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December 17, 2009

Hon. Jaclyn A. Brillig
Secretary
NYS Public Service Commission
Three Empire State Plaza
Albany, New York 12223

**Re: CASE 09-E-0428 – 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.
Statement in Support of the Retail Energy Supply Association**

Dear Secretary Brillig:

On November 23, 2009, a Joint Proposal (“JP”) in the above-captioned proceedings was filed with the Secretary to the Public Service Commission. The signatory parties included Consolidated Edison Company of New York, Inc. (“Con Edison”), Department of Public Service Staff (“Staff”), and other parties representing a wide spectrum of interests, including ESCOs, customer representatives, and other parties. The Retail Energy Supply Association (“RESA”)¹ was an active participant in the negotiations leading to the development of the JP, and was a signatory to the final JP filed with the Secretary of the Commission. RESA respectfully submits that the JP constitutes a reasonable settlement of the issues raised in the proceeding and should be approved by the Commission.

¹ RESA’s members include ConEd Solutions; Direct Energy Services, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Gexa Energy; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; RRI Energy; Sempra Energy Solutions LLC. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

I. THE JP SHOULD BE ADOPTED BY THE COMMISSION

In assessing the reasonableness of a proposed settlement, the Commission generally considers the following standards.

- A desirable settlement should strive for a balance among (a) protection of the customers, (b) fairness to investors, and (c) the long term viability of the utility; should be consistent with sound environmental, social and economic policies of the Agency and the State; and should produce results that were within the range of reasonable results that would likely have arisen from a Commission decision in a litigated proceeding.
- In judging a settlement, the Commission shall give weight to the fact that a settlement reflects agreement by normally adversarial parties.²

In connection with issues related to retail access and the fostering of competitive energy markets the JP, if implemented, will enhance the development of a workable competitive retail market, enhance the competitive economic framework in which ESCOs must compete against the incumbent utility, and is consistent with the established policy of the Commission favoring the growth and development of retail energy markets.

The JP incorporates a number of provisions that can directly affect in a positive manner the growth and development of the utility's retail access program. These include maintaining competitively neutral delivery rates,³ flow through of increased supply related working capital costs through the Merchant Function Charge,⁴ and the update of supply related uncollectible costs.⁵ In addition the JP also establishes a Collaborative to consider the rate ready utility consolidated billing model. In this Collaborative the parties will examine modifications that may be necessary to the Rate Ready Utility Consolidated Billing Model to enable ESCOs to offer and bill for products which reflect time-of-use,

² Case 90-M-0255, et al, - Proceeding on Motion of the Commission Concerning its Procedures for Settlement and Stipulation Agreements, filed in Case 11175, - Opinion, Order and Resolution Adopting Settlement Procedures and Guidelines, Opinion No. 92-2 (issued March 24, 1991), Appendix B at 8.

³ JP, p. 35.

⁴ JP, p. 44.

⁵ JP, p. 45.

interval and real time pricing, as well as to offer multiple rate components such as demand, on peak, and off peak usage.⁶

The Proposal fully complies with the standards of settlement elucidated by the Commission.

First, it properly balances the interests of all interested parties. By fostering competitive choice through the provisions incorporated in the JP, ratepayers will reap the benefits of having the ability to choose a supplier that best suits their economic needs without impairing the financial health of Con Edison and by aiding retail access development, Con Edison will help ensure the development of fully competitive retail markets. In this regard, the Commission's long-standing policy declares that "the best way to ensure just and reasonable rates for commodity and customer services is to establish conditions for fully competitive commodity and customer services markets."⁷

Second, the JP comports entirely with the Commission's policy favoring the growth and development of robust competitive energy markets.⁸ In the Statement of Policy the Commission observed that one of the most efficient and powerful tools the Commission could use to meet its public charge to ensure the provision of safe and reliable energy at just and reasonable rates was the development of competitive markets.⁹

Third, as the JP is supported by a highly diverse group of parties, it is obvious that the provisions dealing with retail access reflect agreement among "normally adversarial parties". In addition to Staff and the Company, the JP is supported by parties representing various interests. The number and disparate interests represented by the Signatory Parties demonstrates that the JP positively bridges the gap between parties of diverse views and concerns, thereby producing a settlement which forges agreement among normally adversarial parties.

⁶ JP, p. 58.

⁷ 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, Order Adopting Three-Year Rate Plan (issued March 24, 2005), p. 49.

⁸ See, Case 00-M-0504 – Proceeding on Motion of the Commission Regarding Provider of Last Resort Responsibilities, the Roles of Utilities in Competitive Energy Markets, and Fostering the Development of Retail Competitive Opportunities, Statement of Policy on Further Steps Toward Competition in Retail Energy Markets (issued August 25, 2005) ("Statement of Policy").

⁹ *Id.*, p. 2.

II. CONCLUSION

In view of the foregoing considerations, RESA supports the JP and recommends its adoption by the Commission.

Respectfully submitted,

Retail Energy Supply Association

By: *Usher Fogel*

Usher Fogel, Counsel

Cc: Service List (by electronic mail)