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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE COMPLAINT BY CONSOLIDATED EDISON DEVELOPMENT, INC. AGAINST NWE CORPORATION DBA NWE ENERGY FOR ESTABLISHING A PURCHASE POWER AGREEMENT	UTILITY DIVISION DOCKET NO. EL16-021

CONSOLIDATED EDISON DEVELOPMENT, INC'S PREHEARING MEMORANDUM

I. INTRODUCTION

Petitioner Consolidated Edison Development, Inc. ("ConEd"), acting by and through undersigned counsel, respectfully submits this prehearing memorandum to the South Dakota Public Utilities Commission ("Commission"). ConED filed its complaint on June 23,

2016, requesting the Commission establish avoided cost rates for three ConEd wind projects[1], each with an installed capacity of 20 megawatts or less ("MW") pursuant to the Public Utility Regulatory Policy Act of 1978, 16 U.S.C. § 824a-n ("PURPA"). Each of the three ConEd wind projects are "qualifying facilities" or "QFs" as that term is defined in PURPA. Under the Federal Energy Regulatory Commission's (hereinafter "FERC") regulations implementing PURPA, NWE Energy ("NWE") is obliged to purchase "any energy and capacity which is made available from a qualifying facility." 18 C.F.R. § 292.303(a). Such purchases, per FERC's regulations, must be at the utility's full avoided cost. 18 CFR § 292.304(b)(2).[2] The utility's full avoided cost is "the cost to the electric utility of the electric energy which, but for the purchase from such cogenerator or small power producer, such utility would generate or purchase from another source." PURPA § 210(d), 16 U. S. C. § 824a-3(d)). *See* 18 CFR § 292.101(b)(6) (1982) (the term full "avoided costs" used in the regulations is the equivalent of the term "incremental cost of alternative electric energy" used in § 210(d) of PURPA). In this case, ConEd and NWE have failed to reach agreement on an avoided cost for the projects, necessitating Commission resolution of this dispute.

II. SUMMARY OF ISSUES.

A. ConEd's Projects Are Entitled to a Legally Enforceable Obligation Under Existing South Dakota Precedent and Federal Law.

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1 The three projects are: (1) Brule County Wind. LLC, which is located in Brule County near Kimball, South Dakota; (2) Aurora County Wind, LLC, which is located in Aurora County near White Lake, South Dakota; and (3) Sanborn County Wind, LLC, which is located in Sanborn County near Letcher, South Dakota.

2 FERC's regulation requiring that utilities pay QFs full avoided cost was upheld by the United States Supreme Court in *Paper Inst. v. Am. Elec. Power Serv. Corp.*, 461 U.S. 402, 406 (U.S. 1983)

As the Commission is aware, ConEd and NWE negotiated for months over a proposed avoided cost for the three ConEd Wind projects, with negotiations commencing in early October of 2015. ConEd and NWE agreed that further negotiations would be pointless and that Commission intervention was needed. ConEd's position at hearing will be that the ending of negotiations date is the date from which a legally enforceable obligation ("or LEO") should run, and therefore is the date from which ConEd's avoided cost should be calculated. Recent decisions by FERC have clearly held: "While this may be done through a contract, if the electric utility refuses to sign a contract, the QF may seek state regulatory authority assistance to enforce the PURPA-imposed obligation on the electric utility to purchase from the QF, and a non-contractual, but still legally enforceable, obligation will be created pursuant to the state's implementation of PURPA." *Virginia Electric Power Co.,* 151 FERC ¶ 61,038, at P. 25 (2016) ("*VEPCO*"). Furthermore, in *Nebraska Public Power District*, 156 FERC ¶ 61,043 at P. 19 (2016)("*NPPD*"), FERC stated: "PURPA and the Commission's regulations provide that a QF that has initiated a proceeding before the appropriate state regulatory authority or non-regulated electric utility that may result in a legally enforceable contract or obligation prior to an electric utility filing its petition for relief pursuant to section 292.310 of the Commission regulations will be entitled to have any contract or obligation that may be established by state law grandfathered."

In *NPPD*, FERC determined that a LEO existed because the QF sent a letter requesting a PPA from NPPD. In *VEPCO*, FERC determined an LEO existed because the QF obtained, pursuant to the North Carolina Commission's rules, a certificate of public convenience and necessity ("CPCN"), and sent a letter to VEPCO. This Commission does not require a

CPCN, and the parties negotiated for approximately 6 months, and exchanged multiple drafts indicating a commitment on ConEd's part to sell the energy and capacity from its projects to NWE. The Commission LEO decision in *In the Matter of the Complaint of Oak Tree Energy*, Docket No. EL 11-06 (Feb. 21, 2013), the Commission found that after months of attempting to engage in meaningful negotiations with NWE, Oak Tree was forced to send a letter entitled "notice to NWE of establishment of a legally enforceable obligation (the 'LEO') for the delivery of energy and capacity by Oak Tree to NWE." *Id.* at p. 6, ¶ 8. The Commission found "this action by Oak Tree, coupled with its unsuccessful efforts to engage NWE in meaningful negotiations, created a legally enforceable obligation under 18 C.F.R. §292.304(d)."

Here, NWE and ConEd did negotiate. As is discussed in more detail below, how sincere NWE's negotiating posture was in those negotiations can be questioned given NWE's multiple drafts of avoided cost estimates that continuously included questionable adjustments to its estimates that both discriminated against ConEd and drove down NWE's avoided cost. Here, there was no possibility of concluding negotiations, because the parties were too far apart. The commitment of ConEd to sell to NWE cannot seriously be questioned, and thus NWE was bound to purchase ConEd's energy and capacity as of the date those negotiations could not proceed further. In *Cedar Creek Wind*, FERC stated "we note that these extensive negotiations between the parties are persuasive and point to the reasonable conclusion that Cedar Creek did commit itself to sell electricity to Rocky Mountain Power. *Such commitment to sell to an electric utility, the Commission has found, 'also commits the electric utility to buy from the QF;* these commitments result either in contracts or in non-contractual, but binding,

legally enforceable obligations.'" 137 FERC ¶ 61,006, at P 39 (2011) (emphasis added). There was simply no way for ConEd to force NWE to agree to terms on an avoided cost price, and although most of the contract terms were resolved between the parties, the only way for ConEd to exercise its rights under PURPA was to file a complaint against NWE.

Although NWE did not technically refuse to execute a contract, no agreement was possible since NWE's proposal was palpably unreasonable and contrary to PURPA. If a utility could prevent the creation of a LEO by simply continuing to insist on its perspective on rate matters, a utility could simply negotiate endlessly and there would be no end to the process, which is precisely the reason that FERC adopted the LEO test in the first place: "[T]he phrase legally enforceable obligation is broader than simply a contract between an electric utility and a QF and that *the phrase is used to prevent an electric utility from avoiding its PURPA obligations by refusing to sign a contract, or as here, delaying the signing of a contract, so that a later and lower avoided cost is applicable*." Id. at P 32 (emphasis added).

Moreover, although FERC has found that a QF 'seek[ing] state regulatory authority assistance to enforce the PURPA-imposed obligation' is a necessary condition precedent to the existence of a legally enforceable obligation," *Grouse Creek Wind Park*, 142 FERC ¶ 61,187, at P. 40 (2013), the extensive negotiations that took place here without any mechanism to force a utility to negotiate reasonably in the absence of some arbiter between

the parties, all make very clear that FERC would find a LEO in this circumstance, as should this Commission.

NWE's position that ConEd has not created a LEO because the interconnection process is not yet complete has also been ruled inconsistent with PURPA and may not be included as part of the LEO test. *FLS Energy, Inc.*, 157 FERC ¶ 61,211 (2016). FERC held that the Montana Commission could not require a signed interconnection agreement, or utilize the interconnection process as part of the LEO test:

> Here, because the utility can, for example, delay the facilities study and the tendering to the QF of an executable interconnection agreement, the requirement of an executed interconnection agreement imposed by the Montana Commission is no different than requiring a utility-signed contract before the QF can establish a legally enforceable obligation, which, as noted, the Commission has previously found is inconsistent with PURPA and our regulations. In sum, as the Commission has stated: "when a state limits the methods through which a legally enforceable obligation may be created to only a fully-executed contract, the state's limitation is inconsistent with PURPA, and our regulations implementing PURPA."[3] The Montana Commission's requiring a signed interconnection agreement is no different than requiring a utility-signed contract, and equally impermissible.

Id. at P 26.

In other words, the creation of a LEO may not be left in the utility's hands. Just as a utility may not withhold or refuse to sign a contract, it does not have the power to refuse to process interconnection studies or to refuse to sign an interconnection agreement and impede, interfere or delay the QF's right to sell its energy and capacity to the utility at its avoided cost. Nor may the utility, by refusing to negotiate on a reasonable good faith basis (for example, by

[3] *Id.* P 35.

attempting to adopt multiple deductions from avoided cost which are discriminatory) prevent a LEO purely by its unreasoning adherence to unlawful positions. Such unreasonable negotiating postures by a utility "create practical disincentives to amicable contract formation. *Such obstacles to QFs are at odds with the Commission's regulations implementing PURPA. They are not reasonable conditions for a state PURPA process."* *Grouse Creek Wind Park*, 142 FERC ¶ 61,187, at P. 40 (2013) (emphasis added).

NWE's other position, that a LEO can only be created by selling power at NWE's avoided cost means one of two things, neither of which is reasonable or lawful. First, NWE may mean that a QF must agree with the utility on the avoided cost rate in order to create a LEO. This is plainly unreasonable, as again it places in the utility's hands the ability to prevent a LEO simply by refusing to agree to a reasonable avoided cost estimate for a QF. Second, NWE could mean alternatively that if the Commission ultimately establishes an avoided cost rate that a QF would accept, the QF may then create a LEO. This is contrary to the whole purpose of FERC's LEO regulation. Allowing a utility to be unreasonable in negotiating and forcing a QF to file a complaint with the Commission may ultimately substantially reduce the avoided cost if it is determined after a Commission Order. This is precisely what FERC meant in *Cedar Creek Wind* when it stated that a utility may not refuse to sign a QF contract or delay signing a QF contract "so that a later and lower avoided cost is applicable" 137 FERC ¶ 61,006, at P 39. In other words, as this Commission also determined in *Oak Tree Energy*, the avoided cost must be calculated as of the date the LEO was created. *Oak Tree Energy* Final Order, at P. ¶ 18

The Commission Staff's position on the LEO issue is plainly unlawful. A yet to be adopted rule may not be imposed retroactively under South Dakota law,[4] and to do so in this case would be unfair and prejudicial to ConEd. ConEd created a LEO as of April 5, 2016, by doing everything in its power to secure a PPA at NWE's estimated avoided cost, just as was the case with Oak Tree Energy.

B. ConEd's Avoided Cost Approach is Calculated Using a Differential Revenue Requirement Analysis Created with a Well-Respected Program that Utilizes a Fundamentals-Based Forecast.

ConEd's witness, Roger Schiffman, prepared a true differential revenue requirement ("DRR") analysis for ConEd's projects in this proceeding in order to calculate an estimate of NWE's avoided costs. Mr. Schiffman performed the following steps in creating the DRR. First, Mr. Schiffman licensed the PROMOD IV simulation model from ABB/Ventyx, as well as the Ventyx Advisors data set, which allows for replications and use of Ventyx's Advisor's Reference Case fuel and electricity price forecast. The Ventyx Reference Case is an independent forecast developed by Ventyx, and is used as the basis for power supply planning decisions throughout the country. The Ventyx Reference case is also used to provide independent electricity price forecasts and valuation estimates in many transactions involving purchase and sale of existing power plants throughout the U.S.

Next, Mr. Schiffman utilized the PROMOD IV model to dispatch the NWE/South Dakota Power System on an hourly basis, for the 2018-2037 period, both including and excluding the ConEd Energy 60 MW wind projects. Mr. Schiffman modeled the ConEd projects as three

[4] *See* SDCL 1-26-6.8 ("Rules unenforceable until properly adopted. No agency rule may be enforced by the courts of this state until it has been adopted in conformance with the procedures set forth in this chapter.")

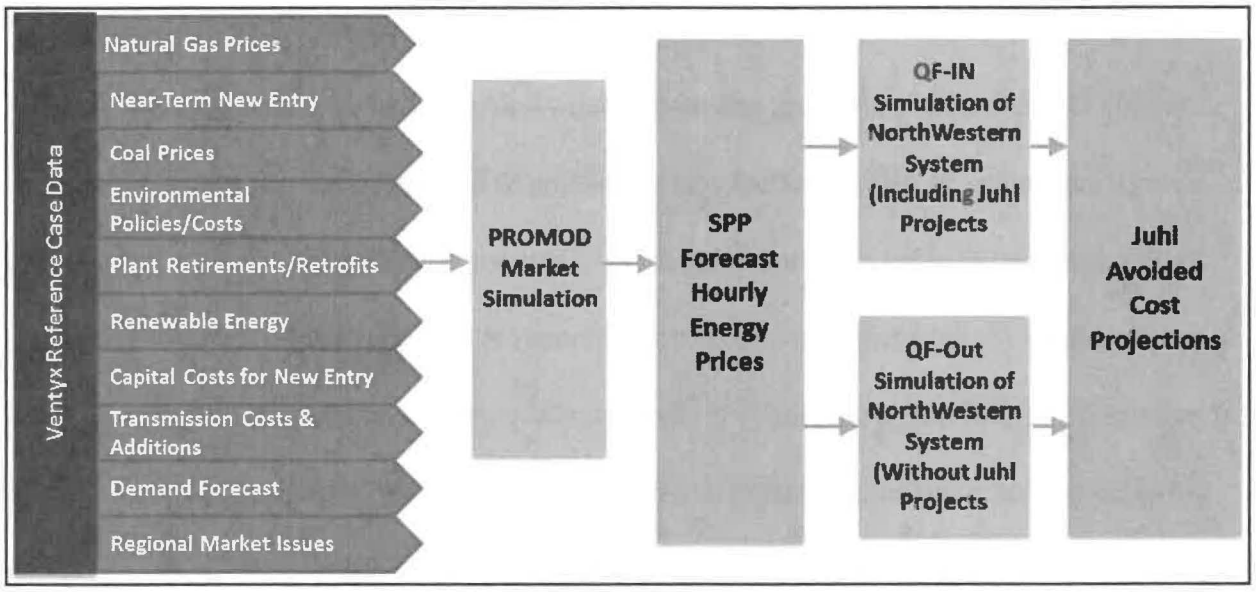
separate 20 MW wind resources. Mr. Schiffman then took the total production costs (fuel, variable O&M, market purchases, and market sales revenue), and divided that by the ConEd Energy generation, to derive avoided cost projections. This approach is consistent with the PUC's approved avoided cost methodology, in examining a utility system's hourly incremental cost as a basis for determining avoided cost. Contrary to what NWE and, apparently, staff believe, Mr. Schiffman is not simply applying a market price to every hour of ConEd's generation. Mr. Schiffman is taking into account the entirety of NWE's system, including dispatch costs, transmission constraints, and generation constraints.

Mr. Schiffman utilized market purchase and sales as *dispatch options* in the analysis, based on forecast hourly SPP[5]-Dakotas power prices from the Ventyx Reference Case. As such, this is a true Differential Revenue Requirement analysis, and is also consistent with how NWE actually operates its power system in South Dakota. Finally, it is important to note that the Ventyx Reference Case does not include carbon costs, or Clean Power Plan ("CPP") compliance costs.

Mr. Schiffman developed his alternative avoided cost estimate based on the analyses described above. Figure 1 provides an illustration of the process and data flow underlying PMRG's avoided cost projections:

Figure 1 – PMRG Avoided Cost Process Diagram

[5] Southwest Power Pool



As shown, the process begins with Ventyx Reference Case data assumptions, relies upon the PROMOD IV model to first develop forecast energy prices in SPP, and to then model the NWE South Dakota power system with and without the ConEd projects. Output from those simulations is then used to develop long-term projections of avoided cost on the NWE system.

Mr. Schiffman also assessed the likely impact of carbon regulation on NWE's avoided cost, and developed a high-level estimate of the likely impact. Under this approach, the CO^2 price forecast recently developed by NWE in its Montana Power Supply study was utilized. PMRG assumed that 50 percent of the carbon cost, expressed on a $/MWh basis, would flow through to energy prices. This is a very conservative assumption, as it effectively assumes that efficient natural gas-fueled resources always set marginal energy prices in SPP, so the carbon pricing component would be reflective of CO2 compliance costs for a natural gas-fueled combined-cycle resource.

The avoided cost projections discussed above also do not reflect any capacity value for the ConEd wind projects. In its 2014 South Dakota Integrated Resource Plan, NWE identified a need for capacity resources beginning in 2019. As such, it would also be appropriate to assign a

capacity value to the avoided cost for ConEd. Mr. Schiffman therefore developed an estimated capacity value for ConEd Energy, reflecting a 5% capacity credit assigned to ConEd Energy, and based on the avoided capital cost of a LMS100 simple cycle power plant. In Mr. Schiffman's opinion, that technology represents a likely addition in NWE's next resource plan, given the size of its system, and the addition of renewable resources onto its system since the time it last developed a resource plan. The inclusion of capacity value increases the avoided cost for ConEd Energy by $1.78/MWh. That potential adjustment is also reflected in Table 10.

Table 10 – Potential Adjustments to Levelized Avoided Cost ($/MWh)

Differential Revenue Requirement Levelized Avoided Cost - NPV @7.24% ($/MWh)	**$47.29**
CO2 Compliance Cost Incremental Impact ($/MWh)	$11.63
Adjusted Avoided Cost, with CO2 ($/MW)	**$58.92**
Capacity Value of ConEd Projects	$1.78
Total Levelized Avoided Cost, with CO2 and Capacity Value ($/MWh)	**$60.70**

C. NWE's Proposed Avoided Energy Cost is Deeply Flawed

NWE's proposed avoided cost methodology rests on a foundation that does not reflect underlying supply and demand fundamentals in the energy markets. In summary, under NWE's approach, it takes near-term forward prices for natural gas and electricity, and escalates those price strips using the annual escalation rate for Henry Hub natural gas prices, as published in the 2016 EIA Annual Energy Outlook. The NWE approach does not include fundamental modeling of changing supply and demand conditions in the electricity markets, and is incapable of measuring structural changes occurring in the industry due to retiring coal generation, a shift to natural gas generation, and substantial development of renewable energy. Those aspects all will

result in changing market heat rates and marginal resources in the SPP market, in altered energy and transmission flows across the Midwest, and in substantially higher natural gas demand than has occurred historically.

The expected electricity price under NWE's approach is wholly dependent upon the credibility and validity of the ICE[6] futures prices in both the short-term and the long-term, because prices from those futures contracts are used initially, and are then subsequently carried forward through the end of the study period after incorporating EIA projected escalation of Henry Hub natural gas prices. However, there is *zero* reported trading volume for the underlying futures contracts that NWE uses as the foundation of its electricity price estimates. The same observation is true for the daily futures contract. There is zero reported trading volume for that contract as well. Market participants are not transacting or trading using these instruments, so there is a lack of credibility about the underlying published prices. Although NWE argues that these data are representative of market and are simple and transparent, the data have no demonstrated reliability, and the process that ICE uses to publish "prices" for products that have zero trading volume is neither transparent nor subject to audit. This is a critical flaw in the NWE avoided cost approach. There is no evidence that those prices are either valid or representative of the wholesale market prices at which NWE completes transactions.

D. NWE's Use of PowerSimm Is Not Consistent with Ordinary Industry Practice and is Discriminatory.

NWE's PowerSimm modeling is in fact not used to determine its cost of energy production, its total system variable cost, or its fuel prices. It is not used in any way to determine its forecast of market energy prices. Furthermore, NWE's PowerSimm modeling approach is not used in any way that is consistent with normal or industry accepted approaches for determining

[6] Intercontinental Exchange

avoided cost. NWE assigns an avoided cost value to the ConEd resource generation, under what it terms as Situation 1, Situation 2, and Situation 3. For Situation 1 periods, when ConEd produces and delivers energy when NWE's supply portfolio is short (i.e., when generation is less than load), ConEd generation is assigned the market purchase price for electricity that NWE would otherwise have purchased. For Situation 2 periods when the project produces and delivers energy when NWE's supply portfolio is long (i.e., when generation is greater than load), if NWE's generating resources can reduce dispatch levels, then ConEd Energy generation is assigned a value equal to the variable cost of the unit being backed down. Under Situation 3, market prices are below what NWE terms the marginal resource, then energy produced by ConEd resources is valued at zero.

NWE did not use the PowerSimm model to actually measure changes in production cost with and without the ConEd projects. Instead, NWE completed PowerSimm simulations with and without the ConEd resources, and used that information to tabulate whether it is in a net purchase or a net sales position. Then NWE took the additional step, external to the simulation, of applying a combination of forecast monthly energy prices, production cost estimates for avoidable resources, or a value of zero, to the monthly forecast production of the ConEd resources. NWE limited its use of the PowerSimm model only to estimate whether its system would be in a net purchase or net sale position, on a monthly basis, segmented by High Load (On-Peak) and Low Load (Off-Peak) periods.

NWE's approach in not examining changes in production costs on its system, and in assigning the operating cost of an "avoidable resource", or assigning a zero value to ConEd's energy production when the utility is in long energy position, violates industry best practice in estimating avoided cost. This approach is inconsistent with how NWE actually operates its

system, and is designed to subsidize NWE shareholders and ratepayers at the expense of QF resource owners and developers. NWE is effectively taking ConEd energy for free under Situation 3 conditions, but in its actual operations, would re-sell that energy at market prices. Under Situation 2 conditions, economic dispatch principles require that NWE would not back down its resources, but instead would also sell the excess energy into the market. The avoided cost approach being used by NWE is discriminatory against the ConEd projects, and in violation of FERC and PURPA avoided cost principles. NWE has attempted to apply this same approach in estimating avoided cost in Montana, and the Montana Public Service Commission has explicitly recognized that the Situation 3 adjustment is discriminatory and in violation of PURPA.

E. NWE's Calculation of Capacity Costs is Deeply Flawed.

NWE's analysis assumes that it will address its need for capacity, which is demonstrated to begin in 2019 according to NWE's 2016 Resource Plan, solely by making short-term capacity purchases in the SPP market over the next 20 years. As detailed in its 2016 Resource Plan, assuming that long-term capacity will be available for that long of a period, and at the current prices seen for short-term capacity purchases in SPP, represents reliability risk for NWE. NWE goes to great lengths in its Resource Plan to evaluate the addition of physical peaking resources onto its power system, to meet the demonstrated capacity need, and to balance risk and cost. NWE states that it will carefully evaluate its capacity need in 2019. In its Resource Plan, NWE admits that despite perceived excess capacity in SPP in its last Request for Proposals seeking capacity resources NWE received only one bid. NWE also acknowledges there may be delivery

risk in getting any available market capacity in SPP to reliably serve its South Dakota power system.

Mr. Schiffman does not believe that NWE will rely upon long-term market capacity purchases to meet its capacity need, but instead will opt for a physical peaking resource. Nor does Mr. Schiffman believe it would be prudent for NWE to accept capacity revenue of $3.50/kW/Month for 20 years for rate recovery purposes, because it is likely the actual cost will be higher. Moreover, if NWE went into the market to price a 20-year capacity purchase, the bid prices it received would approach the fixed operating and capital recovery cost of a peaking resource and would be much higher than $3.50/kW/Month. ConEd believes that NWE will not be able to achieve a long-term capacity transaction priced at current short-term prices in the SPP market. Instead, the capacity value of the ConEd projects should be priced based on a physical peaking resource. Mr. Schiffman's avoided capacity cost reflects the cost of a flexible LMS 100 unit, and is an appropriate measure to use for determining the avoided cost of capacity.

F. Staff Witness Maini's Testimony Fundamentally Misapprehends Both PowerSimm and Mr. Schiffman's DRR Analysis.

Commission Staff Witness Maini misapprehends the manner in which NWE is actually using PowerSimm. As set forth above, NWE only uses PowerSimm to determine its long and short positions, and does not use it to model or predict fundamental changes in forecasts of energy and capacity markets. There is no application of uncertainty in NWE's actual assignment of avoided cost value, either in the market prices assigned, or in the production costs of the marginal unit that are assigned. So, while Ms. Maini bases her conclusions and preference for NWE's avoided cost approach largely upon the uncertainty modeling features of PowerSimm, in reality those features are not used in a meaningful way in estimating avoided energy cost for the

ConEd projects. Thus, Ms. Maini's opinion is thus based on a flawed assumption and is not helpful to the Commission in establishing avoided energy cost for the ConEd projects.

Ms. Maini also claims PowerSimm is not discriminatory because NWE also uses PowerSimm in its resource planning. Despite NWE's claim that PowerSimm is sophisticated, its use is limited to the assignment of avoided cost value under Situation 2 and Situation 3 conditions. This use of PowerSimm, as proposed by NWE, is plainly and obviously discriminatory against QFs. For this approach to not be discriminatory, NWE would have to forego rate recovery for its generation resources under Situation 3 conditions, and would have to limit rate recovery during Situation 2 to only the variable cost of its marginal resource.

Mrs. Maini also apparently misunderstands Mr. Schiffman's DRR. Ms. Maini criticizes Mr. Schiffman for assigning a market price to all hours of ConEd's generation,[7] but that is emphatically not Mr. Schiffman's approach. Instead, Mr. Schiffman completed an actual DRR analysis, and measured the change in system production cost from the QF resources in calculating the avoided cost value of ConEd's generation. Mr. Schiffman's DRR approach explicitly incorporates the minimum dispatch and other operating constraints on NWE generating units. It also explicitly incorporates the net short and net long conditions that both NWE and Ms. Maini claim to be concerned about. Mr. Schiffman's DRR approach incorporates those aspects by completing an hourly economic dispatch of the NWE system, respecting operating constraints on the generators. If there are conditions where minimum generation levels are in excess of NWE load, and market prices are lower than the operating cost of the marginal resource, then the DRR approach will recognize the economic loss from such a situation, and avoided cost in that circumstance will be appropriately lower, by the increment between

[7] PUC Staff witness Thurber appears to share Ms. Maini's confusion.

generation cost and market price. But the approach will not artificially assign a zero value to energy in that instance. The DRR approach has been widely accepted as an avoided cost method in the industry, precisely because it explicitly measures those variables. Counter to the claims made by Ms. Maini, and by NWE, ConEd's approach does not assign market price to ConEd energy production in all periods. It assigns the change in NWE system costs, which is the appropriate measure of avoided cost. The approach Mr. Schiffman has taken is considerably more straightforward than the approach proposed by NWE and promoted by Ms. Maini.

Ms. Maini also offers several proposals as alternatives to calculating avoided costs, including basing avoided cost on competitive solicitations, current pricing of large wind farm power purchase agreements, and current LMP prices. Each of these proposals violates PURPA. Ms. Maini also does not find NWE's proposal to reduce avoided costs by interconnection costs, but these costs may not be reduced from avoided cost without violating PURPA.

III. SUMMARY OF ISSUES

The issues that divide the parties are generally summarized above. In general terms, the parties disagree about the appropriate way to calculate avoided costs in this proceeding, and whether NWE's adjustments are inappropriate and discriminatory. ConEd also takes issue with the testimony of Commission staff, which appears to fundamentally misapprehend both NWE's and ConEd's approach to calculating avoided costs, and also invites the Commission at various points to commit legal error.

IV. CONTESTED ISSUES

ConEd will provide testimony and evidence supporting its calculation of avoided cost as set forth in the testimony of Roger Schiffman. ConEd will also point out where NWE's avoided cost is inaccurate and discriminatory. These differences and the approach of each party are

summarized above. ConEd will also present the testimony of Mr. Corey Juhl regarding the status of each of the ConEd projects.

V. WITNESSES

A. Corey Juhl will testify regarding the publicly available sources of NWE's avoided cost.

B. Roger Schiffman will testify regarding his critique of NWE's avoided cost methodology and results and the results of his own investigation of NWE's avoided cost.

ConEd reserves its right to call any rebuttal witnesses that may be necessary as well as relied upon by any party in their case-in-chief or rebuttal case, if any. At present, ConEd intends to conduct cross examination of each of NWE's witnesses and potentially, each of Commission Staff's witnesses.

V. EXHIBITS AND DISCOVERY FOR INTRODUCTION AT HEARING

A. ConEd will introduce the prefiled testimony of Mr. Corey Juhl and the prefiled testimony of Mr. Roger Schiffman. ConEd expressly reserves the right to rely on any party's prefiled testimony, testimony introduced for the first time at hearing, and any exhibits prepared by any party that may be relevant. ConEd also reserves the right to use any of the following documents or exhibits at hearing:

B. All data responses by or to any party in this proceeding;

C. Any exhibit listed as an exhibit by any party to this proceeding;

D. Any document relied upon by any party at hearing.

E. Any document used for impeachment purposes; and

F. Any document used solely as an illustrative exhibit.

5. ConEd further reserves the right to supplement this exhibit list with documents or evidence discovered in the course of preparing for hearing or necessary for impeachment or rebuttal.

VI. ORDER OF HEARING OR SEQUENCE OF WITNESSES

At this time, as the Petitioner, ConEd intends to present its witnesses first and last and present oral rebuttal testimony if necessary.

RESPECTFULLY SUBMITTED THIS 31st Day of March, 2017

By: _____

Michael J. Uda
William Taylor

Of Attorneys for Consolidated Edison Development, Inc.