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VIA ELECTRONIC SUBMISSION
Hon. Michelle L. Phillips, Secretary
New York Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Subject: Case 25-E-0764 – Proceeding on Motion of the Commission to Address New York City Reliability Needs.

Dear Secretary Phillips:

The Institute for Policy Integrity at New York University School of Law (Policy Integrity)[1] respectfully submits the following comments concerning proposals outlined in the New York City Reliability Contingency Plan, filed in the captioned docket by Consolidated Edison Company of New York, Inc. (Con Edison or the Company, and such New York City Reliability Contingency Plan, the Plan)[2] in response to the Proposed Rulemaking notice published in the State Register on August 12, 2026,[3] the Notice Soliciting Comments filed in the captioned docket on September 21, 2026,[4] and the Notice Extending Comment Period filed in the captioned docket on October 8, 2026.[5] Policy Integrity is a non-partisan think tank dedicated to improving the quality of government decisionmaking through advocacy and scholarship in the fields of administrative law, economics, and public policy. Policy Integrity has extensive experience advising stakeholders and government decisionmakers on the rational, balanced use of economic analysis, both in federal practice and at the state level.

[1] This document does not purport to present the views, if any, of New York University School of Law.
[2] Case 25-E-0764, *Proceeding on Motion of the Commission to Address New York City Reliability Needs*, New York City Reliability Contingency Plan (July 17, 2026) [hereinafter Reliability Contingency Plan].
[3] 48 N.Y. Reg. 10 (Aug. 12, 2026).
[4] Case 25-E-0764, *Proceeding on Motion of the Commission to Address New York City Reliability Needs*, Notice Soliciting Comments (Sept. 21, 2026).
[5] Case 25-E-0764, *Proceeding on Motion of the Commission to Address New York City Reliability Needs*, Notice Extending Comment Period (Oct. 8, 2026).

We are grateful for your consideration of these comments.

Sincerely,

/s/ Elizabeth B. Stein
Elizabeth B. Stein
State Policy Director

/s/ Dean Pigott
Dean Pigott
Policy Research Associate

POLICY INTEGRITY COMMENTS ON CONSOLIDATED EDISON'S NEW YORK CITY RELIABILITY CONTINGENCY PLAN

I. Introduction

In December 2025, NYPSC initiated Case 25-E-0764, Proceeding on Motion of the Commission to Address New York City Reliability Needs, after the NYISO Short-Term Assessment of Reliability (STAR) report and Con Edison's Local Transmission Plan both indicated imminent reliability deficiencies.[6] In the order initiating the case, the Commission directed Con Edison to develop and submit a portfolio of solutions that "prioritizes and leverages all available clean and non-emitting options" and that must "turn over every stone" to define a portfolio that is consistent with the State's clean energy and climate goals.[7] Accordingly, Con Edison issued a Request for Information (RFI) seeking such options.[8]

Con Edison filed the Plan on July 17, 2026.[9] By that time, additional transmission resources and other changes had pushed the expected onset of reliability deficiencies cited in the Order Initiating Proceedings[10] somewhat further into the future, but Con Edison still expected a reliability gap to emerge by 2033.[11]

These comments highlight the following points:

- The downstate reliability need is a difficult challenge and Con Edison's Plan suggests that even so, reliability shortfalls in NYC can be addressed with non-emitting technologies over some time horizon.
- To provide a basis for public and regulator acceptance of its proposals, Con Edison should provide a more thorough explanation of its decisions to reject various options, including proposals submitted in response to its RFI.
- Con Edison should be clear and transparent about the benefits and costs of its chosen approach, and the benefits and costs of alternatives to the RADR proposal.

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[6] *See* Case 25-E-0764, *Proceeding on Motion of the Commission to Address New York City Reliability Needs*, Order Initiating Proceeding and Directing Reliability Contingency Plan 1-2 (Dec. 18, 2025); *see also* N.Y. INDEP. SYS. OPERATOR, SHORT-TERM ASSESSMENT OF RELIABILITY: 2025 QUARTER 3 (Oct. 13, 2025), https://www.nyiso.com/documents/20142/39103148/2025-Q3-STAR-Report-Final.pdf/86d4e2d9-e1eb-475b-c5db-ee5de81ea799; *see also* CONSOL. EDISON CO. OF N.Y., INC., CECONY'S 2025 LOCAL TRANSMISSION PLAN (2025), https://perma.cc/8SDB-8SXX.

[7] Case 25-E-0764, *Proceeding on Motion of the Commission to Address New York City Reliability Needs*, Order Initiating Proceeding and Directing Reliability Contingency Plan 16 (Dec. 18, 2025).

[8] *See* Case 25-E-0764, *Proceeding on Motion of the Commission to Address New York City Reliability Needs*, Request for Information (Jan. 20, 2026).

[9] Reliability Contingency Plan, *supra* note 2.

[10] *See* Case 25-E-0764, *Proceeding on Motion of the Commission to Address New York City Reliability Needs*, Order Initiating Proceeding and Directing Reliability Contingency Plan 1-2 (Dec. 18, 2025).

[11] *See* Case 25-E-0764, *Proceeding on Motion of the Commission to Address New York City Reliability Needs*, July 2026 Reliability Needs Report 2, 5-6 (July 17, 2026) [hereinafter July 2026 Reliability Needs Report].

II. Background

The Plan has two core proposals: a new Reliability Asset Dispatch Rights (RADR) program (a new regulatory construct for distribution-connected storage)[12] and an extension of the existing Utility Dispatch Rights (UDR) program for transmission-connected storage.[13] The Plan also includes a proposal for a technology-agnostic RFP for "additional clean and non-emitting market-based solutions beyond transmission- and distribution-connected batteries."[14]

Under Con Edison's proposal, distribution-connected storage would generally be treated as capable of addressing the transmission shortfall only by operating under the RADR construct, because, according to the Plan, the "current [Value of Distributed Energy Resources (VDER)] framework… is generally not adequate to meet transmission security needs."[15] The RADR construct would be available both to new distribution-connected storage and to storage resources currently operating under VDER (that is, resources could exit VDER and switch to RADR).[16] Under RADR, Con Edison would offer developers 15-year dispatch rights contracts that would "allow the Company to establish and adjust distribution-connected storage operating requirements, such as the assets' discharge schedules, to support evolving system needs."[17] In return, developers would receive fixed compensation, prioritized interconnection, covered interconnection costs for projects not yet in operation, and covered charging costs for charging before dispatch.[18] Storage resources would commit to year-round availability and "non-participation in other tariffs or programs," and would be subject to various obligations including performance obligations and financial consequences for non-performance.[19]

The Plan dismisses many of the 71 proposals submitted in response to the RFI as incapable of providing "transmission security,"[20] but does not include an explanation of what precisely constitutes "transmission security" that enables readers to fully comprehend how Con Edison had concluded that those proposals could not provide it.[21] Similarly, with respect to some proposals,

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[12] *See* Reliability Contingency Plan, *supra* note 2, at 19.
[13] *See id.*
[14] *Id.* at 3.
[15] *Id.* at 2.
[16] *See id.* at 2-3.
[17] *Id.* at 22.
[18] *Id.*
[19] *Id.*
[20] *See, e.g., id.* at 15 (describing VPPs with BTM resources).
[21] *See id.* at 1 n.2, and *id.* at 8, n.16. Footnote 2 offers a high-level definition of transmission security ("the continued delivery of electricity despite a sudden, violent shock like a lightning strike or short circuit. Transmission security planning evaluates a 'worst-case scenario' during the hour of peak electric demand to ensure the system stays reliable."), but does not detail how Con Edison actually applies this concept. Footnote 16 describes in general terms the types of metrics that are included in the assessment, but the language uses inconsistent terminology (for example, "dependable, measurable, and available before a continency event", and "dependable, verifiable, and measurable throughout this entire period") without stating any reason for these discrepancies. Overall footnote 16 does not provide clarity as to how those metrics were established based on system requirements or how particular proposals might satisfy, or fail to satisfy, those metrics, in the manner required to be considered for inclusion in a portfolio of resources with diverse attributes.

the Plan asserts that resources of those types do have the potential to provide transmission security but that those resources do not yet have a sufficient track record or operational data,[22] while omitting specific information about the metrics Con Edison had used to reach that conclusion. Importantly, the transmission security requirements governing the electric grid in New York City diverge from transmission security requirements applicable elsewhere, potentially putting commonly-used strategies out of bounds or establishing unusually high bars to use them. As a result, experience from other locations may be of limited value in providing market participants, stakeholders, and the regulator with the necessary background to understand and evaluate the determinations Con Edison describes in the Plan, sharpening the need for clear explication by the Company.

III. The downstate reliability need is a difficult challenge and Con Edison's Plan suggests that even so, reliability shortfalls in NYC can be addressed with non-emitting technologies over some time horizon.

The challenge of addressing the looming reliability crisis on New York City's electric grid using only clean and non-emitting technologies is steep. Drivers include anticipated retirements of certain generators,[23] load growth,[24] and the absence of new generation resources to replace those that are being retired.[25]

Federal interference with offshore wind has contributed significantly to the problem—as that is a major part of why there is a lack of replacement generation on the way.[26] As Con Edison stated in a filing responding to a Staff inquiry: "The integration of an optimized OSW [offshore wind] portfolio would eliminate the baseline reliability needs for planning years 2033 and 2034 identified in the Company's July 2026 Reliability Needs Report," and "localized post-contingency thermal loading conditions in years 2035 and 2036" could be addressed through targeted transmission topology upgrades[27]—solving identified transmission needs through 2036.[28]

Making this challenge even more difficult is the high reliability standards needed to meet the requirements of New York City. The New York State Reliability Council recognizes local New York City reliability requirements that may be more stringent than regional reliability criteria, including second contingency operation for "certain areas of the Con Edison system."[29] Con

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[22] *See, e.g., id.* at 14 (discussing Daily Shifting of Load under a VPP).
[23] *See* July 2026 Reliability Needs Report, *supra* note 11, at 1.
[24] *Id*.
[25] *Id*.
[26] *See* Case 25-E-0764, *Proceeding on Motion of the Commission to Address New York City Reliability Needs*, Planning Study Report: Impact of Offshore Wind and Energy Storage Integration on New York City Zone J Transmission Security 5 (July 23, 2026).
[27] *Id*. at 1.
[28] *Id*. at 5.
[29] *See* N.Y. STATE RELIABILITY COUNCIL, RELIABILITY RULES & COMPLIANCE MANUAL 95 (July 17, 2026), https://perma.cc/C9X4-5MLL.

Edison also maintains Transmission Planning Criteria (titled TP-7100-20) for the stated purpose of complying with Public Service Law Section 65(15).[30] Con Edison's TP-7100-20 Transmission Planning Criteria require the system to be able to be returned to normal-state limits using specified operating reserves and system controls before a second contingency in designated scenarios,[31] which is stricter than what is required throughout the rest of the state. Developing reliability solutions that satisfy these uniquely strict standards is more difficult than in other locations.

Given the compounding difficulty presented by the above outlined factors, it is encouraging that Con Edison has identified avenues for addressing the reliability need through only clean and non-emitting solutions. Addressing this need using such solutions will provide critical support for New York to meet requirements set forth in Public Service Law Section 66-p—including requirements that the Commission establish a program to require at least 70% renewable generation by 2030 and a "zero-emissions" statewide electrical demand system by 2040,[32] as well as the target of 3 GW of storage by 2030.[33]

IV. Con Edison should provide a more thorough explanation of its decisions to reject various options proposed in response to its RFI.

Con Edison received 71 responses to its RFI, many of which combined multiple projects and programs.[34] In the Plan, Con Edison states that it relied on three criteria to determine whether a resource could potentially qualify: whether the resource was clean and non-emitting;[35] whether the solution could "reasonably be included in a portfolio to relieve the transmission security needs based on the daily performance requirements for the capability period";[36] and whether the solution is "incremental" (that is, whether it provides new or additional load relief that is not already counted in existing load forecasts).[37] Solutions that were able to satisfy these requirements were then subjected to another set of evaluation criteria that aimed to identify proposals with "highest likelihood of successful execution and deliverability,"[38] including operational, financial, portfolio potential, and other considerations.[39]

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[30] *See* CONSOL. EDISON CO. OF N.Y., INC., TP-7100-20: TRANSMISSION PLANNING CRITERIA 1 (July 7, 2026), https://perma.cc/5SPM-TQ7Q [hereinafter TP-7100-20]. Section 65(15) of the Public Service Law provides that the chief executive officer of every combination utility certify annually to the Commission that the utility "has internal controls, policies and procedures designed to ensure compliance with the requirements of this chapter and any rules, regulations, orders and procedures adopted thereto, including the obligation that such corporation provide safe and adequate service." N.Y. Pub. Serv. Law § 65(15).
[31] *See* TP-7100-20, *supra* note 29, at 8.
[32] N.Y. Pub. Serv. Law § 66-p(2).
[33] *Id.* § 66-p(5).
[34] Reliability Contingency Plan, *supra* note 2, at 6.
[35] *Id.* at 8.
[36] *Id.*
[37] *Id.*
[38] *Id.* at 8-9.
[39] *See id.* at 9.

In actually describing proposals that were rejected however, the Plan does not necessarily describe how they performed with respect to these criteria. Instead, for various proposals, the Plan merely gives limited overviews and states that they could not satisfy transmission security (or that their ability to satisfy transmission security has not been adequately demonstrated).[40]

For example, the Plan dismisses event-based demand response (as opposed to daily load shifting) on the grounds that it would "not meet the requirements for transmission security because it would not provide relief during the entire summer capability period."[41] The Plan does not fully explain why a particular resource not being available for the entire summer capability period would necessarily be unable to contribute to a portfolio of resources that meets the requirements for transmission security. The complex, overlapping set of reliability rules applicable to Con Edison's system[42] may entirely rule out specific solutions, including solutions that might be satisfactory in other locations, from eligibility to address the Zone J need.[43] Clear explanations of what these nested sets of requirements demand, and how particular proposals fail to satisfy them, would provide helpful insight to both regulatory decisionmakers and market actors.

Although the Plan dismisses event-based demand response as necessarily incapable of providing transmission security, it suggests that certain types of virtual power plants (VPPs) (those involving "daily load shifting") *could* have the potential to meet transmission security, but takes them off the table on the grounds that "this type of persistent load reduction or daily shifting, while having the potential to help transmission security needs, does not have a proven track record or operational data to demonstrate that it can deliver the needed load relief,"[44] and specifically expresses concerns about the need for repeated customer action and the risk of customer fatigue. While these concerns may be well founded, the literature suggests that flexible connections and flexibility services (including through arrangements where customers can choose not to respond to a dispatch signal) are well demonstrated to provide some functionality (for example, addressing thermal constraints and voltage constraints) while being unable to

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[40] *See id.* at 11-15.

[41] *Id.* at 14.

[42] See TP-7100-20, *supra* note 29, at 1*; see also, e.g.,* N.Y. STATE RELIABILITY COUNCIL, *supra* note 28, 95-97; *see also, e.g.,* N. AM. ELEC. RELIABILITY CORP., TPL-001-5.1: TRANSMISSION SYSTEM PLANNING PERFORMANCE REQUIREMENTS (July 1, 2023), https://perma.cc/AU8E-8CG9.

[43] For example, while Zone J is subject to unique local reliability rules under New York State Reliability Council (NYSRC)'s Reliability Rules and Compliance Manual, Section G.1, *see* N.Y. STATE RELIABILITY COUNCIL, *supra* note 28, at 95-97, the specific N-1-1-0 standard, requiring the system to be restored to 100% normal operating limits prior to a second contingency without firm load shedding, stems from Con Edison's own Transmission Planning Criteria. *See* TP-7100-20, *supra* note 29. It is possible that Con Edison understands the requirements set forth in TP-7100 to entirely rule out some strategies, such as those that would result in load shedding. But in applying the criteria that Con Edison has adopted, care must be taken not to conflate prohibited involuntary customer load shedding (TP-7100 Principle 15) with voluntary, compensated demand response or battery storage dispatch. Contracted distributed energy resource (DER) flexibility represents an active capacity supply resource that maintains grid security, rather than a failure of reliability.

[44] Reliability Contingency Plan, *supra* note 2, at 14.

perform, or requiring more demonstration, for others (for example, reactive power).[45] As such, a detailed explanation of what kind of track record and/or operational data would need to exist for such options to be considered would both bolster Con Edison's decision not to include them at this stage and provide actionable guidance for industry parties making proposals in the future.

V. The RADR proposal raises particular questions that Con Edison should be expected to address.

The RADR proposal (including the assertion that the VDER framework "is generally not adequate to meet transmission security needs"[46]), viewed together with the Plan's skepticism about various non-utility-dispatched aggregations of distributed energy resources (DERs) (for example, third-party VPPs), deserves particular attention because the various choices made in the Plan, in the aggregate, appear to raise questions as to whether Con Edison believes DER aggregations can provide transmission security to its system other than through arrangements where the Company directly controls them.

The assertion about the VDER framework's inadequacy for transmission security demands a detailed explanation, especially as it appears to be in tension with Con Edison's assertion, in its July 2026 Reliability Needs Report, that additional VDER resources are among the developments that had enabled the Company to decrease and defer its assessment of transmission security needs.[47] Con Edison should identify which resources account for that reduction and deferral, explain whether and to what extent they are enrolled in VDER, and explain why the assumptions used to credit their contribution to the forecast do not support relying on them to meet specific transmission-security needs. Additionally, Con Edison should address whether contractual availability requirements, performance penalties, telemetry, or third-party dispatch of these resources could satisfy the identified need without transferring dispatch rights to Con Edison.

Even if operating DERs in a manner that that supports reliability requires some kind of centralized management of them to ensure acceptable performance, evidence from other jurisdictions suggests that this centralized operation need not be by the utility, because third parties may be competent to dispatch DER aggregations, and market operators can structure rules that allow market signals to guide efficient dispatch of DERs to meet grid needs. For example, in Great Britain, Elexon administers key electricity-market arrangements and serves as the market facilitator for local flexibility markets, helping coordinate local and national flexibility-market rules and processes. Those markets enable grid operators to procure flexibility from third-party

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[45] *See* AVINASH AITHAL, ANDREW WAINWRIGHT & STEVE ATKINS, DISTRIBUTION SYSTEM OPERATION: FLEXIBILITY SERVICES 188-189 (2025), https://doi.org/10.1007/978-3-031-92905-2.

[46] Reliability Contingency Plan, *supra* note 2, at 2.

[47] *See* July 2026 Reliability Needs Report, *supra* note 11, at 2 ("This reduction is driven by an updated transmission system topology (per the 2026 Gold Book / FERC 715 Filing), the inclusion of a 100 MW (400 MWh) energy storage project (Queue Position: 931) newly designated as a "FIRM" resource by the NYISO, and additional VDER energy storage assets that have sufficiently progressed in the SIR process since the previous forecast.").

providers, including storage operators, rather than requiring the grid operator to own or directly control every participating asset.[48] In California, the California Public Utilities Commission in 2014 established rules that define the roles and responsibilities of third-party demand response providers and others in direct participation demand response (which includes bidding into wholesale energy markets operated by California Independent System Operator);[49] after more than a decade and subject to applicable utility-coordination, metering, telemetry, and market-participation requirements, these rules (PG&E and SCE Rule 24, and SDG&E Rule 32)[50] remain in place.[51] Con Edison should explain the reasoning underlying any concerns it may have about third-party control of DER aggregations—including, if applicable, why any locally-specific reliability requirements are the source of any such concerns, and exactly how those locally-specific requirements change how the capabilities of such assets should be evaluated in connection with transmission security.

This need for transparency is further heightened by the unknown cost implications of granting Con Edison an exclusive opportunity to dispatch DERs for transmission security. The Plan asserts that certain costs associated with RADR and information relevant to program costs, including price ceilings applicable to bids and performance awards, will be established in confidential consultation with DPS Staff,[52] and the Plan does not state how much capacity Con Edison currently expects to procure at that confidential price ceiling. Consequently, although the Plan asserts that bill impacts will be mitigated by treating certain non-capital costs as a 15-year regulatory asset,[53] the Plan does not describe RADR's total costs.[54] Further, the Plan omits any discussion of the hypothetical costs of various rejected proposals, so in addition to having no basis on which to evaluate whether the Company is correct that various proposals would not provide the required level of reliability (as discussed in earlier sections), stakeholders have no basis on which to evaluate whether the Company has selected the most cost-effective option.

For these reasons, a fuller explanation of the decisions described in the Plan, including the bases on which they were made, is essential to provide a foundation for regulator and stakeholder support for the RADR proposal. This explanation should include a thorough analysis of the

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[48] *See* ELEXON, ELEXON'S ROLE IN FACILITATING FLEXIBILITY MARKETS (last visited Oct. 21, 2026), https://perma.cc/4VKC-5KUC; *see also* ELEXON, FLEXIBILITY VISION & ACTION PLAN 20-21 (July 2025), https://perma.cc/DZ5K-8TF2; *see also* ELEXON, FLEXIBILITY MARKET RULES, PRODUCT DEFINITIONS (Aug. 25, 2026), https://perma.cc/6GPB-QR8T.

[49] *See* CAL. PUB. UTILS. COMM'N, DEMAND RESPONSE PROVIDER REGISTRATION (last visited Oct. 21, 2026), https://perma.cc/UZ63-83B8 .

[50] *See, e.g.*, PAC. GAS & ELEC. CO., ELECTRIC RULE NO. 24: DIRECT PARTICIPATION AND DEMAND RESPONSE (Dec. 12, 2017), https://perma.cc/XU57-5P5N; *see also, e.g.*, S. CAL. EDISON CO., RULE 24: DIRECT PARTICIPATION DEMAND RESPONSE (Jan. 26, 2018), https://perma.cc/KP4L-VR3C; *see also, e.g.*, SAN DIEGO GAS & ELEC. CO., RULE 32: DIRECT PARTICIPATION DEMAND RESPONSE (Dec. 21, 2017), https://tariffsprd.sdge.com/view/tariff/?utilId=SDGE&bookId=ELEC&tarfKey=701.

[51] *See* CAL. PUB. UTILS. COMM'N, *supra* note 48.

[52] *See* Reliability Contingency Plan, *supra* note 2, at 24.

[53] *See id.* at 3.

[54] *See, e.g., id.* at 29 n.45.

benefits and costs of the Company's proposal and alternatives that were fully evaluated, or the Company's explanation for why no alternatives were fully evaluated. Such an analysis would provide an essential foundation for the regulator and stakeholders to evaluate whether the Company's proposal is benefit-cost justified and whether it has higher net benefits than other options for satisfying the same reliability need.