating a higher BIR**
14 **Biomedical Research set-aside?**

15 **A.** Collectively, the CPA members represent a substantial opportunity for
16 maintaining or creating new jobs in New York City. Many of our members
17 maintain leadership positions in the fields of bioscience and Biomedical
18 Research – fields the NYC Economic Development Corporation is developing

¹⁷ Luthin Associates’ CPA member surveys. 2016

¹⁸ Data derived from *Crain’s New York Business*, “2016 Book of Lists”
March 22, 2013.

¹⁹ Luthin Associates’ CPA member surveys. 2016

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

1 by promoting NYC as a location for world-class research. Assisting the
2 economic viability and growth of such non-profit institutions is essential to
3 meeting New York’s economic and job growth objectives.

4

5 Even though these institutions do not pay income or sales taxes, they do pay
6 property taxes, and their many well-paid employees pay both income and sales
7 taxes, contributing substantially to the tax revenue of the City and State.

8 Universities are significant economic growth engines and bring money into the
9 region because they are generating revenue, to a large extent, from students who
10 attend the universities, but live outside the region.²⁰ A significant number of
11 those same students remain after graduation to become taxpayers and high-
12 income consumers.

13

14 **Q. Why are favorable rates necessary for Biomedical Research institutions**
15 **to remain in New York City?**

16 **A.** It is a misconception to believe that because hospitals do not relocate; that
17 their Biomedical Research affiliates will not relocate or otherwise lose funding
18 to institutions in other regions. Biomedical Research is energy-intensive.

²⁰ David, Greg, *Crain's New York Business*, “Textbook answer to good jobs for NY,” August 20-26, 2007.

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

1 Reduced energy rates have a two-pronged effect on this industry. First, the
2 Biomedical Research set-aside in the Business Incentive Rate program lowers
3 operating costs that, in turn, increases capital to attract and pay world-class
4 research talent. World-class research talent attracts grant money that generates
5 economic growth. Second, lower energy costs specifically earmarked for
6 Biomedical Research incentivizes these facilities to stay, and expand, in New
7 York City. Without the benefit of reduced energy costs, these institutions may
8 be less inclined to cultivate Biomedical Research and may decide to locate new
9 research where operating costs are cheaper.

10

11 **Q. What is the wage impact of the Non-Profit Biomedical Research**
12 **Sector on New York City?**

13 **A.** Studies reveal that low pay in New York City is caused by a disproportionate
14 amount of low-paying retail and service jobs. In 2015, New York City added
15 97,700 new private-sector jobs, the second highest gain after 2014 when
16 120,200 jobs were added. However, 53,000, or 54 percent, of those new jobs
17 were in the low-wage sectors, while jobs in the medium-wage sectors
18 contracted.²¹

²¹ NYC *Quarterly Economic Update*, February 2016. http://comptroller.nyc.gov/wp-content/uploads/documents/Q_Econ_Update_4Q15.pdf

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

1

2 High-paying biomedical jobs in the health and education fields helps reduce
3 this wage gap and promotes the NYEDC’s goal of “position(ing) New York
4 City as a leader in translating cutting-edge academic research into breakthrough
5 products for patients worldwide.”²²

6

7 **Q. Does investment in Biomedical Research have a multiplier effect on jobs
8 and New York City’s economy?**

9 **A.** Indeed it does. The Associated Medical Schools of New York (AMSNY)
10 commissioned a report by Tripp Umbach, a nationally recognized economic
11 and marketing consulting firm, which found that New York City receives an
12 economic return of \$7.50 for each dollar invested in academic research and
13 development. The AMSNY study estimated that the economic impact of
14 conducting all medical research and developing business spinoffs was more
15 than \$7.4 billion in New York State. This is in addition to the \$85.6 billion in
16 total economic impact related to the operations of New York’s academic
17 medical centers. Tripp Umbach also estimates that federal and state research
18 dollars collected by AMSNY members in 2008 will result in an additional

²² *NYCEDC Programs for Entrepreneurs*, NYC Early-Stage Life Sciences Funding Initiative,
<http://www.nycedc.com/LifeSciencesFund>

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

1 economic impact of \$16 billion to the New York State economy by 2018.²³
2 According to the Healthcare Association of New York State (HANYS), the
3 economic activity generated by New York hospitals—through jobs and the
4 purchasing of goods and services—makes up more than 10 percent of the
5 State’s entire Gross Domestic Product (GDP). New York City hospitals are
6 estimated to generate \$11.1 billion in tax dollars and \$4.5 billion in charitable
7 activities. Hospitals cover the cost of care provided to people in need; subsidize
8 care and services to low-income, elderly, and under-served communities; and,
9 continuously invest in many community health initiatives.²⁴
10
11 With respect to jobs, a study performed by Ernst & Young showed that biomed
12 has an employment multiplier of 2.9. In other words, each job created in biomed
13 generates an additional 2.9 jobs, resulting from biomed firms' purchases and
14 consumer spending of biomed employees. The same study estimated a revenue
15 multiplier of 2.3 for induced and indirect spending by biomedical companies.²⁵

²³ The Associated Medical Schools of New York report, “The Impact of Medical Education on the State of New York” 2010.
[http://www.amsny.org/sites/default/files/2010%20Economic%20Impact%20Report%20\(Tripp%20Umbach\).pdf](http://www.amsny.org/sites/default/files/2010%20Economic%20Impact%20Report%20(Tripp%20Umbach).pdf)

²⁴ The Healthcare Association of New York State report, “Regional Impact of Hospitals & Health Systems” New York City
http://www.hanys.org/finance/analyses/hospital_impacts/docs/regional_impact_new_york_city.pdf

²⁵ The Economic Contributions of the Biotechnology Industry to the U.S. Economy. Prepared for the Biotechnology Industry Organization. Ernst and Young. May 2000.

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

1 According to a survey published in the New York Academy of Medicine, it is
2 estimated that, “every million dollars of federal research funding generates
3 approximately 12 FTE jobs directly and an additional 7.74 FTE as a result of
4 the indirect and induced spending impacts for a total of almost 20 jobs.”²⁶ These
5 jobs include both direct and indirect hires from overhead grant funds.

6

7 **Q. Do you believe that the Non-Profit Biomedical Research Sector in New**
8 **York City is at an economic disadvantage compared to other sectors?**

9 **A.** Yes. The cost of energy has a significant impact on operating expenses. The
10 biomedical industry has one of the highest energy utilization rates of those
11 industry sectors that are most important to economic growth in New York. A
12 study by Energy Design Resources, a California based utility industry
13 organization, showed that laboratories have a higher energy cost per square foot
14 than all other sectors surveyed. Laboratories typically consume 5 to 10 times
15 more energy per square foot than typical office buildings.²⁷ Con Edison designs
16 its electric distribution services for a biomedical facility at an energy density 50
17 percent higher than for office buildings.²⁸

²⁶ Elliott Sclar, Ph.D., and Nancy Aries, Ph.D, “Biomedical Research and the New York State Economy,” New York Academy of Medicine, 2000.

²⁷ Case Study: *High Performance Laboratories*. Energy Design Resources. 2011.

²⁸ Con Edison, Rider Y Load Density, Engineering Design Values Used in Calculating Peak Demands.

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

1
2 Given the high energy density at bio-research facilities, it is evident that power
3 costs are a major component of these facilities' operating expense. A BIR award
4 value is realized via a discount on Con Edison's Transmission and Distribution
5 (T&D) charges (approximately 45 percent of a hospital's total Utility electric
6 cost). Analysis reveals that Con Edison T&D costs have increased an average
7 of 132 percent over the last 10 years.²⁹ The net effect of this increase is a
8 diminished ability to compete for world-class talent. In fact, a 2016 study
9 conducted by The Boyd Company showed that New York City biomedical
10 facilities have the highest electric, operating, construction and labor costs when
11 compared to other significant bio-research hotspots around the country. Those
12 areas include Boston M.A., Princeton N.J., Stamford C.T., Atlanta G.A., and
13 San Diego C.A. The New York City biomedical industry spends 8 percent more
14 on labor, 18 percent more on annual operating costs and 49 percent more than
15 average on construction costs when compared to the above-mentioned cities³⁰.
16 New York City electricity costs are 53 percent more than the average for those
17 same five cities, 1.5 percent more than San Diego and 38.5 percent higher than

²⁹ Luthin Associates analysis of 3 major hospitals conducting Biomedical Research, 2005 – 2015. PSC; Con Edison Rate Schedule SC-9.

³⁰ The Boyd Company Inc. "A Comparative Operating Cost analysis for the Biotechnology Industry, 2016."

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

1 Boston – the two cities with the next highest power costs. Study after study,
2 year after year, yield similar statistics. Against such a consistent backdrop, there
3 is no reasonable expectation of relief. An expanded Biomedical BIR set-aside
4 will offset these higher costs while also encouraging additional high-wage
5 Biomedical Research jobs.

6

7 **Q. What changes have occurred in Biomedical Research funding?**

8 A. Grants from the National Institutes of Health (NIH) are the principal source
9 of research funding for New York’s universities and Biomedical Research
10 facilities. Recognizing that university research is a long-term investment in the
11 future, the federal government supports 60 percent of the research performed at
12 universities, according to data calculated by the Association of American
13 Universities.³¹ This sector depends a great deal on research grants such as those
14 provided by the National Institutes of Health (NIH). Competition for these
15 grants has significantly increased. Whereas 34 percent of all research proposals
16 to the NIH were approved for funding in 1999, only 19 percent were approved
17 in 2012³². And as applications for NIH funding rise, the percentage of those

³¹ Association of American Universities. University Research: The Role of Federal Funding. 2011.

³² American Foundation for AIDS Research brief: The Costs of Flat Funding for Biomedical Research. August 2013.

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

1 applications receiving funding drops.³³ Stagnant funding translates into actual
2 funding reductions when adjusted for inflation. Over the last decade, NIH's
3 purchasing power has declined by nearly 25 percent. The 2013 federal funding
4 sequester cost New York approximately \$100 million in Biomedical Research
5 funds - funding that will not be restored in future NIH budgets.³⁴ And while
6 New York is the third largest recipient of NIH funding, behind California and
7 Massachusetts, the disparity in funding is far greater than the rankings would
8 indicate. Number-one ranked California's total grant amount of \$3.3 billion
9 compares to New York's \$1.9 billion. Massachusetts was granted nearly \$2.4
10 billion. This disparity exists despite the fact that New York health care prices
11 for medical services are below the national average. In fact, New York's prices
12 are lower than 31 other states, and are 7 percent lower than California and 27
13 percent lower than Massachusetts.³⁵
14

³³ *Crain's New York Health Pulse*. "More Applicants, Few Grants." August 23, 2012 and Federation of American Societies for Experimental Biology, Office of Public Affairs report NIH State Funding Facts: New York 2015.

³⁴ *The Impact of a Sequester on the National Institutes of Health and Implications for Jobs and the US Economy*. United for Medical Research. www.unitedformedicalresearch.com/wp-content/uploads/2013/02/UMR_Impact_of_Sequestration_2013.pdf

³⁵ Greater New York Hospital Association report: NY Health Care Prices Below U.S. average. 5/03/2016. <http://www.gnyha.org/PressRoom/Publication/e1b4a39d-bebf-41ae-a242-7ba8c2205080/>

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

1 Recognizing that research is a long-term investment in the future, the Federal
2 Government supports 60 percent of the research performed at universities.³⁶
3 According to a survey published in the New York Academy of Medicine, it is
4 estimated that, “every million dollars of federal research funding generates
5 approximately 12 FTE jobs directly and an additional 7.74 FTE as a result of
6 the indirect and induced spending impacts for a total of almost 20 jobs.”³⁷ These
7 jobs include both direct and indirect hires from overhead grant funds.

8

9 **Q. What additional factors impact operating margins?**

10 A. New York hospitals serve the needs of uninsured patients and patients in
11 need of financial assistance for their care, regardless of their ability to pay.
12 According to the Healthcare Association of New York State, hospitals in New
13 York spend \$4.5 billion annually on charitable care. Disproportionate Share
14 Hospital (DSH) funding is a federal program that offsets the costs of treating
15 high numbers of Medicaid and uninsured patients. However, cuts to the
16 program are slated to begin in 2017.³⁸ New York City hospitals treat uninsured

³⁶ Association of American Universities. *University Research: The Role of Federal Funding*. 2011.

³⁷ Elliott Sclar, Ph.D., and Nancy Aries, Ph.D, “Biomedical Research and the New York State Economy” New York Academy of Medicine, 2000.

³⁸ *Crain’s Health Pulse Extra*. February 25, 2016.

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

1 patients and are reliant on DSH funding.³⁹ The loss of this funding further
2 erodes operating margins, placing additional financial pressure on these
3 institutions.

4

5 **Q. What energy efficiency measures have CPA members pursued to**
6 **minimize the burden of energy costs?**

7 **A.** Despite their aggressive energy conservation measures, CPA members
8 spend nearly \$200 million on energy each year, over \$128 million (64 percent)
9 of which is spent on electricity.⁴⁰ These institutions have been highly active in
10 finding and eliminating energy waste and cost. Many have been recipients of
11 NYSERDA grants for improving their lighting, HVAC, water chillers and other
12 systems. In the last section of my testimony, I detail some of the excellent
13 efficiency work planned at one of our member facilities. Memorial Sloan
14 Kettering Cancer Center is aggressively pursuing energy efficiency at their
15 newly constructed Biomedical Research facilities and dozens of major energy
16 efficiency projects have also been recently completed at Biomedical Research
17 centers at these CPA member institutions:

18 • Columbia University Medical Center

³⁹ Office of the New York City Comptroller, May 2015 report: "Holes in the Safety Net."
http://comptroller.nyc.gov/wp-content/uploads/documents/Holes_in_the_Safety_Net.pdf

⁴⁰ Luthin Associates' CPA member surveys. 2016.

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

- 1 • NY Presbyterian Hospital
- 2 • Mt. Sinai Medical Center
- 3 • NYU Langone Medical Center

4 These measures included, but are not limited to demand control of air handling
5 units; efficient lighting; Variable Frequency Drives; data center energy
6 efficiency measures; more efficient chillers, motors, fans, and pumps; and the
7 installation of sensors, heat recovery systems, and variable air volume fume
8 hoods. A central plant configuration was reworked to achieve greater
9 efficiency.⁴¹

10

11 Recently, New York City's eleven largest hospitals accepted the NYC Carbon
12 Challenge by pledging to voluntarily reduce their building-based emissions by
13 30 percent or more in just ten years. Six of these hospitals are current CPA
14 members. Since 2009, the participating hospitals have achieved a 15 percent
15 reduction in carbon emissions per square foot, saving millions of dollars and
16 demonstrating their commitment to improve public health and quality of life for
17 all New Yorkers. All together, participants have cut their annual emissions by
18 175,000 metric tons of carbon and are collectively saving almost \$175 million
19 annually in lower energy costs. By the end of the program, participants are

⁴¹ Energy Efficiency Measures Identified in BIR Applications Filed with Con Edison.

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

1 projected to reduce citywide emissions by nearly 515,000 metric tons of carbon
2 dioxide equivalent. One hospital has already met the 30 percent goal and 6 have
3 committed to a 50 percent reduction goal by 2025.⁴²

4

5 The New York Prize program promotes innovative thinking and has funded the
6 study of microgrids - standalone energy systems that can operate independently
7 in the event of a power outage. Nine separate projects have received preliminary
8 funding in New York City, including a proposed microgrid in the East Bronx
9 that would ensure uninterrupted power to several hospitals. This microgrid
10 would provide energy to Weiler Hospital, Jacobi Medical Center, the Albert
11 Einstein College of Medicine, and Calvary Hospital. Although these facilities
12 have on-site generation, the proposed microgrid will mitigate the risk of single
13 generators failing in an area that is currently experiencing stress on the
14 transmission and distribution system. The proposed microgrid would include
15 combined heat and power, solar, battery systems, steam turbine generators, and
16 heat recovery steam generators. The project will also leverage the existing
17 steam generation plants at four hospitals.⁴³

⁴² NYC Mayor's Office of Sustainability. Green Buildings & Energy Efficiency. The New York City Carbon Challenge. <http://www.nyc.gov/html/gbee/html/challenge/nyc-carbon-challenge.shtml>

⁴³ NYSERDA program: NY Prize. State Region: New York City. <http://www.nyserda.ny.gov/All-Programs/Programs/NY-Prize>

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

1
2 During Superstorm Sandy, the Washington Square Campus of New York
3 University was served by a 14.4 MW combined cycle CHP system that has
4 operated since 2010. The CHP system provides electricity to twenty-two
5 campus buildings and thermal energy for thirty-seven campus buildings. The
6 system does not serve the entire NYU campus, but it was sufficient to provide
7 the larger buildings and the essential operations at the Washington Square
8 campus with heat and power during the storm. The University’s CHP system
9 was able to isolate from the grid and go into “island” mode upon the failure of
10 the utility grid. Because of the capability of the University’s CHP system, NYU
11 and New York City officials were able to create a “command post” on the
12 campus.⁴⁴

13
14 More recently, Fordham University has begun renovation of the old law school
15 at 140 West 62nd Street and completed construction on their new Lincoln Center
16 Law School and Dormitory. This mixed-use facility for the University’s law
17 school includes an academic facility of 350,000 square foot with a 120,000 sq.
18 ft. dormitory constructed above it. Mechanical, electrical and plumbing systems

⁴⁴ *NYU Environmental Law Journal*. Keeping the Lights on During Superstorm Sandy:
http://www.nyuelj.org/wp-content/uploads/2015/09/VanNostrand_ready_for_website_1.pdf.
Author: James M. Van Nostrand.

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

1 use high-efficiency fire condensing boilers and hot-water heaters, a high-
2 efficiency refrigeration plant, with variable speed drives and high-efficiency
3 motors and variable speed drives for variable volume systems to support LEED
4 requirements.⁴⁵

5

6 **Q. Can you provide an example of the impact one of your CPA**
7 **member institutions has on the NYC economy?**

8 **A.** I can cite Memorial Sloan Kettering Cancer Center (MSK), a world-class,
9 state of the art institution - the world's oldest and largest private cancer center,
10 having devoted more than 130 years to exceptional patient care, innovative
11 research, and outstanding educational programs.

12

13 **Q. Can you explain MSK's involvement in Biomedical Research?**

14 **A.** MSK's Biomedical Researchers specialize in every aspect of cancer science
15 including basic, translational, clinical, and population-wide studies. Although
16 the core research mission is focused on cancer, many are advancing discovery
17 related to other health problems or scientific fields.

18

⁴⁵ Cosentini Associates: Fordham University, Law School and Dormitory at Lincoln Center.
<http://www.cosentini.com/index.php/portfolio-articles/26-education/184-fordham-university-law-school-and-dormitory-at-lincoln-center>

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

1 Translational research is a way of thinking about and conducting scientific
2 research to make the results of research applicable to the population under
3 study. In the field of medicine, it is used to translate the findings in basic
4 research more quickly and efficiently into medical practice and, thus,
5 meaningful health outcomes. Governmental funders of research and
6 pharmaceutical companies have spent vast amounts internationally on basic
7 research and have seen that the return on investment is significantly less than
8 anticipated. Translational research has come to be seen as the key, missing
9 component.

10

11 With its focus on removing barriers to multi-disciplinary collaboration,
12 translational research has the potential to drive the advancement of applied
13 science. An attempt to bridge these barriers has been undertaken particularly in
14 the medical domain where the term translational medicine has been applied to
15 a research approach that seeks to move "from bench to bedside" or from
16 laboratory experiments through clinical or research trials to actual point-of-care
17 patient applications.

18

19 Currently, MSK doctors are leading more than 900 clinical trials to improve
20 treatment strategies for both adult and pediatric cancers. Between 1980 and

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

1 2015, the US Food and Drug Administration approved nine drugs developed in
2 their labs for marketing — a success rate not matched by any other cancer
3 center.

4
5 MSK is home to one of the world’s most progressive Biomedical Research
6 institutions, the Sloan Kettering Institute (SKI), which includes eight research
7 programs dedicated to studying the fundamental principles of life and disease
8 and developing new therapies and technologies. Alongside SKI, the Human
9 Oncology and Pathogenesis Program of Memorial Hospital includes teams of
10 physician-scientists working to translate molecular insights into new cancer
11 treatments. In addition, many physicians run basic or translational research
12 laboratories affiliated with Memorial Hospital’s academic departments.

13 Collaborative Research Centers bring together scientists and clinician-scientists
14 from across MSK’s research programs and departments to focus on strategically
15 important areas of cancer research. A wide range of state-of-the-art core
16 facilities give support to investigators by offering advanced methodological
17 expertise and research technology.

18
19 In addition, exceptional educational programs are offered to train the scientific
20 leaders of the future, including postdoctoral researchers and PhD and MD-PhD

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

1 candidates who are highly motivated to help improve human health through
2 science.

3

4 **Q. Can you explain MSK’s commitment to Biomedical Research?**

5 **A.** MSK has recently undertaken the development of four new biomedical
6 facilities, creating enormous economic benefit to New York, including
7 significant job creation. In the four new biomedical facilities highlighted below,
8 1,493 full time jobs were created. Over the past four years, through June 2015,
9 MSK increased overall FTEs to 13,440⁴⁶ - a jump of 11percent.

10 A summary of other important initiatives by MSK is included in Exhibit____
11 (CL-1).

12

13 **Q. What is Memorial Sloan Kettering’s specific need for Economic**
14 **Development Assistance?**

15 **A.** The health industry is undergoing a shift from more traditional, longer
16 hospital stays to shorter stays at outpatient facilities. Memorial Sloan Kettering
17 is looking to cut costs and expenses due to anticipated lower revenue from
18 Medicare and Medicaid. The MSK Cancer Center, the fourth largest healthcare
19 employer in NYC (13,440 employees) experienced the fourth largest increase

⁴⁶ *Crain’s New York Business*, “2016 Book of Lists.”

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

1 in 2015 operating expenses (+8.6 percent). World-class treatment and research
2 requires more and more electricity. Therefore, any program that can mitigate
3 the cost of electricity will enable MSK to add to the economic development of
4 New York by building modern facilities, employing high salaried as well as
5 entry level personnel and increasing the contribution of federal research
6 investment. If these investments are not made in New York, they will be made
7 elsewhere - in New Jersey, Connecticut or other regions. MSK's answer to this
8 potential threat is to develop the projects described above. These are exactly the
9 types of projects that will help drive New York's economy in the future.

10

11 **SUMMATION**

12

13 **Q. What can be done to alleviate the financial burden faced by non-profit**
14 **institutions conducting Biomedical Research?**

15 **A.** While Con Edison's Biomedical Research set-aside within the BIR program
16 certainly benefits eligible non-profit institutions, the current 60 megawatt set-
17 aside is insufficient. As previously stated, only 2.7 MW are available for
18 Biomedical Research projects that we anticipate will be developed in the near
19 future. In previous rate years, the Biomedical BIR megawatt allocation
20 utilization rate has been close to 100 percent.

1

2 **Q. What do you propose for the BIR program?**

3 A. The Biomedical BIR megawatt allocation has been nearly fully subscribed
4 for years. Based upon this previous application activity, I propose that the
5 current set-aside in the BIR for non-profit, Biomedical Research customers be
6 expanded to 80 megawatts.

7

8 **ADVANCED METERING INITIATIVE**

9

10 **Q. Have you examined Con Edison's Automated Metering Initiative**
11 **(AMI)?**

12 A. Yes. Since examination the material presented by the Company, I have
13 become concerned that the cost of AMI may result in significant bill impacts,
14 and that these bill impacts may not be fully offset by either operating
15 efficiencies or other benefits.

16

17 **Q. Why are you concerned?**

18 A. According to the Company's AMI Panel testimony (p.7, lines 11-15), Con
19 Edison has proposed an ambitious and costly program to install approximately
20 3.6 million advanced electric meters, and approximately 1.2 million gas meters,

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

1 essentially all of its meter fleet. Nevertheless, much of the benefit that the
2 Company attributes to AMI is expected to be derived from improved voltage
3 control, better outage response and other operating improvements. These
4 benefits are important, but they do not justify replacing all the meters on the
5 system. It is not necessary to place AMI in every individual apartment service,
6 or even in every building on a network, to know that a neighborhood is dark or
7 that a network is unstable.

8

9 **Q. Do you support AMI?**

10 **A.** CPA conditionally supports full AMI implementation. In order to justify
11 replacing all current meters, AMI data must be used in a way that allows
12 specific customer data to be used to manage the energy usage if specific
13 accounts.

14

15 **Q. In what ways can AMI data be used?**

16 **A.** The first obvious way to use AMI data is to settle specific bills. For example,
17 Load Serving Entities (LSEs) now use class average data, sometimes including
18 “stratum variables,” to contract for capacity and energy. AMI data will make
19 it possible for LSEs that aggregate small customers to develop actual metered
20 load data to use in place of these average load methods. The result will be more

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

1 accurate pricing of power and natural gas use, and reduce cross subsidization
2 among classes of service.

3

4 **Q. What are “stratum variables?”**

5 **A.** The term *stratum* refers to the disaggregation of a single class by size or by
6 load factor. The stratum variable allows the development of different average
7 load curves or load factors for application to different bills within a single
8 service class. The use of stratum variables is required when the class average
9 data does not accurately represent all the variable factors that cause costs within
10 a single class. While it is intended to be a more accurate method of determining
11 customer costs, it is still a procedure that applies average costs to specific
12 customers.

13

14 **Q. Why is this important?**

15 **A.** The use of average data obscures the value of energy efficiency measures
16 taken by customers. LSEs or other ESCOs may not correctly recognize the
17 value of those measures, or adequately develop efficiency opportunities, when
18 both customer bills and upstream settlements are based only on average data.
19 More importantly, customers who cannot see the benefit of energy efficiency

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

1 in their bills are unlikely to take advantage of all the feasible energy efficiency
2 measures.

3

4 **Q. Why is the use of AMI data preferable?**

5 A. Theoretically, AMI data could eliminate the need to use class average data
6 for any bill settlement. This will help create an effective market in which
7 energy efficiency is appropriately valued.

8

9 **Q. What AMI benefit has the Company identified related to the use of AMI
10 for billing?**

11 A. In its supplemental testimony filed April 21, 2016, the Company proposed
12 various metric to measure the success of the program. The only metric related
13 to billing is one based on reduction of estimated bills. That is important, but
14 correctly pricing efficiency measures is also important.

15

16 **Q. What do you propose?**

17 A. We recommend that the parties develop a metric based on the elimination of
18 class average estimates in the determination of LSE load requirements, and in
19 the settlement of bills generally.

1 **CONFIDENTIAL TREATMENT OF CUSTOMER DATA**

2

3 **Q. How should customer data be treated?**

4 **A.** Customer data is proprietary to the customer, and should be treated as such
5 by Con Edison. This includes, but is not limited to the AMI data, financial data
6 provided to Con Edison, and other operating data, such as the generator logs
7 provided to claim the Contract Demand Credit in the electric standby tariff.

8

9 **Q. What are your concerns regarding the confidential treatment of**
10 **customer data?**

11 **A.** Due to improved information technology, vastly more data is available to
12 the Company and its customers. With the implementation of AMI, this data
13 will be more granular, and hence more useful than ever before. One of the uses
14 of that data is to provide a better analysis of customer operations. This will
15 allow our member to better control operating costs, but also to better understand
16 their energy needs. This improved understanding is the key to successful
17 negotiation of energy supply contracts and identifying energy efficiency
18 opportunities. Obviously, this information is also useful to the counter-parties
19 in negotiations, but the decision to disclose confidential data must always be

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

1 left to the customer. It must never be disclosed by Con Edison without the
2 customer's express consent.

3

4 **Q. What are the ethical considerations regarding the release of customer**
5 **data?**

6 A. Customer data is the property of the customer and must remain confidential.
7 Business data is a valuable asset that can only diminish in value with
8 distribution to third parties. The loss in commercial value of data caused by its
9 inappropriate release must be considered a cause for recovery of damages from
10 the releasing party. Regulated utilities must treat customer data with the highest
11 degree of security.

12

13 **Q. What are the possible consequences of an unauthorized release of data?**

14 A. Aside from possibly disadvantaging the customer in contract negotiation,
15 our members continue to be subject to slamming attempts. Even when
16 unsuccessful, slamming attempts are costly, and an actual transfer to an
17 authorized supplier can be difficult to correct. Our worst fear is that a cyber-
18 security failure could lead to a disruption of customer operations. That
19 possibility must be considered in all information technology operations in the
20 electric industry.

1

2 **Q. What other consequences may occur?**

3 A. Unauthorized release may diminish the value of the data. In the modern
4 economy, data is a commodity and access confers value. Customer data is
5 frequently sold by many institutions. Release of customer data by Con Edison
6 reduces the opportunity for customers to sell their own data and/or control the
7 privacy of their data from competitors.

8

9 **Q. If banks and other institutions can sell data, why is it wrong for Con**
10 **Edison to sell data?**

11 A. We do not accept that it is appropriate for anyone to sell or otherwise
12 distribute customer data, but Con Edison as a regulated utility is distinguishable
13 from financial institutions. For the most part, our members have some choice
14 about which firms they choose to do business with. In the case of utility
15 services, customers must accept the terms offered by Con Edison. Because of
16 that, the terms of service are properly the subject of Commission oversight.

17

18 **Q. What is the Con Edison data privacy policy?**

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

1 A. In response CPA question 21, the Company referred to the Privacy Statement
2 published on its public website (www.coned.com/privacy). This statement is,
3 in part:

4 *We may disclose your Customer Information as follows:*

- 5 • *To our service providers or contractors in order to help us transact*
6 *business with you, including processing your payment, answering your*
7 *inquiry, promoting programs and associated product and service*
8 *offerings, fulfilling your request for a product or service, or to otherwise*
9 *conduct our business with you, including the payment of bills by you.*
- 10 • *To our affiliates for the purposes described in this Privacy Statement.*
- 11 • *To other third parties to permit them to send information on services*
12 *that may be of interest to you, or marketing communications, consistent*
13 *with your choice regarding our sharing of your customer information*
14 *with such third parties.*
- 15 • *We may need to share information, including Customer Information as*
16 *we believe necessary and appropriate to: (a) respond to requests from*
17 *governmental authorities and other partners to help detect, deter, and*
18 *prosecute suspected criminal activity; (b) comply with applicable law;*
19 *(c) comply with a judicial proceeding, a subpoena, a court order,*
20 *regulatory directives or orders, or other legal processes or requests; (d)*
21 *protect our operations or those of any of our affiliates; (e) protect our*
22 *rights, privacy, safety or property and/or that of our affiliates, you or*
23 *others; and (f) allow us to pursue available remedies or limit the*
24 *damages that we may sustain.*
- 25 • *We may disclose Customer Information to a third party in the event of*
26 *any reorganization, merger, sale, joint venture, assignment, transfer or*
27 *other disposition of all or any portion of our business, assets or stock*
28 *(including in connection with any bankruptcy or similar proceedings).*

29

30 **Q. Is this policy acceptable?**

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

1 A. No. Note that this policy does not restrict the release of data to private
2 entities. It allows disclosure to "...service providers, affiliates, and unspecified
3 third parties,"... or "in the event of any reorganization, merger, sale joint
4 venture assignment, transfer or other disposition of any portion of [Con
5 Edison's] business," ... "for purposes of promoting programs, marketing
6 communications, and other reasons." Moreover, this expansive policy is not
7 included in the tariff, and therefore may not be adequately enforceable.

8

9 **Q. The policy also allows disclosure to "...governmental authorities and**
10 **other partners..." Is this appropriate?**

11 A. CPA does not object to disclosure to government agencies subject to their
12 own internal confidentiality rules and policies. However, the release of
13 sensitive customer data to "...other partners..." on the same basis as to
14 government authorities is completely unacceptable.

15

16 **Q. What do you recommend?**

17 A. I recommend that the Company be required, in consultation with CPA and
18 other interested parties, to develop a comprehensive customer data policy, a
19 code of conduct that applies to all employees and officers who have access to
20 confidential customer data. The code of conduct should include appropriate

Testimony of Catherine M. Luthin, Principal, Luthin Associates, Inc.
on Behalf of Consumer Power Advocates

1 sanctions for employees who mishandle data. These sanctions should include
2 dismissal and criminal prosecution in the worst cases of harm to customers.
3 Finally, the resulting disclosure policy should be included in all the Company's
4 tariffs.

5

6 **Q. Does this complete your pre-filed testimony?**

7 **A. Yes.**