



Carole Sobin  
Secretary

August 17, 2009

Ms. Elizabeth M. Murphy  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549-1090

RE: Facilitating Shareholder Director Nominations, Release Nos. 33-9046;  
34-60089; IC-28765; File No. S7-10-09 (June 18, 2009)

Dear Ms. Murphy:

Consolidated Edison, Inc. (“Con Edison” or the “Company”) appreciates the opportunity to provide the U.S. Securities and Exchange Commission (the “SEC”) with its views regarding the above-referenced shareholder proxy access proposal (the “Proxy Access Proposal” or separately referred to as “Proposed Rule 14a-11” or “Proposed Rule 14a-8(i)(8)”). Con Edison is one of the nation’s largest investor-owned energy companies, with approximately \$14 billion in annual revenues and \$34 billion in assets. Con Edison provides a wide range of energy-related products and services to its customers and employs approximately 15,500 individuals through its two regulated utility subsidiaries and its three competitive energy businesses.

Con Edison is committed to good corporate governance and its shareholders have the meaningful ability to participate in the director election process. For example, Con Edison, like many other S&P 500 companies, has implemented a majority voting standard in uncontested director elections and established a director resignation procedure for incumbent directors who fail to receive a majority of the votes cast. Con Edison strongly believes that majority voting provides its shareholders with a meaningful opportunity to demonstrate their views of Board nominated director candidates. In addition, New York law permits a Con Edison shareholder to nominate his or her own director candidate, and Con Edison provides a process for shareholders to recommend director candidates to the Company. Con Edison’s Corporate Governance and Nominating Committee (the “Nominating Committee”) applies the same review standard

to every director candidate (whether such candidate was recommended by a shareholder or by another source). Moreover, because the SEC allows all public company shareholders to utilize the notice and access proxy solicitation rules, shareholders can solicit proxies in support of their own nominees at a lower cost than prior to the adoption of such rules.

#### Proxy Access Proposal Comment Period

If adopted in its current form, the Proxy Access Proposal would dramatically alter the way shareholders nominate and elect directors to a company's board. The potential impact of the Proxy Access Proposal on the composition of a company's board, which is fundamental to its ability to govern, merits significant additional review time (beyond the 60-day comment period provided) and consideration prior to adoption. The Company believes that it is inappropriate to simultaneously adopt Rule 14a-11 and/or amend Rule 14a-8(i)(8) in the same year that the amendments to New York Stock Exchange Rule 452 are adopted without providing the public with adequate time to study the potential impact of all of the proposed changes on the current system and to respond to the hundreds of questions and requests for data and information in the SEC release regarding the Proxy Access Proposal.

#### Proposed Rule 14a-11

The Company is opposed to the adoption of proposed Rule 14a-11 because shareholders currently have the right under New York law to nominate directors. Proposed Rule 14a-11 would complicate the nomination and election process and promote election contests. The Company specifically objects to the aspects of Proposed Rule 14a-11 discussed below.

##### A. Role of Independent Nominating Committees

Proposed Rule 14a-11 provides that, to have a director nominee included in a company's proxy materials, a nominating shareholder or shareholder group must represent that each shareholder's or shareholder group's director nominee (a "shareholder's nominee") meets the objective criteria for "independence" of the national securities exchange where the company is listed. The rule does not, however, require that each shareholder's nominee meet independence standards or other qualifications that have been developed by a company's board. The rule also does not require that each shareholder's nominee meet with a company's nominating committee prior to inclusion in a company's proxy materials. The rule only provides for minimal disclosure regarding a shareholder's nominee in new Schedule 14N. The absence of a review process for shareholder-nominated director candidates under Proposed Rule 14a-11 could promote special interest directors who represent the interests of the shareholders nominating them and could negatively impact the diversity, quality and overall composition of a company's board. All of the nominees to a company's board should be treated equally and should be subject to the same criteria and evaluation process.

Con Edison's Nominating Committee considers the qualifications of director candidates, including any shareholder-recommended director candidates. The Company's Corporate Governance Guidelines (the "Governance Guidelines") provide a flexible framework that reflects important policy goals (such as diversity), and individual character traits befitting a qualified director (such as integrity, sound judgment, and business experience), as determined by the Nominating Committee and the Board. Utilizing the Governance Guidelines, the Nominating Committee, composed entirely of independent directors, recommends to the Board for nomination director candidates who represent the interest of all of the Company's shareholders. These Board-nominated director candidates not only reflect a unique blend of interests, skill sets, and values, but have also met New York Stock Exchange independence rules and other requirements set forth in the Governance Guidelines. Eliminating a nominating committee's ability to evaluate a shareholder's nominee or nominees pursuant to the same criteria and evaluation process as other board candidates would undermine the steps the company has taken to enhance the quality of its board.

In view of these considerations, Proposed Rule 14a-11 should be revised to provide that each shareholder's nominee must be reviewed by a company's nominating committee prior to inclusion in a company's proxy materials. This would allow the committee to exercise its fiduciary responsibilities with respect to the nominating process, and allow a board to make an informed recommendation to its shareholders with respect to the nominee's candidacy.

#### B. Deadlines

Proposed Rule 14a-11 would require that a nominating shareholder or shareholder group provide a company and the SEC with notice on new Schedule 14N. Notice on new Schedule 14N must be provided by the date specified in a company's advance notice by-law provision or, where no such provision is in place, no later than 120 calendar days before the date that the company mailed its proxy materials for the prior year's annual meeting. If, after receipt of the new Schedule 14N, a company determines that the eligibility requirements have not been satisfied by a nominating shareholder or shareholder group, the company has 14 calendar days to notify that shareholder or shareholder group of its intent to exclude the nominee or nominees from its proxy materials. Con Edison is concerned that the four-month and two-week timeframes are unrealistic and would not allow a company adequate time to review the information contained in the candidate's Schedule 14N to determine whether the eligibility requirements have been satisfied. The potential difficulties posed by these timeframes would be even greater if a company is required to review two or more Schedule 14N submissions in one two-week period or is required to restart the Schedule 14N review process after the clock has already started running with a new shareholder after determining that the shareholder who was first in the door did not meet the eligibility requirements. To allow a company sufficient time to review Schedule 14N submissions, Proposed Rule 14a-11 should be revised so that the 120- and 14-day periods are increased to at least 180 and 45 calendar days, respectively.

### C. Eligibility Thresholds

Proposed Rule 14a-11 would permit a shareholder or shareholder group that holds 1, 3 or 5 percent of a company's voting securities (depending on a company's capitalization) for at least one year prior to the filing of a notice on new Schedule 14N, and continues to hold such voting securities through the date of the annual meeting, to include that shareholder's nominee or nominees in the company's proxy materials. Proposed Rule 14a-11 would permit a single large shareholder to put an individual in the director nomination process (and cause a company to incur expenses) without having to demonstrate in advance that there is any additional shareholder support for such nominee. Moreover, a shareholder would not be required to have previously disclosed any ownership information on a Schedule 13D or Schedule 13G under Regulation 13D-G under the Securities Exchange Act of 1934, except at the smallest companies (non-accelerated filers), where shareholders would be subject to a 5 percent eligibility threshold. The Company recommends that the eligibility threshold for all companies (irrespective of capitalization) be increased to more than 5 percent for shareholders acting alone and to 10 percent for shareholders acting as a group. Setting the threshold for shareholders acting alone at more than 5 percent would provide greater transparency to the nomination process and would ensure that only shareholders with a significant interest in a company can act alone. Further, setting the threshold for shareholders acting as group at 10 percent would ensure that shareholders with smaller shareholdings can demonstrate broad-based support for their nominee prior to imposing costs on all shareholders.

### D. First-In Standard

Proposed Rule 14a-11 would require a company to include in its proxy materials the greater of one shareholder's nominee or the number of nominees that represent 25 percent of the company's board. If more than one shareholder or shareholder group is otherwise eligible to nominate one or more directors to a company's board, the first nominating shareholder or shareholder group to provide the company and the SEC with timely notice on new Schedule 14N of intent to nominate one or more directors is required to be included in the company's proxy materials. The first nominating shareholder or shareholder group to put in a valid submission could preclude any subsequent shareholder or shareholder group submission.

This "first-in" standard would have a number of negative consequences, including: (1) encouraging a race to the door, (2) favoring large shareholders, who have greater resources to prepare their submission materials, over small shareholders, who must aggregate to reach the ownership threshold and need to pool resources to prepare their submission materials, (3) facilitating a change-in-control (as discussed below), and (4) creating confusion in cases where multiple submissions are received by a company on the same date. Moreover, the first-in standard, coupled with the absence of candidate review by a company's nominating committee, would give a company's shareholders the right to vote for the "first" nominee or nominees but would potentially deprive shareholders of the right to vote for the most qualified nominee. To address

some of the potential negative consequences of the “first-in” standard discussed above, the Company recommends that the shareholder or shareholder group with the largest shareholdings be given priority. The Company also recommends a rule of one director nominee per shareholder or shareholder group (to an aggregate maximum of 25 percent of the board as described in Proposed Rule 14a-11) to ensure proxy access to large and small shareholders.

#### E. Change-In-Control Issues

Proposed Rule 14a-11 requires that a nominating shareholder or shareholder group provide a company and file with the SEC a notice on new Schedule 14N. New Schedule 14N requires a number of disclosures, representations and certifications, including a certification that the securities are not held for the purpose of, or with the effect of, changing the control of the company or gaining more than a limited number of seats on the board. Other than this certification, a company is provided with no other safeguard against a takeover under Proposed Rule 14a-11. Proposed Rule 14a-11 should be revised to reduce the opportunity for circumvention of the SEC’s takeover disclosure rules. For example, as discussed above, the SEC should consider limiting shareholder nominations to one director nominee per shareholder or shareholder group. The SEC could also consider limiting the number of shareholder nominating groups that a shareholder may join to one per proxy season.

#### Proposed Rule 14a-8(i)(8)

The Company is opposed to the adoption of Proposed Rule 14a-8(i)(8) but would be in favor of its adoption if the eligibility requirements were increased and shareholders could utilize the rule to submit by-law amendments that would impose tighter eligibility criteria than Proposed Rule 14a-11.

#### A. Eligibility Requirements

Rule 14a-8(i)(8) currently provides that a company may exclude a shareholder proposal from its proxy statement and proxy card if the shareholder’s proposal relates to a nomination or an election for membership on a company’s board or a procedure for nomination or election. Proposed Rule 14a-8(i)(8) would remove the “director-election exclusion” from the shareholder proposal process. Under Proposed Rule 14a-8(i)(8), a shareholder may submit a Rule 14a-8 proposal if he or she has continuously held at least \$2000 in market value or 1 percent of the company’s shares entitled to vote on the proposal at the meeting for at least 1 year prior to submitting the proposal and continues to hold such shares through the date of the meeting. The removal of the “director-election exclusion” is a significant change from current practice, and the importance of director elections suggests that higher thresholds than those applicable to other shareholder proposals should apply. For this reason, the low eligibility threshold for other shareholder proposals permitted by Rule 14a-8 should not be applied to director elections. Rather, a more substantial shareholder commitment should be required to submit a shareholder proposal to modify a company’s director-election process. For

example, Proposed Rule 14a-8(i)(8) could be amended to apply the eligibility thresholds, holding periods and aggregation principles of Proposed Rule 14(a)-11, or the 5 percent eligibility threshold that the Company has proposed above.

B. Proposed Rule 14a-8(i)(8) Proposals Relating to Proposed Rule 14a-11

Proposed Rule 14a-8(i)(8) would allow a shareholder, under certain circumstances, to require companies to include in a company's proxy materials a proposal to amend, or request an amendment to, a company's governing documents regarding nomination procedures or disclosure related to shareholder nominations, provided the proposal does not conflict with Proposed Rule 14a-11. Thus, a shareholder would be allowed to submit a Proposed Rule 14a-8(i)(8) proposal to a company that would impose looser eligibility criteria than Proposed Rule 14a-11, but would not be allowed to submit a proposal that would impose tighter eligibility criteria. The SEC does not offer a rationale for this distinction, and if a company's shareholders adopt a proxy access by-law that provides for different thresholds than those in Proposed Rule 14a-11—whether the thresholds are stricter or more lenient—the SEC should defer to the will of the shareholders. Otherwise, a company's shareholders will not have the flexibility to determine the best governance structure for the companies in which they invest.

Conclusion

For the reasons stated above, Con Edison cannot support the Proxy Access Proposal in its current form. Con Edison believes that the election contests that will result from the adoption of the Proxy Access Proposal will not improve a board's performance in the long-term; rather, they will impose costs on all shareholders to benefit special interest shareholders with no demonstrated interest in long-term value, will exacerbate the problem of short-termism.

Con Edison appreciates the opportunity to share its views on the Proxy Access Proposal and would be pleased to discuss any of the issues covered in this letter.

Sincerely,



Carole Sobin  
Secretary

cc: Hon. Mary L. Schapiro, Chairman  
Hon. Luis A. Aguilar, Commissioner  
Hon. Kathleen L. Casey, Commissioner  
Hon. Troy A. Paredes, Commissioner  
Hon. Elisse B. Walter, Commissioner  
Ms. Meredith B. Cross, Director, Division of Corporation Finance  
Mr. David M. Becker, General Counsel and Senior Policy Director