Thomas R. Teehan
Senior Counsel

September 23, 2008

VIA HAND DELIVERY & ELECTRONIC MAIL

Luly E. Massaro, Commission Clerk
Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

RE: Docket 3943 – National Grid Request for Change of Gas Distribution Rates
Response to Data Requests and Commission Record Requests

Dear Ms. Massaro:

Enclosed please find eight (8) copies of National Grid's[1] responses to Data Requests DIV 13-4, COMM 2-6, and record requests issued at the evidentiary hearings in the above-referenced proceeding. Attached is a listing of the outstanding data and record requests for which the Company has not yet provided a response. The Company is endeavoring to file these responses as soon as possible.

Thank you for your attention to this transmittal. If you have any questions, please feel free to contact me at (401) 784-7667.

Very truly yours,

Thomas R. Teehan

Enclosures

cc: Docket 3943 Service List

[1] The Narragansett Electric Company d/b/a National Grid ("Company").

Outstanding Responses to Data & Record Requests as of September 23, 2008

Data Request COMM 2-1
Data Request COMM 2-2
Data Request COMM 2-9
Data Request COMM 3-2
Data Request COMM 3-8
Data Request WILEY 3-1
Data Request WILEY 3-2
Data Request WILEY 3-3
Data Request WILEY 3-4
Record Request COMM-2
Record Request COMM-5
Record Request COMM-6
Record Request COMM-7
Record Request COMM-8
Record Request COMM-9
Record Request COMM-10
Record Request COMM-11
Record Request COMM-12
Record Request COMM-13
Record Request COMM-14
Record Request COMM-21

Certificate of Service

I hereby certify that a copy of the cover letter and/or any materials accompanying this certificate were electronically submitted, hand delivered and mailed to the individuals listed below.

/S/ September 23, 2008
Linda Samuelian Date

National Grid (NGrid) – Request for Change in Gas Distribution Rates
Docket No. 3943 - Service List as of 9/15/08

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File original & nine (9) copies w/: Luly E. Massaro, Commission Clerk Public Utilities Commission 89 Jefferson Blvd. Warwick, RI 02889	Lmassaro@puc.state.ri.us Tmassaro@puc.state.ri.us Anault@puc.state.ri.us	401-780-2107 401-941-1691

Data Request COMM 2-6

Request:

Please provide a list of any Print, TV, Radio or Other type of advertisement since the merger that promotes increased consumption of natural gas or promotes conversion to natural gas. Please also provide the cost of each advertisement. Be sure to include the RIPTA bus or buses that have been "wrapped" in an advertisement for natural gas.

Response:

Please note that copies of the direct mail customer communications on gas conversions were provided in response to Data Request COMM 2-5. In addition, the Company is providing copies of scripts for visual media and radio in response to Data Request AG 1-1.

The Company's customer outreach activities involve two types of communications, which are differentiated by the Company for cost tracking purposes. Specifically, the Company differentiates "branding" or general promotion of natural gas or the gas company from spending that is specifically designed to facilitate conversions to natural gas service. The costs for these two categories of customer communications are tracked separately. However, because certain media communications contain elements of both the Company's branding and conversion communications, the Company allocates the cost of those communications between these two categories. This approach is necessary because branding costs are paid for by shareholders and are not recovered through rates. Conversely, costs incurred to communicate information on gas conversions are typically recoverable through rates in the Company's New York, Massachusetts and New Hampshire jurisdictions.

The actual cost of customer communications is the product of three cost categories, which are (1) media purchase costs, (2) production and development costs, and (3) direct mail costs. The breakdown for Rhode Island through Spring 2008 is as follows:

Media Purchases

Media Purchases	Total Spending	Allocated to Branding or General Promotion	Percent of Total Spending	Allocated to Conversion Information	Percent of Total Spending
TV	$61,987	$27,894	45%	$34,093	55%
Radio	$23,214	$11,607	50%	$11,607	50%
Newspaper	$51,786	$33,077	64%	$18,709	36%
CNG Bus Wraps (4 Buses)	$20,400	$20,400	100%	0	0%
OLA	$48,102	$33,369	69%	$14,733	31%
Total	**$205,489**	**$126,347**		**$79,142**	

In addition to the $79,142 expended by the Company in relation to conversion-related media purchases listed in the table above (i.e., the purchase of time or space for TV, radio and print communications), the Company incurred costs for development and production of the media communications and the cost of direct mail communications. The Company attributed approximately 5 percent of its total media development and production costs (or $54,340 out of $1,073,717) to its Rhode Island conversion messaging. For direct mail communications targeted specifically to conversion activities, the actual cost was $47,673. Therefore, in total, the Company expended $181,155 on customer communications and outreach in Rhode Island relating to gas conversions through spring 2008.

Also, please note that the Company does not consider the "bus wraps" to be conversion oriented advertising and has not included the cost of those communications in rates or in the budget for the Gas Marketing Program.

Division Data Request DIV 13-4

Request:

Please update the response to Division Data Request 1-2.

Response:

The table below presents and updates the data provided in response to Data Request DIV 1-2.

Month	**Forecast Spend**	**Actual Spend**	**Difference**
Oct-07	$2,968,155	$2,788,488	$179,667
Nov-07	2,968,155	3,851,385	(883,230)
Dec-07	2,968,155	2,615,846	352,309
Jan-08	2,968,155	1,905,364	1,062,791
Feb-08	2,968,155	820,269	2,147,886
Mar-08	2,968,155	2,378,201	589,954
Apr-08	3,145,055	2,496,892	648,163
May-08	3,145,055	2,780,593	364,462
Jun-08	3,145,055	2,510,327	634,728
July-08	3,145,055	2,620,554	524,501
Total	**$30,389,150**	**$24,767,919**	**$5,621,231**

Please note that the data presented in the table above for the period October 2007 through March 2008 is the same data presented in the Company's initial response to Data Request DIV 1-2.

Prepared by or under the supervision of: Mike Laflamme and Susan Fleck

Record Request No. 1

Request:

Please provide the schedule and workpapers relating to the Company's calculation of savings from the National Grid/Southern Union based on total O&M expenses for the period ending June 30, 2006 as compared to Rate Year.

Response:

Attached please find a calculation of National Grid/Southern Union transaction synergy savings based on total operation and maintenance ("O&M") expenses. The calculation referred to and supplied by the Company at the September 8, 2008 hearing was a calculation prepared prior to the filing of the rate case and did not include any of the Company's or Division's rebuttal issues. The attached calculation compares actual O&M expenses, as adjusted, for the twelve months ended June 30, 2006, which is the period immediately preceding the effective date of the transaction, to similar O&M expenses included in the rate year in this proceeding. The analysis compares the inflated June 30, 2006 O&M expenses to both the Company's rebuttal position rate year O&M expenses and the Division's rebuttal position rate year O&M expenses.

Using this approach, the analysis set forth in Attachment RR-1 suggests that synergy savings of $393,000 were achieved if the Rate Year revenue requirement is calculated in accordance with the Company's rebuttal position and $1,777,000 was achieved if the Rate Year revenue requirement were calculated in accordance with the Division's rebuttal position.

Prepared by or under the supervision of: Mike Laflamme

National Grid - Rhode Island
Alternative Test of Achieved Savings - Docket No. 3943
Gross Expense Calculation

Line			Co. Rebuttal Position	Div. Rebuttal Position	
1	Other Operational and Maintenance Expenses as adjusted /1		77,789	75,820	
2	Uncollectible Accounts Expense Excluding GCR Related	(Att. NG-MDL-1-Rebuttal Pg 3, Ln 22)	3,556	2,912	
3					
4					
5	Rate Case Expense	(Att. NG-MDL-1-Rebuttal Pg 3, Ln 13)	(266)	(266)	
6	Gas Marketing Program Expense	(Att. NG-MDL-1-Rebuttal Pg 3, Ln 8)	(1,377)	(148)	Schedule DJE-4S
7	Accelerated Replacement Program Expense	(Att. NG-MDL-1-Rebuttal Pg 3, Ln 9)	(278)	(278)	
8					
9	**Adjusted Expense included in Rate Year**		**79,424**	**78,040**	
10					
11	**Adjusted Expense from ESM June 30, 2006 as escalated**		**79,817**	**79,817**	
12					
13	**Savings**		**(393)**	**(1,777)**	

/1	Total O&M	Att. NG-MDL-Rebuttal Pg 3:	Line 25	80,544	73,370	Schedule DJE-2S
	Less: Uncollectible		Line 22	(3,556)		
	Less: Rider costs included in O&M		Lines 10-12	(2,085)		
	Less: KeySpan Synergy included in O&M		Line 18	6,400	6,400	(a)
	Less: KeySpan CTA amort included in O&M				(1,500)	(a)
	Less: Company Share of Net Synergies		Lines 19 & 20	(3,347)	(2,450)	(a)
	Less : Health Care Adjust agreed to by Company			(907)		
	Add: FAS 112 as Proposed by Company			740		
				77,789	75,820	

(a) SU and KeySpan CTA amortization is included with Amortization on Line 28 of Attachment NG-MDL-Rebuttal-1, Page 3. In Schedule DJE-2S, KeySpan CTA amortization is included in Other Op & Maint Expense. Also $897k of SU net synergy sharing is excluded in the Division's Rebuttal Position.

/2	Adjusted Expenses @ 06/30/2006 (See page 2 of 2)		73,954
	GDPIP Growth Y/E 06/30/2007 (Sch. DJE-4.1 Line 5)	2.39%	
	GDPIP Growth 3 Mos. 09/30/2007 (Sch DJE-4.1 Line 6)	0.60%	
	GDPIP Growth 2 Yrs 09/30/2009 (Att. NG-MDL-1 Pg 19, Ln 20)	4.78%	
	Escalated Benchmark COS		**79,817**

NEW ENGLAND GAS COMPANY
INCOME STATEMENT
FOR THE TWELVE MONTHS ENDED JUNE 2006 PER ESM FILING

		12 MONTHS ENDED JUNE 2006	
1	**OPERATING REVENUES**		1
2			2
3	TOTAL FIRM GAS	$ 450,432,460	3
4	TRANSPORTATION	11,855,999	4
5	OTHER	1,830,921	5
6	COMPANY PORTION NON-FIRM MARGIN	(474,073)	6
7			7
8	TOTAL OPERATING REVENUES	463,645,307	8
9			9
10	ADJUSTMENTS TO OPERATING REVENUES		10
11	ESM FY '05	423,222	11
12	UNBILLED REVENUES	(1,198,651)	12
13	INVENTORY FINANCING	(3,130,242)	13
14	TOTAL ADJUSTED OPERATING REVENUES	459,739,636	14
15			15
16			16
17	**OPERATING EXPENSES**		17
18			18
19	PRODUCTION (GAS COSTS)	313,529,239	19
20	STORAGE	1,022,755	20
21	DISTRIBUTION	22,083,901	21
22	CUSTOMER ACCOUNTS	23,611,709	22
23	SALES	403,443	23
24	ADMINISTRATIVE & GENERAL	33,230,106	24
25	CORPORATE ALLOCATION	3,265,542	25
26	ACCRUED HEALTH & ENVIRONMENTAL STUDY	191,500	26
27	INCENTIVE PAYMENTS	(255,098)	27
28	TOTAL OPERATING EXPENSES	397,083,097	28
29			29
30	ADJUSTMENTS TO OPERATING EXPENSES		30
31			31
32	ASSET MANAGEMENT INCENTIVE	21,285	32
33	GAS PROCUREMENT PENALTY	(148,486)	33
34	UNBILLED GAS COSTS	(868,028)	34
35	SAVINGS IMPUTED IN BASE RATES	2,049,000	35
36			36
37	TOTAL FUNCTIONAL EXP	398,136,868	37
38			38
39	**OTHER EXPENSES**		39
40			40
41	DEPRECIATION & AMORT.	22,238,475	41
42	LOCAL AND OTHER TAXES	9,952,677	42
43	REVENUE RELATED TAXES (GET)	11,250,032	43
44	FEDERAL INCOME TAXES @ 35%	2,820,629	44
45			45
46	TOTAL OTHER EXPENSES	46,261,813	46
47			47
48	**INCOME BEFORE INT EXP**	15,340,955	48
49			49
50			50
51	**INTEREST EXPENSE**		51
52			52
53	SHORT-TERM DEBT	1,047,014	53
54	LONG-TERM DEBT	8,979,865	54
55	**OTHER**	134,370	55
56	AFDUC	(58,606)	56
57	TOTAL INTEREST EXPENSE	10,102,643	57
58			58
59			59
60	**NET INCOME (LOSS)**	5,238,312	60
61			61
62	PREFERRED DIVIDENDS	474,685	62
63			63
64	**NET INC (LOSS) APPL TO CMN STK**	$ 4,763,627	64

Net Expense For Alternative Synergy Calculation Dkt. 3943

	397,083,097	Line 28
	(313,529,239)	Line 19
	(884,359)	GCR Portion on Line 20
306,575,277		GCR Revs 12 Mos end 6/30/06
2.10%		Uncollectible Rate
	(6,438,081)	
	(284,061)	AGT Expense (Per G/L)
	(1,694,566)	LIAP and Weatherization Exp (Per G/L)
	(298,516)	Prior period Liap Exp Adj (Per G/L)
	73,954,275	

National Grid - RI Gas
Revenue Requirement For The Twelve Months Ended September 30, 2009
Operating Expenses

Line		(A) Filed COS	(B) Division Adjustments	(C) Division COS	(D)	(E) Co. Rebuttal Position	(F)	(G) Rebuttal Cost of Service
1	Labor	$32,300,871		$32,300,871				$32,300,871
2	Health Care	5,316,827	(907,456) (a)	4,409,371	907,456			$5,316,827
3	Empl Thrift - Co. match	1,370,810		1,370,810				$1,370,810
4	Group Insurance	184,803		184,803				$184,803
5	Pensions	5,052,002		5,052,002				$5,052,002
6	OPEB's	4,567,872		4,567,872				$4,567,872
7	Postage	1,171,087		1,171,087				$1,171,087
8	Marketing Program Expenses	1,377,000	(1,229,000) (a)	148,000	1,229,000			$1,377,000
9	New Programs	1,034,000	(756,000) (a)	278,000				$278,000
10	LIAP Expense	1,585,000		1,585,000				$1,585,000
11	Energy Eff. - Weather.Program	200,000		200,000				$200,000
12	AGT Expenses	300,000		300,000				$300,000
13	Rate Case Cost Amortization	265,750		265,750				$265,750
14	AMR Labor Savings	(433,257)		(433,257)				($433,257)
15	AMR Non-labor Savings	(21,420)		(21,420)				($21,420)
16	All Other	26,832,917	(539,000) (a)	26,293,917		(4,531) (e)		$26,289,386
17	Donations	236,428		236,428				$236,428
18	NGRID/Keyspan Total Synergies	(6,400,000)		(6,400,000)				($6,400,000)
19	Company Share of Synergies - NEGas	1,140,601	(1,140,601) (a)	0	1,140,601	(243,887) (f)	257 (h)	$896,971
20	Company Share of Synergies - KeySpan	2,450,000		2,450,000				$2,450,000
21								
22	Uncollectibles	3,594,522	(273,000) (b)	3,321,522	273,000		(38,888) 1/	$3,555,635
23			(415,000) (b)	(415,000)	415,000			$0
24								
25	Total Operating Expenses	82,125,814	(5,260,057)	76,865,757	3,965,057	(248,418)	(38,630)	80,543,766
26								
27	Depreciation	20,069,816	(347,000) (c)	19,722,816	347,000			20,069,816
28	Amortization	3,198,152	(158,152) (a)	3,040,000	158,152	133,979 (g)	(515) (i)	3,331,617
29	Taxes Other Than Income Taxes	10,021,017		10,021,017				10,021,017
30								
31	Total Operating Expenses	115,414,799	(5,765,209)	109,649,590	4,470,209	(114,439)	(39,145)	113,966,215
32								
33								
34	Total Cost of Service 2/	$149,885,295	($11,509,845) (d)	$138,375,450	$10,214,845	($246,648)	($39,145)	$148,304,502

1/	Total Cost of Service Adjustments	($11,509,845)	$10,214,845	
	Less: Company Adjustments per Column E		($246,648)	
	Less: Company Adjustments per Column F (excl. Uncollectibles)		($257)	
	Less: Uncollectible Expense Adjustments per Columns B and D	(273,000)	273,000	
		(415,000)	415,000	
	Net Cost Of Service Adjustments	($10,821,845)	$9,279,939	($1,541,905)
	Uncollectible Expense Adjustment			($38,888)

2/ Page 2 of 3 Line 40 plus Page 3 of 3 Line 31

Notes:
(a) Schedule DJE-4
(b) Schedule DJE-3
(c) Schedule DJE-5
(d) See Schedule DJE-2
(e) Misclassified expense. See response to Div 5-33a
(f) See response to Div 1 - 18 and Attachment NG-MDL Rebuttal-2
(g) Legacy IT system amortization. See response to PUC 1-15
(h) 50% of Column (F), Line 28 times -1
(i) 10 year levelized SU transaction CTA amortization adjustment due to adjusted Company WACC. See Attachment NG-MDL Rebuttal-4, Page 2

Schedule DJE-2S

NATIONAL GRID - RI GAS
COST OF SERVICE
($000)

	(A) Company Position	Adjustments		Division Position
Uncollectible Accounts Expense	$ 3,556	$ (644)	(B)	$ 2,912
Other Op & Maint Expense	76,561	(3,191)	(C)	73,370
Depreciation and Amortization	20,444	(347)	(D)	20,097
Taxes Other Than Income Taxes	10,021	-		10,021
Income Taxes	8,052	(2,869)	(E)	5,183
Return on Rate Base	26,286	(2,660)	(F)	23,627
Total Base Rate Cost of Service	$ 144,920	$ (9,710)		$ 135,210
Costs Subject to Rider Recovery	3,385	-		3,385
Total Cost of Service	$ 148,305	$ (9,710)		$ 138,595

Sources:
(A) Attachment NG-MDL-Rebuttal-1, Page 1
Expenses reclassified to be consistent with Schedule DJE-2
(B) Schedule DJE-3S
(C) Schedule DJE-4S
(D) Schedule DJE-5S
(E) Schedule DJE-6S
(F) Schedule DJE-7S

NEW ENGLAND GAS COMPANY
DETAIL O & M EXPENSE
FOR THE TWELVE MONTHS ENDED

		JUNE 2006	
1	TOTAL STORAGE COST PER FILING - **SP-1 PG. 2 LINE 20**	1,022,755	1
2			2
3	TOTAL PER FERC REPORT - **PG. 322 LINE 177**	1,022,755	3
4			4
5			5
6	TOTAL DISTRIBUTION COST PER FILING - **SP-1 PG.2 LINE 21**	22,083,901	6
7			7
8	TOTAL PER FERC REPORT - **PG. 324 LINE 229**	22,083,901	8
9			9
10			10
11	TOTAL CUSTOMER COST PER FILING - **SP-1 PG.2 LINE 22**	23,611,709	11
12			12
13	TOTAL CUST COSTS PER FERC RPT - **PAGE 325 LINE 237&244**	23,611,709	13
14			14
15			15
16	TOTAL SALES COST PER FILING - **SP-1 PG. 2 LINE 23**	403,443	16
17			17
18	TOTAL PER FERC REPORT - **PG. 325 LINE 251**	403,443	18
19			19
20			20
21	TOTAL ADMIN & GEN COST PER FILING - **SP-1 PG. 2 LINE 24**	33,230,106	21
22			22
23	TOTAL PER FERC REPORT - **PG. 325 LINE 271**	32,896,101	23
24	ADD / (SUBTRACT) :		24
25	FERC # 42650002-0410 INCLUDED (DONATIONS)	133,712	25
26	FERC # 426710-0630 INCLUDED (DONATIONS)	269,249	26
27	SP TESTIMONY PAGE 8 OF 13 LINE 9 EXCLUDED (ADVERTISING)	(68,956)	27
28			28
29	FERC ADJUSTED ADMIN & GEN COSTS	33,230,106	29

NEW ENGLAND GAS COMPANY
DETAIL GAS COSTS
FOR THE TWELVE MONTHS ENDED

	GAS COSTS	JUNE 2006	
1	TOTAL GAS COST	314,648,567	1
2	PRIOR PERIOD DEFERRED GAS COST ADJ	(1,119,328)	2
3	TOTAL GAS COST PER FILING - **SP-1 PG.2 LINE 19**	313,529,239	3
4			4
5			5
6	TOTAL PER FERC REPORT - **PG. 320 LINE 97**	314,648,567	6

ATTACHMENT SP-4
FERC FORM NO. 2
SEPTEMBER 1, 2006

Name of Respondent	This Report Is:	Date of Report	Year Ending
New England Gas Company, A Division of Southern Union Co		*(Mo, Da, Yr)*	**June 30, 2006**
Rhode Island Location	___ A Resubmission		

GAS OPERATION AND MAINTENANCE EXPENSES

1. Report operation ad maintenance expenses. If the amount for previous year is not derived from previously reported figures, explain in footnote.

2. Provide in footnotes the source of the index used to determine the price for gas supplied by shippers as reflected on line 74.

Line No.	Account (a)	Amount for Current Year	Amount for Previous Year (c)
1	1. PRODUCTION EXPENSES		
2	A. Manufactured Gas Production		
3	Manufactured Gas Production *(Submit Supplemental Statement Page 317a)*	52,530	597,309
4	B. Natural Gas Production		
5	B1. Natural Gas Production and Gathering		
6	Operation		
7	750 Operation Supervision and Engineering		
8	751 Production Maps and Records		
9	752 Gas Well Expenses		
10	753 Field Lines Expenses		
11	754 Field Compressor Station Expenses		
12	755 Field Compressor Station Fuel and Power		
13	756 Field Measuring and Regulating Station Expenses		
14	757 Purification Expenses		
15	758 Gas Well Royalties		
16	759 Other Expenses		
17	760 Rents		
18	TOTAL Operation(Total of lines 7 thru 17)	-	-
19	Maintenance		
20	761 Maintenance Supervision and Engineering		
21	762 Maintenance of Structures and Improvements		
22	763 Maintenance of Producing Gas Wells		
23	764 Maintenance of Field Lines		
24	765 Maintenance of Field Compressor Station Equipment		
25	766 Maintenance of Field Measuring and Regulating Station Equipment		
26	767 Maintenance of Purification Equipment		
27	768 Maintenance of Drilling and Cleaning Equipment		
28	769 Maintenance of Other Equipment		
29	TOTAL Maintenance(Total of lines 20 thru 28)	-	-
30	TOTAL Natural Gas Production and Gathering(Total of lines 18 and 29)	-	-

Name of Respondent	This Report Is:	Date of Report	Year Ending
New England Gas Company, A Division of Southern Union Co		*(Mo, Da, Yr)*	**June 30, 2006**
Rhode Island Location	___ A Resubmission		

GAS OPERATION AND MAINTENANCE EXPENSES (Continued)

Line No.	Account (a)		Amount for Current Year (b)	Amount for Previous Year (c)
31	B2. Products Extraction			
32	Operation			
33	770	Operation Supervision and Engineering		
34	771	Operation Labor		
35	772	Gas Shrinkage		
36	773	Fuel		
37	774	Power		
38	775	Materials		
39	776	Operation Supplies and Expenses		
40	777	Gas Processed by Others		
41	778	Royalties on Products Extracted		
42	779	Marketing Expenses		
43	780	Products Purchased for Resale		
44	781	Variation in Products Inventory		
45	*(Less)* 782	Extracted Products Used by the Utility - Credit		
46	783	Rents		
47		TOTAL Operation (Total of lines 33 thru 46)	-	-
48	Maintenance			
49	784	Maintenance Supervision and Engineering		
50	785	Maintenance of Structures and Improvements		
51	786	Maintenance of Extraction and Refining Equipment		
52	787	Maintenance of Pipe Lines		
53	788	Maintenance of Extracted Products Storage Equipment		
54	789	Maintenance of Compressor Equipment		
55	790	Maintenance of Gas Measuring and Regulating Equipment	67	
56	791	Maintenance of Other Equipment		
57		TOTAL Maintenance (Total of lines 49 thru 56)	67	-
58		TOTAL Products Extraction (Total of lines 47 and 57)	67	-

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Rhode Island Location	___ A Resubmission		

GAS OPERATION AND MAINTENANCE EXPENSES (Continued)

Line No.	Account (a)		Amount for Current Year (b)	Amount for Previous Year (c)
59	C. Exploration and Development			
60	Operation			
61	795	Delay Rentals		
62	796	Nonproductive Well Drilling		
63	797	Abandoned Leases		
64	798	Other Exploration		
65	TOTAL Exploration and Development (Total of lines 61 thru 64)		-	-
66	D. Other Gas Supply Expenses			
67	Operation			
68	800	Natural Gas Well Head Purchases		
69	800.1	Natural Gas Well Head Purchases, Intracompany Transfers		
70	801	Natural Gas Field Line Purchases		
71	802	Natural Gas Gasoline Plant Outlet Purchases		
72	803	Natural Gas Transmission Line Purchases		
73	804	Natural Gas City Gate Purchases	316,726,731	266,245,714
74	804.1	Liquefied Natural Gas Purchases		
75	805	Other Gas Purchases		
76	*(Less)*	805.1 Purchased Gas Cost Adjustments		12,741
77	TOTAL Purchased Gas (Total of lines 68 thru 76)		316,726,731	266,258,455
78	806	Exchange Gas		
79	Purchased Gas Expenses			
80	807.1	Well Expense - Purchased Gas		
81	807.2	Operation of Purchased Gas Measuring Stations		
82	807.3	Maintenance of Purchased Gas Measuring Stations		
83	807.4	Purchased Gas Calculations Expenses		
84	807.5	Other Purchased Gas Expenses		
85	TOTAL Purchased Gas Expenses (Total of lines 80 thru 84)		-	-

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GAS OPERATION AND MAINTENANCE EXPENSES (Continued)

Line No.	Account (a)	Amount for Current Year (b)	Amount for Previous Year (c)
86	808.1 Gas Withdrawn from Storage - Debit		
87	*(Less)* 808.2 Gas Delivered to Storage - Credit		
88	809.1 Withdrawals of Liquefied Natural Gas for Processing - Debit		
89	*(Less)* 809.2 Deliveries of Natural Gas for Processing - Credit		
90	Gas Used in Utility Operations - Credit		
91	810 Gas Used for Compressor Station Fuel - Credit		
92	811 Gas Used for Products Extraction - Credit		
93	812 Gas Used for Other Utility Operations - Credit	(237,762)	(443,288)
94	TOTAL Gas Used in Utility Operations - Credit (Total of lines 91 thru 93)	(237,762)	(443,288)
95	813 Other Gas Supply Expenses	(1,892,999)	(2,301,569)
96	TOTAL Other Gas Supply Exp. (Total of lines 77, 78, 85, 86 thru 89, 94,95)	314,595,970	263,513,598
97	TOTAL Production Expenses (Total of lines 3, 30, 58, 65, and 96)	314,648,567	264,110,907
98	2. NATURAL GAS STORAGE, TERMINALING AND PROCESSING EXPENSES		
99	A. Underground Storage Expense		
100	Operation		
101	814 Operation Supervision and Engineering		
102	815 Maps and Records		
103	816 Wells Expenses		
104	817 Lines Expenses		
105	818 Compressor Station Expenses		
106	819 Compressor Station Fuel and Power		
107	820 Measuring and Regulating Station Expenses		
108	821 Purification Expenses		
109	822 Exploration and Development		
110	823 Gas Losses		
111	824 Other Expenses		
112	825 Storage Well Royalties		
113	826 Rents		
114	TOTAL Operation (Total of lines 101 thru 113)	-	-

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SEPTEMBER 1, 2006

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Rhode Island Location	___ A Resubmission		

GAS OPERATION AND MAINTENANCE EXPENSES (Continued)

Line No.	Account (a)		Amount for Current Year (b)	Amount for Previous Year (c)
115	Maintenance			
116	830	Maintenance Supervision and Engineering		
117	831	Maintenance of Structures and Improvements		
118	832	Maintenance of Reservoirs and Wells		
119	833	Maintenance of Lines		
120	834	Maintenance of Compressor Station Equipment		
121	835	Maintenance of Measuring and Regulating Station Equipment		
122	836	Maintenance of Purification Equipment		
123	837	Maintenance of Other Equipment		
124		TOTAL Maintenance (Total of lines 116 thru 123)	-	-
125		TOTAL Underground Storage Expenses (Total of lines 114 and 124)	-	-
126		B. Other Storage Expenses		
127	Operation			
128	840	Operation Supervision and Engineering	138	37
129	841	Operation Labor and Expenses		717,817
130	842	Rents	4,045	
131	842.1	Fuel		10,472
132	842.2	Power		236
133	842.3	Gas Losses		-
134		TOTAL Operation (Total of lines 128 thru 133)	4,183	728,562
135	Maintenance			
136	843.1	Maintenance Supervision and Engineering		
137	843.2	Maintenance of Structures and Improvements		
138	843.3	Maintenance of Gas Holders		
139	843.4	Maintenance of Purification Equipment		
140	843.5	Maintenance of Liquefaction Equipment		
141	843.6	Maintenance of Vaporizing Equipment		
142	843.7	Maintenance of Compressor Equipment		
143	843.8	Maintenance of Measuring and Regulating Equipment		
144	843.9	Maintenance of Other Equipment		
145		TOTAL Maintenance (Total of lines 136 thru 144)	-	-
146		TOTAL Other Storage Expenses (Total of lines 134 and 145)	4,183	728,562

Name of Respondent	This Report Is:	Date of Report	Year Ending
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GAS OPERATION AND MAINTENANCE EXPENSES (Continued)

Line No.	Account (a)	Amount for Current Year (b)	Amount for Previous Year (c)
147	C. Liquefied Natural Gas Terminaling and Processing Expenses		
148	Operation		
149	844.1 Operation Supervision and Engineering		
150	844.2 LNG Processing Terminal Labor and Expenses	808,132	
151	844.3 Liquefaction Processing Labor and Expenses		
152	844.4 Liquefaction Transportation Labor and Expenses		
153	844.5 Measuring and Regulating Labor and Expenses		
154	844.6 Compressor Station Labor and Expenses		
155	844.7 Communication System Expenses		
156	844.8 System Control and Load Dispatching		
157	845.1 Fuel	17,793	25,377
158	845.2 Power		
159	845.3 Rents	34,350	23,345
160	845.4 Demurrage Charges		
161	*(Less)* 845.5 Wharfage Receipts - Credit		
162	845.6 Processing Liquefied or Vaporized Gas by Others		
163	846.1 Gas Losses		
164	846.2 Other Expenses		
165	TOTAL Operation (Total of lines 149 thru 164)	860,275	48,722
166	Maintenance		
167	847.1 Maintenance Supervision and Engineering		46,078
168	847.2 Maintenance of Structures and Improvements	1,739	29,510
169	847.3 Maintenance of LNG Processing Terminal Equipment	61,990	45,754
170	847.4 Maintenance of LNG Transportation Equipment		
171	847.5 Maintenance of Measuring and Regulating Equipment	-	1,504
172	847.6 Maintenance of Compressor Station Equipment		
173	847.7 Maintenance of Communication Equipment		
174	847.8 Maintenance of Other Equipment	94,568	13,616
175	TOTAL Maintenance (Total of lines 167 thru 174)	158,297	136,462
176	TOTAL Liquefied Nat Gas Terminaling and Proc Exp (Total of lines 165 and 175)	1,018,572	185,184
177	TOTAL Natural Gas Storage (Total of lines 125, 146, and 176)	1,022,755	913,746

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GAS OPERATION AND MAINTENANCE EXPENSES (Continued)

Line No.	Account (a)	Amount for Current Year (b)	Amount for Previous Year (c)
178	3. TRANSMISSION EXPENSES		
179	Operation		
180	850 Operation Supervision and Engineering		
181	851 System Control and Load Dispatching		
182	852 Communication System Expenses		
183	853 Compressor Station Labor and Expenses		
184	854 Gas for Compressor Station Fuel		
185	855 Other Fuel and Power for Compressor Stations		
186	856 Mains Expenses		
187	857 Measuring and Regulating Station Expenses		
188	858 Transmission and Compression of Gas by Others		
189	859 Other Expenses		
190	860 Rents		
191	TOTAL Operation (Total of lines 180 thru 190)	-	-
192	Maintenance		
193	861 Maintenance Supervision and Engineering		
194	862 Maintenance of Structures and Improvements		
195	863 Maintenance of Mains		
196	864 Maintenance of Compressor Station Equipment		
197	865 Maintenance of Measuring and Regulating Station Equipment		
198	866 Maintenance of Communication Equipment		
199	867 Maintenance of Other Equipment		
200	TOTAL Maintenance(Total of lines 193 thru 199)	-	-
201	TOTAL Transmission Expenses (Total of lines 191 and 200)	-	-
202	4. DISTRIBUTION EXPENSES		
203	Operation		
204	870 Operation Supervision and Engineering	523,641	850,716
205	871 Distribution Load Dispatching	1,084,261	988,048
206	872 Compressor Station Labor and Expenses	3,761	-
207	873 Compressor Station Fuel and Power	112,131	82,309

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Rhode Island Location	___ A Resubmission		

GAS OPERATION AND MAINTENANCE EXPENSES (Continued)

Line No.	Account (a)		Amount for Current Year (b)	Amount for Previous Year (c)
208	874	Mains and Services Expenses	3,895,319	3,487,834
209	875	Measuring and Regulating Station Expenses - General	95,777	178,523
210	876	Measuring and Regulating Station Expenses - Industrial		-
211	877	Measuring and Regulating Station Expenses - City Gas Check Station	80,679	
212	878	Meter and House Regulator Expenses	2,715,935	1,784,507
213	879	Customer Installations Expenses	2,768,846	2,830,207
214	880	Other Expenses	2,559,807	2,655,745
215	881	Rents	-	24
216		TOTAL Operation (Total of lines 204 thru 215)	13,840,157	12,857,913
217	Maintenance			
218	885	Maintenance Supervision and Engineering		
219	886	Maintenance of Structures and Improvements	1,606,944	836,355
220	887	Maintenance of Mains	4,107,160	3,284,003
221	888	Maintenance of Compressor Station Equipment	1,143	58
222	889	Maintenance of Measuring and Regulating Station Equipment - General	431,008	348,244
223	890	Maintenance of Meas. and Reg. Station Equipment - Industrial	148	1,168
224	891	Maintenance of Meas. and Reg. Station Equip. - City Gate Check Station	57,722	74,405
225	892	Maintenance of Services	803,572	601,950
226	893	Maintenance of Meters and House Regulators	1,105,975	1,085,477
227	894	Maintenance of Other Equipment	130,072	144,774
228		TOTAL Maintenance (Total of lines 218 thru 227)	8,243,744	6,376,434
229		TOTAL Distribution Expenses(Total of lines 216 and 228)	22,083,901	19,234,347
230		5. CUSTOMER ACCOUNTS EXPENSES		
231	Operation			
232	901	Supervision		
233	902	Meter Reading Expenses	1,418,620	1,160,730
234	903	Customer Records and Collection Expenses	9,065,263	7,646,330

Name of Respondent	This Report Is:	Date of Report	Year Ending
New England Gas Company, A Division o	_X_ An Original	*(Mo, Da, Yr)*	**June 30, 2006**
Rhode Island Location	___ A Resubmission		

GAS OPERATION AND MAINTENANCE EXPENSES (Continued)

Line No.	Account (a)	Amount for Current Year (b)	Amount for Previous Year (c)
235	904 Uncollectible Accounts	11,501,879	7,733,557
236	905 Miscellaneous Customer Accounts Expenses	980,520	862,487
237	TOTAL Customer Accounts Expenses (Total of lines 232 thru 236)	22,966,282	17,403,104
238	6. CUSTOMER SERVICE AND INFORMATIONAL EXPENSES		
239	Operation		
240	907 Supervision		
241	908 Customer Assistance Expenses		53
242	909 Information and Instructional Expenses	260,186	146,709
243	910 Miscellaneous Customer Service and Informational Expenses	385,241	382,261
244	TOTAL Customer Service and Information Expenses (Total of lines 240 thru 243	645,427	529,023
245	7. SALES EXPENSES		
246	Operation		
247	911 Supervision		
248	912 Demonstrating and Selling Expenses		158,782
249	913 Advertising Expenses		
250	916 Miscellaneous Sales Expenses	403,443	205,862
251	TOTAL Sales Expenses (Total of lines 247 thru 250)	403,443	364,644
252	8. ADMINISTRATIVE AND GENERAL EXPENSES		
253	Operation		
254	920 Administrative and General Salaries	9,008,825	9,813,728
255	921 Office Supplies and Expenses	2,962,909	3,092,890
256	*(Less)* 922 Administrative Expenses Transferred - Credit	(3,795,490)	(4,018,188)
257	923 Outside Services Employed	1,460,548	2,355,002
258	924 Property Insurance	700,437	829,943
259	925 Injuries and Damages	1,718,694	1,811,927
260	926 Employee Pensions and Benefits	16,329,311	16,369,843
261	927 Franchise Requirements		
262	928 Regulatory Commission Expenses	1,571,553	1,385,595
263	*(Less)* 929 Duplicate Charges - Credit		
264	930.1 General Advertising Expenses		
265	930.2 Miscellaneous General Expenses	2,497,373	2,993,561
266	931 Rents	343,719	124,048
267	932 Maintenance of General Plant	96,384	277,470
268	TOTAL Operation (Total of lines 254 thru 267)	32,894,263	35,035,819
269			
270	935 Maintenance of General Plant	1,838	
271	TOTAL Administrative and General Expenses (Total of lines 267 and 269)	32,896,101	35,035,819
272	TOTAL Gas O&M Expenses (Total of lines 97, 177, 201, 229, 237, 244, 251, and 270)	394,666,476	337,591,590

Record Request No. 3

Request:

Please provide an update to Schedule NG-MDL-5 to take into account that the Company has accepted the Division's position.

Response:

The updated schedule requested was included in the Rebuttal testimony of Mr. Laflamme as Attachment NG-MDL-Rebuttal-6 and is attached herewith as Attachment RR-3 for ease of reference.

Prepared by or under the supervision of: Mike Laflamme

National Grid - RI Gas
Accelerated Infrastructure Replacement Program
Computation of Revenue Requirement

Line No.			Fiscal Year 2009 (a)	Fiscal Year 2010 (b)	Fiscal Year 2011 (c)	Fiscal Year 2012 (d)	Fiscal Year 2013 (e)	Fiscal Year 2014 (f)
1	Deferred Tax Calculation:							
2	PRP Progam Targeted Spend		$21,500,000	$25,100,000	$25,100,000	$25,100,000	$25,100,000	
3	Base Spending Level		21,500,000	18,400,000	11,700,000	11,700,000	11,700,000	
4	Incremental Amount		0	6,700,000	13,400,000	13,400,000	13,400,000	
5	Cumulative ARP Incremental Spend		$0	$6,700,000	$20,100,000	$33,500,000	$46,900,000	
6								
7	**Annual Retirements**	**1/**	**$0**	**$670,000**	**$1,340,000**	**$1,340,000**	**$1,340,000**	
8	**Cumulative Retirements**		**$0**	**$670,000**	**$2,010,000**	**$3,350,000**	**$4,690,000**	
9								
10	Book Depreciation Rate	2/	**1.88%**	**1.88%**	**1.88%**	**1.88%**	**1.88%**	
11	20 YR MACRS Tax Depreciation Rates		5.00%	9.50%	8.55%	7.70%	6.93%	
12	Vintage Year Tax Depreciation:							
13	Year 1 Spend		0	0	0	0	0	
14	Year 2 Spend			**301,500**	**572,850**	**515,565**	**464,310**	
15	Year 3 Spend				603,000	1,145,700	1,031,130	
16	Year 4 Spend					603,000	1,145,700	
17	Year 5 Spend						603,000	
18	Annual Tax Depreciation		0	301,500	1,175,850	2,264,265	3,244,140	
19	Cumulative Tax Depreciation		0	301,500	1,477,350	3,741,615	6,985,755	
20								
21	Book Depreciation		**0**	**113,078**	**339,233**	**565,389**	**791,545**	
22	Cumulative Book Depreciation		0	113,078	452,311	1,017,700	1,809,245	
23								
24	Cumulative Book / Tax Timer		0	188,422	1,025,039	2,723,915	5,176,510	
25	Effective Tax Rate		35.00%	35.00%	35.00%	35.00%	35.00%	
26	Deferred Tax Reserve		$0	$65,948	$358,764	$953,370	$1,811,779	
27								
28	Rate Base Calculation:							
29	Cumulative ARP Incremental Spend		$0	$6,700,000	$20,100,000	$33,500,000	$46,900,000	
30	Accum Depreciation		0	(113,078)	(452,311)	(1,017,700)	(1,809,245)	
31	Deferred Tax Reserve		0	(65,948)	(358,764)	(953,370)	(1,811,779)	
32	Year End Rate Base		$0	$6,520,974	$19,288,925	$31,528,930	$43,278,977	
33								
34	Revenue Requirement Calculation:							
35	Year End Rate Base		$0	$6,520,974	$19,288,925	$31,528,930	$43,278,977	
36	Pre-Tax ROR	3/	12.15%	12.15%	12.15%	12.15%	12.15%	
37	Return and Taxes		0	792,298	2,343,604	3,830,765	5,258,396	
38	Book Depreciation		0	113,078	339,233	565,389	791,545	
39	Property Taxes 4/	2.52%	0	168,840	506,520	844,200	1,181,880	
40	Annual Revenue Requirement		$0	$1,074,216	$3,189,358	$5,240,354	$7,231,820	
41								
42	Annual Rate Adjustment:			Year 2	Year 3	Year 4	Year 5	Year 6
43	Incremental Annual Rate Adjustment			$0	$1,074,216	$2,115,142	$2,050,996	$1,991,466

1/ Assumes 10% of Line 4 for illustrative purposes. To be replaced with prorata share of actual plant retirements.

2/ Composite mains and services depr.rate per Attachment NG-KAK-1, Page 18 (Original submission Volume 3 - Page 42)

	Plant	Depr. Accrual	Rate
Mains - Steel and other	103,509,822	1,697,561	
Mains - Plastic	99,167,915	1,973,442	
Mains - Cast Iron	8,280,995	131,668	
Services - All sizes	146,392,432	2,898,570	
	357,351,164	6,701,241	1.88%

3/ See NG-MDL-1, page 32 as amended for revised short term debt rate of 3.91%, Attachment NG-MDL Rebuttal-4 Page 2

4/ Test Year ratio of municipal tax expense to average net plant in service. To be replaced with actual prior calendar year data.

Record Request No. 4

Request:

Please explain the negative accrual rate for production plant shown in the table presented in Dr. Kateregga's pre-filed testimony at Page 16 of 17 (also marked as Vol 3-Page 20).

Response:

The formula used in deriving a remaining-life accrual rate is shown at page 15 of Dr. Kateregga's pre-filed testimony. The numerator in that formula can be positive or negative depending upon the magnitude of the reserve ratio and the future net salvage rate. The reserve ratio exceeds 100% for all three accounts, the numerator in the formula is negative and the accrual rate is therefore negative.

Prepared by or under the supervision of: Dr. Kateregga

Record Request No. 15

Request:

Please provide the return on equity and rate of return on rate base allowed for National Grid plc's regulated UK businesses in each of its 3 most recent rate case decisions.

Response:

Please see Attachment RR-15 for the requested information. Also, please note that under the UK system of regulation, revenue requirements are calculated in real terms. The allowed return on capital is set at a "real" rate, which is applied to the regulatory asset value (RAV) of the rate base. This return excludes a direct allowance for inflation. The inflation-related part of the allowed return is provided by inflating the RAV by inflation each year. The net effect is that in the absence of any superior or under-performance, the business is worth exactly RAV today. Thus, the effect of UK regulation is to spread the return over a longer time period (as the initial lower return is offset by the return provided on the inflated asset base over time), but to still provide investors with an equity return that exactly matches the allowed cost of equity. As such, the timing and mechanisms of recovery are different between the US and UK, and in the UK the inflation of RAV is part of the return that is required to ensure that the asset is worth exactly RAV in today's money. Therefore, to make the allowed returns authorized in the UK comparable to the allowed returns in the US where rate base is not escalated by inflation every year, the UK returns need to be expressed in nominal values. In other words, the UK returns need to be increased for the inflation component being provided via the annual escalation of the RAV. It is also important to note that the RAV ends up being increased by the actual rather than an assumed inflation rate so that the Company's shareholders are not at risk for variances between the actual rate and that initially assumed by the regulator to set rates.

Thus, RAV is a number that is fixed by the regulator as an appropriate value for the business when the businesses were created as listed companies in the mid 1980s, early 1990s. At that time, the RAV was established at a level that was significantly higher than the depreciated original (historic) cost of the regulated assets. As a result of this initial increase in asset values for regulatory purposes, the cash flows from depreciation and return have exceeded the levels that would have been allowed from the business had the net book value approach used in the United States been applied to these assets.

This initial difference has continued and grown since privatization. Since the RAV was initially set, it has been indexed by inflation each year so that it maintains its value in real

terms. In addition, qualifying investments made in the year ("capex") are added and depreciation based on the economic value of the RAV is deducted. Because this depreciation amount has been calculated by assuming a depreciation profile on the existing RAV (which exceeded net book value initially and has been adjusted for inflation since privatization), the depreciation allowance produces significantly higher cash flow than straight line depreciation based on depreciated original costs. Similarly, the asset base on which the regulated operations are valued is increased over time, while the return applied to the higher asset base is determined using an allowed real return on capital excluding inflation. This approach also produces a different pattern of cash flows from the regulated business. Rather, than the front-loaded return that is associated with original cost rate-making in the US, the cash flows in the UK are higher in the later years associated with higher asset values, and lower in the initial years, because the lower return is applied to plant when it first enters service. Because of these differences in initial valuation and the escalation of asset values with inflation, when considering debt to capital ratios for UK utility businesses, credit rating agencies ignore accounting balance sheets and use RAV instead in their leverage calculations. Moody's has made it clear that debt/RAV is one of their key metrics for most UK regulated utility businesses.

Attachment RR-15

UK Regulated Business	Gas Distribution	Electric Transmission	Gas Distribution
Regulatory Decision Date	Dec 2002	Dec 2006	Dec 2007
Rate Year(s)	Mar07-Mar08	Mar 07-Mar12	Mar 08-Mar13
Real Return on Equity	6.25%	7.00%	7.25%
Real Rate of Return on Rate Base	5.25%	5.05%	4.94%
Forecasted Inflation Rate *	4.1%	3.0%	2.7%
Nominal Return on Equity **	10.64%	10.16%	10.15%
Nominal Rate of Return on Rate Base **	9.60%	8.15%	7.77%

* The inflation rate of 4.1% is the actual inflation rate for the period March 07 - March 2008
** Comparable to US returns

Record Request No. 16

Request:

Please provide the actual capital structure of Providence Gas Company prior to Southern Union merger. Please provide Southern Union actual capital structure at time of last rate case.

Response:

Please see Attachment RR-16.

Prepared by or under the supervision of: Paul Moul and Andrew Dinkel

Attachment RR-16

Capital Structure of Providence Gas
Just Prior to Merger

	Amount ($000)	Percent
Short-Term Debt	33,845	16.0%
Long-Term Debt	87,976	41.6%
Common Equity	89,482	42.3%
Total	211,303	100.0%

Capital Structure of Southern Union
At Time of the New England Gas Division's Last Rate Case

	Amount ($000)	Percent
Short-Term Debt	683,470	29.7%
Long-Term Debt	942,866	40.9%
Common Equity	677,459	29.4%
Total	2,303,795	100.0%

Record Request No. 17

Request:

Please provide a copy of the ConEd decision setting ROE at 9.1 percent.

Response:

Please see Attachment RR-17.

Prepared by or under the supervision of: Paul Moul and Andrew Dinkel

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 07-E-0523 - 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 ESTABLISHING RATES FOR ELECTRIC SERVICE

(Issued and Effective March 25, 2008)

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of New York on March 19, 2008

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
Robert E. Curry, Jr.
Cheryl A. Buley

CASE 07-E-0523 - 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 ESTABLISHING RATES FOR ELECTRIC SERVICE

(Issued and Effective March 25, 2008)

BY THE COMMISSION:

INTRODUCTION

On May 4, 2007, Consolidated Edison Company of New York, Inc. (Con Edison or the Company) proposed to increase electric rates by $1.2 billion. We suspended the rate filing through March 30, 2008 and instituted a proceeding to consider new electric rates to go into effect on April 1, 2008.[1]

On January 8, 2008, the administrative law judges assigned to this case issued a recommended decision. In it, they recommended that Con Edison be allowed to increase electric rates by $601.4 million and that $330 million of the rate increase be made temporary pending a further review of the

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[1] Case 04-E-0572, Consolidated Edison of New York, Inc. – Electric Rates, Order Adopting Three-Year Rate Plan, (issued March 24, 2005) (the 2005-08 Rate Plan). Pursuant to the 2005-2008 Rate Plan, new electric rates for Con Edison would not be effective until April 1, 2008.

Company's construction program process. The parties who participated in this case were provided an opportunity to submit briefs on exceptions in accordance with 16 NYCRR 4.10.

The Parties' Positions

In their briefs on exceptions, various parties state alleged errors believed to be contained in the recommended decision, but they do not challenge the judges' overall approach to this case. The briefs filed by Department of Public Service (DPS) Staff and the State Consumer Protection Board (CPB) are two examples of such briefs. Other parties, like Con Edison and Westchester County, challenge the judges' approach and urge us to decide this case not on an issue-by-issue basis.[2]

1. Con Edison

The Company does not believe that the amount recommended by the judges is sufficient to maintain its financial integrity, to serve customer interests well, or to provide reasonable returns to investors. Con Edison states that it must serve the growing demand for electricity in the greater New York City area and it must maintain system reliability. In so doing, the Company states that it must substantially increase its infrastructure investments. For the energy system to remain strong, resilient and reliable, Con Edison urges us to maintain its financial integrity and allow it a reasonable amount of profit. According to it, this is the key issue for us to consider.

Con Edison does not believe that an issue-by-issue analysis of the contested matters provides the best framework to address the adverse financial impact and dire consequences were it to receive an electric rate increase that is too low. In

[2] Notwithstanding the opportunity to provide briefs on exception and replies to the briefs on exception, a request was made for oral argument of this case before the Commission. This request was denied in a Notice from the Secretary issued on March 5, 2008.

order to maintain an “A” rating for its debt securities, Con Edison states that it must receive a higher return on equity and more equity capital must be recognized in its capital structure. According to it, the rate increase must be consistent with the amount it has requested.

The Company is aware of the challenges facing customers in the prevailing economic climate and it does not doubt that the Commission will take into account the customer impacts from increasing electric rates. It also observes that the residential customer electric bills in its service area are lower than those experienced elsewhere. It states that, on an inflation-adjusted basis, the Company’s unit cost per kilowatt hour has remained essentially flat over the last ten years. Consolidated Edison believes that our decision in this case should serve the long-term interests of the service area by providing the resources it needs to remain financially strong.

2. New York City Government Customers

The City of New York (NYC), the Metropolitan Transportation Authority and the Port Authority of New York (collectively appeared and are jointly referred to as NYC Government Customers) support many of the adjustments made by the judges and other adjustments that were not accepted. NYC Government Customers believe that the rate increase should be about $166 million less than the amount the judges recommended. They support an expansion of demand-side management programs to control energy usage, and the implementation of advanced metering and mandatory hourly pricing. They oppose the Company’s embedded cost of service study which indicates that the New York Power Authority should pay higher prices. They urge us to implement a cost reconciliation mechanism for expenditures made for site investigation and remediation work at locations where manufactured gas plants once operated.

3. Westchester County

Like Con Edison, Westchester County disagrees with the issue-by-issue analysis the judges used to examine the rate filing. Given the magnitude of the rate request, it believes that the major drivers of the proposed rate increase require critical assessment. It proposes that Con Edison's unprecedented infrastructure program proposals be denied. Westchester doubts that the Company needs to spend $7.5 billion on capital improvements over the next five years and it believes we should substantially limit the amount of funds provided for capital expenditures.

Westchester County believes that Con Edison has decided to grow its business and earnings by making large investments in transmission and distribution (T&D) facilities. In its view, the capital programs and operation and maintenance (O&M) budgets are bloated not for safety and reliability purposes but to improperly benefit stockholder earnings. The County fears that Con Edison will obtain funds for infrastructure improvements and other programs that it may not spend and will use instead for stockholder earnings.

Westchester County also believes we should only allow $50 million for new O&M programs. The County states that such a limit would not harm safety or reliability. It points out that the 2006 O&M budget was $1.15 billion and the actual expenditures were $1.3 billion. Since then the Company's O&M programs have increased to $1.47 billion and Westchester County does not challenge this amount. It believes Con Edison should receive $1.52 billion for O&M programs in the rate year and not the $1.7 billion it requested.

Westchester further believes that capital expenditures should receive strict scrutiny and project costs should be spread over a long time to match their use and the benefits provided to customers. The County questions whether all of the proposed projects are truly necessary, and it believes the Company should provide more detailed explanations to support them. It claims that the capital projects and budget were

presented in a confusing manner and the total amount of funding is in doubt.

Westchester County also addresses in its brief the costs Con Edison is incurring to restore facilities at the World Trade Center location in Manhattan, site investigation and remediation costs for locations where manufactured gas plants once operated, depreciation matters, and the use of the proceeds obtained from the sale of certain real estate on First Avenue in Manhattan.

4. Consumer Protection Board

Consumer Protection Board (CPB) claims that the rate increase should be below the $600 million recommended by the judges. It also believes that more auditing and investigation should be performed before the Company is allowed to include $1.6 billion of capital spending, and $200 million of environmental remediation costs, in rates. CPB advocates, as well, for changes to the Company's energy efficiency proposal. It also addresses various expense items and capital costs.

5. New York Power Authority

The New York Power Authority (NYPA or the Authority) filed five exceptions. They concern Consolidated Edison's embedded cost of service study; the audit of capital expenditures suggested by the judges; the application of an earnings base/capitalization adjustment; the judges' rejection of the working capital calculation it proposed; and, the revenue decoupling mechanism's impact on NYPA customers' incentive to pursue demand-side management.

6. Local 1-2

The Utility Workers Union of America, AFL-CIO, Local 1-2 (Local 1-2 or the Union) filed exceptions to the recommended decision concerning certain expenses, rate base and other matters.

7. Retail Energy Supply Association

The Retail Energy Supply Association (RESA) excepts to the judges' recommendations concerning the changes proposed to the Monthly Adjustment Clause (MAC) and the Market Supply Charge (MSC). RESA is also interested in the expansion of mandatory hourly pricing to customers whose maximum demand is greater than 500 kW per month. It has proposed a modification of the customer referral program that would allow new customers to obtain their electricity from an ESCO when they initiate their delivery service. The Small Customer Marketer Coalition supports the positions RESA has taken.

8. NYSERDA

The New York State Energy Research and Development Authority (NYSERDA) participated in this case. It filed a letter which states that it does not take exception to the recommended decision. NYSERDA supports the judges' recommendation to extend, for a year, Con Edison's targeted energy efficiency program.

9. NRDC and Pace Energy Project

The Natural Resources Defense Council (NRDC) and Pace Energy Project (Pace) participated jointly in this case. They have filed exceptions to the judges' recommendations concerning demand-side management and energy efficiency matters.

10. Consumer Power Advocates

Consumer Power Advocates (CPA) has filed exceptions on four matters. CPA supports a higher rate of return on equity for Con Edison and seeks an additional allocation of low-cost electricity for non-profit biomedical research facilities. CPA addresses the transmission congestion credits that are available to customers and proposes that a date be set for ending the collection of stranded costs.

11. ARE-East River Science Park, LLC

ARE-East River Science Park LLC excepts to the judges' recommendation to allow Con Edison to implement tariff revisions that encourage customers in the Business Incentive Rate program to use steam service rather than electric service for the equipment they install and operate.

12. New York Energy Consumers Council, Inc.

The New York Energy Consumers Council, Inc. (NYECC) a group of commercial property owners and managers, do not consider the Company's demand side management program costs to be just and reasonable. They believe that these costs should not be imposed on ratepayers.

13. Reliant Energy, Inc.

Reliant Energy, Inc. engages in the sale and marketing of electricity at retail in various places through the United States. Its brief on exceptions addresses the changes proposed for the Monthly Adjustment Clause and the Market Supply Charge.

14. Joint Supporters

The Joint Supporters encourage the use of energy efficiency, demand responses and clean distributed generation to address the growth that is occurring on the Con Edison system.

Public Statement Hearings

Public statement hearings were held at six locations between January 8 and 23, 2008. The first was held in Manhattan and Commissioner Robert E. Curry, Jr. attended, with the presiding officer, to hear the public statements. Customers spoke at the hearing about high bills and expressed concern about stray voltage and the recent steam main rupture. The Manhattan Borough President commented on the large amount of the proposed rate increase and he urged the Commission to consider a rate freeze for customers who cannot afford to pay higher

utility bills. He also addressed the need for renewable sources of energy and for more energy conservation.

In Brooklyn, the Commissioner and the presiding officer heard from the Borough President and the Deputy Borough President who urged Con Edison to make system improvements and provide the highest possible levels of reliable and safe service. They also supported the use of alternative energy sources.

In Westchester, about 150 persons attended an afternoon hearing and another 100 attended the evening hearing. Almost everyone was opposed to the proposed rate increase. Representatives of the elderly, disabled veterans, the unemployed and persons on fixed incomes explained the difficulties that these customers would have to pay any higher bills for electric service. Local officials and various customers identified specific neighborhoods that are experiencing frequent service outages. They urged us to require the Company to provide more reliable facilities and system improvements. A business customer detailed the problems he experienced in his dealings with the Company and various customers complained about not being able to get through to customer service representatives when they telephone the Company about their service difficulties. Some customers complained about repeatedly receiving estimated bills for service even when they have observed a meter reader on their premises.

Various customers spoke in favor of energy conservation and some believe the Company should do more to establish efficient consumption practices in the service area. A petition signed by customers who oppose the proposed rate increase, but who could not attend the hearing, was received and included in the record. At the evening hearing the County Executive provided both prepared comments and extemporaneous remarks about the proposed rate increase and its adverse consequences for residents, businesses and municipalities in Westchester.

In Queens, several local elected officials stated their displeasure with Con Edison and the Company's handling of the Long Island City service outage, the gas leak explosion in Sunnyside and the steam pipe rupture that occurred in Manhattan. Assemblyman Gianaris obtained signed cards from more than 1600 of his constituents stating that they believe that the proposed rate increase is unfair and it should be rejected. Representatives of a coalition of customers, Western Queens Power for the People, attended the hearing and commented on the company's rates and service. They also provided petitions signed by about 100 individuals who oppose the proposed rate hike and were unable to attend the hearing.

On Staten Island, two members of the New York City Council, and a local customer, stated their opposition to the proposed rate hike and the need for more reliable and safe electric service. No one attended the two hearings convened in the Bronx.

Comments and Correspondence

Throughout this proceeding, we have received many comments from customers, and local officials, about the electric rate increase proposal. The letters began when the rate filing was received in May 2007 and the volume of correspondence grew steadily in 2008 when the public statement hearings were held. By electronic mail, voice mail and postal service, customers have registered their opposition to the proposed rate increase; they have expressed concerns about system reliability and safety; and they have identified specific company practices that they question. Customers have stated concerns about the size of the electric bills they will have to pay this year. Some believe that the Company's officers and managers receive too much compensation. Many urge that the Company be made more responsible for its actions and failings. Also, expenditures for advertising have been questioned and some customers believe the Company's employees could work harder.

Overview

We have fully considered the parties' arguments presented in their respective briefs on exceptions and, in doing so, we have not limited ourselves to the issue-by-issue analysis provided by the administrative law judges assigned to this case. We have taken into consideration the strongly held views of the public, and the local officials who represent them, who state that the amount of rate relief requested by Con Edison would have negative impacts on customers who find it difficult to pay the increased delivery prices sought by the Company. In this case, and in a series of investigations and formal proceedings that are ongoing, we are taking a hard look at the safety, reliability and the quality of the service that Con Edison provides and we are taking all the steps needed to ensure that the public receives good service.

To establish reasonable rates, we are not permitting the $1.2 billion that Con Edison has requested in this case. Instead, we have decided to allow the Company to implement a $425.0 million electric rate increase. This amount, in addition to the revenues the Company already receives, will provide Con Edison the resources necessary for it to continue to improve the electric energy infrastructure that is vital to the well-being of customers, businesses and commercial operations in New York City and Westchester.

In addition to authorizing significant infrastructure spending to improve and maintain the reliability of service, this rate order enhances public safety by increasing inspections to detect stray voltage, facilitates efficient use of energy, implements customer service and reliability performance incentive mechanisms and includes provisions to moderate rate impacts on low-income customers.

We have also taken proper steps in this rate order to have the Company account for the capital improvements it has been making since the last time the Commission passed on its electric rates and approved the three-year rate plan that is now coming to an end. We are also taking action to stabilize the

upward pressure on electric rates that the Company's construction requirements and operations are currently producing. We are concerned about the potential for rate increases in the future and we recognize the need for all interested parties to have a clearer understanding of the trajectory of Con Edison's overall electricity prices as well as the underlying cost components when developing positions regarding the proper level of the Company's rates in future proceedings. In the next electric rate case that Con Edison files, it will have to provide, for a five-year horizon, its best estimate of its annual capital program (including changes to net plant), all its forecast delivery and supply costs, its sales and associated revenue requirements, and the future level of both T&D and Supply Prices for each major service classification over that time period. We also require that the Company demonstrate, as part of its next filing, that it has considered all the potential means available for mitigating the size of any rate increase, while at the same time balancing its need to maintain access to the financial markets at reasonable terms.

In the sections of this order presented below, we consider and address the issues raised and the points presented by the parties in their respective briefs on exceptions.

REVENUES

Revenue Decoupling

On April 20, 2007, the Order Requiring Proposals for Revenue Decoupling Mechanisms (Cases 03-E-0640 and 06-G-0746, "the RDM order") was issued. In compliance with this order, Con Edison included in its rate filing a revenue decoupling mechanism (RDM) called the "revenue accounting and rate incentive mechanism" (RARIM). Con Edison's proposed RARIM would reconcile revenues on a per-customer basis and included a weather normalization provision.

The judges found that the Company identified no substantial reason for its weather normalization proposal except

that it would maintain the status quo and that the Company earns money from hotter-than-normal weather. They concluded that, "if the Company has historically earned money from weather fluctuations, at the expense of ratepayers, then correction of that flaw in the ratemaking process was justification enough for establishing an RDM that removes weather variations from the Company's revenues." They recommended that the weather normalization proposal be rejected, because the complexity of the mechanism was self-evident and customer interests would suffer from requiring Staff to monitor the mechanism.

The judges stated that, the revenue-per-customer issue cast two legitimate concerns against each other – reducing the impact of gaming and uncertainty in forecasting versus encouraging the company to promote economic development. They found however that both concerns were theoretical in that Staff provided only general concerns regarding gaming of customer counts, while the Company did not identify any economic development programs that it would not pursue. The judges stated that, even in the absence of specific economic development programs, there was an intangible benefit in having the Company's interests aligned with the economic interests of the service territory. They noted our approval of revenue-per-customer mechanisms in other recent cases and thus recommended that the Company's proposal be adopted here. They added that the Company should be ordered to produce for Staff any reports on customer account activity that Staff deems necessary for monitoring its gaming concerns.

In response to NYPA's opposition to its treatment as a single service class, the judges found that (1) NYPA customers would still have a significant opportunity to save through a reduction in supply costs and (2) assuming NYPA passes any RDM adjustments to all NYPA customers and not only to those who pursue DSM, NYPA customers would still be able to reduce their delivery costs due to reduced usage.

Exceptions to the RD were filed by the Company, Staff and NYPA.

The Company argues that the RD errs in recommending a revenue decoupling mechanism without also recommending an energy efficiency program. According to the Company, the two programs are inextricably linked and implementation of revenue decoupling without contemporaneous implementation of a Company energy efficiency program would not accomplish our policy goals.

The Company contends that the goal of revenue decoupling is to align investor and consumer interests, and revenue decoupling that is not coupled with a program for energy efficiency promotion by the utility does no such thing. Con Edison argues that the RDM mechanism "caps" revenues, disconnects the Company's revenue stream from the economic growth its service territory is experiencing, and puts the Company in an endless annual go-round of revenue increase "updates" in order to keep its revenues in synch with the spending it must incur to keep pace with system growth. It states that revenue decoupling is simply not worth the effort unless coupled with a robust energy efficiency program in which the Company has a central role. Con Edison thus requests if we delay consideration of the energy efficiency issue, we also should delay decoupling; conversely, if we determine that the Company should not have a central role in promoting energy efficiency, then we should not adopt an RDM mechanism for the Company.

If we decide to implement revenue decoupling without adopting the Company's energy efficiency program, the Company excepts to the RD's rejection of the weather normalization component of its proposed RDM. Referencing its arguments below, Con Edison asserts that the RD's rejection of its weather normalization provision is neither required by, nor consistent with, the RDM Order, or otherwise warranted based on the record in this proceeding.

The Company contends that the RDM Order (p. 2) is clear that the purpose of requiring utilities to develop RDMs is to reduce or eliminate any rate structures that discourage utilities from actively promoting energy efficiency, renewable

technologies and distributed generation. The Company states that, since weather is a factor over which it has no control, there is no need or reason for the RDM to address weather-related sales variations in order to reduce or eliminate a disincentive the Company may otherwise have to encourage energy efficiency. Con Edison adds that since the RDM Order (p. 8) indicates no preference as to including or excluding weather-related sales but expresses a preference for the development of utility-specific RDMs, the only fair reading of the RDM Order is that each utility's existing rate structure should serve as the starting point for such evaluation. Con Edison states that its proposal does not reintroduce weather variability; rather it preserves the existing rate structure, except to the extent necessary to address the potential disincentive to encourage energy efficiency or other reasonable and appropriate policy objectives. In the latter regard, Con Edison continues, the record is devoid of any other reasonable basis for eliminating its exposure to weather-related sales variations.

Con Edison argues that the RD errs in stating that "[i]f the Company has historically earned money from weather fluctuations, at the expense of customers, then correction of that flaw in the ratemaking process is justification enough for establishing an RDM that removes weather variations from the Company's revenues." According to it, the fact that, in some years, it experienced weather-related revenues that exceeded its weather-related costs does not support a finding that its existing rate structure is somehow "flawed." The Company argues that its exposure to weather-related sales variations has been fully and carefully considered by us, Staff and other parties to many Company rate proceedings for each of its utility services, resulting in a weather normalization clause for its gas service and no weather normalization for its electric and steam services. Absent consideration of revenue decoupling, the Company asserts that no party to this proceeding has alleged any basis for a change in the status quo in this regard.

The Company adds that the recommendation to correct this “flaw” to provide a customer benefit is fundamentally inconsistent with the RD’s recommended 10 basis point RDM-related adjustment to ROE. It contends that the two recommendations are not only mutually exclusive, but they support the Company’s position that eliminating its exposure to weather-related sales variations requires an increase to its ROE, since investors would lose prospectively what the RD considers to be a financial benefit. The Company asserts that its testimony explains that the link between the RDM and ROE is exactly the opposite of what Staff and the RD presume, in that there is no investor benefit from an RDM and in fact, it introduces regulatory risk and increases financial risk.

The Company claims that the record does not support the RD conclusion that the “the complexity of the mechanism is self evident.” It states that the parties arguing that the mechanism was overly complex are fundamentally opposed to the concept of weather normalization and, therefore, are not inclined to explore and consider any modifications to the mechanism to address their concerns. The Company states that it remains open to reasonable adjustments to address these parties’ concerns, so long as any modifications to its procedures do not sacrifice accuracy for simplicity.

The Company states that the RD (at 10) errs in concluding that earnings from weather-related revenues are not a competing concern against which these allegations of complexity and gaming must be balanced. The Company argues that this statement demonstrates an unreasonable disregard for the interests of the Company’s investors and asserts that the decision in this case must strike a proper balance between the interests of customers and investors. It states that there is no basis for eliminating the current treatment of weather-related revenues and certainly no basis for compounding this error by further reducing the allowed ROE as a result of this action.

The Company concludes its exceptions by stating that the RD properly rejects the remaining objections to and criticisms of the Company's RDM. It also confirms that it does not object to the adoption of Staff's proposal to perform the true-up every six months, based on its understanding that, as noted in the RD (at 7), there could be interim surcharges or credits if the cumulative actual reconciliations equal or exceed $10 million at any point during the rate year.

Staff argues that the RD correctly recommends rejection of the Company's weather normalization proposal but errs in recommending the Company's revenue-per-customer methodology over Staff's total class revenue methodology. According to Staff, the recommendation endorses a mechanism that will not provide a distinct level of allowed revenues to be retained by the Company for the rate year. Rather, the precise level of allowed revenues to be retained by the Company is not known until the conclusion of the rate year, when actual customer numbers are known and allowed revenues can be calculated by multiplying actual customer numbers for each service class by their respective revenue-per-customer factors.

Staff explains that under the revenue-per-customer method, the Company retains 100% of the average revenue for each customer over the forecasted level, regardless of the actual incremental revenues generated by the additional customers or, more importantly, the Company's incremental cost of serving the additional customers. Staff adds that, allowing the Company to retain 100% of the average revenue each additional customer produces above the forecast over-compensates the Company for the incremental costs of serving those additional customers. Conversely, if actual customer numbers are less than forecast, Staff asserts that the resulting downward adjustment to the revenue target by the revenue-per-customer value would be excessive, thereby producing a significant incentive for the Company to conservatively (under) estimate customer numbers when the forecasts are prepared and litigated. Staff argues that the subsidy created by the use of the revenue-per-customer method on

the upside outweighs the potential incentive to encourage economic development.

In response to the RD's statement that "there is an intangible benefit in having the Company's interests aligned with the economic interests of the service territory," Staff reiterates its arguments that economic development incentives should not and need not be intertwined within an RDM. Staff notes, however, that in the interest of supporting a perhaps more cost effective way of addressing potential incremental costs incurred by the utility when customer growth exceeds the level assumed in the forecasts, it outlined a proposed modification to its total class revenue methodology which called for the creation of a separate mechanism that would allow the Company to retain a portion of the excess revenues that would otherwise be captured under Staff's total class revenue reconciliation method and fully returned to ratepayers.[3] According to Staff, under its modified proposal, the Company would be more appropriately compensated for the costs of adding customers at levels different than those assumed in its customer forecast, without the added incentive provided by retaining the full average revenue per customer.[4]

Given what Staff states are "inherent flaws" in the proposed revenue-per-customer RDM, Staff urges us to consider adopting some form of total class revenue RDM. Staff further adds that we should direct the Company to make a filing, in compliance with our decision in this proceeding, which fully describes the revenue decoupling mechanism and reconciliation

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[3] Staff indicates that this proposal mirrors the one proposed in the ongoing O&R rate case, Case 07-E-0949, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Orange and Rockland Utilities, Inc. for Electric Service, Prepared Testimony of Staff Rate Panel, December 2007, pages 17-22.

[4] Staff adds that if we ultimately decide to employ either a revenue-per-customer RDM or modified total revenue-per-class RDM, the Company should use Staff's customer number forecast, consistent with the RD's recommendation to utilize Staff's sales forecast.

process to be ultimately employed, including, at a minimum, the information to be used to calculate the allowed monthly revenue targets that will readily enable the eventual comparisons with actual monthly amounts and require the Company to maintain monthly customer counts by service class.

NYPA argues that the RD erred by endorsing a proposal that largely negates the revenue savings achieved through NYPA's demand side management ("DSM") programs. NYPA reiterates its previous arguments that, since the Company proposes to treat NYPA as a single service class, the recommended RDM would impose a delivery service surcharge equal to the revenue savings achieved through energy efficiency programs like DSM. NYPA provides an example of what it refers to as a one-for-one offset[5] and concludes that its example indicates that the Company's mechanism clearly diminishes the incentive to participate in NYPA's DSM programs.

NYPA also argues that the RD erroneously concurs with the Company's argument that NYPA customers might still have an incentive to pursue DSM programs because they would ultimately pay less for commodity. NYPA contends that this is hardly relevant in determining whether the RDM's effects on delivery rates are just and reasonable and is merely a residual benefit that does not repair the deterrent effect that Con Edison's RDM would impose on DSM programs.

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[5] In NYPA's example, the rate case establishes that $100 is to be recovered from NYPA as a class, NYPA uses 1000 kWh, and the initial delivery rate is $0.10/kWh. If NYPA institutes a DSM program that saves 100 kWh, the Company will only recover $90 (900 kWh times $0.10), which will trigger the RDM and a surcharge for the subsequent rate year. Assuming NYPA is expected to consume 1000 kWh in that year, the surcharge will be $10 (the amount of the first year shortfall due to the DSM program) divided by 1000 kWh which means that the second year rate will be $0.11/kWh and Con Edison will recover $110 in year 2. Thus, in NYPA's example the $10 saved by the NYPA DSM program in year 1 is simply added to the bill in year 2 so that ultimately there is no savings for NYPA customers from the DSM program.

The Company states that no party other than Staff excepts to the RD's adoption of the Company's revenue-per-customer mechanism over Staff's total class methodology. It argues that none of Staff's arguments provides a basis for the rejecting its revenue-per-customer mechanism. The Company asserts that Staff's argument that the revenue-per-customer mechanism is flawed because "the precise level of allowed revenues to be retained by the Company is not known until the conclusion of the rate year" was made for the first time by Staff in its Brief on Exceptions and should be rejected as an attack on revenue-per-customer mechanisms per se, which were recognized in the RDM Order and confirmed in the most recent Con Edison's gas case.[6] The Company adds that Staff does not provide any reason why knowing in advance of the rate year the precise level of revenues to be retained by the Company at year's end is a necessary feature of an RDM. The Company argues that the RD properly rejected Staff's general and theoretical concerns regarding any gaming of the customer forecast in favor of the more compelling need to have the Company's interest aligned with the economic interest of the service territory.

With respect to which customer forecasts to use, the Company does not object to Staff's proposal to use the Staff forecasts for SCs 1, 4, 2 and 7, but it notes that, to its knowledge, Staff did not, in the course of this proceeding, provide customer forecasts for all service classifications. The Company states that if we adopt the RD's recommendations regarding the sales forecast, then Staff's concerns about the Company gaming the customer forecast are moot.

The Company asserts that Staff also argues for the first time that the revenue-per-customer mechanism is flawed because it may enable the Company to retain additional revenues in excess of incremental costs incurred in serving new customers. The Company contends that such concerns are not

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[6] Case 06-G-1332, Consolidated Edison Company of New York, Inc., Order Adopting in part the Terms and Conditions of the Parties' Joint Proposal (issued September 25, 2007).

specific to it or to its proposed RARIM; nor are they in line with Commission precedent or policy. Instead, says the Company, they constitute a general attack on revenue-per-customer mechanisms and ignore the symmetrical nature of the revenue-per-customer mechanism (i.e., the Company could incur costs to attach new customers and still be required to return revenues to customers at the end of the rate year pursuant to the revenue-per-customer mechanism).

The Company also claims that it may incur incremental costs for particular customers that exceed the revenue-per-customer revenue target for those customers. The Company states that the suggestion it be precluded from retaining any revenues above incremental costs of attaching new customers would defeat the very purpose of the revenue-per-customer method, as recognized in the RD, to provide it an incentive to promote economic development on its system.

The Company argues that Staff’s offer, belatedly made for the first time in its reply brief on exceptions, of a modified RDM with a separate mechanism to address customer growth only serves to highlight the inherent defects in Staff’s position. The Company states that, from a procedural standpoint, there is no record basis for adopting Staff’s severely untimely proposal, which originally was proposed for another utility in a still pending proceeding; is characterized in a single sentence with no supporting detail or analysis; and is presented after the record in this proceeding has closed, thereby denying the Company the opportunity to test Staff’s proposal through discovery and/or testimony. The Company adds that Staff’s proposal also fails from a substantive standpoint because, by proposing that the revenues retained by the Company approximate its marginal cost in serving incremental new customers, Staff would effectively remove all incentive for the Company to pursue economic development in its service territory.

According to the Company, Staff's focus on hook up costs as the sole source of increased system costs is wrong and will not even keep the Company whole as it ignores (1) the added

costs such as metering, billing, and customer service; (2) the fact that O&M expenses increase as customers are added; and (3) the potential for system reinforcement costs to increase above forecasted levels (for which Staff proposes a one-way, downward-only true-up). The Company adds that Staff's proposal to fund this cost recovery out of excess revenues that would otherwise be returned to customers under its RDM (1) belies its assertion regarding the importance of knowing in advance of the rate year the precise level of revenues to be retained by the Company and (2) fails to explain how the Company would be compensated if there were no "excess revenues" to be returned to customers under its proposed mechanism.

The Company argues that NYPA's claims were properly considered and rejected by the RD which recognized that treating NYPA as a single customer would not negate the revenue savings achieved through NYPA's DSM programs. The Company asserts that, while NYPA claims that, if it were not treated as a single customer group, this disincentive would evaporate, it has yet to explain why. The Company contends that, contrary to NYPA's assertions, NYPA as a single class may not experience a surcharge if the reduced load attributable to its customers' DSM measures is offset by increases in load by other customers that constitute the NYPA class.

Staff and CPB argue that an RDM should be implemented for the rate year irrespective of the implementation of a Company administered energy efficiency program. Staff states that the goal of revenue decoupling, as defined by the RDM Order, is to significantly reduce or eliminate any disincentives caused by the recovery of utility fixed delivery costs via volumetric rates. It contends that the RDM Order did not tie the implementation of an RDM with the requirement of the Company playing a "major role" in energy efficiency programs. Staff asserts that we allowed for the expansion of energy efficiency, demand response, or distributed generation, without specifically relying on the Company to administer such programs or allowing for positive incentives to be retained by the Company. CPB adds

that without an RDM, Con Edison would have the incentive to take actions that would undercut the benefit of ratepayer-funded energy efficiency programs, thereby jeopardizing consumers' acceptance of ratepayer-funded demand side management activities.

Staff observes that the RDM Order (at 16) clearly states that design issues, such as weather normalization, should be addressed in individual rate proceedings. Staff states it demonstrated that the Company's weather normalization provision is overly complex and flawed, noting that the Company's weather impact calculation begins with a sophisticated statistical methodology, which involves various allocations between sales and sendout, calendar days and billing days, days and months and quarters, as well as service classes.[7] It adds that these multi-stage allocations at such high frequencies introduce mismatches and create complexities and areas of disagreement, making the proposal operationally cumbersome, if not entirely unworkable. Staff asserts it demonstrated that, absent the weather normalization provision, the incentive to use weather to game the sales forecast in the rate case is greatly reduced or eliminated, but with such a provision, a significant amount of on-going regulatory oversight auditing efforts would be required.

NYC Government Customers also argue that the RD correctly rejected the Company's proposed weather normalization provision. They assert that the Company wants the provision because it expects to make money from it. They state that the record supports the Company's expectations, citing testimony and exhibits establishing that if the provision were operational during 2005 and 2006, revenues would have increased $68 million. NYC Government Customers share the previously discussed concerns regarding the complexity of the provision, stating that such complexity supports its elimination.

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[7] Staff cites to Record Exhibit 161.

With respect to the Company's arguments against the RD's 10 basis point adjustment to the ROE, Staff asserts that over the long haul, the weather variability should be symmetrical given a correct forecast of the normal weather. It adds that, without the weather normalization provision in the RDM, the weather risk is removed from the Company's revenue stream and thereby further stabilizes the revenue and lowers the risk premium on ROE. Given these factors, Staff states that the RD correctly recommended a 10 basis point adjustment to the ROE.

Discussion

The Company's argument that adopting a revenue decoupling mechanism without also adopting a Con Edison energy efficiency program would not accomplish our policy goals is incorrect. The RDM order does not require utility administered energy efficiency promotion programs as a prerequisite to the adoption of a revenue decoupling mechanism. Rather, it states that the purpose of a revenue decoupling mechanism is to eliminate or substantially reduce the linkage between sales and utility revenues and/or profits.[8] It also states that one of the reasons for supporting the proposals to have the design and implementation of RDMs take place in individual utility rate cases was "the need to move expeditiously in addressing remaining disincentives to the implementation of energy efficiency and public benefit programs…."[9] As a result, the Company's request that we not implement a revenue decoupling mechanism without also implementing a Con Edison energy efficiency program is denied. We are adopting the judges' recommendation that a revenue decoupling mechanism should be implemented for the rate year and we further direct that it will remain in effect until otherwise directed or modified by the Commission.

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[8] RDM Order at 7.

[9] Id., at 14.

Con Edison argues that rejection of its weather normalization provision is not required by or consistent with the RDM Order and is not otherwise warranted by the record. We however note that the RDM Order expressly provides (at 8) that "whether to include or exclude weather related sales fluctuations" is one of "a number of design and implementation issues that would need to be considered in the development of an effective revenue decoupling mechanism." We also note that several parties have persuasively argued that the proposed weather normalization provision here at issue would be overly complex, create an incentive for gaming and require a significant amount of oversight and auditing. In light of such concerns, we find that the disadvantages associated with approving such a provision would outweigh any benefits that its approval might have. We therefore deny the Company's exception and adopt the judges' recommendation that the weather normalization proposal be rejected.

The claim that the Company's revenue-per-customer approach will over-compensate it, along with the judges' finding that the Company did not identify any economic programs that it would not pursue, lead us to reject the revenue-per-customer approach. In the final analysis, we are not persuaded that theoretic economic development arguments overcome the need to eliminate or at least mitigate the deleterious effects of gaming and of approving a potentially inflated level of revenues per customer. Accordingly, we are approving a total class revenue approach.

NYPA provides no record evidence for its claims that treating it as a single class will negate the revenue savings achieved through its DSM programs. We therefore find that NYPA's arguments are speculative and unconvincing. As a result, they provide insufficient basis for granting NYPA's exception.

We find the Company's arguments against the recommended ROE adjustment unpersuasive, unsubstantiated and effectively rebutted by the Staff's arguments in reply. The Company's exception is therefore denied.

Transmission Congestion Credits

Con Edison sells transmission congestion credits (TCCs) and obtains revenues from the New York Independent System Operator (NYISO). Currently, $60 million is built into base rates and any additional amounts are provided to customers through the Monthly Adjustment Clause (MAC). This arrangement was implemented in the three-year rate plan adopted in 2005. In this case, the judges recommended that $150 million be projected and included in the revenue requirement calculations for the rate year. Over the last three years, this is the average amount the Company has obtained.

On exceptions, Con Edison and DPS Staff claim that $150 million of TCC revenue should not be assumed. Staff believes that only $60 million need be included in base rates and the remainder can continue to be provided through the MAC. Staff urges a conservative projection to avoid the risk that customers would have to pay back any TCC revenues that do not materialize. Staff also believes it is unfair to allow the New York Power Authority to share in $90 million more of the transmission congestion credits, particularly if the Authority would not have to pay them back if $150 million is not reached.[10]

Like Staff, Con Edison believes that the results of a proceeding before the Federal Energy Regulatory Commission could reduce the amount of transmission congestion credits.[11] The Company also points out that network congestion, and the amount of TCC revenues, can decline. From a high of $207 million in 2005, the TCC revenues were only $149 million in 2006. The Company expects revenues to decline with the additional in-City generation capacity from the Poletti expansion and Astoria Energy LLC.

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[10] The MAC does not apply to NYPA and another means would have to be established to obtain from NYPA any TCC revenues that do not materialize. In any event, NYPA recognizes this unfair situation and it is willing to pay its share of any TCC revenue shortfall if it receives a share of the $150 million estimate.

[11] FERC Docket ER07-521.

Con Edison also objects to NYPA receiving any more TCC revenue than the 14.22% share it receives from the $60 million currently included in base rates. The Company states that the TCC revenues pertain to the transmission facilities owned by Con Edison that are used to serve full service and retail access customers. According to the Company, the TCCs are not related to the transmission facilities that are used to serve NYPA and Economic Development Delivery Service (EDDS) customers. It states that the transmission congestion credits associated with the transmission facilities that NYPA uses are not sold. Rather, the NYPA-related congestion rents collected by the NYISO are used to reimburse NYPA for the congestion payments it pays. Thus, NYPA is kept whole.

Consumer Power Advocates agrees with Con Edison that NYPA enters into TCC contracts on its own account. It doubts that NYPA should receive any share of the TCC revenues that are derived from contracts entered into for the benefit of the full service customers.

NYPA supports the judges' recommendation to estimate $150 million of TCC revenue for the rate year. It opposes the Company and DPS Staff proposals to exclude the Authority from sharing the TCC revenues. NYPA disagrees with Con Edison's assertion that the Authority would enjoy a "double benefit" by sharing in the TCC revenues and by receiving reimbursement for the congestion costs it pays. It states that the reimbursement agreement is not relevant to the TCC revenues. Further, it would distinguish the congestion rents that are collected by Con Edison from the NYISO from the TCC auction revenues.

NYPA points out that it pays about 14.22% of the costs of the Con Edison transmission and distribution system. It therefore believes that it should receive a proportionate share of the $150 million. NYPA does not believe that it should be limited to a share in the first $60 million of TCC revenues. Responding to Consumer Power Advocates, NYPA asserts that there is no record evidence to support the claim that the TCCs should only benefit full service customers. It believes that the Con

Edison transmission system benefits all customers and states that the Authority pays its fair share for using the transmission system.

NYC Government Customers support the use of the $150 million estimate of TCC revenues for the rate year. They recognize that there will be new in-City capacity to decrease congestion; however, they note that the amount of TCC revenues has remained high. They point to the retirement of the 850 MW Poletti power plant, and growing load in New York City, as contributing to system congestion. Also, in advance of a FERC decision on the long-term sale of TCCs, NYC Government Customers state that no one knows how the decision will impact the TCCs.

Westchester County considers the $150 million to be the best estimate of TCCs supported by recent, historical data. It doubts that new in-City capacity will decrease the value of TCCs that depend on the level of energy prices. It believes that energy prices in the City may not decline in the next two years. Further, since the results of the FERC proceeding remain unknown, Westchester states that there is no way of knowing if the TCC revenues will decrease or increase.

We are aware that before the NYISO was formed, NYPA and Con Edison entered into a 1989 Delivery Service Agreement that required the Company to provide NYPA transmission and delivery services for the power that the Authority generated and purchased for its customers in the greater New York City area. When the NYISO began, the 1989 agreement was converted into "grandfathered" TCCs. The grandfathered TCCs are not offered for sale in the TCC auctions and NYPA is reimbursed by Con Edison for the congestion rents it pays. These points are significant in that they strongly suggest that NYPA's interest is limited to and are addressed entirely by the grandfathered TCCs. We do not believe that the Authority has an interest in the TCC revenues obtained from the sale of TCCs pertaining to Con Edison's native load that have no relationship to the TCCs associated with NYPA's load. Why NYPA was previously allowed to share in the first $60 million of the TCC revenues is unclear to

us and there is no basis on the record here for continuing to allow NYPA to participate in the TCC revenues. We therefore conclude that NYPA should not share in any amount of the imputed TCC revenues.

For ratemaking purposes, we will use the $150 million estimate which represents the recent three-year average of these revenues. The rate design we are employing will apply the $150 million to Con Edison's full service customers and retail access customers. If the amount of TCC revenues for the rate year is less than the $150 million, the Company is permitted to recover the short fall using the Monthly Adjustment Clause. If the actual TCC revenues for the rate year are higher than the amount included in base rates, the additional revenues should be flowed to customers through the MAC.

Sales Forecast Adjustments

The Company presented forecasts for its sales volume, delivery revenues, and sendout. Staff proposed adjustments to the Company's sales forecast which, in total, would have resulted in an upward revision of 220 GWhs to the Company's sales forecast (equivalent to an increase of $12.2 million in delivery revenues). The City proposed that the sales forecast be increased as a result of eliminating the Company's DSM adjustment. In relevant part, the judges recommended that the City's proposed DSM adjustment and Staff's cooling degree days (CDDs) adjustment not be adopted. The overall impact of the judges' sales forecast recommendations resulted in an upward adjustment of 145 GWhs or $9.3 million.

Exceptions were filed by Staff and NYC Government Customers.

Staff asserts that the RD fails to recognize that the Company used CDDs in all months of the year to estimate its econometric models. Staff states that when an econometric model is estimated using the data of all months, but the input is estimated using truncated data, the resulting forecast will be biased; in this case, resulting in an understated sales

forecast. Staff sets forth in detail its views on the proper construction of econometric models and explains that its proposed adjustment is based on the principle of consistency. It further explains why, in its view, Con Edison's methodology violates that principle, resulting in the exclusion in the months of November through April of about 23 to 27 CDDs (Exhibit 264, p. 2).

Staff characterizes as misleading the Company's argument that we should use a sales forecast based on econometric models relating total monthly or quarterly sales to total CDDs. It asserts that the total CDDs in each month or quarter of the year is what is relevant to the forecast of total sales, because electric sales are related to total CDDs in the Company's econometric models, including those in the non-summer months.

Staff argues that the RD's recommendation to reject its proposed adjustment for CDDs in non-summer months is erroneous because it is narrowly based on the Company's explanation as to why CDDs are calculated to measure the use of air conditioning appliances over the course of the year and fails to fully consider how CDDs are used in econometric models to forecast electric sales.

The City argues that the RD erroneously adopted the Company's contention that DSM programs did not have a continuously growing impact within Con Edison service territory. It argues that this contention cannot withstand scrutiny. The City asserts that the Company has not satisfied its burden of proving that a specific DSM adjustment is needed because it conceded that it had not done analysis to support its assumption that its model had already adjusted for DSM spending. As a result, the City states that the RD should be reversed.

The Company replies that the RD correctly rejected Staff's adjustment for cooling degree days in non-summer months and the City's DSM adjustment.

The Company contends that, in continuing to pursue its adjustment, Staff misstates the Company's treatment of CDDs in

non-summer months. The Company states that it did not use truncated data, but made a reasonable judgment that the forecast for CDDs in certain months should be zero, notwithstanding historical CDDs data that may show some level of CDDs.[12]

The Company argues that its assumption of zero normal CDDs in non-summer months has a rational and reasonable basis in that CDDs are generally used to capture the impact of weather on the customers' use of air conditioning appliances, normally in the months of May through October (Tr. 585). It cites to its testimony explaining that, although CDDs may occur in April, it is reasonable to assume zero normal CDDs for non-summer months because of the manner in which the CDDs are calculated and customer behavior patterns (Tr. 623-626). That is, just because the temperature reaches a level in a non-summer month that constitutes a cooling degree day does not mean that customers reacted to that temperature by turning on their air conditioners.[13] The Company states that Staff is taking an unreasonable "all or nothing" approach in assuming that every cooling degree day in the non-summer months would result in air conditioning load (Tr. 118). It argues that, for the reasons it cited, its assumption of zero normal CDDs in non-summer months does not result in an understated sales forecast.

The Company adds that Staff also mischaracterizes the Forecasting Panel's testimony in stating that "Con Edison explained that it used daily CDDs to measure the impact of customers' use of air conditioning appliance over the course of

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[12] The Company adds that Staff's misinterpretation is also evidenced in its Westchester analogy, from which one might conclude that the forecast is missing a variable. The Company explains that this is not the case, rather the variable was included and its forecast value for non-summer months was 0.

[13] The Company states that the testimony at issue explained, for example, that customers "are not going to find their air conditioners and put them in a wall" on a warm day or two in April (Tr. 624) and, more importantly, where the temperature flips back and forth, as is common in shoulder months like April, "businesses themselves take a couple of days to heat up before you are going to require any kind of cooling" (id.).

the year." According to the Company, the Forecasting Panel explained that cooling days are intended to capture air conditioning during the summer months including May through October (Tr. 622).

The Company asserts that there is also no merit to the City's DSM adjustment, stating that the City continues to erroneously argue that the Company's adjustment for the impact of future DSM programs "represents a double-count of the impact of DSM because the impact of DSM already is reflected in the models used to determine sales revenue." The Company states that, as correctly recognized by the RD, the City assumed without justification that past DSM programs have a continuously and uniformly growing impact on sales throughout the estimation period and also ignored the ARIMA terms, which are an important component of the sales forecasting models.

Con Edison asserts that the City's continued arguments ignore the Company's explanation that the manual adjustment to the sales forecast for DSM reductions was made only for incremental reductions that have not already been realized (Tr. 632-636). The Company states that, for the existing targeted DSM program, reductions that are already achieved are not included in the manual adjustment; that is, the Company's sales forecasting models are premised upon historical sales data through December 2006, which reflect the impact of prior DSM programs (Tr. 592; 633).[14] The Company contends that it is only manually adjusting the resulting sales forecasts for incremental DSM reductions above the historical level already reflected in the sales forecast, and, as a result, there is therefore no basis for accepting the City's adjustment.

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[14] The Company adds that it reflected the projected DSM reductions in this rate filing in the same fashion as the projected DSM reductions related to the targeted program in the 2004 rate filing, and notes that the incremental DSM reductions for the Rate Year in this rate proceeding are 17 times larger, in terms of kWhs, than in the 2004 rate proceeding, where manual adjustments to the model forecasts were accepted.

We have reviewed the arguments offered by Staff, the City and the Company. On this record, we do not find the arguments raised by Staff and the City persuasively overcome the Company's arguments and explanations. We therefore adopt the recommendation to reject the CDDs adjustment proposed by Staff and the DSM adjustment proposed by the City.

First Avenue Property Proceeds and Other Credits

Con Edison will pass back to ratepayers the gain it obtained from selling certain property located on First Avenue in Manhattan. The Company proposed to provide the First Avenue proceeds to customers over three years, consistent with the period that the judges have recommended be used for other one-time revenue sources. On exceptions, Westchester County urges us to pass back a total of $199 million during the rate year rather than spread this amount over three years.

We find that the amount of the rate increase allowed in the case can be mitigated adequately by using other means than the one suggested here by Westchester County. We are aware, from the Company's rate filing, that it will be applying to increase rates in succeeding years. Were we to use all of the available credits and proceeds to reduce the rates for 2008-09, we would exacerbate the ratemaking circumstances for 2009-10 and for 2010-11. For this reason, Westchester's proposal is rejected and its exception is denied.

EXPENSES

World Trade Center Costs

Con Edison currently collects $14 million annually in rates for costs incurred due to the collapse of the World Trade Center. The Company proposed, and the judges recommended, that the amount be increased to $37.3 million. DPS Staff and CPB take exception to the judges' recommendation.

Staff points out that the Commission has not formally authorized the use of deferral accounting for the World Trade Center costs. In 2004, the Commission decided to hold off such

treatment because cost recovery from other sources was available to the Company.[15] In the interim, the Company has received a modest amount in rates, and it has been accruing interest on the balance of the deferred costs, pending the receipt of reimbursements and supplemental ratemaking action.

Staff states that Con Edison recently submitted an application to the federal government for a $197 million reimbursement that was not factored into the rate request presented in this case. Staff also points out that the Company's most recent figures would only support a $33.5 million rate allowance and not the $37.3 million figure the judges adopted.

For these reasons, Staff believes that it is premature to provide the Company any greater rate allowance than it is currently receiving. Staff points out that it has not audited this cost category pending the Company's receipt of the available reimbursements.

Like Staff, CPB believes that we should maintain the current ratemaking and any additional rate allowances for World Trade Center costs should be considered in a future rate case. According to CPB, it is in the consumers' best interests to allow the Company to collect the federal reimbursements before we provide any additional rate recovery. CPB also believes that the World Trade Center costs should be fully audited by DPS Staff, and other parties, before they are included in rates. According to CPB, there may be reasons for disallowing some of these costs.

Westchester County also urges that the World Trade Center costs not be recovered at this time. It believes there is no harm for the Company to wait another year to exhaust other sources of funding. Westchester also addresses the amortization period for the World Trade Center costs. Rather than use three

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[15] Case 01-M-1958, Consolidated Edison of New York, Inc. – Costs Related to the World Trade Center Disaster, Order on Treatment of Electric Interference Costs (issued January 30, 2004).

years as the Company has proposed, the County believes that they should be recovered over ten years.

In response to the parties' assertions about federal funds, Con Edison states that it does not expect to obtain any additional, material reimbursements. The Company's recent filing was for Category 3 reimbursements that are limited to a total of $60 million for all qualified applicants. To the extent it obtains any additional reimbursements or any recoveries from insurers, Con Edison is committed to returning them to customers.

Responding to the assertion that the World Trade Center costs require additional auditing, Con Edison states that these costs have been audited by the Empire State Development Corporation and that its support for the claims has been available since 2004. It points out that the Empire State Development Corporation rejected some of the Company's claims, not because they were improper, but because they were for work that was not within the definition of an event for which federal reimbursement is available. Pointing to the fact that $14 million is currently built into rates for World Trade Center costs, the Company argues that the time is ripe to adjust the rate allowance upwards.

With respect to the use of deferral accounting for these costs, Con Edison states that the 2005-08 rate plan explicitly recognizes that deferral accounting should apply to the World Trade Center costs. It also notes that Staff has not opposed the continued accrual of interest on these costs. In sum, the Company believes there is no basis for delaying the recovery of World Trade Center costs. Given its Herculean effort to restore lower Manhattan quickly, Con Edison believes that the recovery of the costs it incurred should not be postponed.

Finally, the Company considers the ten-year amortization period suggested by Westchester County to be far too long for the costs related to the World Trade Center collapse that occurred over six years ago.

We find that the best course of action, in the circumstances presented here, is to continue to allow Con Edison to recover $14 million annually for World Trade Center costs pending the final resolution of the Company's most recent filing for federal reimbursement. This will provide Staff, and other interested parties, an adequate opportunity to complete an audit and examination of the World Trade Center costs and to present this matter in a future rate proceeding. When next we consider this cost, we will set the proper amount to be recovered from ratepayers, including accrued interest, and the amortization period that should be used.

In a related matter, in order to achieve the amount of rate mitigation required in this case, we are removing deferred costs for the World Trade Center from rate base to reduce revenue requirements by $16 million. The record reflects $156.5 million of World Trade Center-related costs included in rate base on an after tax basis. The $16 million of carrying costs associated with this treatment have been considered part of Con Edison's electric revenue requirement. We are reducing the revenue requirement by this $16 million for two reasons. The Company has received additional funds from the federal government and insurance claims to offset the expenses it incurred and it has transferred some of its World Trade Center expenses to plant in-service. The combined effect of these items is a reduction in the amount included in rate base to $85 million. Second, we find no strong reasons to provide current recovery of the carrying costs related to the $85 million at this time. These costs have yet to be reviewed and verified, and the Company's income is not affected because it would accrue carrying costs on the deferred balance while the analysis of the costs is pending.[16] We find that portion of this adjustment reflecting known changes related to insurance and federal proceeds is necessary to prevent the Company from over earning, and the removal of the remaining $85 million from rate

[16] Carrying charges should continue to accrue at the AFUDC rate.

base reasonably reflects the status of the review of these expenditures.

Finance and Auditing Department Personnel

Con Edison hired an outside consulting firm (KPMG) to provide it recommendations for its Finance and Audit Departments. To implement the results of the audit, Con Edison has sought to include in rates twelve new positions--seven in the Tax Department, three in the Treasury Department and two additional accounting positions. The judges determined that the new positions were recognized in the rates set for Con Edison's gas operations.[17] They also observed that all but three of the positions were filled. Accordingly, they recommended against DPS Staff's proposal to eliminate the twelve positions from rates.

On exceptions, Staff states that the acceptance of the joint proposal in the gas rate case should not control the decision here. According to Staff, the terms of the gas joint proposal are not a precedent for the electric department matters presented in this case. Staff further explains that its position on the twelve positions differs because it recently obtained additional information about the outside auditor's report. The auditor's benchmark analysis supporting the new positions considered a peer group consisting mostly of manufacturing firms. If an electric utility company peer group were used, Staff doubts that the benchmark analysis would support the additional positions.

Con Edison states that it has accepted the consultant's recommendation to add staff and reorganize its tax department functions. The Company states that the auditor considered electric industry survey information in addition to the peer group Staff has criticized. Moreover, it considers the

[17] Case 06-G-1332, Consolidated Edison Company of New York, Inc. – Gas Rates, Order Adopting in Part the Terms and Conditions of the Parties' Joint Proposal (issued September 2007), Joint Proposal p. 43.

peer group useful and informative, and it does not believe that it must contain a large number of utility companies. Con Edison doubts that a different peer group, or any more current data, would alter the consultant's recommendations or change the Company's actions to implement the audit results.

Con Edison also denies that it withheld any information from Staff about the outside auditor's report. Further, it believes that it would be improper for the Commission to consider the same hiring plans in two cases and reach different outcomes. It asserts that Staff is second-guessing the outside auditor's expert opinion and recommendations for improving its performance on tax matters to benefit customers. The Company has filled almost all of the new positions and it believes that Staff has not provided a good basis to exclude the twelve positions from rates.

We find no firm evidence for disallowing the twelve new positions in the finance, audit and tax departments. We accept Con Edison's representations that the outside auditor, and its management, gave due consideration to how such work is performed at other utility companies and at large firms. We also note that utility companies were not entirely omitted from the benchmark analysis that the outside auditor employed. We have decided, therefore, to adopt the same treatment for the twelve positions that was allowed in the recent gas rate case.

Management Compensation

1. Deferred Compensation

Con Edison's officers and management employees receive a portion of their pay in the form of deferred compensation stock options. The judges determined that comparable compensation was previously allowed in rates and they recommended that we allow $14 million for this expense. DPS Staff excepts.

According to Staff, the fact that the Commission may have previously allowed a portion of such costs in rates should not control the decision here. It acknowledges that, in 1992,

Con Edison was allowed to recover half the cost of its Management Incentive Compensation Plan. However, this resulted from the Commission's acceptance of a joint proposal, the terms of which do not provide any precedent.[18] Staff also points out that there was also a general reduction made to expenses claimed in the 1992 rate case that covered items in dispute, including management compensation matters.

Staff considers the stock-based, deferred compensation to be "incentive compensation" that should only be provided to officers and managers who enhance corporate productivity and improve the Company's performance. Staff does not consider this compensation to be "base pay" that Con Edison's officers and managers routinely receive. In addition to opposing the inclusion of the stock-based deferred compensation in rates, DPS Staff considers the $14 million to be overstated by $6.7 million that was paid to two senior officers who have since retired.

Con Edison states that the 1992 decision demonstrates that the Commission is willing to recognize incentive compensation in rates as a legitimate business expense. The Company also states that the benefits the deferred compensation plan provides customers do not lend themselves to precise measurement. It insists that this compensation is an integral component of the annual compensation package that is offered to officers and management employees. It states that the total package is designed to be competitive with the median level of compensation provided to the officers and managers of a peer group of companies. Further, it states that the total amount of compensation recognizes the high cost of living in the New York City area and is designed to attract and retain talented persons who are needed for long-term success. It believes that Staff's adjustment does not recognize the many elements needed for a proper compensation package in today's business environment. Moreover, the Company believes that the compensation it provides should be considered a legitimate business expense.

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[18] Case 91-E-0462, Consolidated Edison Company of New York, Inc. – Electric Rates, Opinion No. 92-8 (issued April 14, 1992).

Con Edison notes that it is not seeking to recover in rates the cost of the annual bonuses that its executives receive even though they, too, according to the Company, are a legitimate cost of doing business that could be recovered from customers.

We find that Staff has properly sought in this case to apply a valid and important distinction between "incentive compensation" and "base pay." We also find that Con Edison has sought to blur this distinction and frustrate Staff's review. The Company has not provided a good basis for us to consider the components of the compensation packages it provides to officers and managers, or the reasonableness of the entire compensation package provided for individual positions and the management team. On the record before us, it appears that the Company has generally provided incentive compensation without requiring clear and convincing demonstrations that the officers' and managers' performances, in their respective departments and units, have produced any specific results to warrant incentive payments. For these reasons, we are adopting Staff's adjustment and rejecting the judges' recommendation.

2. Variable Pay Plan

The judges recommended that $11 million be allowed for the Company's variable pay plan. Staff excepts and states that Con Edison has admitted that the variable pay plan is "incentive compensation" and, for this reason, it believes the plan should be excluded from rates. According to Staff, all incentive compensation should be covered from improved corporate performances that are sufficient to justify the additional payments to officers and managers. It points to Commission decisions involving three utility companies to support its

assertion that the Commission does not permit incentive compensation to be included in rates.[19]

CPB also proposes that the costs of the variable pay plan be excluded from rates. If this expense were to be recognized, CPB believes that the Company must first demonstrate the ratepayer benefits that the plan provides. Also, according to CPB, the evidence provided in this case does not support a finding that the variable pay plan is part of the base pay the Company provides its officers and managers.

According to Con Edison, the variable pay plan adjusts management compensation for the achievement of such corporate goals as good service, reliability, customer service, safety and system operations. The Company believes that it met its burden of proof and has adequately supported the plan in its testimony and with its responses to the parties' discovery.

Similar to its support for the deferred compensation plan, Con Edison states that the variable pay plan is an essential part of the total compensation package for officers and managers. Without it, the Company states, base pay levels and merit increases would have to be higher than they are now. The Company asserts that the merit pay amount was reduced when the variable pay plan was adopted. Con Edison believes that variable pay encourages and rewards good performance by management employees and it helps the Company compete for talented persons. It denies that the variable pay is incentive compensation and asserts that the amount of discretion that managers have to award such amounts is similar to the discretion that managers have to award base pay merit increases.

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[19] Cases 90-G-0737 and 91-G-0019, National Fuel Gas – Rates, Opinion No. 91-16 (issued July 19, 1991); Cases 90-S-0938 and 90-G-1001, Consolidated Edison Company of New York, Inc. – Steam and Gas Rates, Opinion No. 91-20 (issued October 3, 1991); and, Cases 02-E-0198 and 02-G-0199, Rochester Gas & Electric Corporation – Electric and Gas Rates, Order Adopting the Recommended Decision with Modifications (issued March 7, 2003).

According to Con Edison, the variable pay plan is comparable to plans offered by other utility companies. It also states that performance payments are universally accepted as a proper approach to compensation. It asserts that the plan produces many benefits for customers, including the provision of reliable service and the development of innovative and productive business practices. The Company states that the plan helps to align employees' goals with customers' interests in safe and reliable operations, good service and public safety. It believes that these benefits are not easily measured and the costs of the variable pay plan should not be disallowed for this reason.

Similar to our determination concerning the deferred compensation plan, we find that the variable pay plan has attributes of an "incentive compensation" program and it should be evaluated as such. In this case, the Company has not shown that the variable pay payments were justified by any specific or quantified productivity that the directors and managers were able to obtain. Absent such demonstrations, we are unwilling to allow this expense as any enhancement to the base pay the Company is obligated to provide. Incentive compensation and base pay should not be confused with each other, and we will require that both be adequately justified for inclusion in rates. The Staff and CPB exceptions are granted.

Health Insurance Costs

Con Edison asks us to examine the Commission's standard practice that includes health care costs in the expense group to which we apply the general inflation rate. Like many other utility companies, Con Edison would prefer that we allow specific cost estimates and projections for its health care costs.

Addressing the original rationale for the prevailing practice, the Company observes that the approach has failed to save time or avoid litigation in rate proceedings. Instead, Con Edison states that it has achieved the opposite effect by

engendering continuous, administrative litigation by utility companies. Con Edison believes that the practice is out-dated, arbitrary and illogical.

As to the facts of this case, Con Edison states that its health insurance costs are expected to increase at a rate well above the general inflation rate. It estimates an 8.0% annualized increase in health care claims and a 16% increase in the rates charged by three of its major HMO plans. Rather than use the general inflation rate, Con Edison urges us to take its forecast information for health care costs. Specifically, the Company proposes a labor factor of 6.39% to escalate employee welfare costs; a non-labor factor of 4.7% to escalate employee welfare costs that are unrelated to salaries and wages; and, projected health care cost trend rates of 8.0% and 9.5% for hospital/medical costs and prescription drug costs, respectively.

DPS Staff points out that the Commission has in recently-decided rate proceedings affirmed the use of a general inflation factor for health care costs. According to Staff, it is sufficient in this case to apply the inflation factor to the 2008 health insurance premiums and to use the number of health plan participants as of September 2007. This will provide the Company about $101.5 million, which is $3.9 million more than it first requested for health insurance costs. Staff argues against the escalation rates proposed by the Company given the increases being experienced in aggregate operations and other maintenance expense items.

We find no need to reconsider or to change the Commission’s standard ratemaking practice in the circumstances presented in this proceeding. We are satisfied that the standard practice is proper and rational within the complete ratemaking context and that the Company is being treated fairly. The practice uses the recent costs and the current employee count to capture the present operating conditions. It also acknowledges that the costs in this and many other categories are expected to increase. Overall, the Company is expected to

manage the cost increases in the entire group and to keep them, as best it can, to the general inflation rate. By this time, we would expect the utility companies to have accepted the standard practice and to apply their resources more productively to other matters.

Group Life Insurance

Con Edison provides management and union-represented employees group life insurance. The judges adjusted downward the costs that the Company claimed for its insurance policies. The Company receives dividends on the insurance polices that serve to reduce their costs. The adjustment was sponsored by CPB and supported by DPS Staff. The judges failed to mention that CPB contributed substantially to the development and consideration of this matter.

East River Repowering Project

Con Edison currently has available $8.7 million for major maintenance at the East River generating units. The judges recommended that the Company hold on to these funds and continue to use them for the East River Repowering Project. In addition to this sum, the Company will also be collecting $7.5 million annually in rates for major maintenance at the Repowering Project. The major maintenance at ERRP is currently expected to cost $24 million in total over the next three years.

As with the $8.7 million previously collected, Staff proposes that the additional $7.5 million per year be applied exclusively to major maintenance at the Repowering Project. Any unused funds should be kept for the on-going work on the Project. Staff states that a new expense estimate will be necessary when sufficient operating experience is established.

Con Edison did not respond to the Staff position stated in its brief opposing exceptions. Thus, it does not appear to object to the Staff proposal. The judges' recommendation, and the Staff proposal, is adopted.

Vehicle Fuel Costs

With its rebuttal testimony, Con Edison sought to update its estimate of vehicle fuel costs. At the evidentiary hearings, Staff moved to preclude the use of the new estimate; however, the judges allowed the updated information into evidence. In its briefs to the judges, Staff objected to the new estimates provided with rebuttal. The judges recommended that we use the more recent figures.

On exceptions, DPS Staff insists that the applicable policy statement should be followed and the update should not be allowed.[20] Staff states that Con Edison provided for the record an increase in its budget and it did not provide any properly developed price information and volume changes with the assumptions, factors, contingencies and activity levels that are needed to support the new estimates and volume changes. Staff criticizes the Company's workpapers for not showing the vehicle fuel expense for 2006 or the method that was used to forecast this expense. According to Staff, the Company has not provided a proper basis for us to consider the change.

In response, Con Edison asserts that it provided the vehicle fuel expenses for 2006 for the record and a summary of its fuel costs from 2001 to October 2007.[21] According to it, the exhibit shows that fuel costs and consumption have increased. The Company believes that the exhibit provides a sufficient basis for accepting a volumetric change in consumption. It also notes that vehicle usage and fuel consumption will increase during the rate year due to the large amount of capital construction and O&M projects it has planned.

We are granting Staff's exception because it has demonstrated that the Statement of Policy on Test Periods in Major Rate Proceedings has not been followed and the Company has not shown otherwise that it fulfilled the stated requirements. We accept Staff's assertion that the update is not tied to the

[20] Case 26821, Statement of Policy on Test Periods in Major Rate Proceedings (issued November 23, 1977) 17 NY PSC 25-R.

[21] Exhibit 363.

original estimate provided in this case, and the development of the update is not clear. While the Company can point to an exhibit reflecting the amounts for 2006 and previous periods, it has not shown how its update was developed from the historic base or how it relates to the previous estimate. Nor has it shown that the revised estimate is based on data that were not available at the time of the original filing, nor has it identified a significant and unforeseen intervening event to justify the consideration of any such revision.

Informational and Institutional Advertising

DPS Staff has proposed that Con Edison only be allowed 0.06% of its operating revenues for informational and institutional advertising. Staff arrived at this percentage by applying the Commission's applicable policy statement.[22] Thus, Staff would hold the Company's electric operations to $4.47 million for informational and institutional advertising. During 2006, Con Edison spent more than twice as much on advertising, $10.5 million, and it has proposed to spend $19 million, on a total company basis, during the upcoming rate year. The judges agreed with Staff that the policy statement should apply.

On exceptions, Con Edison claims the 1977 policy statement is out-of-date and the Company's efforts to inform the public about energy conservation, emergency preparedness and other matters would be substantially frustrated if the expense level advanced by Staff and recommended by the judges is adopted. The Company believes it should enhance and expand communications on important topics rather than cut back. The Company states that it is prepared to consult with Staff on the design of a proper communications program, and make appropriate changes to its plans, in order to obtain approval for its communications program rather than go forward with an inadequate program.

[22] Statement of Policy on Advertising and Promotional Practices of Public Utilities (issued February 25, 1977) 17 NY PCS 1-R.

Addressing the 1977 policy statement, Con Edison notes that the Commission stated that it would review its policy periodically and revise its practice to reflect any new or changed circumstances. The Company states that much has changed in the intervening years, including electric industry deregulation, the sale of utility property and assets, and the introduction of competitive energy suppliers and retail access. In the current environment, the Company claims that the public requires more information about service conditions, energy conservation and doing business with electric companies. It considers the policy statement to be an artifact of the past that has no valid application today.

If the policy statement were to continue, Con Edison suggests that its allowance should be increased. Rather than receive a 0.06% allowance, the Company argues for the 0.1% allowance that would put it at the top of the range established in 1977. In any event, by examining the Company's 2006 expenditures, Con Edison believes that we should see that a higher expense allowance is necessary for useful information programs. It also points out that doing business in the New York City area is more costly than in many other locations.

Con Edison also states that the communications requirements that have been adopted for service outage conditions require that greater funding be provided for information advertising. It notes that customers will receive notification of service conditions through bill inserts, advertisements and public service announcements. The Company observes that it must reach many diverse communities and use ethnic publications.

In response, Staff supports the application of the advertising policy statement and states that important information and public messages need not be curtailed. Staff also distinguishes from informational and institutional advertising the Company's outreach program that is used to inform customers of their rights, responsibilities and safety matters, and to provide pertinent information about contacting

the Company. These efforts will not be affected by the application of the policy statement to curtail the Company's use of ratepayer provided funds for self-serving advertisements.

We agree with Staff that reliance on the 1977 policy statement on informational and institutional advertising should not affect Con Edison's important consumer outreach efforts, which are separately budgeted and accounted for in rates. The application of the policy statement to Con Edison will not adversely affect any new or important informational programs that the Company will implement for any valid public programs we may mandate. In any future rate proceedings, the Company is encouraged to document its outreach program needs on the record so that these programs can continue in an effective and efficient manner.[23]

Separate from these outreach funds, however, is the funding for this informational and institutional advertising category. Because evaluation of the appropriate level of such advertising is a much more subjective enterprise, reliance on the policy statement's guidelines has continuing merit and application here. The policy statement continues to have a valid purpose and it can be put to good use in today's circumstances and conditions. We are therefore adopting Staff's proposal for a 0.6% allowance that is the standard for a company of Con Edison's size. If the Company believes that the funds available to it through the standard allowance are insufficient for it to accomplish proper objectives, the program plans that

[23] The Company's rate case presentation contained a line item amount for informational advertising that was not based on any percentage allowance. This line item reflected both advertising and outreach and education expenditures. Further, we have determined that general outreach and education, and the outreach and education for retail access and energy efficiency was also included in the "Other" operations and maintenance expense line of the Company's presentation. In the future, Con Edison should clearly and separately state all such amounts in its rate case presentations and it should minimize the inclusion of any such expenses in the "Other" category.

it submits for our review in the future should include the Company's funding request for any additional informational and institutional advertising it believes is warranted.

Interference Expense

Con Edison incurs expenses to protect and replace electric facilities when municipalities install or repair water mains, sewers, drainage, roads, sidewalks and curbs. The judges recommended that Con Edison be allowed about $93 million in rates to perform the amount of work expected during the rate year. Exceptions have been filed by CPB and DPS Staff.

CPB believes that the expense estimate should be reduced to $78 million. It developed this figure by using the amounts Con Edison budgeted and incurred for interference work in 2006. CPB states that its calculation conforms with standard ratemaking practices. It also believes that a $24 million (44%) increase for interference work is adequate and reasonable.

In response, Con Edison states that there is no record support for the amount of interference work estimated by CPB and the estimates provided by the Company and Staff are in keeping with New York City's projections of planned capital expenditures. The Company also disagrees with the method that CPB used to project this expense which relies exclusively on historical data and does not consider new or different information such as the City's work projections. According to Con Edison, 2006 was an anomalous year. It notes that interference expenditures have increased since 2002, and in any year, the expenditures can either exceed or be below the budget amount.

On exceptions, DPS Staff addresses the $1 million difference between its expense estimate and the Company's. Staff explains that its expense estimate is $92 million because it adjusted the Company's incremental interference labor to avoid a double count. According to Staff, Company personnel will be shifted from one area to another to provide the workers

needed to perform the interference work. This will bring about a reduction in another labor expense item.

Staff also supports the use of a one-way expense reconciliation mechanism. It recognizes that $92 million for interference work is 27% greater than the four-year average expense that the Company has incurred. Due to this substantial cost increase, Staff proposes that any portion of the $92 million not spent for the intended purpose be preserved for ratepayers. Were Con Edison to spend more than $92 million on interference work during the rate year, Staff would not allow the Company to recover the excess expenditures from ratepayers.

We accept the $92 million estimate that Staff has provided for interference work in the rate year. This figure is supported by the parties' knowledge and review of New York City's plans for infrastructure improvements and it is not limited to a review of the historic information. We recognize that this is a large sum and we are willing to include it in rates but only for the intended purpose of paying for the protection and restoration of electric facilities that are impacted by municipal works. Consequently, we are adopting Staff's proposal to require the Company to return to ratepayers any portion of the amount that is not spent for this work.

Customer Service – Call Centers

The judges recommended a compromise between the Con Edison and DPS Staff positions concerning the need for additional call center staff. The Company proposed to increase the staff at the call center by 36 representatives and two supervisors; Staff proposed to eliminate the new positions. The judges recommended that half of the positions be included in rates and that this matter be revisited in the next Con Edison rate case to determine whether any additional positions are needed. Local 1-2 excepts.

According to the Union, all the call center positions are needed. It points out that, during a recent service outage, the representatives worked 16 hour shifts. From its experience

and observations, Local 1-2 believes that there is a clear need for all the call center representatives proposed by the Company to provide adequate customer service.

We adopt the judges' recommendation to provide additional staff for the call center in a gradual manner to see how well the Company implements the new positions. This will provide a useful basis for determining whether any additional employees are needed in the future should we examine this matter again in the Company's next rate proceeding.

Customer Service – Field Operations

The judges recommended that the Company be allowed to increase its field representatives by 15 positions as it proposed. No party has taken exception to the judges' recommendation. In its brief, Local 1-2 states that it agrees with the proposal because the field representatives provide a valuable, direct link between customers and the Company. In addition to investigating accounts and helping to protect the integrity of the electric network, the Union observes that the field representatives provide customers a good means to communicate with the Company and to obtain satisfaction that their dealings with computers and telephones may not be able to provide.

Director and Officer Liability Insurance

The judges recommended that Con Edison be allowed to include in rates the cost of the liability insurance that the Company purchases to protect its directors and officers. CPB proposed that these costs be disallowed; however, the judges were not aware of a Commission policy, practice or precedent for disallowing such costs. On exceptions, CPB urges us to consider Con Edison's current circumstances and to require shareholders, rather than ratepayers, to pay for the recent increase in the cost for the liability insurance.

CPB states that the liability insurance protects directors and officers from inappropriate activities and

decisions that are adverse to shareholder interests. It also states that ratepayers provide directors and officers fair compensation in the rates they pay for utility service. CPB considers it to be unfair for ratepayers to also be called upon to pay for the insurance to insulate directors and officers from their responsibility for any inappropriate decisions.

Addressing Con Edison's current circumstances, CPB states that the cost of the liability insurance for directors and officers significantly increased in recent years. According to CPB, it represents over one-fifth of the Company's total corporate insurance costs. CPB believes that the Company is capable of controlling this cost and the recent increase may be attributable to pending lawsuits and investigations of the Company's actions. CPB believes that customers should not be required to fund the higher insurance costs and pay for any corporate officer liability for recent events. It specifically proposes that the amount included in rates for director and officer liability insurance be set at the cost level incurred before 2006.

In response, Con Edison asserts that director and officer insurance is a legitimate business expenditure that is incurred to provide service to customers. It states that this insurance is necessary to retain its officers and directors and to attract qualified individuals to these positions. It denies that there are any new facts or circumstances to warrant a change in the established ratemaking practice. And, rather than attribute any cost increases for this liability insurance either to the 2006 power outage or the 2007 steam rupture, Con Edison states that, through no fault of the Company's management, and due to forces outside of its control, the liability insurance rates have been on the rise since 2001.

The judges are correct that a review of past cases shows that the Commission has not previously made an adjustment like the one CPB has proposed here. For this reason, we will accept the judges' recommendation. However, the parties are on notice that if adequate, detailed support for such an adjustment

is provided by CPB, or any other party interested in this matter, we will entertain a cap on the amount of basic liability insurance that ratepayers would be expected to cover in the rates they pay.

Site Investigation and Remediation

The judges accepted DPS Staff's estimate for the cost of the site investigation and environmental remediation (SIR) work that will be performed where manufactured gas was once produced. On exceptions, CPB argues for a full audit of the SIR program and the potential disallowance of some of the costs that the Company has claimed for this work.

According to CPB, the amount that Con Edison expects to incur ($134.5 million from April 2007 to March 2009) should be examined to determine the Company's ability to perform the work in a cost-effective manner. CPB believes that the reasonableness of the Company's SIR cost estimates; the Company's bidding procedures; and the adequacy of Con Edison's management to minimize overall costs should all be examined. It believes that the funds for SIR work should be subject to reconciliation to the audit results. According to CPB, the amount ultimately paid by customers should be no more than is determined to be reasonable by a complete review of the SIR program. CPB believes that temporary rates might be used for the portion of the rate award for SIR work pending the audit results.

Con Edison states that the issues listed by CPB were not examined in this case and the record contains no evidence casting any doubt on the reasonableness of the SIR costs that it incurs. To the contrary, it points to the testimony of a Company witness concerning the steps that the Company takes to control the SIR costs.

In contrast to the reconciliation mechanism suggested by CPB, Con Edison proposes that a reconciliation process be used to provide full recovery of the prudently incurred SIR costs. It states that the Commission previously provided full

recovery for SIR costs through a reconciliation process and by using deferred accounting. The Company believes that this practice should continue so it can aggressively pursue environmental remediation and further the State's and New York City's environmental policies. Absent a reconciliation and deferred accounting, the Company states that it would not be able to recover unanticipated costs for contamination that may be found during field work. The Company is unwilling to incur unrecoverable liabilities and expenditures.

New York City fully supports the Company and agrees that a reconciliation mechanism and deferral accounting are warranted. It does not believe that Con Edison's remediation efforts should be discouraged. It states that the manufactured gas plant sites pose a serious health and safety problem that inhibits redevelopment efforts in local communities. The City states that it has worked with State government officials on the development of cost-effective and expeditious clean-up efforts.

Westchester County proposes to extend to ten years the amortization period used to recover SIR costs. The County observes that the Commission recently adopted a ten-year amortization of such costs in approving the merger of KeySpan Corporation and National Grid PLC.[24]

In opposition to Westchester, Con Edison states that there has been no showing that its circumstances are comparable to those presented in the National Grid/KeySpan merger case. It also states that there is no basis for believing that a ten-year recovery period would be reasonable for the costs the Company expects to incur during the rate year. It prefers that we use a three-year amortization period for the SIR costs.

In response to the Company and New York City, CPB states that it supports the need to investigate and remediate manufactured gas plant sites in accordance with the directives issued by the State Department of Environmental Conservation.

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[24] Case 06-M-0878, National Grid PLC and KeySpan Corporation – Acquisition and Rates, Order Authorizing Acquisition Subject to Conditions (issued September 17, 2007).

It believes that the Company should not have any financial incentive to postpone or avoid environmental efforts and it supports the proposal for a cost reconciliation process and deferral accounting. Nonetheless, it also states that an investigation of the actual SIR costs is necessary for there to be a thorough review of the program and assurances that the projects are performed in a cost-effective manner.

We find that the judges erred and they should have recommended that the rates provided for the SIR program will be reconciled with amounts the Company incurs. Deferral accounting has previously been used for the SIR program and it will continue to be used for these costs. This much is not in any substantial dispute among the parties who believe that Con Edison should be allowed to recovery prudent and reasonable SIR costs.

The amortization period to be used for cost recovery purposes, and the need for additional review of the management and execution of the SIR program have been seriously debated by the parties. We agree with Westchester County that the length of the amortization period should be in keeping with current conditions which, in the case of KeySpan and National Grid, led us to adopt a ten-year amortization. We find that a ten-year amortization is also warranted for Con Edison given the proximity of its service area to KeySpan’s and the rising rate levels that the Company is experiencing.

With respect to CPB’s proposal calling for additional auditing of Con Edison’s oversight and execution of the SIR program, we are requiring the Company to address fully in its next electric rate increase filing its bidding process, management practices and efforts to operate a cost-effective SIR program. Inasmuch as we have decided to use a ten-year amortization period for SIR costs, there is no need to adopt any other ratemaking mechanisms for the recovery of the Company’s prudent and reasonable costs that will be fully examined in the next rate proceeding.

Reserve Accounting For Storms

The RD stated that CPB's arguments were persuasive and recommended that the Company be permitted to establish a storm reserve in the amount of $5.6 million dollars, subject to true-up, and to accrue interest.[25] CPB questions whether the recommended dollar level was a typographical error (because it advocated $5 million) and asks for clarification. We hereby clarify that $5.6 million was not a typographical error, but was intended to recommend an amount that was less than the Company's proposal but greater than CPB's. We find that the recommended amount is a reasonable compromise. We further find that the recommendation, which includes, among other things, a true-up provision, adequately balances concerns about rate levels and impacts and requirements for safe and adequate service. We therefore adopt it without modification.

Labor Expense – Normalizing Adjustment

The judges did not address specifically an issue CPB raised about Con Edison's rate year labor forecast. According to CPB, the Company added about $3.4 million to its estimate to account for positions that were filled for only a portion of the historic test period (for which a full year's compensation is required) and for positions that were vacant during the historic test period that are expected to be filled during the rate year. CPB claims the Company's adjustment is one-sided and does not account for employees who leave the Company or for the vacancies that can be expected to occur during the rate year. CPB has proposed to reduce the Company's labor expense projection by $2.46 million.

According to Con Edison, CPB's characterization of the employee payroll expenses forecast is incorrect. The Company states that the forecast reflects a vacancy factor because "any

[25] Thus, a regulatory asset would be created if the spending level does not reach $5.6 million in the rate year; conversely, a regulatory liability would be created if the spending were greater than $5.6 million in the rate year.

vacancies that occurred in the historic year are reflected in the payroll costs for that year." Thus, it states, the vacancy durations in the historic period are carried forward to the rate year. As to the vacancies that will occur in the rate year, the Company states that it immediately seeks to fill such positions and it is not practical to attempt to forecast the duration for any particular vacancy due to the amount of time it takes to hire of employees.

A review of the evidence shows that Con Edison projected rate year labor count, before program changes, based on the December 2006 force count that was the final month of the historic test year and which has the highest count in the year.[26] This clearly obviates the need to normalize the labor cost forecast for positions that were filled for only a portion of the historic year. Also, it is unreasonable to assume, as Con Edison has, that the vacancies that will occur during the rate year will be immediately filled. Therefore, we are adopting the CPB-proposed adjustment.

Tax Matters

1. Property Tax Reconciliation Proposal

Con Edison proposed that the amount included in rates for property taxes be reconciled to the actual amount of taxes that are paid during the rate year. DPS Staff opposed the Company's proposal and the judges agreed with Staff that reconciliation is not required for property taxes.

On exceptions, the Company points out that the judges have recommended a reconciliation for certain capital expenditures and it believes that consistency would apply reconciliations to other items. With respect to property taxes, Con Edison claims that they can be highly variable and the taxes are outside its control. For example, it points to the 18.5% New York City real property tax increase that occurred in 2002-03 and the adverse impact it had on the Company. The Company

[26] See, Exhibit 84, Schedule 2, p. 2.

states that the tax amounts for 2007-08 are only known through June 2008 and during the remainder of the rate year they could vary from the amount projected. According to Con Edison, a symmetrical, bilateral reconciliation mechanism would properly protect both customers and investors.

Staff continues to oppose the Company's proposal and states that it should not be insulated entirely from the risk of a property tax increase. Staff acknowledges that the judges recommended reconciliations for some items but none for property taxes; however, Staff believes it is appropriate to use a one-way reconciliation to protect customer interests in instances involving large cost increases while avoiding the use of reconciliation mechanisms for items that can be reasonably forecast. According to Staff, the possibility of an extraordinary or unforeseen event that could affect the amount of property taxes does not mandate the use of a reconciliation mechanism. It notes that the Company may file a petition to defer extraordinary costs that would be decided on its merits.

We find that the judges correctly concluded that the typical approach for a conventional, one-year rate proceeding does not provide a property tax reconciliation. Like most other expense items, the best estimate of this cost should be used to set the level of rates for the upcoming year. The Company's exception is denied.

2. Property Tax Refunds

To achieve the amount of rate mitigation that is needed in this case, we are crediting to ratepayers the New York City property tax refund that Con Edison declared in the August 2, 2007 notification it provided in Case 07-E-0927. Pending the completion of Case 07-E-0927 and a final accounting of the costs the Company incurred to obtain this refund, we are passing back to ratepayers $11.2 million. The rate amount will be reconciled with the results obtained in Case 07-E-0927.

We are also returning to ratepayers the Town of Stony Point property tax refund declared in a March 17, 2008 notice

provided by Con Edison. Pending the completion of our investigation of the refund and a final accounting of the costs the Company incurred to obtain this refund, we are passing back to ratepayers $1.2 million. The ratepayer benefit amount will be reconciled to our findings in Case 08-M-0281.

In addition, we have reflected the expected rate year property tax expense savings resulting from the Stony Point settlement. Con Edison has identified an expected $2.4 million reduction in its rate year property tax expense resulting from its settlement.

3. New Property Tax Estimate

The Company, by letter dated March 10, 2008 to the Secretary, indicated that the Office of Real Property Services was increasing the estimated value for certain properties by 17.53%. Based upon the property tax rates reflected in the Recommended Decision, the Company estimated that this would increase its rate year level of property taxes by $46 million. Con Edison did not propose any specific treatment of this information in the revenue requirements we determine here. Staff, by letter dated March 13, 2008, states that this item does not qualify as an allowable update under our Statement of Policy On Test Periods in Major Rate Proceedings because it was submitted too late and the effect of the change in the valuation base on actual taxes cannot be estimated with any certainty because the actual tax rate is unknown. Inasmuch as the Company did not specifically request that we include this matter in revenue requirements, there is no reason for us to decide any such issue. In any event, the Company may seek deferral of this expense during the rate year if it qualifies for such treatment under the established standards.

4. Economic Stimulus Act of 2008

The Economic Stimulus Act of 2008 (the Act) which became law on February 13, 2008 enables businesses, including Con Edison, to depreciate for tax purposes a much higher portion

of assets constructed and placed in service in 2008 than is normally available. This produces a significant improvement in cash flow for the Company as the result of reduced current tax liabilities. The improved cash flow is generally reflected in ratemaking as an offset to rate base. Given the Company's forecast of capital additions for 2008, we estimate that the value of the revenue requirement reduction associated with the incremental $208 million rate base offset created by the Act is about $22.5 million for the rate year. We will reflect these benefits in our rate determination today. Because the precise level of benefits ultimately depends on the amount of eligible property placed in service, the Company is directed to defer any differences between the amount we authorize and actual results.

R&D Costs

Con Edison has also sought a reconciliation for its research and development (R&D) costs and the judges did not recommend one. On exceptions, the Company claims that all of its research and development projects are warranted and $22 million is needed to support them. If Staff's $19 million estimate is used, the Company believes it should have the benefit of a reconciliation mechanism should any higher amount be incurred.

In response, Staff explains the rationale for its $19 million estimate which takes into account the success of the Company's projects and the credits that the R&D program receives whenever successful projects are capitalized. Staff projects a continuation of such credits and it sees no need to provide any reconciliation mechanism for this expense category.

We adopt Staff's estimate of R&D expenses for the rate year which includes proper recognition of the credits that the program receives for successful efforts. We see no need to provide any reconciliation mechanism for this expense.

Productivity Adjustment

In its rate case filing, Con Edison applied the standard one-percent productivity adjustment that is typically used to encourage more efficient operations. The judges recommended against a three-percent productivity adjustment proposed by NYC Government Customers. They also recommended against a Local 1-2 proposal calling for an end to the productivity adjustment. Both parties have filed exceptions.

From its review of the Company's operations and the capital projects that are planned and in progress, NYC Government Customers believe that there is a much greater opportunity for the Company to achieve cost savings and productivity. They point to the large increase in capital and O&M spending and discuss the analysis of these programs provided by the witness they sponsored. They believe that the analysis shows the potential for productivity savings in the three-percent range.

In response, Con Edison claims that the analysis provided by NYC Government Customers is speculative and increased productivity depends on the nature of the capital and O&M spending and not on the amounts that are spent. The Company states that the opposing witness should have sought to quantify the potential productivity that each project could provide but he did not do so. The Company states that it has, in fact, reflected in its revenue requirements calculation the productivity associated with many of the projects that the witness listed.

Local 1-2 is concerned about the productivity adjustment's potential interference with the collective bargaining process. The adjustment is calculated as a percentage of the Company's internal labor costs. The Union believes that this encourages the Company to reduce the internal workforce and induces poor performance. Local 1-2 believes that the adjustment discriminates against internal labor and encourages the Company to use outside contract labor to avoid the application of the productivity adjustment. Thus, the Union

believes that the ratemaking process has inserted itself into the collective bargaining process to the advantage of outside contractors.

The Company's use of outside contractors also raises other concerns for Local 1-2. The Union believes that outside contractors are capable of providing shoddy work that could detract from the provision of safe, adequate and reliable service. Local 1-2 believes, as well, that outside contractors may use undocumented workers who may present security risks for the electric network.

We find that the one-percent productivity adjustment that is frequently applied to public utility companies is a modest ratemaking convention that does not provide the utility company a perverse incentive to reduce its workforce below the level that is necessary to provide good quality service. We also find that neither the magnitude nor the mechanics of the adjustment are likely to cause utility management to hire unqualified contractors to perform low-quality work or to induce management to incur excessive outside costs or to engage in strategies to minimize its application of the adjustment to its operations.

Emergency Preparedness

Con Edison proposed to increase its O&M expenses by about $4 million and its capital expenditures by about $8.4 million to improve its emergency response organization. Staff argued that the Company was not ready to make these expenditures because, at all levels, the Company's emergency preparedness program lacks cohesion and accountability. Before any new funds are committed to the program, Staff insisted that an acceptable business plan be provided which demonstrates better coordinated efforts. The judges accepted the Company's assertion that some of the work it proposed would be necessary in any circumstance, so they provided an allowance for vault replacements used for coastal storm mitigation purposes, a command center and a control center screening group. Con Edison excepts.

The Company urges us to fully fund its Electric Operations Emergency Management group on the basis of the order recently issued that addresses its emergency preparedness.[27] The recent order requires the Company to provide a comprehensive plan addressing the findings and recommendations it contains. According to the Company, the plan it will implement, and the improvements it will make, will require that it spend the amount requested in this case for emergency preparedness. Con Edison also believes that deferral accounting will be needed to allow it to recover from customers the incremental costs associated with the improvements required by the recent order.

We find, at this stage of the process, that it is premature to provide the Company any incremental amounts for emergency preparedness. This does not relieve Con Edison of its responsibility to provide safe and adequate service, and to make adjustments to its corporate policies and procedures where necessary. The Company is provided with over $1 billion of non-fuel O&M in rates and while we are willing to address the need for proven new programs, we cannot adopt the projections provided by the company. We will, however, reconsider the need for additional funding after more definitive and better supported analysis is submitted by Con Edison in a future rate proceeding or as part of a separate filing. Such an analysis should clearly differentiate incremental costs from those cost which are reallocated from existing resources. At that time, we will also consider the Audit Report implementation plan, its underlying analysis and support, including costs and benefits, as well as actions that the Company will have implemented which demonstrate progress and which will lead to performance improvement.

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[27] Case 06-M-1078, Consolidated Edison of New York, Inc. – Performance Response to Outage Emergencies, Order Directing the Submission of an Implementation Plan (issued January 17, 2008).

Mandatory Hourly Pricing (MHP)

The Company proposed to expand its MHP program to all customers whose maximum demand is greater than 500 kW in any month during an annual period ending September 30.[28] The judges recommended that Staff's enhanced outreach and education (O&E) plan be incorporated into the Company's proposed expansion of its MHP program, but with respect to approval of the Company's proposal, including its proposed schedule, they deferred to our decision in the MHP proceeding.[29] The Company, Staff, the City, RESA, and SCMC filed exceptions to the judges' recommendation.

The Company, Staff and RESA contend that increasing the number of customers with access to hourly prices and hourly usage information is consistent with Commission policy and should be undertaken. The Company and Staff note that that there was no substantive objection to the Company's proposed expansion of MHP by any party to this proceeding. The Company contends that deferring to the MHP proceeding would result in a delay of at least two years and would frustrate the goals articulated in our MHP Order. The Company states that its MHP proposal and its positions relating to Staff's suggestions should be adopted.

Staff states that clear decisions on O&E, the implementation schedule, the proposed penalty for denying access to replace the meter, and cost recovery will aid in moving the program ahead quickly. Staff argues that the recommendation to defer to a decision in the MHP proceeding for purposes of determining the implementation schedule fails because the MHP

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[28] There are currently 1,570 customers with demand greater than 500 kW and up to and including 1500 kW. The Company projects expenditures of about $6.1 million for meter and meter installations and nearly $1 million in O&M expense for ongoing associated communication requirements. Tr. 772.

[29] Case 03-E-0641, Proceeding on Motion of the Commission Regarding Expedited Implementation of Mandatory Hourly Pricing for Commodity Service, Order Denying Petitions for Rehearing and Clarification in Part and Adopting Mandatory Hourly Pricing Requirements (issued April 24, 2006) (MHP Order).

Order does not address the scheduling of the expansion of Con Edison's MHP customer class. Staff recounts its disagreement with the Company on the pace of the proposed implementation. However, Staff asserts that it and the Company now agree that if we determine that customers should have access to data before being required to switch to MHP, then we should require the program to start after all the meters are installed and the Company has had an adequate opportunity to provide the required data.

With respect to the Company's proposed penalty for denying access to replace the meter, Staff notes that the RD does not resolve the issue, but does correctly state Staff's opposition to the proposal and its reasons for such opposition. Based on those reasons, Staff continues to urge that we not allow the special charge.

Staff opposes the Company's cost recovery proposal and reiterates its recommendation that the meter costs be recovered by a tariffed incremental meter charge, consistent with the MHP Order's directive that utilities should "recover incremental metering costs from the affected customers over time in conformance with normal amortization periods." Staff notes our approval of National Grid's proposal to recover metering costs through an incremental metering charge and argues that Con Edison has not provided sufficient evidence to support a different cost recovery method.

The City argues that the RD erred in finding that "insufficient record basis was provided" for the City's proposed collaborative. It reiterates its concerns regarding customers transferring from conventional to real-time rates, including the need to insure accuracy and fairness of the MSC/MAC mechanism and to reconcile real-time rates to conventional service rates. The City contends that the extensive investment sought by the Company for advanced metering infrastructure and O&M over the next three years evidences the need to ensure that MHP rates are correct.

RESA states that it strongly supports the Company's proposed expansion of the MHP program. In addition to reiterating arguments discussed in the RD, RESA asserts that the provision of the data made available by real time meters empowers customers with the information needed to make informed choices about consumption and patterns of energy use and that ESCOs require access to such data in order to develop products that meet customers' needs, including enhancing the ESCOs ability to offer energy efficiency products. SCMC concurs with RESA.

In its reply, the Company disagrees with Staff's position that it failed to demonstrate that a $1,000 special access charge is needed. It cites its testimony that "'some customers do not freely provide access for some reason or no reason' (Tr. 831) and that in Westchester, as part of the AMR program, customers refused to allow the Company access to replace the meter (Tr. 3883-3884)." The Company also refers to its testimony (Tr. 3879-3884) that "a customer that does not want to be transferred to mandatory hourly pricing has an incentive to refuse the Company access…."

The Company proposes that the costs of the meters be recovered from all customers through the delivery rate. It contends that MHP benefits all customers because reductions in usage by MHP customers may decrease the market price of energy. It adds that its proposal to recover the meter costs in base rates is consistent with its recovery of the costs of meters generally and states that such rate treatment is particularly appropriate for a program where customer participation is mandatory. The Company argues that making customers liable for meter costs may very well give them an incentive to refuse meter installation. The Company asserts that National Grid's administration of its MHP program and its recovery of metering costs should not dictate the results here, particularly since the Con Edison proposal is not precluded by the MHP Order. Finally, the Company adds that Staff provides no explanation as to why the Company's recovery of meter installation costs should

be different from its recovery of implementation and outreach and education costs.

In response to the City, the Company asserts that the RD properly concluded that "insufficient record support was provided by NYC for the collaborative it suggests." The Company characterizes the City's exception as confusing because it refers to "AMI offers" without defining what that term means. The Company concludes that the RD properly determined that much of the information sought by the City could be provided through O&E efforts.

In its reply, Staff reiterates the importance of adopting an implementation schedule that would enable customers to avail themselves of historic usage data in order to fully benefit from MHP and enable the program to achieve its maximum effectiveness. Staff urges us to embrace the recommendation to incorporate Staff's O&E enhancements, stating that the Company misinterpreted its position on O&E. Staff cites to its recommended increase of $400,000 in the Company's O&E budget, an amount it contends is large enough to cover the projected cost of O&E for MHP expansion.

We concur with the parties' arguments that the expansion of the MHP program should not be delayed and find that efforts to move more swiftly to hourly pricing comport with the goals expressed in the MHP Order. Accordingly, we approve the Company's proposal to expand its MHP program to all customers whose maximum demand is greater than 500 kW in any month during an annual period ending September 30. However, our adoption of the proposed expansion is coupled with our adoption of (1) Staff's "enhanced" O&E plan; (2) a modified implementation schedule, described more fully below; (3) denial of the Company's proposed penalty; and (4) approval of cost recovery that is consistent with our MHP Order. Specifically, we concur with the judges' finding that the O&E enhancements proposed by Staff may be a better way of addressing the interests of the customers for whom the expansion is proposed and the parties commenting on this issue. Measures such as live seminars and

communications designed to determine ways to make software packages more customer friendly should better prepare eligible MHP customers for their transition to MHP.[30]

As to the implementation schedule, we require the program to start after all the meters are installed and the Company has had an adequate opportunity to provide six months of hourly interval data for customers with demand greater than 1 MW up to and including 1.5 MW and one year of interval data for customers with demand greater than 500 kW up to and including 1 MW. We find that adoption of this schedule strikes a reasonable balance between expediency, on the one hand, and, on the other hand, the desire to ensure that eligible MHP customers have sufficient time and data to see how their load is affected by season, production patterns, weather and the like, and to effectively make adjustments to their load patterns in an anticipation of the new Hourly Pricing Tariff.

We are not persuaded by the Company's arguments in favor of a tariffed penalty charge. In short, the testimony to which the Company refers does not provide any specific information regarding the alleged incidents of refusal and does not justify the basis for the proposed penalty amount. Accordingly, the Company's proposal to impose a $1000 charge on the bills of customers who deny access to change the meter is denied. If the Company can later demonstrate that its actual experiences and costs warrant it, the Company may file a

[30] We are denying the City's request for a RTP/rate design collaborative because, to the extent the request is motivated by a desire to educate and prepare customers to transfer from conventional rates to real-time rates, such concerns should be adequately addressed by the O&E program we have adopted. With respect to the City's concerns about the accuracy and fairness of RTP, reference to testimony that discusses in general terms some of the guiding principles the City would have apply to RTP and rate design, does not, by itself, persuade us that there is sufficient justification for instituting a RTP/rate design collaborative in this proceeding.

petition seeking our authorization to impose an appropriate charge.

With respect to cost recovery, the reasons for allowing recovery of metering costs through an incremental metering charge to the customers who require installation of an interval meter in order to participate in hourly pricing and allowing remaining implementation and O&E costs to be recovered from all ratepayers through delivery rates were set forth in the MHP Order (at 30-31). As stated therein, we found that recovery of metering costs through an incremental metering charge is an appropriate rate mechanism because it recovers the cost over time from those customers requiring installation of an interval meter in order to participate in hourly pricing. We further found that authorizing the utilities to recover the remaining implementation and outreach and education costs (i.e., those unrelated to meter installation and activation) from all ratepayers through delivery rates was appropriate because all customers would benefit from the reduction of peak load and peak prices resulting from the implementation of hourly pricing. These reasons have not been persuasively overcome by the Company's arguments here. Therefore, consistent with our MHP Order, we authorize Con Edison to recover metering costs through an incremental metering charge to the customers who require installation of an interval meter in order to participate in hourly pricing and to recover remaining implementation and O&E costs from all ratepayers through delivery rates.

Electric Production

The Company proposed a number of O&M program changes to its electric production category, increasing projected spending in these areas by approximately $7 million. The RD recommended approval of the changes, along with one adjustment proposed by Staff.

CPB excepts and renews its request that its adjustments to gas turbine maintenance and facilities maintenance be adopted. CPB claims that neither the record nor

the RD contains explanations for the magnitude of the increases or why approval of the increases is in the public interest. The Company responds that CPB provides no justification to overcome the RD's conclusion that "the Company has demonstrated a sufficient record basis for adoption of its proposed spending levels." It states that CPB simply reiterates its prior statements that there is an increase in costs between the historic year and the rate year. The Company argues that it has explained the reasons for the cost increase (Tr. 907-935), and that the RD determination was proper.

We have reviewed the record evidence cited by CPB and by the Company and we concur with the RD's finding that the Company provided sufficient evidentiary basis for concluding that its proposed program changes should be adopted. We note in particular testimony that some of the reasons for the program changes at issue are that they will help enhance reliability and provide critical black start service for restoration (Tr. 927-928) and will address certain inspection related repairs that are designed to address conditions so that they do not become safety issues (Tr. 928-929). We also note that the RD summarized the relevant testimony and the Company's references thereto, and we conclude that it is this testimony which lead to the finding that the Company provided sufficient basis for its proposed changes. Against this backdrop, we find no support for CPB's assertions that the there is no record explanation for the magnitude of the increases or for why their approval is in the public interest; CPB's exceptions are therefore denied.

Depreciation and Amortization

The Company proposed updating the average service lives of twelve of its primary plant accounts or sub-accounts, so that eight accounts would change toward shorter lives and four would change toward longer lives. In addition, it proposed changing the majority of its primary plant accounts or sub-accounts toward higher negative net salvage factors.

Staff contested some of the changes to service lives and net salvage factors, while NYC Government Customers and Westchester County proposed to modify the recovery of net salvage. The judges recommended that the Company's proposed changes be implemented for the uncontested accounts and that Staff's proposed changes be implemented for the contested accounts. The Company, NYC Government Customers and the County except.

The Company argues that the RD failed to explain why the Staff's consideration of additional historical data and studies is a superior approach. More importantly, according to the Company, the RD errs on a substantive basis because (1) Staff only considered such data for two of the six accounts where average service lives were contested and improperly relied on two inherently inaccurate plant mortality studies in setting the service lives and (2) for the other four contested accounts as to service lives, as well as two additional accounts where Staff contested the Company's net salvage factor proposals, Staff did not consider any additional historical data but instead relied on the work papers supplied and relied upon by the Company. The Company argues that its rebuttal testimony demonstrated why the results derived by Staff from the Company's work papers were incorrect and why the Company's proposal was justifiable. It concludes that the RD errs in not even addressing its demonstration.

NYC Government Customers argue that the RD apparently and erroneously adopted the Company's intergenerational equity argument and, as a result, the Company's rate year depreciation expense is overstated by $120 million. They state that the current method is inequitable because it usually requires the installation of a new asset to serve a new generation of electric customers which means a prior generation must fund the siting of that new asset. To the extent the RD relied on the facts that the Company's current method is widely used in the industry and the City witness was not recommending the same change for other utilities, NYC Government Customers argue that

the RD erred. NYC Government Customers and the County observe that (1) Pennsylvania and New Jersey expense negative net salvage and (2) the NARUC manual specifically recognizes such an approach.

According to NYC Government Customers, the record establishes that "an extraordinary confluence of events dictates" that their approach should be adopted. They point to their testimony as highlighting such factors (i.e., the magnitude if the requested increase, the level of net negative salvage in rates, the need to amortize a depreciation reserve deficiency, the recent growth in balances and the extent to which depreciation was contributing to the level of the rate increase).

NYC Government Customers also assert that the RD erred in citing the Company's concerns that changing the treatment of net negative salvage would prevent the Company from recovering current net salvage values and contribute to the need for future rate increases. They state that they proposed to include a $50 million rate year allowance to prevent against contributing to future rate increases.

Finally, NYC Government Customers state that the RD recognized that the current approach is fraught with "extreme uncertainty." They reiterate assertions that their recommended approach will eliminate (1) the guess work regarding which assets will result in negative net salvage and how much the amount will be, and (2) the current effect of penalizing the customers who contribute to the asset in the early years. NYC Government Customers add that their adjustment will significantly reduce the rate request without reducing safety or reliability.

The County notes that it, NYC Government Customers and CPB identified depreciation for net salvage as an area to explore for savings. It states that given the extraordinary amount of money requested in this case, we should consider all alternatives to aggressively reduce rates, and one such alternative is funding negative net salvage by expensing current

costs. The County observes that Con Edison Gas has used this approach in the past. The County states that the RD did not discuss the benefits to ratepayers of changing to a system where removal costs are expensed or review its counter arguments to the Company.

The County reiterates that, while it could have advocated its approach for all accounts, it did not do so, but instead identified the transmission and distribution accounts because they are long lived assets. In response to Con Edison's claims that the County's proposal is inconsistent with current rate and accounting principles, the County counters that its proposal does nothing to the actual amounts collected for net salvage, it only changes the rates that ratepayers pay at this time. The County concludes that since Con Edison will get all of its money for net salvage, its proposal does not violate any accounting principles. The County also adds that Con Edison failed to mention that utilities in Pennsylvania and New Jersey expense the costs of removal without any apparent harm to their accounting.

In response to NYC Government Customers and Westchester, the Company replies that the RD implicitly (and correctly) recognized that NYC Government Customers' and Westchester's proposals suffer from multiple deficiencies identified by the Company, particularly the creation of intergenerational inequities. The Company states that neither NYC Government Customers nor Westchester adequately addressed its concerns.

The Company characterizes NYC Government Customers' statements that "negative net salvage almost always results in the installation of a new asset to serve a new generation of electric customers" and "requiring a prior generation of customers to fund the siting of that new asset by paying for negative net salvage in depreciation promotes 'intergenerational inequity,' not 'intergenerational equity'" as "logical misdirection." The Company argues that NYC Government Customers are misconstruing the fundamental purpose for including a net

salvage factor in depreciation rates – which is to properly reflect, over the life of an asset, the anticipated cost of its retirement, including the cost of removal. The Company argues that its proposed approach fairly provides for payment by current customers of a small portion of negative net salvage each year over the life of the assets that provide their electric service. It contrasts this approach to NYC Government Customers' "misdirection" approach, which it says "speciously assumes current customers are the appropriate customers to pay for the removal of facilities and assets installed to serve the prior generation of customers."

The Company continues that NYC Government Customers' claims that their proposal will not prevent the Company from recovering current net salvage values cannot disguise the fact that NYC Government Customers would underfund the Company's current net salvage expense. The Company cites to its testimony that, by employing a ten-year average approach, NYC Government Customers' and Westchester's net salvage proposals would prevent it from recovering its current net salvage costs, and will create a shortfall that will need to be recovered in future electric rate cases.

With respect to NYC Government Customers' arguments that adoption of their proposal will remove guesswork and provide certainty, the Company agrees that NYC Government Customers' proposal provides certainty but says it is the certainty that the Company will not recover its net salvage expenditures on a current basis.

In response to Westchester, the Company asserts that Westchester's proffered "selective application" does not "transform an ill-conceived proposal into good public policy." The Company adds that the lack of a technical violation of accounting principles, or the fact that two other nearby states may have adopted it does not provide a compelling rationale for adopting Westchester's proposal.

Staff contends that the Company incorrectly states that it did not consider any additional historical data for the

certain accounts addressed in its testimony and relied solely on the very work papers supplied by the Company. Staff cites to its testimony for proof of its assertion that it relied on the Company's 2005 and 2002 mortality studies and the Company's workpapers for its recommended changes in average service lives. Staff asserts that the Company, in fact, incorrectly relied on the results of just one study to determine its proposed depreciation factors for certain contested accounts (i.e., Accounts 9514 and 9526). Staff adds that, the Company's analysis was solely based on a single current study and therefore, as to depreciation parameters, did not consider other factors, such as changes in operating procedures and accounting procedures; labor costs; equipment replacement programs; requirements of governmental authorities; and obsolescence and technological changes. Staff combined the Company's current study with other factors in order to develop its recommended depreciation parameters. Staff argues that, as a result, it properly arrived at more thorough and supportable depreciation and amortization adjustments than did the Company.

We have considered the arguments presented here and below, and we generally concur with the recommendation espoused in the RD. We find, on this record, and given the particular circumstances of this rate request and this Company, an approach that considers other factors, such as changes in operating procedures, changes in accounting procedures, labor costs, equipment replacement programs, requirements of governmental authorities, obsolescence and technological changes, results in a more thorough and balanced outcome. For example, the magnitude of the Company's expenditures on capital projects in just the last three years, suggests to us that reliance on only one study may be too limited in scope. In addition, a proposal to change current recovery practices, particularly given the magnitude of the dollars at issue, should have more to recommend it than statements that other jurisdictions have approved it or that the NARUC manual recognizes it. And, while the City, County and CPB note the magnitude of the requested increase, the

level of net negative salvage in rates, the need to amortize a depreciation reserve deficiency, the recent growth in balances and the extent to which depreciation was contributing to the level of the rate increase as factors or events that warrant a change, all suggest that we address the reserve deficiency in some manner.[31] Because we recognize the significant level of the rate increase produced by our determinations in this proceeding and the effect of such an increase on the company's service territory, we see merit in limiting the extent of the reserve deficiency amortization. We will limit the recovery of the depreciation reserve deficiency to a 15-year amortization of $162.5 million which is the amount in excess of the minus 10% level of the tolerance band that we have traditionally employed to measure the significance of reserve deficiencies.

Transmission and Distribution

The Company projected O&M expenditures for Transmission and Delivery projects, excluding interference work, increasing by nearly $100 million in the rate year. The Company's proposal includes 44 new programs in which the Company spent zero dollars in 2006. These new programs total $36.4 million in cost.

The bulk of the increased O&M programs are in Electric Operations. Notable are unit substation repairs and inspection, maintenance of remote monitoring systems, underground structure inspection program, overhead inspection program, stray voltage testing, network transformer vault cleaning, line clearance, and maintenance associated with capital work.

Substation Operations projects will support new substation facilities and a structural integrity/station betterment program. System and Transmission Operations increase expenditures over a wide range of programs, notably improving

[31] Though the City would include a $50 million rate year allowance to prevent against contributing to future rate increases, it appears such a proposal only reduces, not prevents, contributing to future rate increases.

overhead transmission restoration capability, manhole inspection and refurbishment, and several advanced technology programs, including maintaining the Company's alternate energy control center.

Staff expressed reservation regarding the large increases in inspection programs and stray voltage testing. Staff reserved a recommendation, however, explaining that any changes to the operation of these programs should be handled under Case 04-M-0159.[32] Staff also emphasized the importance of these programs.

With the exception of the underground inspection programs, the RD recommended adoption of Staff's recommendation to consider safety inspection expenses in the context of Case 04-M-0159, with any resulting decreases in program costs being credited to customers. We concur, with the additional exception of the overhead inspection program, as discussed below.

1. Underground Inspection Program

The Company projected that it will conduct 75,447 inspections in the rate year at an average cost of $463.92 per inspection, as the fourth year of its five-year underground inspection program. CPB recommended that this sum be reduced by $19 million. The Company must conduct 275,000 inspections over a five-year period; 44,728 inspections were conducted in 2005 at a cost of $8.5 million and 45,067 in 2006 at a cost of $11.1 million. According to the Company's Brief on Exceptions, only 35,000 inspections were performed during 2007.

a. Average Cost per Inspection

The average cost of an inspection was $190.04 in 2005 and $246.30 in 2006. The Company explained that the increase in cost per repair was due to the increased number of repairs directly related to safety inspections, as opposed to inspections performed in the course of normal maintenance. In

[32] Proceeding on Motion of the Commission to Examine the Safety of Electric Transmission and Distribution Systems.

2006, approximately 50% of inspections and repairs were completed during normal maintenance. In the rate year, inspections and associated repairs will be performed beyond the scope of normal maintenance work, increasing the incremental cost per inspection.

CPB observed that, assuming the 2005 figure reflects only the lower cost inspection incurred during normal maintenance, the 30% increase in cost per inspection from 2005 to 2006 suggests that the cost of the direct inspections is approximately 60% above the average per-inspection costs of 2005. This would result in an average per-inspection cost of $319.20, substantially less than the Company's projection of $463.92 per inspection.

The RD recommended that the figure proposed by CPB be adopted. The Company presents new information in its brief on exceptions. The Company states that it has recently awarded contracts to outside contractors to perform the underground inspections during the rate year. Based on this new information, the Company now calculates the cost per inspection will be $363, less than its original forecast of $463, but greater than CPB's estimate of $319. The Company explains that this estimate reflects the fact that in each of the next two years 3,500 buried facilities must be inspected, which will increase average costs.

CPB replies that the Company has not supported its new cost information and that the new estimate violates the Policy Statement on Test Periods. We agree. For inspections conducted during the rate year, the Company's allowance will be calculated based on the evidence presented in the record, as calculated by CPB and recommended in the RD.

b. Number of Inspections

CPB noted Con Edison testimony that an incremental 50,000 inspections are required and CPB suggests that the expenses allowed for the rate year be limited to 50,000. The RD recommended expenses based on 60,000 inspections, in

consideration of the numbers performed in the first two years of the program.

The Company takes exception, noting that its reference in rebuttal testimony to “an incremental 50,000 inspections” was an inadvertent error and that the necessary number of inspections is 75,447, as presented in their direct testimony. The Company explains that the target of 275,240 inspections must be complete by November 2009 and that because only 35,000 underground inspections were performed in 2007, 75,447 must be performed in the rate year. The Company explains that the low number of inspections in 2007 was “due to operational priorities” and states that while inspections in the rate year must be increased, overall inspection targets through 2009 remain unchanged. The Company’s response to Staff’s interrogatory number 329.9 indicates an inspection schedule of 55,048 inspections in the following rate year. This would still fail to satisfy the five-year inspection target.

Despite the confusion caused by the Company’s testimony on interrogatory response, it does appear that approximately 75,000 inspections must be conducted in each of the two next years. Due to the importance of this program for ensuring public safety, we will adopt the Company’s proposed number of 75,447 inspections. Whether the increased number of inspections for the rate year resulted from poor planning, as Staff has suggested, cannot be concluded from the record before us but may be considered in a subsequent proceeding.

2. Distribution Line Clearance and Danger Tree Removal

The Company’s initial testimony explained that in early 2007, the minimum allowable distance between electrical lines and tree branches was increased. The Company projected $13.755 million in expense for its line clearance program. CPB argued that the Company’s three year average, including $9.5 million in 2007, was $8.025 million per year. CPB recommended an adjustment based on the three-year average. The RD recommended the Company’s rate year allowance for this program

be limited to the $9.5 million estimated for 2007, adjusted for inflation.

On exceptions, the Company presents new information claiming that system-wide in 2007 it expended nearly $13.6 million on line clearances. CPB again argues that the new information violates the Policy Statement and should not be considered. CPB argues, in the alternative, that if the Commission adopts the Company's figure it should also adopt a reconciliation mechanism for this particular spending category to ensure that the funds are actually spent.

Although the 2007 spending figure provided by Con Edison is untimely, the estimate of $9.5 million relied upon by CPB does not appear to be included in the record. Because line clearance standards were enhanced beginning in 2007, it is reasonable that the Company's spending would increase substantially. For that reason, we adopt the Company's original estimate for the rate year of $13.755 million. We accept CPB's recommendation that this figure be subject to reconciliation in the event the Company spends less than $13.755 million during the rate year.

3. Double Wood Program

The Company projected $5.235 million for this program, an increase of 489% over the test year cost identified in its filing. The record indicates that in 2004, the Company incurred no costs for removing double wood and it spent $951,000 in 2005, $889,000 in 2006, and budgeted $900,000 in 2007. CPB recommended a complete disallowance in costs. The Company's initial testimony explained that municipalities require removal, but did not identify any recent developments that explain an acceleration of the program. The RD recommended an allowance of $1 million for the rate year, a slight increase over the average from previous years.

On exceptions, for the first time, the Company explains that in 2007 it expended over $4 million Company-wide to remove double wood and that the figure of $900,000 cited in

the testimony of CPB was for Bronx and Westchester only. The Company also argues that the City of Peekskill instituted fines for not removing double wood in 2005, and that other municipalities are “threatening” to institute similar measures. CPB responds that there is no record support for the Company’s assertion that it spent $4 million in 2007 or that the figures provided on the record were only for the Bronx and Westchester.

We concur with CPB; the Company had ample opportunity to clarify the record at earlier stages of the proceeding, and the new and unexamined information provided by the Company on Exceptions will not be considered.

4. Mobile-Stray Voltage

The Company proposed an increase of $7.43 million over the test year. The RD adopted Staff’s proposal to defer consideration of the costs of this program. CPB argues that because standby cost-per-detection have tripled in one year without explanation that an adjustment should be made at this time. The Company replies that the vehicle fleet has been expanded and that eight system-wide scans will be performed in the rate year, versus one in the test year.

Because stray voltage is a critical public safety issue, and because testing methods are relatively new, the Commission will take notice of recent developments and will take a more proactive approach than that which was initially proposed by the Company. 2007 testing data indicate that twice as many stray voltage conditions were identified in 2007 as were identified in 2006. This is in all probability due to the increased number of tests performed in 2007. For that reason, we order the Company to perform twelve system-wide mobile stray voltage testing sweeps, rather than the eight initially proposed. To accommodate the increased cost of these sweeps, the funding for this program will be increased by four million dollars.

The RD noted Staff’s reservation concerning the Company’s proposal for mobile stray voltage testing in that,

based on the frequency of vehicular usage, the funding request for standby cost may be unreasonably high. Staff did not recommend an adjustment, but rather recommended that Con Edison be required to file a report reassessing the expenses of the program as related to the program's standby cost and reassessing its current operation to optimize utilization of its current fleet of vehicles. Staff recommended this report should be filed with the Department within two months of the Commission's order adopting a rate plan in this case, and that any decreases in program costs resulting from the Company's reassessment should be credited to customers. The RD recommended acceptance of this proposal, and we adopt it.

CPB Exceptions

The RD rejected several adjustments proposed by CPB on the grounds that further information should have been sought during the discovery phase of the proceeding. On Exceptions, CPB argues that three of these adjustments had a basis independent of the discovery dispute.

1. Five-Year Overhead Inspection Program

CPB recommended that Con Edison's proposed increase of $5.443 million for overhead pole inspections be reduced by one-half. CPB noted that the Company made no expenditures on this program in 2006 or 2007. The Company had asserted in rebuttal testimony that its cost projection was based on costs "incurred in the test year and is based on five years of inspections." CPB argued that the Company was deferring inspections until the rate year.

The Company replies that the program is not discretionary. It performed a complete inspection in 2005 and zero inspections in 2006 and 2007, but has now shifted to a 5-year cycle in which 20% of inspections will be performed annually.

According to its response to a Staff Information Request, the Company spent $5.1 million in 2005 to inspect the

entire overhead system. Because the Company now proposes to inspect 20% of the system each year, we will allow 20% of the $5.4 million proposed by the Company for the rate year. We also note with concern that the Company's decision not to begin its 5-year cycle until the rate year means that the final 20% of units to be inspected will have gone a full seven years without an inspection.

2. Network Transformer Vault Cleaning

The Company estimated $5.488 million in total cost for this program. CPB argued that information provided by the Company only identified components totaling $4.357 million, and that the Company, again in discovery, identified the vault cleaning project as the least important of the programs in its "Public Safety and Environmental Program" category. The Company did not specifically rebut CPB's arguments either in rebuttal testimony, in reply briefs, or in Reply on Exceptions. CPB's recommended adjustment to $4.357 million will be adopted.

3. System and Transmission O&M

Con Edison requested an increase in system and transmission O&M expenses of $7.375 million from spending in the test year. CPB recommended that this projection be reduced by $3.798 million, due to the absence of supporting information. Based on information provided in the Company's rebuttal testimony, CPB revised its proposal but continued to recommend a disallowance for the "new EMS system license" and "improve OH restoration capability" programs. The RD rejected CPB's proposed adjustment on grounds that it did not exhaust its remedies in the discovery process.

CPB argues that because the Company responded in its rebuttal testimony regarding some, but not all, of the system and transmission O&M programs, that the Company's silence regarding two of the programs "demonstrates that the Company's request was nothing more than a wish list." The Company

responds that CPB had received workpapers and that failure to provide rebuttal testimony is not a test of record support.

We find that the record adequately supports Con Edison's response. CPB received workpapers regarding the EMS system license and did not submit a discovery request. Regarding the overhead restoration category, CPB submitted CPB IR #7 and the Company responded. CPB's arguments on Exceptions are denied.

Westchester County

Westchester County argues that the number and cost of new O&M programs are excessive and that the Company should be limited to a total of $50 million for all new O&M expenditures inclusive of Transmission and Distribution.

The County argues that the Company's proposed increases will create an imbalance between rates and reliability and that recent reliability records do not warrant a large incremental increase in expenditures.

The County's argument that the Commission must consider the overall impacts on reliability and rates is correct; however, that consideration must be informed to the extent possible by detailed analysis. In this proceeding the Company has demonstrated a need for infrastructure improvements that encompass both capital and O&M expenditures. Where detailed analyses of the Company's infrastructure-related O&M proposals have been presented on the record, we have made appropriate adjustments. In the absence of detailed analyses, the County's proposed adjustment is denied.

RATE BASE

Average Rate Base

The Company proposed a positive adjustment to its average rate base in order to align its rate base with its capitalization (a.k.a. the "EB/Cap adjustment"). Staff and NYPA opposed the adjustment. The judges rejected the Company's assertions that Staff's adjustment was barred by the previous

rate order or prohibitions regarding retroactive making. They credited Staff's explanation for calculating its adjustment and rejected the Company's criticisms thereof. The judges also rejected NYPA's proposal to eliminate the entire adjustment, based upon a finding that it was premised on an outmoded approach and would inappropriately understate the level of adjustment. Con Edison and NYPA except.

The Company argues that Staff's adjustment violates the 2005 Rate Plan and constitutes retroactive ratemaking. It asserts that the "only reasonable interpretation" of the 2005 Rate Plan Order regarding the prepaid pension balance is that the Company settled "for all time" claims that it unfairly benefited from being off the Pension Policy Statement.[33] It requests that we reverse the RD, stating that if we do otherwise, it would unfairly deprive the Company of a material part of its share of the give-and-take that led to the establishment of the 2005 Rate Plan. It also asserts the RD erred in rejecting, without explanation, the Company's explanation why Staff's calculations understate the benefits to customers.

Staff responds that the RD properly recommends adoption of its proposed rate base adjustment. It challenges the Company's claims regarding the interpretation of the language of the 2005 Rate Plan by noting that the plan's term is explicitly defined as the period "commencing April 1, 2005 and continuing through March 31, 2008." It argues that the recommendation does not violate the current Rate Plan nor does it constitute retroactive ratemaking because the contemplated rates will commence April 1, 2008 and thus not affect the Company's current and past rates. Staff also notes that absent its adjustment the Company will be permitted to earn a return in

[33] Case 91-M-0890, Development of Statement of Policy Concerning Accounting and Ratemaking Treatment for Pensions and Postretirement Benefits Other than Pensions, Statement of Policy and Order Concerning the Accounting and Ratemaking for Pensions and Post Retirement Benefits Other than Pensions (issued September 7, 1993)(Pension Policy Statement).

perpetuity on a $142 million dollar investment it never actually made.

With respect to the Company's assertions that the RD erred in rejecting, without explanation, claims that Staff's calculation of customer's benefits was understated, Staff asserts that such claims were properly rejected. Staff refers to its previously-made arguments and explanations, along with their record support. Staff states that these explanations provide ample justification and basis for the RD recommendation.

In its exceptions, NYPA reiterates arguments that no adjustment of any amount has been justified by the Company. NYPA argues that its balance sheet method is a sophisticated means of estimating the actual requirements for cash and cash equivalents to fund all the Company's needs for cash payments arising from its regulated T&D business. According to NYPA, its method indicates that the Company's cash working capital needs are overstated by about $187 million as compared to the results of using the FERC 1/8 formula based calculation. NYPA urges us to eschew the FERC 1/8 formula and adopt the balance sheet method's working capital requirement of $369 million.

In response, the Company reiterates that it identified various flaws in NYPA's balance sheet approach and established that usage of the FERC 1/8 formula is an accepted practice by the Commission. The Company also repeats its assertion that NYPA is being contradictory when it asserts that an EB/Cap adjustment is inappropriate when it results in an increase to rate base, while at the same time claiming that using balance sheet data is more appropriate for calculating working capital requirements than the expense data used in the FERC 1/8 formula. The Company contends that, contrary to NYPA's claims, its use of the FERC 1/8 formula likely understates, rather than overstates, its working capital requirements.

Neither the Company nor NYPA have offered persuasive reasons for rejecting the judges' recommendation. The parties' arguments were set forth and considered in the RD, and we agree with the RD's treatment of those arguments. We concur with the

RD's finding that the current rate plan, which terminates prior to the effective date of the rates we are establishing in this proceeding, cannot bar the Commission from exercising its statutory obligation to set just and reasonable rates here. Moreover, because the rate adjustment applies prospectively, and to a period not covered by the current rate plan, it is not retroactive ratemaking and does not disturb the previous rate plan.

With respect to Staff's calculation, we have reviewed the explanation offered by Staff and the criticisms levied by the Company and find that Staff has provided sufficient and convincing justification for its calculation that adequately addresses the Company's criticisms.

We adopt the recommendation to reject NYPA's adjustment because we agree with the Company that the proposed adjustment is based on a flawed and disfavored approach.

Advanced Metering Infrastructure (AMI)

The judges found that our recent decision in the AMI proceeding[34] mooted the parties' AMI arguments in this proceeding because it definitively established that AMI implementation and the treatment of related costs will be addressed in the AMI proceeding. They therefore recommended that any rate year AMI costs be removed from this rate case and, that the rate case be updated, if appropriate, to reflect the outcome of AMI proceeding.

NYC Government Customers urge us to expedite the issuance of an order on AMI functionalities and ask that we ensure here that there is sufficient funding for the roll-out of

[34] Case 94-E-0952, et al., In the Matter of Competitive Opportunities Regarding Electric Service, Order Requiring Filing of Supplemental Plan (issued December 19, 2007).

Con Edison's pre-deployment pilot program.[35] We are denying their request because we find it would be premature to provide funding here and now for a program that has not yet been reviewed. It is possible that we will be in a position to order the implementation of AMI investment either on a pilot or full deployment basis during the pendency of the rates established here. In order to create the appropriate environment for Con Edison to make timely AMI investments, we will provide the Company the ability to seek deferral of any reasonable AMI costs, net of benefits, which are incurred during the rate year as the result of Commission determinations in the AMI proceeding.

Transmission and Distribution Capital Program

The Company presented a plan for spending $1.819 billion on Transmission and Distribution (T&D) capital projects in 2008. Capital funding is organized into three categories: Substations ($612.0 million) Transmission ($224.3 million) and Distribution ($983.7 million). The plan is unprecedented in size and scope. From an average of under $450 million per year from 1997 through 2000, the Company's proposed capital spending has increased to approximately 400% of the former average. The level of spending is forecasted to dip only slightly in 2009-

[35] The Company observes that the City, in its exception, incorrectly described its AMI proposal; the Company notes that it proposed to install or retrofit with AMI technology 200,000 electric and gas meters in 2008 (not 2,000,000) and 800,000 annually thereafter (not 500,000). Company RBOE at 66.

2011, and the Company does not anticipate a significant reduction in capital needs in the years following 2011.[36]

The Company generally attributes this trend to three developments: growth in demand, the aging of the Company's infrastructure, and the cyclical nature of large transmission-level and substation capital projects. A detailed description of the Company's proposed programs is contained in the RD.

No party questioned the need for the Company to engage in improvements to its T&D infrastructure, and no intervenor challenged the importance of any specific project. Several intervenors proposed substantial adjustments based on the need to mitigate rate increases.

The RD found that the intervenors were correct that the rate of increase in the Company's capital budget is extraordinary, and correct that it warrants strict scrutiny from the Commission. The RD found, however, that the intervenors had not provided the Commission with a specific analytic basis for a percentage adjustment to capital spending, and had not specifically rebutted the evidence presented by the Company and Staff that the large majority of the Company's construction program is necessary to maintain the high levels of reliability required by the residents and businesses in the service territory.

The RD concluded that an overall spending adjustment of 8% was warranted. The RD's adjustment differed from the 12% adjustment proposed by Staff in three ways. It reflected a finding that no adjustment for the M29 transmission project was warranted, and it reflected agreement between Staff and the

[36] The Company's forecast of capital spending in 2011 and beyond, as presented in this proceeding, has been thrown into question by its February 27,2008 filing in Case 06-E-0894 of a five-year forecast that presents spending in 2011 and 2012 at levels of $1.284 billion and $1.211 billion. That filing has not been analyzed, and a comparable filing in 2007 was subsequently revised upward by nearly $500 million. Regardless of which information is relied on, however, annual capital spending will continue at levels two to four times higher than levels experienced in the previous decade.

Company regarding adjusted budgets for Paper Insulated Lead-Covered cable replacement and network transformer replacement. The net result of the RD's adjustments was a spending target of $1.65 billion and a plant in service adjustment of $62 million.

The third difference between the RD and Staff's analysis was the manner in which the total adjustment was reached. In forming its proposal, Staff had combined numerous specific adjustments based on disparities between the Company's historical spending and proposed spending in the rate year, and adjustments based on a need to mitigate the rate increase. The RD recommended that the Commission need not rule individually on each category. The RD's rationale was that Staff has amply demonstrated the variability of Con Edison's budget forecasting, and the Company had confirmed this with its own updates. The variability demonstrated by Staff, according to the RD, provided a substantial basis for a generalized percentage cut of the type proposed by intervenors.

The RD made its recommendation contingent on the treatment of concerns regarding the Company's capital program that are discussed in the context of the capital spending from the 2005-2008 Rate Year.

Exceptions

Con Edison objects to the RD's finding that a generalized adjustment of 8% is warranted. The Company argues that although the 8% adjustment is derived in large part from Staff's historical analysis adjustments, the RD fails to substantiate those historical analysis adjustments and fails to demonstrate that the 8% generalized adjustment will produce a realistic overall funding level. The Company argues that it had rebutted many of Staff's historical analyses which were not specifically addressed in the RD. The Company also argues that nothing in the record indicates that underspending is likely to occur in other programs, or would not be offset by overspending for other programs or projects.

Staff concurs with the RD that a general adjustment, based on historical data, reflects a realistic overall funding level. CPB notes that the RD contained detailed analysis of numerous proposed capital expenditures over which there was disagreement.

Westchester County excepts to the RD, arguing that the RD reflects a traditional approach to evaluating a rate filing, while the "sheer magnitude of the request was so staggering that it cried out for a totally different regulatory approach." The County advocates a "top-down" approach that would adjust the Company's capital spending based on the overall size of the program, with reference to the general state of reliability on the Company's system. The County argues that the RD gave little consideration to the effect of the proposed increase on ratepayers and the economy of the service territory, and that the County's top-down approach would take this factor into account.

The County observes that Con Edison's reliability levels and its customer satisfaction ratings have improved, and there have been no catastrophic events driving the need for a rate increase. The County further argues that peak load growth has not increased at a rate that would warrant a large increase in capital spending. The County's proposal is to limit net T&D plant-in-service additions to the rate of addition experienced during the past two years.

NYPA observes that, elsewhere in its exceptions, the Company criticizes the RD for an "issue-by-issue" approach without taking the Company's overall financial interest into consideration. NYPA argues that this is inconsistent with the Company's criticism of intervenors for urging an overall approach to capital spending, taking customers' interests into account, as opposed to an item-by-item approach.

Regarding the concerns expressed in the RD with respect to the Company's management of its capital program, the Company and Staff argue that regardless of the treatment of the capital overspend from the current rate plan, there is no basis

for making recovery of rate year spending contingent on an audit.

Discussion

Intervenors' arguments against T&D spending levels, based on recent reliability records, do not take into account prospective planning and the assessment of needs based on aging infrastructure and demand growth in specified areas of the service territory.

The Company's arguments against an 8% adjustment are not persuasive. Given the fluctuating nature of the Company's budget and of implementation timing, it is reasonable to require that the Company reduce its spending by a relatively small percentage by adjusting construction schedules and prioritizing projects. We agree with the RD that specific findings on each of the numerous "slippage" adjustments proposed by Staff are not necessary because the adjustments taken as a whole demonstrate the variability of the Company's budgeting process.

The basis for the adjustment adopted here is not simply one of slippage but rather a reasonable restriction on overall spending, in order to mitigate rate increases, without undue disruption of the Company's construction schedule. The purpose of the adjustment is to reflect a realistic overall funding level, not to discourage the Company from undertaking any particular project. The recommendation of a capital budget of $1.65 billion, and a $62 million adjustment to the Company's Plant in Service, is adopted.

The allowance for capital spending authorized here is made in the context of serious concerns regarding the pace of growth of the Company's capital program. The abrupt acceleration of spending raises questions regarding the Company's planning and implementation of capital programs, the potential inefficiencies of highly compressed construction schedules, and the level of oversight and leadership provided by the Company's Board.

The future expenditures authorized in this order reflect the evidence in the record indicating that the projects are necessary and that the estimated costs appear reasonable. However, this authorization is not equivalent to a finding of prudence. The Company must aggressively act to manage costs, and prioritize projects, in order to accomplish necessary future infrastructure improvements at the least possible cost to customers.

The recommendation in the RD that a portion of the revenues attributed to rate year construction spending be collected on a temporary basis subject to an audit will not be adopted. Unlike the capital spending from the 2005-2008 Rate Plan, discussed below, rate year expenditures have not yet been incurred. The Commission, as always, retains its authority to review Company expenditures at any time that grounds for performing such a review arise.

Updated T&D Capital Expenditures

On August 8, 2007, the Company provided Staff with an addendum to its filing that updated cost estimates for several substation projects. The effect of the updates was to increase capital spending by $71 million. Staff asked for more information, including a "detailed cost breakdown," and on August 30, 2007, the Company responded.

Staff's initial testimony, filed September 7, stated that it did not have sufficient time and information to provide an analysis of the updates. Staff's rebuttal testimony, filed September 28, did not address the updates.

The RD found that the Company's revised testimony did not conform to the guidelines in the Commission's Statement of Policy on Test Periods in Major Rate Proceedings.[37]

The Policy Statement specifies conditions under which updates should be allowed. The pertinent provisions state:

[37] Issued November 23, 1977; 17 NY PSC 25-R.

> Revisions for changes in estimate will only be entertained when they are based on data which were not available at the time of the original filing. On occasion, significant events may occur between the time of the original filing and the revised estimate which could not have been foreseen at the time of the original filing. Wholesale revisions because of changed circumstances (for example a later view of the company's budget) will not be entertained unless an event beyond the control of the company has occurred.

The intent of this provision is to prevent the Company from presenting a moving target in a rate proceeding. Other than known changes in cost rates (e.g., a tax law change), revisions will not be allowed unless they are based on developments that were not foreseeable at the time of the filing. Particularly in a case as large and complex as this one, it is essential that there be closure so that the parties can focus their resources on analysis of the filing.

The RD found that the Company had provided no explanation or demonstration that the changes in project estimates were unforeseeable. Without prejudice to the importance of the projects or to the Company's ability to prioritize and complete the projects that it found most necessary, the RD found that the updates would not be considered.

The Company claims that the RD erred with respect to at least two projects because it had demonstrated that the changes were unforeseeable. With respect to the $39 million in updated 2008 costs for the Newtown Substation, the Company claims that it did make a showing that the acceleration of the substation to 2010 was unforeseeable in time for the Company to have reflected detailed cost estimates with its filing on May 4, 2007. The Company's argument is based on a study report that it submitted to Staff on May 10, 2007--6 days after the May 4 rate filing. The report recommended establishing the new substation by summer 2011. According to the Company, it was urged by Staff to further accelerate the substation to 2010.

The Company argues that it also explained the unforeseeable circumstances causing the update for spare transformers purchases, i.e., that the need was triggered by recent failures of major power transformers coupled with long lead times for major equipment, which necessitated the Company's revision of its transformer inventory strategy.

Staff responds that the information was not provided in a timely manner and that new claims of unforeseeable circumstances are unfounded.

We agree with the RD, that in a proceeding as large and complex as this one, closure of the record is particularly important and the Policy Statement should be strictly but reasonably enforced. A six-day lag between the Company's filing and its report on the substation does not demonstrate that the results of the report were unforeseeable. Moreover, because the Newtown substation is not projected to enter service until 2010, the update would have no direct impact on the revenue requirement in this case. With respect to the Spare Transformer Program, the Company has argued in other contexts that a certain amount of equipment failure is generally foreseeable; there is no specific demonstration here that the transformer failures were so far beyond the norm as to be unforeseeable. Regarding the lead time for purchases, emerging market trends are not unforeseeable in the sense contemplated by the Policy Statement. Therefore, the updates will not be considered.

Streetlight Isolation Transformers

This program is designed to eliminate stray voltage conditions existing in streetlights. The RD recommended funding the program at the Company's proposed figure of $10.95 million. The Company notes on exceptions that its update filing increased the cost for the Streetlight Isolation Transformer Program from $6.1 million to $10.95 million, and that the RD recommended funding the program at the updated amount, despite the RD's general proposal to disallow the Company's update filing. In this instance, the update is allowed as an exception to the

Policy Statement, owing to the urgent public safety nature of the program.

The record contains a discussion regarding the optimal method for installing isolation transformers in the most safe, timely and cost-effective manner. The RD supported Staff's position that the transformers should be installed in service boxes rather than in the bases of streetlights. This method will better serve to eliminate the risk of stray voltage, though it is more expensive and time-consuming to perform. The Company did not object on Exceptions. We concur with Staff and we direct that the Company perform as many installations as can reasonably and cost-effectively be accomplished. In consultation with Staff, the Company should continue its efforts to develop and implement faster and less costly methods of installing isolation transformers in service boxes.

Demand-Side Management and Construction

Before the judges, CPB proposed that in future rate cases the Company should be required to demonstrate that any capital investment could not have been displaced by energy efficiency measures. While not adopting CPB's proposal, the RD found that the Commission should address the need for greater integration of demand-side management (DSM) into the Company's construction planning.

The Company presently conducts a 150 MW program of targeted DSM, increased by 30 MW in this order, for the purpose of deferring capital spending as well as achieving the other benefits of energy efficiency. The Company forecasts spending sums approaching $2 billion annually on construction, and many of the Company's construction needs will be demand-driven. Company witnesses stated that energy efficiency programs could have an impact on capital needs in coming years.

The RD recommended that the Company should be required to compile a report, as part of its 10-year planning process, identifying demand-driven construction needs, geographic areas in which targeted DSM programs have reasonable potential to

defer or eliminate the needs, and estimates of the economic value of such potential measures. The Company excepts, stating that it already performs this exercise as part of its ongoing planning process and, therefore, the recommendation is unnecessary.

Joint Supporters support the recommendation of a mandatory report but argue that demand reduction providers should be consulted in the compilation of the report and in determining the priorities and resources addressed.

We agree that the integration of demand response and energy efficiency into the Company's infrastructure planning should be encouraged to the extent that such measures can economically delay or displace the need for capital expenditures and provide other benefits. However, at this time we will not require the reporting mechanism recommended by the RD, pending receipt of further information from the Company. Within 60 days of this order, the Company should file an initial report describing in detail the methods and practices it currently employs to integrate energy efficiency and demand response resource planning with its T&D infrastructure planning to maintain the required reliability standards.

The report should explain how major energy and environmental policy initiatives such as the statewide 15 X 15 electricity usage reduction goal and the High Electrical Demand Day (HEDD) Ozone Transport Commission initiative are being incorporated into the Company's T&D infrastructure planning. The Company's report should also explain the manner in which, and the extent to which, the Company identifies specific geographic areas within its service territory where load relief (either in the form of energy efficiency or demand response) has the potential to defer or displace T&D construction. The report should also comment on the extent to which, and the time by which, information about the potential for deployment of load relief measures in certain geographic areas could be made available to providers of demand response and energy efficiency services.

The report should identify and discuss all potentially avoidable costs of construction, and all of the potential benefits that should be considered in evaluating the economic value of demand response and energy efficiency resources (including avoided wholesale capacity and energy costs and the quantification of any potential transfer payments among customers, generators, energy efficiency and demand response providers that may occur because of reduced demand).

Upon receipt of this initial report from the Company, we will publish the report for comments. Department Staff should analyze the report and comments and make recommendations to the Commission regarding further process improvements and analyses that may be warranted to enhance the integration of load relief planning and T&D construction planning.

Advanced Technology

The RD identified advanced technology measures being pursued by the Company. These include measures that will enhance monitoring and control functions and real-time analysis of system conditions, and 3G "System of the Future" network architecture to enhance asset-sharing characteristics. The RD found that in the near future, the Company's plans for advanced technologies do not extend to interactive behind-the-meter functions.

The RD found that the Company's planners face the dilemma of needing to build immediately with available technology to accommodate system needs, while risking that the new construction might not be able to accommodate advanced technologies when they are adopted. The RD found that there was insufficient evidence in the record in this proceeding to evaluate whether the Company is achieving a reasonable balance of those goals, and recommended that this issue be addressed in greater detail in a subsequent proceeding.

On Exceptions, CPB supported the recommendation but urged that a report be issued as soon as possible and no later than the completion of the Company's Management and Operations

Audit. We will require that the Company address this issue in its next rate filing.

Reconciliation for Shortfalls between Budget and Actual Expenditures

The RD adopted the proposal of Staff and CPB that if the Company spends less than its allowance, the difference should be deferred as a ratepayer credit, but that no reconciliation should be provided for expenditures exceeding the allowance. The RD concluded that this reconciliation mechanism was warranted because the circumstances of the case give the Commission a compelling reason to take all reasonable measures to protect the interests of ratepayers.

On exceptions, the Company cites the testimony by its infrastructure panel that its proposed expenditures represent the minimum required to maintain safe and adequate service, and that any slippage in some projects will be balanced by the need to advance others. If overspending is required, the Company would be forced to reduce spending on other projects that are justified when it needs funds for an underestimated or a new project. The Company argues that a reconciliation mechanism that promotes investments needed to maintain a safe and adequate electric system is in the customer's interest. The Company suggests that if the slippage adjustment of 8% is accepted that at a minimum the Company should be permitted to reconcile T&D expenditures up to the level reflected in the Company's filed forecast expenditures.

Staff opposes the Company's proposal that reconciliation be allowed up to the spending allowance in the rate year. Staff argues that a one-way reconciliation mechanism will protect ratepayers.

We agree with Staff and the RD that, given the extraordinary size of the capital expenditures proposed by the Company, the interests of ratepayers require a reconciliation mechanism that ensures any unspent funds will be credited to customers. This will be measured by the revenue requirement effect of any reductions in T&D plant in service from the level

authorized in this order. Conversely, the size of the Company's construction budget emphasizes the need for the Company to control its spending and keep it within the recommended range. For that reason, we adopt the RD's recommendation that there be no reconciliation for plant in service beyond the allowed amount.

Reconciliation of Capital Expenditures from the Current Rate Plan

As part of the rate plan approved in Case 04-E-0572, the Company was allowed in rates a budget for T&D capital expenditures of $774 million for RY1, $825 million for RY2, and $876 million for RY3. These targets were lower than the Company's original proposal by a total of $531 million. Staff had questioned the Company's ability to complete all of the work identified within the allotted time. In order not to discourage the Company from making needed capital investments, the Commission's order allowed the Company to defer the carrying costs related to capital projects above and beyond what was embedded in rates.

The Company was required to file annual reports identifying project expenditures compared to previously forecasted amounts, along with updated project budgets for the upcoming year. The Company's actual expenditures were $1.080 billion for RY1, $1.371 billion for RY2, and (estimated) $1.704 billion for RY3. Con Edison is expected to spend approximately $1.68 billion more than the level set in rates during the 3-year period of the current plan. After accounting for plant retirements and other factors, the figure for purposes of reconciliation is $1.616 billion.

Carrying charges for years 1 and 2 of the extra expenditures, nearly $200 million, were offset by the application of available customer credits. The Company proposed that carrying charges for the final rate year, approximately $198 million, be collected in the revenue requirement over a three-year period commencing April 1, 2008.

Staff analyzed the Company's annual infrastructure budget reports, met with the Company periodically, and concluded that the projects were necessary and reasonable.

The RD found that the annual reports filed by the Company satisfied the requirements of the 2005-2008 Rate Plan, and were reviewed by Staff to an extent comparable to the review afforded new expenditures in a rate proceeding. Based on these findings, the RD concluded that a conventional analysis would support full recovery by the Company. The RD continued, however, with a statement that the judges lacked confidence in the record and that the "extreme circumstances of this case warrant the strictest possible review." The RD recommended that a portion of the revenues associated with the Company's capital program should be authorized in the form of temporary rates pending the results of an audit.

The RD articulated three sources of concern regarding the record supporting recovery of capital expenditures. First, according to the RD, a review of capital spending over a 10-year period suggests that the Company under-funded its construction program until financial constraints were removed by the 2005-2008 Rate Plan, with the result that annual construction budgets increased at an unprecedented pace over a short period of time.

Second, the judges found that the record contains very little discussion of any efforts by the Company to adjust its project management systems to accommodate the extraordinary increase in spending. The RD indicated several sources of concern regarding the Company's management of the rapid growth, including the cost premiums resulting from an accelerated construction schedule. Among other concerns, the RD noted that the Company is incurring greater overtime expenses and has not tracked the cost premium associated with increased reliance on outside contractors.

Third, the RD observed that the Company has not had the benefit of a comprehensive management and operations audit pursuant to Public Service Law Section 66(19) for many years. The RD found that Staff's review of the past expenditures was

comparable to the scrutiny given to proposed expenditures in a rate case. The RD found that this level of review was adequate for normal ratemaking purposes, but that the circumstances of this case require an in-depth audit of expenditures.

For purposes of establishing temporary rates relevant to the reconciliation figure, the RD derived a reference figure representing the rate year revenue impact of two numbers: the overspent capital expenditures from the 2005-2008 Rate Plan being added to rate base; and the recovery of carrying charges from Year 3 of the current rate plan.[38]

Regarding the term of recovery of the deferred carrying charges, the Company proposed to recover the amount over a three-year period. CPB proposed that recovery occur over a 10-year period, to mitigate the impact on rates in this proceeding. The RD recommended that the Commission should select a recovery period that balanced the reduction of rate shock with the desirability of reducing long term costs.

Exceptions

Staff and the Company both oppose the recommendation for audit and temporary rates. Staff argues that PSL §66(19) does not require and does not contemplate a retrospective audit on which a denial of rate recovery could be based. Staff argues that §66(19) contemplates prospective audits, not an examination of historic expenditures, except as historic expenditures would inform efforts to improve the utility's planning and management in the future.

Staff notes that nothing in the 2005-2008 Rate Plan indicates that the "audit and prudence review" provision would be governed by PSL §66(19). Staff takes exception to the suggestion that the review that was conducted and documented in

[38] The RD also recommended a figure representing a portion of the revenues attributed to capital spending in the rate year; those sums will not be considered here for the reasons explained previously.

the record of the case may not have been adequate. Staff notes there has been no evidence presented in the record that its review was incomplete or in any way less than thorough.

The Company interprets the RD as basing its recommendation on a finding that Staff's work is "suspect and unreliable." The Company claims that the RD accepted the argument of CPB, that because Staff proposed no adjustments to the historical expenditures, therefore, Staff's review must be inadequate. The Company points out that the RD does not question the Company's compliance with its reporting responsibilities under the 2005 rate plan and that Staff confirmed that its review of these expenditures was no less rigorous than its reviews of the Company's capital expenditures proposed in this proceeding or any other rate proceeding. The Company also argues that the RD should have required independent verification of Staff's many recommendations adverse to the Company regarding O&M expenditures and its recommendations resulting from major outage investigations.

The Company argues that the RD's proposal would effectively impose a presumption of imprudence for Con Edison's investments, and would "stand on its head the seminal ratemaking principle that an investment incurred by a utility is deemed to have been made in the exercise of reasonable judgment absent a showing of imprudence."[39] The Company agrees with Staff that the audit required by PSL §66(19) should not be used retrospectively for the purposes of a rate allowance review. The Company further argues that because Staff did not exercise a right to conduct a prudence review during the three-year term of the rate plan, the Company was justified in relying on Staff in support of its construction decisions.

The Company also argues that establishing temporary rates under the circumstances of this case would exceed the Commission's statutory authority, because the Commission in this case has all of the relevant facts necessary to render a final

[39] Con Edison Brief on Exceptions at 54.

decision. The Company cites Chenango and Unadilla Telephone Corporation v. Public Service Commission, 45 A.D. 2d 409 (3rd Dept. 1974) for the proposition that temporary rates cannot be used to provide an opportunity for certain parties to litigate issues that should have been resolved during the proceeding.

Finally, the Company argues that if it is subjected to continuous second-guessing as to the timing and level of its construction expenditures, despite its ongoing consultation with Staff, it will necessarily be induced to err on the side of spending less than it deems necessary.

CPB supports the RD but requests a clarification that, where the RD refers to evidence that "the individual components of the Company's construction program are necessary, and that their costs are reasonable," this be taken in the context of the reservations expressed by the RD concerning the record.

NYC and NYPA support the audit recommendation, but request that the Commission require the audit to be conducted by an independent entity, citing the concerns expressed in the RD regarding the ongoing strain on Staff's resources. NYC also argues that the Company should have the burden of justifying its expenditures through the audit process.

Westchester County requests clarification that the audit would be more than a review of management practices, but would examine the details of capital spending. Westchester argues that the audit should also focus on new O&M programs.

Local 1-2 argues that the audit will not be complete unless the Company is required to establish and maintain an information system regarding the use of contractor labor.

CPB, NYPA, NYC and Westchester argue that the circumstances giving rise to the audit recommendation are unprecedented, and note that the RD raised substantial questions regarding the Company's management of its construction program. NYC and CPB state that it is the Commission's prerogative, not Staff's, to determine whether further review is required. NYC notes that Staff's position has changed from its Initial Brief, in which it conceded that further review might be warranted.

NYPA states that even if no rate recovery is conditioned on its findings, an audit should be performed.

CPB argues that given the magnitude of the expenditures it is inconceivable that a comprehensive review would have resulted in no adjustments and little documentation. NYECC argues that the Company should not be allowed to benefit from the fact that its own operations have overburdened Staff.

NYECC notes that while the 2005-2008 Rate Plan does not specifically reference PSL 66(19) it also does not preclude reliance on that statute. CPB adds that the interpretation of PSL 66(19) is not the central issue, because further investigation of Con Edison's expenditures need not be conducted under the auspices of PSL 66(19).

NYC argues that the RD does not recommend retroactive ratemaking because the spending under the rate plan was specifically deferred for consideration in this proceeding.

NYC also notes that the Commission has determined in the past that temporary rates are available when additional development of the record cannot be completed within the suspension period.[40] NYC notes that the Commission has ruled that prior costs may be disallowed regardless of whether rates are temporary or permanent.[41] NYC cites Chenango & Unadilla Telephone, *supra*, in support of the Commission's authority to establish temporary rates.

Westchester observes that Staff should not object to the proposition that its own analysis is not sufficient, when

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[40] Cases 90-M-2255, 92-M-0138, Proceeding on Motion of the Commission Concerning its Procedure for Settlement and Stipulation Agreements, Opinion, Order and Resolution Adopting Settlement Procedures and Guidelines, Opinion No. 92-2 (issued March 24, 1992)

[41] Case 06-E-1433, Orange and Rockland Utilities, Inc. Electric Service, Order Setting Permanent Rates, Reconciling Overpayments During Temporary Rate Period, and Establishing Disposition of Property Tax Refunds, p. 33 (issued October 18, 2007)

the Commission has already noted in public session that an audit of Con Edison is long overdue.

Discussion

Con Edison's Briefs do not respond to the concerns stated in the RD regarding the Company's planning and implementation of capital projects. Rather, the Company relies almost entirely on a mischaracterization of the RD as finding fault with Staff's review. This masks the central issue presented here: Con Edison spent $1.6 billion more than the targets established in the 2005-2008 Rate Plan -- $1.1 billion more than its own proposal -- and brought the costs forward in this proceeding without any substantial effort to explain or justify them.

The Joint Proposal adopted in the 2005-2008 Rate Plan states as follows:

> The reconciliations in each of RY1, RY2 and RY3 will be deferred and recovered from customers or credited to customers after expiration of this electric rate plan in a manner to be determined by the Commission. However, at the end of each rate year and subject to audit and prudence review, the Company may apply any available credits except credits associated with TCCs to offset the deferred balance. [42]

The "subject to audit and prudence review" phrase indicates that the Commission retained the right to question expenditures that were offset against customer credits prior to a rate proceeding. No such provision was needed to address deferrals that would be recovered in this rate proceeding. The Commission would have the authority to review such balance sheet items, particularly rate base items, as a matter of course. In any event, Commission discretion was preserved by the phrase making deferrals subject to recovery "in a manner to be determined by the Commission." Under both phrases, therefore, the deferred amounts would be subject to review.

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[42] 2005-2008 Rate Plan, Joint Proposal, Page 10.

The scale of the Company's expenditures is clearly beyond what was anticipated at the time of the 2005-2008 Rate Order. The Company cannot now feign surprise at the obvious fact that the Commission would have a strong interest in reviewing these extraordinary expenditures. The Company did not seek clarification from the Commission regarding the "manner to be determined" for recovery of the deferred costs, opting instead to seek recovery through a rate case filing.

The overspent amounts have an extremely large rate impact and raise complex issues regarding the reasonableness of the Company's actions to incur costs much greater than anticipated. The Company should accordingly have presented, in its rate filing, a thorough explanation and justification of the overspent sums. The Company also should have presented a comprehensive review of the efforts that it has made to organize its internal controls to ensure cost-effective management of the huge increase in construction spending. Rather than presenting an affirmative case, the Company instead relied on Staff's review of its annual filings, thus essentially placing the burden of proof on Staff, which was not, and should not have been expected to be, in a position to present an affirmative case regarding the Company's management of the extremely large construction program. Such reliance on Staff is particularly unreasonable, when review of costs requires more than an analysis of annual filings.

As a result, the Commission now confronts a record that contains open questions regarding the quality of the Company's expenditures and its management controls. The record does contain some evidence supporting the expenditures, but under the circumstances of this case, the Company has not yet carried its burden to justify their permanent inclusion in rate base. As CPB notes in its Exceptions, the finding in the RD of record support for the expenditures is in the context of other concerns that create a lack of confidence in the Company's planning and management of its construction program. The record as it stands, without the

benefit of additional evidence and review, is not adequate to support either unconditional recovery of these costs or disallowance of any specific costs.

We determine that the revenue requirements associated with the overspent amounts will be recovered through an adjustment clause mechanism. The adjustment clause mechanism must be designed to provide for recovery in the same manner as the Company's delivery revenue requirement is recovered in base rates. This portion of the revenue requirement will continue to be recovered in this manner, subject to Commission audit, review and refund until such a time as we determine that the Company has fully satisfied its burden of proof with regard to the expenditures or until a disallowance determination is made and a refund implementing this determination has been effectuated. The revenues to be recovered through this mechanism total $236.7 million, consisting of an initial $19.1 million related to the RY3 deferred carrying charges, and $217.6 million for the revenue requirement impact of the $1.616 billion added to rate base including depreciation expense.

We further determine that the Company will be required to support the expenditures by providing to the Department Staff, within 60 days of the date this order is issued, a report providing detailed support for its cost recovery. In addition to the information that is set forth in Appendix 3, the report should provide, at a minimum, a description of the following aspects of the Company's budgeting and construction program management that was in effect during the period affecting the 2005-2008 rate plan expenditures: 1) the capital budget process, including the process by which the corporate mission, objectives, goals, priorities and strategies are determined by management and Board to direct the T&D capital program; 2) the role of system and construction program planning models, forecasts and assumptions; 3) the methodology for project identification, cost estimating, prioritization, appropriation process, approval requirements and variance reporting; 4) the procurement process, starting with the bid package development

and supporting scope of work and specifications for the job, including the use of open contracts; contract acquisition, make/buy decisions including make/buy decisions regarding contract management, contract formation, and approval of contracts; 5) management controls associated with the purchase, requisition or procurement process; 6) the work planning process including definition of roles and responsibilities, the timely preparation of construction plans and work planning and management; 7) work management systems used to schedule and manage crews, transportation, equipment and materials; and 8) management processes for monitoring project and construction management performance and implementing timely and effective corrective action to deal with cost and schedule issues.

Upon submission of these materials by the Company, the Department Staff, or its designee, will conduct an investigation into the expenditures and into the Company's budget creation and construction program management during the period affecting the 2005-2008 Rate Plan expenditures.

Such filing and subsequent investigation will be performed in a continuation of this proceeding. The Company is directed to designate a senior officer to coordinate the Company's participation in the investigation and in such other efforts as may be directed. We anticipate that the Company will act promptly to provide the above-described compliance filing, as well as any further information that Staff or its consultants may request. We hope to conclude this phase of this proceeding as promptly as possible.

At the conclusion of Staff's investigation, it will prepare and submit to us a report that will include its recommendation for any action we should take with respect to the rate treatment for these capital expenditures. Staff will distribute a copy of its report to all active parties in the proceeding along with a notice to parties inviting the submission to us of comments on the report.

The Company's argument that continued scrutiny of its expenditures would reverse the presumption of prudence is

misplaced. No finding of imprudence has occurred, and the Commission has identified several bases for questioning the Company's expenditures, as detailed in the RD.

The Company is correct that PSL Section 66(19) does not strictly require retrospective audits, and that its ordinary application is in the context of prospective implementation. More importantly, however, a precise interpretation of PSL 66(19) is not necessary here, because the investigation ordered here is conducted pursuant to the Commission's authority and responsibility to establish just and reasonable rates.

Regarding the amortization period for the revenue requirement associated with the amount by which Con Edison's actual capital spending exceeded the amount reflected in the third year of the Company's expiring rate plan, the RD supported a three-year amortization period but noted that the Commission should consider a longer term in light of the overall impact on ratepayers of the rate increase authorized in this proceeding. We are concerned about the level of the rate increase, and while we determine that it is reasonable to amortize this amount, with interest, over a ten year period, we will further reduce the amortization in the first year to provide additional rate mitigation. As such, the amortization reflected in the revenue requirement for the rate year will be $9.5 million.

COST OF CAPITAL

Capital Structure

The judges recommended that we adopt and use the capital structure developed by DPS Staff and that we not use the one provided by Con Edison. The two capital structure proposals are as follows:

	DPS Staff	Con Edison
Long-Term Debt	49.65%	48.88%
Common Equity	47.98%	48.68%
Preferred Stock	1.13%	1.21%
Customer Deposits	1.24%	1.23%

The judges selected Staff's capitalization figures because they comport with the established practice to use the consolidated capital structure of the parent company (in this case Con Edison, Inc.) adjusted for the relative business and financial risks of the subsidiary companies. Con Edison takes exception to the judges' recommendation.

According to the Company, its "stand alone" capital structure is the appropriate basis for establishing its allowed rate of return. It objects to Staff's allocation of equity capital away from utility operations and to the non-utility firms. The Company does not believe Staff should speculate about the non-utility subsidiaries' financial practices or their credit evaluations. Con Edison denies that the non-utility operations have a greater amount of business risk than the utility operations. And, without an indication that Con Edison, Inc. is engaged in "double leverage", the Company believes there is no reason for using the Staff approach.

Pointing to financing practices of competitive electricity companies, Con Edison asserts that some firms with non-investment grade ratings have substantially lower equity ratios than the one proposed here by Staff. Thus, the Company concludes that Staff's position does not square with financial reality. Nor does the Company believe that Con Edison, Inc.'s investments in unregulated subsidiaries have any material impact on its financial rating.

Con Edison is concerned that the use of the Staff-proposed capital structure would result in our regulating the capitalization and financing of the unregulated subsidiaries. Such action, according to the Company, could impose higher costs on the competitive operations and could foreclose some of their business opportunities. Con Edison does not believe that the

unregulated subsidiaries should be disadvantaged in their capital-raising activities particularly if no such disadvantages apply to a foreign corporations and new market entrants.

In support of its position, Con Edison points to the Commission's recent decision authorizing the merger of National Grid and KeySpan.[43] It claims that a "stand alone" capital structure was employed in that case. The Company states that we should maintain a consistent policy and we should reject Staff's approach which puts it at a financial disadvantage to attract capital on competitive terms.

Finally, Con Edison states that its affiliate, Consolidated Edison Development, Inc. is selling its entire fleet of generation assets and it will retire its outstanding debt. If executed, the sale will have the effect of increasing the amount of equity capital for the unregulated subsidiaries. According to the Company, the sale of the generating assets would remove the basis for Staff's adjustment and create a basis for allocating equity capital away from the non-regulated operations and to the regulated firms. If for no other reason, Con Edison believes its "stand-alone" capital structure should be used.

In response, DPS Staff states that the Company's arguments are flawed and the "stand-alone" structure proposed by the Company does not necessarily reflect the actual amounts of capital being used, or the use of rational or reasonable capitalization policies. Staff does not consider it reasonable to apply lower equity ratios to the unregulated subsidiaries than those indicated for the regulated operations. Were this to occur, Staff asserts that the non-regulated operations would obtain favorable access to capital at the cost and expense of the utility company ratepayers. Staff is certain that the non-utility operations face greater amounts of business risk and competition than the utility companies. It points out that the

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[43] Case 06-M-0878, National Grid PLC and KeySpan Corporation – Merger and Acquisition, Order Authorizing Acquisition (issued August 23, 2007).

published guidelines of financial advisory firms indicate that non-utility businesses have more risk than utility businesses and they are expected to have higher levels of equity at comparable bond ratings.

Addressing the practices of competitive energy companies, Staff states that, if Con Edison, Inc. were allowed to follow a similar approach, ratepayers would have to support more equity capital than if there were no investments made in non-utility operations. For this reason, Staff believes the Company's proposal should be rejected.

Staff also denies that the use of the capital structure it proposed amounts to regulation of the non-utility operations. It states that its capital structure proposal is warranted to assign costs properly and to ensure that the non-utility investments do not increase the costs paid by utility customers.

With respect to the Commission's approval of the National Grid and KeySpan merger, Staff observes that the capital structure used in that case was part of a joint proposal that the Commission adopted with modifications. It states that trade-offs were made and financial protections were applied that have no counterpart in this rate proceeding. Staff denies that a "stand-alone" capital structure was used in that case and it states that the equity ratio used in that case does not reflect other ratemaking concessions made in the case that inure to the benefit of customers.

As to the potential sale of the Consolidated Edison Development, Inc. generation assets, Staff states that it is premature to adjust the capital structures pending the sale of the assets and the actual retirement of the outstanding debt. At this stage of the proceeding, Staff does not believe that we should entertain any update as uncertain as this one.

We find that Staff has used a proper approach for calculating the capital structure to be used for public utility ratemaking purposes. Staff's approach considers the capital structure of the consolidated operations and it assesses the

amounts of capital used by the regulated and the unregulated firms. For our ratemaking purposes here, it is proper and necessary to determine the amounts of debt and equity capital that Con Edison is employing for ratepayers to be assured that they are only paying for the costs that the Company is incurring to support regulated operations and for no others. Con Edison's point about "materiality" is not logical, as it suggests that when competitive operations are small, cost assignment is not necessary, and therefore the subsidy can be ignored. Ratepayers should not be providing credit support for competitive operations regardless of their size.

The recent case involving the National Grid and KeySpan merger and acquisition does not provide any support for Con Edison's position here. A "stand alone" capital structure was not adopted in that case and the specific ratios adopted for those firms are not instructive for the calculations and determinations that must be made here. No valid comparison can be made between our action adopting the multifaceted joint proposal that permitted the two utility companies to merge and the ratemaking action that is called for in this case. Our standard practice is to adopt the results indicated by a review of the consolidated operations in which a utility company exists and to adjust the consolidated capital structure in the manner that Staff has done in this case.

This approach does not begin to regulate the non-utility operations as the Company alleges, nor does it subject the non-utility operations to a competitive disadvantage. Consolidated Edison, Inc. is entirely at liberty to conduct its non-utility operations as it sees fit, and we will assign the appropriate cost responsibility in the ratemaking process. However, the consequences of its non-utility operations cannot be allowed to have an impact on the public utility operations or add to the costs that ratepayers incur for their utility services.

Con Edison's argument that our assignment of higher capital costs to more risky competitive operations puts those

businesses at a competitive disadvantage is tantamount to saying that competitive operations can minimize their cost of capital through the use of high debt ratios which imply non-investment grade credit quality. This view is at odds with the financial presentations of virtually all the State's energy utilities over the last 30 years. If Con Edison indeed believes that high leverage and non-investment grade bond ratings lead to a lower cost of capital, then the company should not only explain the basis for this position in its next case but also why it should not be applied to utility operations as well.

Finally, the issue of the appropriate capital structure cost assignment for competitive subsidiaries was recently addressed in a National Fuel Gas rate case. In that case we stated:

> We also note that the Company criticized Staff's equity/debt allocation of 60%/40% for competitive subsidiaries based upon evidence suggesting that the S&P 500 Industrial Companies have an average equity/debt mix of 40%/60%. This perspective, however, does not address a key element of our approach. It is not our intent to remove competitive operations at average competitive company capitalization ratios. We are removing competitive operations at ratios that would support the parent's rating at the level that it currently has. The Company's suggestion that competitive operations should be removed at a 40%/60% equity/debt mix is therefore antithetical.[44]

Con Edison's exception is therefore denied.

Cost of Equity

1. The Exceptions

The judges recommended a 9.0% rate of return for Con Edison as proposed by DPS Staff, CPB and as supported by various other parties. For the most part, DPS Staff and CPB followed

[44] CASE 07-G-0141, National Fuel Gas Distribution Company, Order Establishing Rates for Gas Service (issued December 21, 2007), pages 35-36.

the guidance provided by the Generic Finance Case which established the general approach that the Commission has used for rate of return determinations in many cases for many years. The Commission has used the Discounted Cash Flow (DCF) Method and, to a lesser degree, the Capital Asset Pricing Model (CAPM) to arrive at its cost of equity determinations. These methods are applied to representative proxy groups whose results are adjusted for the utility company being considered. Con Edison and Consumer Power Advocates except to the judges' recommendation.

According to Con Edison, cost of equity matters should not be limited by any particular party's view of the results of the Generic Finance Case. It points out that the Commission has never formally rendered a final decision in that proceeding. It also notes that Staff at one time supported the use of the Comparable Earnings Approach but ultimately changed its position without providing any explanation. The Company also observes that the parties to that proceeding agreed to an ongoing review of such matters as the Arbitrage Pricing Theory and the Fama-French model. Con Edison asserts that the Commission has not uniformly applied the Generic Finance Case approach over the years and that it has made modifications when warranted.

Con Edison claims to have identified a fundamental error in the Generic Finance Case approach and in Staff's use of the DCF Method. According to the Company, the essential flaw in the Staff approach is the direct application of market-derived values to the book measures used to set the allowed return. It states that the two financial concepts are vastly different and a methodology is needed to translate market returns into book returns. In support of its position, Con Edison states the following:

> The Company does not claim that returns on historic book investment, rolled forward to the test year, is the wrong basis for regulating returns to providers of capital. Rather, the Company asserts the Generic Finance Case approach misstates, and in the current environment understates, the required return on book. It has

> this error because its determinations of required return are all based on market variables, including the very basis on which it measures return—the significantly higher market prices of the equity of the peer universe (rather than the book values upon which the Commission actually authorizes returns).[45]

According to the Company, there is no validity to the assumption that market value and book value should be equal, particularly given the current aggregate market value for the S&P 500 index which is 2.9 times the historic book equity investment. Making a similar point with the proxy group that Staff used, the Company states that this group has an average market-to-book ratio of 1.9 times. The Company states that such market-to-book ratios have persisted for decades in the electric utility industry. It therefore believes that the DCF and CAPM results should be much higher than Staff has recognized.

The Company also criticizes the Generic Finance Case approach for assigning to it the lowest return on equity in the nation, placing its stock among those of the troubled and weak companies. The Company does not believe that it should receive a return that will reduce its stock price to book value which, in its view, would contravene the Hope Natural Gas doctrine and recent industry trends.[46] The Company believes that no rational investor would expect to incur a reduction in Con Edison's stock price to book values. It believes an adjustment must be made to book value so as not to understate the required return.

Rather than receive the lowest return on equity in the nation, Con Edison asserts that it requires a return that is at least 200 basis points higher in order to reach the average return for the proxy group Staff used in this case. Even if

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[45] Con Edison's Brief on Exceptions, p. 67. The Company also believes that the application of the Capital Asset Pricing Model calculation of a market return and its application to a book value of equity serves to dramatically and incorrectly understate the Company's fair return.

[46] Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591 (1944).

variations in risk are considered, the Company insists that an additional 200 basis points is necessary to avoid an abnormally low rate of return that could adversely affect its credit strength and financial viability. In the Company's view, it is in the long-term interests of customers to provide it adequate support for the infrastructure improvements that are being undertaken. Given various other recommendations made by the judges concerning energy efficiency matters, negative incentive mechanisms, the revenue decoupling mechanism and temporary rates (all of which in the Company's view increase its regulatory risks), Con Edison does not consider a 9% allowed rate of return on equity to be either just or reasonable.

The Company specifically proposes, in addition to the proper application of the DCF and CAPM methods, that we credit additional methodologies presented by its expert witness. Alternatively, the Company proposes that we provide equal weight to the DCF and CAPM approaches which would reduce the amount of reliance placed on the DCF method which, according to Con Edison, is subject to serious theoretical flaws, restrictive assumptions and severe measurement challenges.

The Company does not believe that the CAPM method suffers from the "beta creep" suggested by Staff. It notes that the betas for other New York utilities are also increasing which it believes is related to equity returns that are at historic lows and are subject to regulatory risk.

Staff applied a credit quality adjustment to its results of its analysis to which the Company objects. The adjustment was made for the bond rating difference between Con Edison and the proxy group. The Company claims there is no empirical market evidence of a relationship or correlation between credit quality and the required equity returns. It believes that the existence of any such relationship is refuted by the efficient market hypothesis that operates in modern capital markets.

Further, the Company objects to a 10 basis point adjustment Staff made for the revenue decoupling mechanism that

will soon apply to the Company. Con Edison would distinguish use of such mechanisms (and the need for any adjustment) from the cases involving natural gas distribution companies, like the National Fuel Gas Distribution Corporation. If anything, the Company believes that the revenue decoupling mechanism will increase its regulatory risk should it be denied timely recovery of any sizable deferred balances. In any event, Con Edison does not believe the mechanism is sufficiently well formulated or tested to warrant any adjustment to the allowed return on equity at this time.

In sum, the Company believes that the judges failed to accept the results of acceptable financial models and they employed attributes of approaches that have no theoretical foundation and they avoided making adjustments in the Company's favor. Further, Con Edison fears that, if the judges' recommendation is adopted, the Company may not be able to retain its "A" bond rating without which its capital program would be more costly to finance. It states that Con Edison has already experienced weakness in dealings with the insurance firms that provide assurances for corporate and mortgage bonds. If the Company's earnings deteriorate due to an inadequate return allowance and other adverse ratemaking treatments, Con Edison states that it will not be easy to reverse a downward spiral in the Company's financial health and bond ratings.

Consumer Power Advocates agree with Con Edison that the judges' rate of return recommendation is too low. It urges us to allow the Company a 9.7% return on equity to help it raise the capital needed for infrastructure investments. This party states that the Company should not be provided the lowest return in the nation nor should the financial community be given any cause for concern. If the Company's ability to raise capital is seriously inhibited, Consumer Power Advocates believes that the costs for consumers will increase.

2. The Responses

DPS Staff continues to support a two-thirds weighting of the DCF method and a one-third weighting of the CAPM approach that the Commission has used repeatedly and has recently confirmed.[47] Staff acknowledges that no formal decision was entered in the Generic Finance Case; however, it notes that this framework has frequently been used, endorsed and accepted by the Commission. Staff supports the DCF method because it is used by other regulatory commissions and it employs readily available data and provides an analysis of investor behaviors. Staff accepts the CAPM method as a check on the DCF results; however, it has reservations about this method due to its reliance on a market risk premium, and an average beta, that has been increasing in recent years. Staff attributes the change to an increase in utility diversification and not to regulatory action in New York. Due to "beta creep," Staff acknowledges that the CAPM is producing higher return on equity estimates than it once did.

Addressing the Company's arguments concerning the application of market-derived returns to book measures of equity capital, Staff points out that one of the Company's witnesses stated that this practice is universal and has published a book which states that it is not unreasonable to apply market-based return estimates to book measures of equity.

In response to the argument that the Company's rate of return would be understated and the value of its stock impaired, Staff states that the Company's total return to stockholders has exceeded market returns over a recent, 25 year period (1981-2006) and, in the last five years, the Company earned higher than the S&P 500. It also observes that Con Edison has been able to issue debt and equity on reasonable terms.

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[47] Case 06-E-1433, Orange & Rockland Utilities, Inc. – Electric Rates, Order Setting Permanent Rates (issued October 18, 2007), p. 14; Case 07-G-0141, National Fuel Gas Distribution Corporation – Rates, Order Establishing Rates (issued December 21, 2007), p. 40.

According to Staff, a significant flaw in the Company's proposal to adjust allowed returns upward for companies with high market-to-book ratios is the upward spiral it would create. Higher allowed returns would produce even higher market-to-book ratios which, in return, would require even higher allowed returns. Conversely, Staff states, very low market-to-book ratios would force reductions to a company's allowed return that would further depress its earnings and imperil its operations.

In response to the Company's claim that it should receive a higher equity return to match the returns allowed the other companies to which it has been compared, Staff asserts that Con Edison's allowed return for a one-year period should not match those set for multi-year periods. For example, Staff notes that a lower rated electric company in a neighboring state earlier this year was allowed a 9.4% equity return for a two-year period. According to Staff, this example demonstrates the reasonableness of the judges' recommendation in this case.

Staff also observes that current returns are lower than those determined over the last few years because interest rates have fallen to near-record lows. Since the time Con Edison filed its rate case, Staff observes, the yield on ten-year Treasury bonds has decreased by over 100 basis points.

Staff notes, as well, that Con Edison's lower-than-average cost of equity is consistent with its S&P business profile score which indicates that its risks are lower than those of most other electric companies. For this reason, Staff believes that the Company should not expect to obtain an equity return equal to the national average for electric companies.

With respect to the Company's reference to a 200 basis point spread between its allowed return and the group average, Staff states that the data Con Edison used for other companies is out-of-date, for multi-year rate plans, are for earnings-sharing thresholds, and apply to lower rated/higher risk companies without revenue decoupling mechanisms and weather normalization clauses. All of this leads Staff to conclude that

there is little support for believing that there is any such spread between Con Edison and other firms.

In support of the adjustment it applied for Con Edison's higher credit rating than the proxy group, Staff firmly believes that its adjustment is warranted given the different business and financial risk levels between the Company and the proxy group. Also, with respect to the revenue decoupling mechanism adjustment, Staff states that this adjustment is needed to recognize the reduction in risk for revenues, weather fluctuations, economic conditions and customer usage. Staff does not expect the Company's revenues to be as volatile as they once were.

Finally, in response to the Company's arguments concerning its financial integrity and credit rating, Staff states that Con Edison exaggerates the likelihood of a downgrading. Staff is opposed to the Company obtaining an unwarranted equity return allowance at an additional cost to ratepayers.

CPB supports the application of the Generic Finance Case approach to Con Edison and agrees with the judges that the Company's arguments for a different approach, and a higher allowed return, are not new. It defends the Commission's use of this approach over the years and the minor changes that have been made to the approach. CPB asserts that the Commission has, over the years, affirmed the Generic Finance Case approach in numerous cases.

CPB denies that there is any flaw in this approach related to the use of market and book values. It states there is no reason to modify the DCF method or to assign to it any less weight. With respect to the assertion that a 9% allowed equity return would be the lowest in the nation, CPB insists that this is the fair return for the Company given the risks to which it is exposed and that the return is consistent with the Commission's recent decisions in other rate proceedings.

Addressing the 200 basis points Con Edison claims between it and the average equity return for the proxy group,

CPB states that the Company's data suffers from substantial infirmities which place the claimed difference in doubt. Responding to Con Edison's assertion of circularity problems with the DCF and CAPM methods, CPB observes that the Commission dismissed these assertions in the recent case involving Orange and Rockland Utilities, Inc.[48] Similarly, the Commission adopted, over the utility company's objections, a two-thirds DCF and a one-third CAPM weighting of the two approaches.[49] And, like Staff, CPB doubts that the judges' proposed return on equity would jeopardize the Company's credit rating.

NYC Government Customers also support a 9.0% equity return allowance. They understand that the Commission has repeatedly used the Generic Finance Case approach, has relied on the approach for over a decade, and recently affirmed its use with unequal weightings for the DCF and the CAPM methods. NYC Government Customers fail to see any flaw in the Generic Finance Case approach or in the DCF method. They also state that Con Edison has not demonstrated any material, recent change in financial circumstances to warrant a rejection of the DCF method.

NYC Government Customers also believe we should reject Con Edison's challenge to the allowed return by comparing it to other utility companies across the nation. It states that the allowed returns in other jurisdictions are irrelevant due to a lack of comparable regulatory actions from one state to another. If anything, NYC Government Customers states that the return proposed here for Con Edison is entirely consistent with the returns that the Commission has allowed other New York utility companies in recent months.

They also believe that the average return for the companies in the proxy group is distinguishable in many respects due to time differences and differing financial circumstances,

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[48] Case 06-E-1433, Orange and Rockland Utilities, Inc. – Rates, Order Setting Permanent Rates (issued October 18, 2007), p. 10.

[49] Id., p. 11.

including negotiated results, multi-year rate plans, and different regulatory practices and ratemaking policies. Also, the credit rating differences between the group and Con Edison, according to NYC Government Customers, supports a lower allowed return for Con Edison.

On all of these, and various other points raised by Con Edison, NYC Government Customers agree substantially with the positions stated by Staff and CPB. Westchester County also supports the 9.0% return on equity recommendation which, it states, is consistent with the returns recently allowed to other utility companies in New York.

3. Discussion and Conclusion

We find no merit in Con Edison's claim that the DCF method and the Generic Finance Case approach are flawed and should not be used without an upward adjustment applied to the indicated equity return allowance. The Company is correct that market-to-book ratios for many electric utility companies are currently, and have been for a time, substantially above unity. However, the existence of higher market prices does not necessitate an adjustment, in any way, to the calculation of the equity return estimate applied to the regulated company's book value for ratemaking purposes. The Company's argument suggests that it wants its rates set on the market price of its stock and not its rate base. This not only goes against the foundation of historical cost rate base regulation, but it creates the potential upward or downward spirals depending on whether stock prices are above or below book value. Moreover, Con Edison has provided no technical analysis in support of its premise and academic literature written by one of its own witnesses contradict this hypothesis. We are satisfied that the DCF method remains a valid and proper method in these circumstances and we are not inclined to modify it for the reasons presented here by Con Edison.

With respect to the Company's claim that it should not receive the lowest allowed equity return in the nation or one

that is 200 basis points below the average return for the proxy group, we do not find the Company's argument persuasive. The parties have demonstrated to our satisfaction that it is not clear that 200 basis points separate Con Edison from the group average. No such comparison or conclusion is possible on the record presented here.

The parties have noted a number of problems in the Company's position. Current returns are not available for all the companies in the proxy group and some of the companies in that group have returns that were established as part of multi-year rate plans and rate settlements. The returns set in such circumstances are likely to reflect the higher risks of multi-year plans and the trade-offs that often occur in reaching a settlement agreement. There are also risk differences between these companies and Con Edison, as evidenced by Con Edison's higher bond rating and lower business risk profile.[50] Also, many jurisdictions do not use a fully forecast test year as New York does or provide the same level of reconciliations and true-ups as is present in New York. Further, the equity return we are setting for Con Edison is entirely consistent with the method and results had for other utility companies in New York in these times of low interest rates. Finally, we find the Company's arguments regarding the risks created by the use of a revenue decoupling mechanism unpersuasive. Con Edison's concerns about the timely recovery of deferred balances are a red herring. Absent the existence of a revenue decoupling mechanism, Con Edison would have no ability to recover such balances in the first place. By contrast, the parties have adequately explained why a revenue decoupling mechanism will reduce the volatility of the Company's cash flows and earnings, and therefore its risks.

The equity return allowance we are setting in this case is fully intended and designed to sustain Con Edison's financial integrity and to provide it the resources it requires to attract capital. The ratemaking actions we are taking here provide it a fair opportunity to earn a reasonable return as the

[50] See Exhibits 253 and 254.

investors in the stock of this company would expect. Also, the adjustments made to the DCF and CAPM results on account of the risk differences between Con Edison and the proxy group as measured by bond ratings, and for the reduction in the Company's financial risk due to the introduction of a revenue decoupling mechanism are entirely proper and necessary. We are therefore rejecting the exceptions filed by Con Edison and Consumer Power Advocates and upholding the judges' recommendations for the reasons advanced by the parties who have supported the 9% equity return allowance.

We will, however, recognize two impacts on the cost of capital -- one that results from recent events in the bond insurance market and the other related to the overall risks created by our decisions on various issues in this rate case. First, Con Edison currently has about $635 million of auction rate tax-exempt debt that is insured by Ambac Financial Group, Inc. and XL Capital. The cost of this debt is currently reflected in the revenue requirement at a rate of approximately 3.6%. In the past, this debt has consistently been among the lowest cost sources of financing to the company. The sub-prime mortgage crisis has, however, resulted in increased scrutiny for bond insurers and has caused the auction rate debt market to be very unsettled at this time. As a result, the recent actual cost of this debt, while still low relative to most other sources of capital, has been higher than the rate we have set in rates and more volatile than in the past. Recognizing this uncertainty, we will allow the company to true-up the interest expense associated with these issues, both positive and negative, from the amount reflected in rates. This will serve to insulate the company from this financial risk, and allow ratepayers to continue benefiting from this low cost debt.

Second, while the revenue decoupling mechanism reduces earnings volatility and necessitates a 10 basis point downward adjustment in the return on equity, the rate mitigation measures and additional revenue adjustments we have adopted create risks and uncertainties which obviate the need for a 10 basis point

RDM adjustment. More specifically, while the additional revenue adjustments are within the company's ability to control, and the rate mitigation measures have no direct effect on the company's earnings, they create added uncertainty about the Con Edison's future financial results. It is difficult to precisely quantify the specific risks associated with any of these items. However, we believe it is reasonable to conclude as a whole that the risk factors identified above offset the effects of adopting an RDM. Thus, we recognize the overall risks inherent in this rate case decision when concluding that no specific adjustment to the 9.1% base cost of equity is warranted.

Con Edison's overall rate of return will be set as follows:

Component	Percentage	Cost Rate	Weighted Cost
Long-Term Debt	49.65%	5.78%	2.87%
Preferred Stock	1.13%	5.34%	0.06%
Customer Deposits	1.24%	3.76%	0.05%
Common Equity	47.98%	9.10%	4.32%
TOTAL	100.00%		7.30%

COST ALLOCATIONS

NYPA Cost Allocations

Con Edison presented a fully allocated embedded cost of service study in this case showing that the New York Power Authority's cost allocations should be increased by about $30 million. If the cost study results are adopted, in full, the Authority's rates would be increased by this amount and by the general rate increase that applies to all customers. The cost study results are opposed by NYPA, NYC Government Customers and Westchester County.

DPS Staff accepted the Company's embedded cost of service study results and proposed that a load diversity study be performed in the next rate case. Pending the results of the load diversity study, Staff has proposed that a broader tolerance band be used for determining the interclass revenue allocation in this case. Thus, Staff proposed that only a portion of the $30 million be applied to NYPA at this time.

The judges recommended that one-half of the indicated deficiency, or $15 million, be applied to NYPA to provide a more gradual rate change for the customers served by the Authority. NYPA, NYC Government Customers, Westchester and Con Edison take exception to the judges' recommendation. For its part, the Company continues to support its position that the entire $30 million deficiency be applied to NYPA. Only if we set rates for a multi-year period would Con Edison support the use of a longer phase-in period for implementing its cost of service study results.

1. NYPA

The Authority urges us to fully consider the cost of service study and to decide this matter for the next three years. It believes the cost study should be rejected and that no changes should be made to the interclass cost revenue allocations for the next three years. If we adopt the judges' recommendation, NYPA believes that the $15 million allocation should be for all the next three years. It firmly opposes the implementation of the entire $30 million deficiency either in this case or over the course of several rate cases.

NYPA believes that the judges did not consider the embedded cost of service study to the degree, depth or detail that is warranted. Rather than render an overall determination, the Authority requests that we rule on each technical point it has presented.

To begin, NYPA states that Con Edison's Embedded Cost of Service (ECOS) study is flawed because the Company did not use contemporaneous data. According to NYPA, using the 2005 historic ECOS data to allocate 2008-09 revenue requirements does not accurately reflect the implementation of the Company's infrastructure expansion program. NYPA claims that the 2005 data does not reflect load growth differences that may have occurred among the service classes, particularly between the Authority and Con Edison's other customers. NYPA notes that four cost allocators set using the 2005 data (D03, D04, D08 and

D09) directly influence the allocation of about 82% of Con Edison's rate base. NYPA insists that the four allocators should be adjusted for the changes that have occurred in customer demands since 2005.

Next, NYPA objects to Con Edison's substitution of its recent earned return (9.03%) for the 2006 allowed rate or return (8.08%). According to the Authority, the return allowance determines the fair amount that should be collected from customers. It believes that the 2006 allowed return is the fair return that customers should pay. By using a higher rate of return, NYPA claims that the Company has improperly exaggerated the magnitude of the NYPA deficiency.

Given the alleged flaws in the embedded cost of service study, and its inherent imprecision, NYPA believes that the tolerance band used with the study should be increased from the standard +/-10% to a +/-20% range. It points out that Staff supports a +/-15% tolerance band in this case and the Commission has departed from a +/-10% tolerance band in other cases that required such action. If for no other reason, NYPA believes its +/-20% tolerance band should be used because the Company increased its overall return from 8.08% to 9.03%, an amount that exceeds ten percent.[51]

On exceptions, NYPA also addresses the high tension and low tension system cost allocators. The Company used the highest summer or winter non-coincident maximum class demands to allocate the high tension system. NYPA agrees that the non-coincident maximum class demand should be used but only those for the summer period. In support of its position, it points out that the Con Edison service area peaks in the summer. NYPA claims that the summer non-coincident peaks are the most appropriate in these circumstances. The use of the allocator that NYPA prefers would decrease its cost deficiency by $1.3 million.

[51] This percentage increase is 11.7%.

Con Edison allocates its low tension system costs using an average of class non-coincident peak (NCP) and individual customer maximum demands (ICMD). For three classes, it uses 75% of the NCP and 25% of the ICMD for its allocator. NYPA claims that the allocations for the low tension system should only be made using individual customer maximum demands. This approach is supported by the National Association of Regulatory Utility Commissioners (NARUC) manual. Its use would reduce the NYPA cost deficiency by $16.8 million.

NYC Government Customers also believe that Con Edison's cost study is materially flawed, claiming it allocates too much of the system costs to NYPA. They also claim that the functionalization of the Company's working capital, and the allocation of administrative and general expenses, contain numerous errors.

Addressing the allocation of transmission plant, NYC Government Customers state that a more accurate and precise measure of the system peak should have been used. The Company used the highest peak demands on five days using four-hour averages. Instead, NYC Government Customers believe that the Company should have used the highest five-day, single-hour peaks. They state that this would capture the "pure peaks" and avoid "near-peak" hours. It would not dilute the cost causation signal and would track costs better according to NYC Government Customers.

2. NYC Government Customers

Like NYPA, NYC Government Customers oppose Con Edison's high tension plant allocator. They contend that the Authority should have been treated as a single class to provide it the diversity effects that exist among NYPA's 14 subclasses. Diversity of demand allows utility planners to build plant on the premise that not all customers' peaks occur simultaneously. NYC Government Customers allege that Con Edison has overstated NYPA's non-coincident demand, and cost responsibility, by not using the 14 subclasses for cost study purposes.

NYC Government Customers also allege that the high tension plant allocator is flawed because of Con Edison's inconsistent use of two different demand factors. For all but three classes, the Company uses the higher of the summer or winter demand. However, for three classes (SC 7, SC 12 and SC 12 TOD), it uses the classes' summer demands even though they are far exceeded by the classes winter demands. According to NYC Government Customers, Con Edison should be consistent and use either the summer demands or the maximum demands for all classes. They state that the Company should not be allowed to selectively target NYPA to receive a greater allocation of the high tension system costs.

NYC Government Customers also object to the Company's cost study not having a customer component in the allocation of line transformer costs. They state that this is a clear error at odds with the NARUC Manual. To correct this alleged error, NYC Government Customers would reclassify certain underground and overhead transformers as part of the minimum system, and arrive at a 13.7% customer allocation factor. This would decrease the NYPA deficiency by $2.6 million.

With respect to the low tension system, NYC Government Customers disagree with the amount of diversity benefits that Con Edison assumes for this system. They state that there are limited diversity benefits at the secondary voltage level of the distribution system. By adjusting the demand allocators the Company used to reflect slightly less diversity benefits on the low tension system, NYC Government Customers would decrease the NYPA deficiency by $6.4 million.

NYC Government Customers also criticize the Con Edison cost of service study for using the same demand allocators for the underground and the overhead low tension systems. They believe that this is illogical, unjustified, inaccurate and unsupportable. They point out that Manhattan has very few overhead facilities contrary to the cost allocations that the Company made.

NYC Government Customers also disagree with the amount of working capital Con Edison included in its cost study and the way it was assigned. Working capital is up by $1.2 billion and is four times greater than the amount that was used in the last cost of service study. They consider this to be unreasonable. They also disagree with the amount of working capital assigned to NYPA which, at $143 million, is almost half of NYPA's total revenues. NYC Government Customers consider this an excessive amount and doubt that NYPA takes a long time to pay its Con Edison bills as this working capital figure suggests.

Addressing the functionalization of administrative and general expense, NYC Government Customers believe that this expense should be proportionate to the amount of operation and maintenance expenses. Con Edison allocated a disproportionate amount of administrative and general expense to the transmission and high tension categories which, according to NYC Government Customers, penalizes NYPA.

NYC Government Customers also allege that there is a disparity between the amount of the historic test year investments and costs and the forecast rate year amounts which makes the cost of service study results unreliable. Given the magnitude of the difference, and the difference in the cost structures for the two periods, NYC Government Customers believe that the 2005 cost figures are not relevant or reliable for interclass revenue allocation purposes.

For all of these reasons, NYC Government Customers believe that we should not reallocate revenue requirement responsibilities with a cost of service study that is as infirm as the one the Company has presented here. In their view, a uniform across-the-board increase should be applied to all customer classes with NYPA receiving an equal percentage increase on the current net-of-fuel, transmission and distribution revenue. If this proposal is rejected, NYC Government Customers propose alternatively that we correct the errors identified by their witness, and the NYPA witnesses, and

reduce the claimed $30 million NYPA deficiency to a $5 million deficiency.

3. Westchester County

Westchester agrees with New York City that there should be no re-allocation of revenues among the services classes at this time. Instead, it claims there should be another cost-of-service study collaborative process to examine the alternate methods for allocating demand-related plant. According to Westchester, the unprecedented expansion in the Company's plant additions places into doubt the previous allocators that the Company used. If we adopt the results of the Company's cost of service study in this case, Westchester County proposes that we limit the amount of the rate increase for NYPA, and any other individual serviced class, to no more than one and one-half times the overall average percentage increase. It points out that NYPA serves the County and 100 municipal entities in Westchester. They would incur about $7 million in added costs under the judges' recommendation which would be passed on to residents and businesses as tax increases.

4. Con Edison and Staff Responses

The Company supports the judges' recommendation to use the cost of service study results and reflect one-half of the $30 million NYPA deficiency in rates. Con Edison continues to believe that it is proper to implement the entire $30 million; nonetheless, it concurs with the judges' finding that a range of competing views is possible due to the expert opinion and judgment that is required to functionalize costs, apply cost allocators, and assign costs to the customer classes. The Company points out that any amount NYPA does not properly shoulder will become the responsibility of other customers who would provide NYPA a subsidy.

Con Edison asserts that NYPA, NYC Government Customers and Westchester County have not presented new arguments in support of their positions and they have not demonstrated errors

in the results of the cost of service study. It does not believe that the opinions of witnesses sponsored by the opposing parties, about the alternative ways that the costs can be allocated, are sufficient to put aside the judges' recommendation. Con Edison states that the testimony it provided has been mischaracterized by the parties. The Company insists that its cost of service study is proper and the results can be used to align the costs borne by NYPA and other customers.

The Company considers unreasonable NYPA's proposal to resolve the cost of service study issues for the next three years absent a three-year rate plan. It observes that cost allocation matters should remain open beyond the rate year and the information presented in the next rate proceeding should be examined on its merits.

DPS Staff denies NYPA's assertions that it did not defend the cost of service study; that Staff only performed a cursory analysis of the study; and it did not seriously engage in the issues that were raised by the Authority and other parties. Staff responds that it performed a detailed review of the Company's cost of service study and has recommended additional load diversity studies as a result of its review. Staff also points out that it recommended that a +/-15% tolerance band be used in this case. Staff supports the use of the Company's cost of service study as a basis for resolving revenue requirement allocations along the lines that the judges have recommended.

5. Discussion and Conclusion

Some parties believe that the capital projects and improvements the Company has implemented since its last ECOS study differ from the past projects and this provides a basis for not applying the cost of service study results provided in this case. We do not accept the parties' premise, nor has it been shown on the record, that the new construction is for purposes that differ. To the contrary, it appears to us that

the current construction and plant additions are of a kind and nature that makes them comparable to the activity performed in the past. Moreover, it has not been established to our satisfaction that demand growth and system requirements have abruptly changed from when the cost data was obtained. We cannot conclude on this record that the demand allocators that the Company used would differ had more recent data been used. We therefore reject the notion that the 2005 cost of service study does not provide a valid basis for determining the cost responsibility for the various customer classes for the upcoming rate year. The study was prepared for this purpose and we find that it is acceptable and can be used.

The parties also ask us to modify the cost of service study results by picking and choosing among the expert opinions provided by the consultants and engineers hired to challenge the deficiency indicated by Con Edison's study. We are reluctant to do so for reasons similar to those provided by the judges and because there has not been an adequate showing here demonstrating that Con Edison has materially altered its cost of service study methodology and parameters from those used in prior cases, which the Commission found to be acceptable. Nor has any party shown that the Company failed to properly implement suggestions for which there was a full consensus during the most recent cost-of-service study collaborative process in which the parties aired their views about the mechanics of the cost of service study.

In this case, we are neither troubled by Con Edison's use of the 2005 data for the rate year cost allocations nor are we averse to the use of a more recent earned return for cost study purposes. Neither of these actions constitutes an error or an inadequacy requiring redress.

We find that the judges' recommendation to implement only one-half the indicated NYPA deficiency at this time is justified by the amount of rate increase all customers will experience and the need to avoid abrupt rate changes. Gradualism is warranted here. As to NYPA's request that we

address cost of service study matters for the period beyond the rate year, it is not proper to do so in this case. Our ratemaking actions pertain directly to the upcoming rate year and without prejudice to subsequent rate periods.

Street Lighting

The judges recommended that the charges for street lighting facilities be increased by the system-wide average percentage rate increase. They recommended against using the 2005 cost of service study results to increase further. Con Edison excepts.

According to the Company, the current rates and charges grossly understate the street lighting service class's cost responsibility. The Company states that it has been under-recovering its street lighting costs for at least five years.

Next, the Company asserts that its street lighting costs increased significantly from 2002 to 2005. Contrary to the judges' understanding, the Company states that the amount of work it performed on street lighting equipment during 2005 was not abnormally high. It claims that a comparable amount of work was performed in 2006 and in 2007. For these reasons, the Company believes that we should accept the 2005 cost study results.

The Company also explains that it did not assign all of its stray voltage program costs to the street lighting service class. It assigned only the portion of these costs to the street lighting customers that are for the testing of the street lighting facilities. It states that the majority of the stray voltage program costs are paid for by all customers and not by the street lighting service class.

In response, New York City insists that the amount of street lighting costs incurred during 2005 were aberrational. The City states that Con Edison performed thousands of repairs during 2005 to meet the goals of the incentive ratemaking provisions that apply to street lighting facilities. From 2000 to 2004, the City states that street lighting service was

deplorable and an average of 3,645 facilities were out of service annually. It notes that the Company performed extra work in 2004 and 2005 to eliminate a backlog and in 2006 and 2007 the number of repairs dropped by half.

In response to Con Edison's argument concerning the assignment of stray voltage program costs, New York City continues to object to the direct assignment of any stray voltage program costs to the street lighting service class. In no other instance has the Company made any such direct assignments to any other service classes. New York City believes that all the stray voltage detection program costs (including those incurred for inspections made of street lighting facilities) should be generally allocated to the entire body of customers which was the Company's practice for 2,600 underground structures, 240,000 service boxes, and numerous manholes and vaults that required testing.

We find that the evidence does not demonstrate conclusively that the amount of work performed during 2005 on street lighting facilities is representative of the amount of work that will be performed during the upcoming rate year. New York City has shown that the number of facility points in need of repair went down appreciable after the Company eliminated its backlog.

With respect to the costs that Con Edison has shown for 2005, the cost figure is inflated by amounts the Company has incurred for the stray voltage detection program. Given the nature of this program which applies broadly to the Company's facilities, and whose scope is neither limited to nor exclusively directed towards the street lighting facilities, we find that the direct allocation to the street lighting class is not necessary and such an allocation should not be made solely for purposes of justifying a higher than average percentage increase for the service class. We reject the Company's exception and accept New York City's position.

RATE DESIGN

Customer Charges

The judges recommended against Con Edison's proposal to increase the customer charge for residential customers to $15.21. It is unclear whether the judges intended to recommend that the existing charge at $11.78 be retained or whether it should be increased to $12.20. By examining the Company's 2005 embedded cost of service study, they determined that there was no support for an increase as large as the one the Company proposed.

On exceptions, Con Edison asserts that the judges' recommendation understates the amount of costs that should be recovered through the customer charge. The Company points out that the 2005 cost of service study showed for SC 7 customers costs at $17.37 which supports a greater customer charge for these customers even if it does not do so for SC 1 customers. Con Edison also refutes CPB's claim that it is better to recover additional costs in usage charges to promote conservation and efficiency. According to the Company, efficient pricing would suggest otherwise and there is no evidence that an increase in the customer charges would negatively impact the use of energy.

Addressing the application of customer charges to low-income customers, Con Edison states that about 239,000 customers receive a $5.00 monthly reduction. If the low-income program remains funded at $12.5 million and the customer charge discount is reduced to $4.25, Con Edison states that the program can provide benefits for 245,000 customers. The Company is opposed to Staff's proposal to increase the funding for this program but is quick to point out that an increase in the amount of benefits for these customers must be covered by a commensurate increase in the revenue requirements. As it has done previously, the Company proposes to defer for future disposition any difference between the targeted funding level and the actual discounts provided to customers.

Staff supports no increase in the customer charge for low-income customers. It proposes that the funding for this

program be increased if we determine that the customer charges for other residential customers should be increased. For the customers in SC 1 and in SC 7, Staff proposes that the customer charge be increased to $13.38 which is consistent with the overall percentage rate increase that Staff has supported.

According to Staff, a larger amount of fixed costs should be reflected in the customer charge and the Company's volumetric charges should only be used to recover variable costs. Also, with customer charges at a higher level, less revenue would be subject to reconciliation through the revenue decoupling mechanism and this would reduce the amount that could affect customer bills.

CPB states that the Company's cost of service study only supports a $12.20 customer charge for the SC 1 customers. It is aware that the cost of service study supports a $17.37 customer charge for SC 7 customers but it points out that there are only 16,000 of these customers and 2.6 million SC 1 customers. It states that the established practice has been to apply to the SC 7 customers the same customer charge that applies to the SC 1 customers and not the reverse.

The 2005 embedded cost of service study provided by Con Edison in this case is not the best source of information for purposes of setting the residential customer charges. The Commission typically examines the results of a current, marginal cost study to make this decision; however, the Company did not provide any such results in this case. Nevertheless, it is safe to deduce that any such study would have provided higher cost figures than those presented in the embedded cost of service study presented here. For this reason we will adopt DPS Staff's proposal to use the overall percentage increase found warranted in this case to increase the residential customer charge for all but the low-income customers. We agree with Staff, that the low-income customer charge should remain at the current level and it should not be increased. This action requires, as Con Edison points out, that the revenue requirement amount be increased. Also, as the Company has proposed, the targeted

funding level and the actual results for the current and the upcoming rate year should be reconciled and the difference deferred for future disposition.

BIR Discounts

Consumer Power Advocates proposed that additional Business Incentive Rate (BIR) discounts be provided for non-profit biomedical research facilities. The judges accepted Con Edison's position that an additional allocation was not needed.

On exceptions, Consumer Power Advocates claim that Con Edison presented erroneous arguments and, contrary to the Company's assertions, an additional allocation is needed. It states that the biomedical research portion of the BIR program is fully subscribed. It also states that biomedical sector has been successful in assisting economic development and growth. This party observes that non-profit organizations cannot take advantage of other economic development power programs. It also believes it is desirable to retain matriculated graduate students, and the firms they join, in New York. According to Consumer Power Advocates, there is a need to expand buildings and provide new facilities for this growing sector.

In response, Con Edison states that there is no evidence demonstrating a need for additional BIR discounts for biomedical research facilities. The Company does not believe that the BIR allocations need be increased.

We find that overall the BIR program is not fully subscribed and there remain discounts that should be available for the non-profit biomedical research sector. Accordingly, we see no need to modify the program at this time.

An exception was also filed by ARE-East River Science Park, LLC (ERSP) concerning Con Edison's proposed changes to the tariff provisions for the BIR program. The Company has proposed to reduce the amount of the BIR discount available to electric chillers in buildings that are within 250 feet of a steam main. The tariff revision would encourage the users of such equipment

to attach to the steam system where it is available. The judges recommended that the tariff revisions be implemented.

According to ERSP, the policy and practices used to support the economic viability of the steam system should not apply to economic development programs like the Business Incentive Rate. If the costs to own and operate steam-powered chiller systems are greater than the costs of using electric-powered systems, ERSP believes it is unreasonable to require the BIR program participants to pay the higher costs.

In response, Con Edison states that the proposed tariff revisions are needed to avoid disincentives for customers to use the steam system for cooling purposes. The Company notes that the capital and operating costs for electric chillers are generally less than those for steam chillers.

We find that the proposed tariff revisions are consistent with the long-term plans for the viability of the steam system. As such, we find the proposed tariff revisions to be acceptable. The party's exception is denied.

Monthly Adjustment Clause (MAC)/Market Supply Charge (MSC)

The judges recommended that, with the exception of the proposal regarding inclusion of RGGI costs, "other environmental initiatives" and recovery of unforeseen commodity related charges in the MSC tariff provisions, the Company should be allowed to implement its proposed MAC/MSC changes.[52] They further recommended adoption of the Staff proposal that we order the Company to file a plan, within 60 days, to revise its MSC charge so that it reflects actual day-ahead market prices that were in effect during each customer's billing period, identifying specific issues that will need to be resolved and including a proposed implementation schedule.

[52] The judges were persuaded by the County's concerns regarding the proposed scope of recoverable RGGI and other environmental or "unforeseen costs"; and accordingly found that the categorization of such costs was overly broad and the proposal itself was premature.

The judges found that the Company persuasively rebutted the arguments of RESA, the County and CPA by citing sufficient record evidence demonstrating that the proposed changes will result in rates that better reflect cost causation, consistent with the Hedging Order[53] and the January 23, 2006 "Order Concerning Petitions for Rehearing and Clarification" in Case No. 04-E-0572. The Company, RESA, SCMC, Reliant Energy, Inc., and the County filed exceptions.

The Company argues that the presence of testimony that the RGGI and other environmental costs here at issue will be incurred by the Company to meet the demands of its full service customers, and its claims that the RGGI program will become effective during the rate year (January 1, 2009) and may cause the Company to incur compliance costs as early as June of 2008, support the adoption of its proposal to recover these costs through the MSC. The County responds that the proposal is "too early" and that, even if some portion of such costs are "flowed through", others portions may more appropriately be capitalized or treated as standard O&M costs. In any event, the County urges that such costs should undergo regulatory review to decide whether and to what extent such they should be recovered. We find that the Company has not overcome the concerns regarding the breadth of such costs or their potential for being premature. Thus, if such costs are in fact incurred during the rate year, the Company should petition for approval to begin recovery of such costs.

RESA, SCMC, and Reliant argue that the Company's proposal, if approved, would mask accurate pricing signals, harm the existing and developing retail market in the Con Edison territory, be inconsistent with the "15 x 15 initiative" and conflict with goals of accurate pricing and the encouragement of

[53] Specifically, the April 19, 2007 "Order Requiring Development of Utility-Specific Guidelines for Electric Commodity Supply Portfolios and Instituting a Phase II to Address Longer-Term Issues" (Case No. 06-M-1017, "Hedging Order").

efficient energy usage set forth in the 2005 MHP[54] and Hedging Orders. They also assert that adoption of Con Edison's proposal to shift certain costs from the MAC to MSC conflicts with our policy initiatives supporting the development of competition. In the alternative, Reliant argues that if the proposal is approved, it should be approved on a temporary basis and, after some interval, be reevaluated to determine the effect on the retail market.

The Company responds that RESA, SCMC and Reliant have focused their exception on an allegation that the Company's proposal would adversely impact competitive markets and interfere with the State's 15 x 15 goal, but notes that none of these parties have put forth any evidence to substantiate their speculations nor have they provided a basis for continuing indefinitely a rate design whereby all customers bear certain costs that unequivocally are incurred solely on behalf of full service customers. The Company argues that its proposal as adopted by the RD satisfies RESA's objective of providing customers accurate price signals. It asserts that maintaining the status quo would continue to mask the true cost of providing service to the Company's full service customers. It also observes that, contrary to RESA's assertion, the RD recognized that the Company provided ample evidence that the costs it proposes to recover through the MSC were incurred on behalf of full service customers.

In response to Reliant's request for disclosure of pricing information, the Company asserts that such issues are being addressed in Case 06-M-1017, and thus should not also be considered here (or, if they are considered here, should be rejected).

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[54] Case 03-E-0641, Proceeding on Motion of the Commission Regarding Expedited Implementation of Mandatory Hourly Pricing for Commodity Service, Order Instituting Further Proceedings and Requiring the Filing of Draft Tariffs (issued September 23, 2005) (2005 MHP Order).

The Company argues that Reliant's recommendation that the Company's proposed MAC/MSC changes be placed into effect on a temporary basis should be similarly rejected. It asserts that the relief sought is unclear and reflects a misapplication of Public Service Law §§ 114 and 72. The Company argues that these PSL provisions authorize the Commission to increase or decrease a utility's rates on a temporary basis if rates are deemed not just and reasonable, but are not relevant to a rate design issue in a permanent rate proceeding. The Company adds that (1) no party to this proceeding, including Reliant, raised any issue regarding the Company's right to recover the costs at issue and (2) adoption of its proposal would not result in any change in its revenues or the aggregate amount of costs to be recovered. The Company states that the RD correctly concluded that the Company's proposal is supported by sufficient record evidence and is consistent with Commission policy, and, as such, Reliant's exception should be denied.

Staff also opposes the exceptions of RESA, SCMC, and Reliant Energy, stating that the Company's proposal complies with the Commission's orders in case 06-M-1017 and, therefore, should be adopted.

We note that Reliant's arguments, like those of RESA and SCMC, are premised on the assertion that the costs being moved from MAC to MSC are not incurred solely to benefit full service customers or, as Reliant seems to intimate, are "below market fixed term costs." Neither RESA, SCMC nor Reliant persuasively demonstrated the veracity of their underlying premise. The Company, on the other hand, demonstrated that the costs at issue were incurred on behalf of full service customers. In addition, the proposal complies with our orders in Case 06-M-1017. Accordingly, the exceptions of RESA, SCMC and Reliant are denied. With respect to Reliant's request for pricing information and for approval of the MAC/MSC proposal on a temporary basis, for the reasons argued by the Company, the requests are denied.

The County renews its arguments against the adoption of the Company's proposal to simplify the calculation of MAC estimates by switching to a flat MAC rate per kWh, commencing May 1, 2008. The County claims that since some of the MAC costs are demand-related and some are energy-related, the current recovery mechanism, which reflects that difference, should continue. The County also repeats its claims that the proposed change will have a significant rate burden on the SC1 class. The County suggests that instead of approving the Company proposal, we could require meetings between Con Edison and parties to determine other ways to simplify the MAC calculation.

The Company responds that there is ample Commission precedent for recovering both demand-related and energy costs through an energy-only charge and argues that it is important to note that not all energy-only classes will experience an increase as a result of this change. The Company states that, in terms of customer impacts, the effect of its proposal on typical County and New York City residential customers for the 24-month period ending April 1, 2007 would have been an average bill increase of $0.55 and $0.34 per month, respectively.

The County's exception is denied. The County's arguments regarding the potential for significant rate impacts have been persuasively rebutted by the Company both as to amount and scope. In addition, we note that the proposal will be revenue neutral as to the Company. As a result, we find that the goal of simplifying the MAC calculation prevails and therefore deny the County's exception.

With regard to Staff's recommendation that the Company file a plan to revise its MSC charge as detailed above, we adopt that recommendation and will allow the company 90 days instead of the proposed 60 days to make that filing. Given the technical nature of this change, the additional time will allow the company to consider all the implications and to include a detailed implementation plan with the filing.

RETAIL ACCESS

New Customers

Retail Energy Supply Association (RESA) proposed that Con Edison expand its ESCO referral program to include customers who contact the Company for new service. The judges recommended that the Company fully evaluate RESA's proposal and report whether it is feasible to provide new customer referrals to ESCOs.

In its brief on exceptions, Con Edison states that if the Commission adopts the judges' recommendation the Company should be provided not less than six months to submit its report. The Company would also address its cost recovery for any expansion of the ESCO referral program in the report it provides.

As long as the Company's evaluation comports with an outstanding and applicable Commission order, Staff states that it does not except to the judges' recommendation. Staff notes that in an order issued on April 27, 2007 in Case 07-M-0458, the Commission determined that it may be appropriate to review ESCO referral programs to determine their effectiveness in removing barriers, to examine the costs of such initiatives and the extent to which the costs are borne by ratepayers.

We accept the judges' recommendation and the Company's proposal to submit a report. In its report, the Company should address how the HEFPA regulations will be met. Specifically, it should address Section 11.3 (4) which states that a distribution utility is obligated to provide service to any applicant who meets the requirements within five business days. The Company should demonstrate how RESA's proposal would not present an impediment to the timely provision of service as required by law. We expect the Company to provide its report in 60 days.

Customer Information for ESCOs

RESA proposed that Con Edison examine with interested parties ESCO access to customer lists, consumption information, and other data that could be used to develop tailored products

for specific customer needs. The judges recommended the use of a collaborative process to address this matter.

On exceptions, Con Edison states that the uniform retail access business practices that the Commission has fostered establish the customer-specific information that must be provided to ESCOs and customer privacy protections. It therefore believes there is no need for a Con Edison-specific collaborative process to pursue any such matters.

DPS Staff agrees with Con Edison and states that the uniform business practices provide a standard approach to the procedures that are used by New York utility companies in their dealings with ESCOs. Staff does not believe that any of the uniform business practices should be modified or discontinued without following the process that was used to adopt them. Staff states that consideration should be given to customer privacy and the protection of their information.

In response, RESA claims that a collaborative process should consider how to enhance competitive choice in Con Edison's service area. It is aware of the need to protect customer privacy and of the requirements continued in the uniform business practices. In its view, a collaborative process could explore the additional access that can be provided to ESCOs without violating any privacy rights and remain consistent with the uniform business practices. It states that the ESCOs want to develop a wider variety of products for consumers and to provide them additional benefits and choices. It believes this subject should be examined by the parties in a non-litigious environment to see if revisions to existing corporate policies and practices can be made. In its view, there would be no infringement of customer privacy rights or the provisions of the uniform business practices by conducting a collaborative.

RESA is not opposed to Staff's proposal that proper notice of in the collaborative be provided to the parties who participated in the development of the uniform business practices. It disagrees with the Company's assertion that there

are no Con Edison specific issues to warrant a collaborative process. RESA points to the Commission having recently directed a collaborative for KeySpan, and believes that it would be useful to consider Con Edison's service territory as well.

In Case 98-M-1343, the Commission addressed a similar matter raised by a petition filed by Accent Energy LLC. The Commission found insufficient reason to allow ESCOs direct access to customers' distribution utility account numbers. Instead, customers have had real-time remote access to their account numbers and their protection was maintained by ensuring that this access was secure. As a pre-condition to the release of the customer account number, the requestor would have to provide the non-public information known only by the customer.

This issue can continue to be considered in the review of the plans that were filed in Case 98-M-1343, as well as our review of uniform business practices in that case. We are not establishing the collaborative that RESA requested.

Customer Information for Non-ESCOs

Consumer Power Advocates (CPA) has stated that it is difficult for some electric customers to take advantage of competitive opportunities without adequate access to their account information. It proposed that customers, and their consultants, have the same access to the information that is provided to ESCOs. The judges recommended that Con Edison demonstrate that it is providing its customers and their representatives a fair opportunity to make informed decisions concerning the supply offers they receive from ESCOs.

On exceptions, Con Edison states that it provides customers and their consultants information that is available to ESCOs in the Retail Access Information System (RAIS). The company has offered a spreadsheet showing the information it has provided to the customers represented by CPA since August 2006. According to it, this demonstrates that the customers and their authorized representatives have been given an equivalent opportunity to obtain the same information that ESCOs obtain

through the RAIS. Further, Con Edison states that it is willing to develop for interested customers and their consultants access equivalent to the RAIS access for ESCOs. When such access becomes available, the customers and consultants will be able to view and download account-specific information one account at a time. This will reduce the manual labor that is currently needed to prepare the spreadsheets that contain the customer information.

In response, CPA states that Con Edison has not adequately demonstrated that it is providing customers and their authorized representatives a fair opportunity to make informed decisions about the supply offers they receive from ESCOs. CPA reiterates that an interested customer must request information in advance and the information is provided on an account-by-account basis that requires a long and laborious collation. Since this information is provided to ESCOs on a complete and continuous basis, CPA believes that it should also be shared with the customers in the same manner. It urges us to direct the Company to provide customer access to RAIS without delay.

We find that Con Edison should provide interested customers, and their authorized representatives, the means for obtaining access equivalent to that which the RAIS provides to ESCOs. Con Edison should provide to Staff and interested parties an implementation plan and timetable for achieving equivalent access for non-ESCOs. It should do so in 45 days.

DEMAND SIDE MANAGEMENT (DSM)/ENERGY EFFICIENCY

In Case 07-M-0548, Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard ("EEPS"), the Commission established a goal of reducing electricity usage 15% from expected levels by 2015. The Commission identified the rationale for the EEPS goal as "to reduce consumer bills, mitigate increasingly volatile fuel prices, prevent stress on the State's delivery system and reduce fossil fuel-related emissions …."

The Company has proposed a program to achieve 500 MW of permanent energy efficiency reductions by 2016. The program target date and the reduction goal reflect the NYISO 2007 Reliability Needs Assessment, in which the NYISO determined there was need for 1,000 MW in new capacity in the downstate area by 2016. The Company's proposal consists of a targeted initiative focused on load relief in certain T&D load areas, where the proposed levels of DSM reductions would result in deferral of Company planned load relief projects (approximately 150 MW) and programs designed to reduce demand throughout the Company's service territory (approximately 350 MW). Although the goals of the program would be expressed in demand, all measures to implement the program would achieve permanent energy efficiency reductions.

Under the 2005-2008 Rate Plan, Con Edison administers a targeted program to achieve 150 MW of permanent energy efficiency reductions, targeted to load areas to provide deferral of necessary load relief projects. Under the rate plan, NYSERDA also administers a 150 MW system-wide demand reduction program. The budget for each program was established at $112 million, not including administration and evaluation fees. For the targeted program, additional expenditures are allowed up to the present value of construction revenue requirement reductions achieved by the deferral of planned T&D investments. At the conclusion of the rate plan, any funds collected by NYSERDA for the system-wide program that have not been committed will be returned to the Company.

Con Edison's costs under its targeted program have been approximately $1,000/kW, which represents the outer limit authorized by the Commission and includes an allowance for deferred construction costs. Con Edison explains that this price is influenced by the fact the targeted program has geographic limits because it must target specific load areas.

The RD adopted Staff's recommendation that the Commission not authorize any new efficiency programs pending a determination in the EEPS proceeding of the optimal role to be

played by utilities in delivering energy efficiency services. The RD noted that the Company had proposed a six-month ramp-up period for the initiation of any new programs, and stated that it would be counterproductive for the Company to expend the resources to ramp up new programs while there is a possibility that a generic decision in the EEPS proceeding might determine a different role for the Company. The RD also found that the Company's proposals lack sufficient detail, and that a collaborative would be needed to develop detailed programs.

The RD found that the target for a new Con Edison program would be difficult to enumerate outside the context of an EEPS decision, in which the participation of other providers toward meeting the 15 x 15 goal would be determined. The RD also found that the Company's proposed 500 MW target would not, in itself, meet the 15 x 15 goal and would not fully address the Company's demand-driven construction needs.

The Company suggested in its Reply Brief that, short of implementing new programs, it is important for the Company to begin the market research component of its proposal. The RD found that market research is a priority, but that the Company could undertake market research with existing funds, under the assumption that market research could result in higher incentive payments.

As an interim measure, to maintain continuity until the EEPS proceeding produces a long term program, the RD recommended that Con Edison's Targeted Program be continued on its existing terms, with the Company authorized to contract for up to 30 MW in the rate year. The RD further recommended that NYSERDA's System-wide program be continued for the same reason.

For purposes of the interim program, the RD proposed that Con Edison continue to receive the $22,500/MW incentive that it receives under the 2005-2008 Rate Plan, without establishing a precedent for incentive policies to be developed in the EEPS proceeding. The RD did not specify whether this incentive should apply only to the Targeted Program or, as

provided in the 2005-2008 Rate Plan, to the System-wide program, SBC programs, and NYISO demand response programs.

Parties' Positions on Exceptions

New Programs

Con Edison argues that the RD errs in not authorizing it to proceed with its proposed 500 MW Energy Efficiency Program. Con Edison is joined by the New York City Government Customers and by NRDC/Pace in arguing that targets should be established and programs authorized in this proceeding. NYC notes that the City has already committed to invest 10% of its energy bill, or $80 million in the fiscal year, to fund energy efficiency initiatives and that nowhere in the State is the need for increased energy efficiency more pronounced than in New York City. NYC further notes the January 24, 2008 Ruling in the EEPS proceeding declining to pursue a "fast track." NYC argues that the Commission should take action in this proceeding to avoid a delay in implementation of new DSM programs that could extend well into 2009. NYC states that Con Edison could expand its DSM initiatives and begin implementation no later than the summer of 2008.

NRDC/Pace observes that, while the EEPS proceeding will address certain generic policy issues, those matters could be decided in the case at hand, and there is ample evidence in the record to do so. NRDC/Pace argues that Con Edison should be assigned a 15% reduction target, consistent with the EEPS proceeding. NRDC/Pace opposes the suggestion that program size could be based on the extent of the Company's demand-driven construction needs. NRDC/Pace also notes that the issue of performance incentives has been more thoroughly examined in this proceeding than it has in the EEPS proceeding and is ripe for determination here.

Finally, the Company argues that at a minimum it should be allowed to begin to study market potential. The Company objects to the denial of $2 million in labor costs necessary to begin ramping up, which would include funds for

employees to conduct market studies. The Company opposes the RD's rationale that it could initiate its own market research work which would likely pay for itself in the form of performance incentives. The Company notes that the Commission has authorized customer funding for a DSM Market Study Program for Orange and Rockland Utilities. The Company proposes that, if the Commission is reluctant to authorize the full increased labor expense, then it should at a minimum authorize a customer-funded study between $500,000 and $750,000, which could be used by the appropriate program administrator.

NYC and NRDC/Pace argue that the Company should be allocated a target based on its share of the goal. The Company responds that these parties do not take into account the potential contributions of other factors including building codes and appliance standards.

NYECC responds that Con Edison's request on Exceptions for market study funding does not identify an error in the RD and is not supported in the record.

Staff responds that it is troubling that the Company proposed specific budgets and program goals without identifying programs. Staff disagrees with the Company's alternative proposal to begin spending on marketing studies, arguing that they are not always essential and that some programs, e.g., the "fast track" proposals of the EEPS, are able to proceed without market studies.

Staff responds to NRDC/Pace by arguing that its position would undermine the progress of the EEPS proceeding which will determine policy on a statewide basis. Staff also argues that a collaborative process, if formed, should result in a proposal for the Commission's approval rather than authorizing the Company to unilaterally select programs.

Joint Supporters observe that a collaborative structure of stakeholders already exists and can be readily mobilized to assist in setting priorities for an interim program.

Interim Programs

Staff concurs with the rationale for continuing the existing programs on an interim basis, with three provisos. First, Staff notes that the current rate plan allows for lost revenue recovery by the Company. Because an RDM will be in place, the Company should not be eligible for recovery of lost revenues. The Company agrees, but argues that for the same reason it should not be required to institute a revenue decoupling mechanism unless new DSM programs are authorized.

Staff also urges that the Company be required to conduct an independent evaluation to measure program effectiveness. Staff argues that an independent program evaluation is essential because as the RD noted, simply meeting targets does not imply that the program cannot be made more cost-effective. Staff notes that independent program evaluation is a requirement for most major energy efficiency programs. Staff notes that Con Edison has not administered a major energy efficiency program portfolio in more than ten years and that its references to its former program are irrelevant to its present capability to conduct programs.

NYSERDA and NYECC agree with Staff that the Company should be required to provide measurement and verification data on the targeted program. The Company states that it does not object to independent valuation prospectively if it does not delay progress in establishing a program.

NYECC argues that there is no clear rational basis for recommending 30 MW of efficiency measures in the rate year, because Con Edison’s revised request for continuation of its targeted program over an eight-year period estimated zero megawatts of installed reductions during the first year. The Company responds that installations in the first year are irrelevant to a program targeted to load relief, so long as installation schedules conform to the scheduled need for load relief.

Staff urges that the Company and NYSERDA be required to consult with Staff to develop the terms of interim programs.

The Company responds that it has met with Staff continually and there has been no showing that these meetings are inadequate.

Joint supporters urge that the Targeted Program be modified to include demand response and more effective deployment of distributed generation. The Company responds that the Targeted Program utilizes energy efficiency measures to establish permanent load relief that does not rely on intervention to reduce demand.

Staff supports continuation of the NYSERDA program, noting that it has exceeded its target at below-budget costs. Staff states that it is open to meeting with the Company and NYSERDA to consider updating the terms of the program.

Staff notes that an extension of the NYSERDA system-wide program needs to clarify whether the extension is up to the original target of 150 MW, or up to the budget allowance of $112 million. The Company also notes that the program should not be extended for two years where the RD's recommendations are applicable for the most part to the rate year only.

The Company objects to any extension of NYSERDA's system-wide program, arguing that it has resulted in demand response, not permanent energy efficiency.[55] NYSERDA responds that the record demonstrates 55% of the MW reduction achieved through its program are either energy efficiency or distributed generation, both of which are permanent measures. The Company also argues that the Con Edison territory has not received a fair share of SBC funding. Staff agrees with the RD that this rate case is not the proper venue for considering the issue of SBC allocations.

Regarding the System-wide program, Joint Supporters support its continuation but urge that it be modified to enable smaller systems to participate.

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[55] The Company also claims that NYSERDA's programs cost Con Edison's customers more than Con Edison's programs when the same amount of money is spent, because NYSERDA requires pre-payment for its programs. Con Edison's example of programs of equivalent cost is hypothetical.

NYC opposes the continuation of interim programs in lieu of immediate measures to establish new programs. NYC proposes that an immediate collaborative effort be ordered to produce a program proposal within 60 days. The Company does not oppose this proposal on condition that the collaborative be merely advisory and have no decision-making power.

Incentives

The Company urges the Commission to adopt, in this proceeding, the principle that utility DSM incentives should be at least as profitable as supply-side investments. The Company also argues that the proposed interim $22,500/MW incentive would be plainly inadequate as a permanent incentive, and even on an interim basis should be adjusted for inflation.

Staff urges the elimination of the $22,500/MW incentive and states that even if it were applied to the targeted program, it should no longer apply to the NYSERDA System-Wide SBC 3 Program and NYISO Demand Reduction Programs. The Company notes this is an interim measure, lasting at most one year, and that there has been no demonstration of a need to change the incentive during its expected short remaining life.

NYECC excepts from the recommendation to allow the continuation of the $22,500/MW incentive, arguing that no incentives should be awarded for demand side management programs. NYECC argues that there is no inherent entitlement to incentives; that Con Edison did not request an incentive in the previous electric rate case; that a revenue-decoupling mechanism eliminates a need for an incentive; and that in no event should an incentive be granted for attainment of any goal that is less than superior in achievement.

NRDC/Pace urges the adoption of an incentive mechanism based on the structure recently adopted by the California Public Utilities Commission, which authorizes an incentive of 9% of net benefits upon achievement of 85% of the base energy savings goal, increased to 12% if the Company meets or exceeds its goal.

The CPUC model also provides for negative adjustments if the Company fails to meet a specified percentage of its target.

NYC states that an appropriate incentive payment can be included in the design of new programs within the 60-day period that it recommends.

The Company argues that negative incentives are unnecessary and unjustified. The Company analogizes to incentives for promoting retail access, which were not accompanied by negative adjustments. The Company argues that promoting efficiency is not a duty under the Public Service Law and that in no event should the Company be held responsible for voluntary decisions of customers.

Staff argues that the development of Con Edison's incentive proposal was not based on an economic analysis of its return on supply side investment. Staff notes that under the California incentive system, a utility would have to achieve 125% of its target to receive incentives amounting to 20% of program budget, and that the California mechanism also includes negative adjustments. Staff also argues that the parallels drawn by the Company between incentives for property tax refunds and for DSM programs ignore the testimony of the Company that it has reasons for pursuing DSM independent of financial incentives.

Other DSM Issues

NYC urges the Commission to adopt its proposal to create a DSM coordination board that would apply the expertise of its members to optimize the results of Con Edison's DSM Program. NYC claims that without proper coordination, money will be wasted and the achievement of targeted goals may suffer.

Joint Supporters argue that the Board proposed by NYC would not provide adequate stakeholder participation. Staff continues to maintain that a Board has the potential to delay planning and implementation and should not be adopted outside the context of the EEPS proceeding.

The RD did not recommend that the City's proposal be adopted, but recommended that it be considered in the context of the EEPS or in a subsequent proceeding. The RD noted that Con Edison is unique in having most of its territory represented by a single municipal entity that has committed substantial financial resources to energy efficiency.

NYC also urges the Commission to adopt two proposals: (1) that Con Edison reduce contributions in aid of construction that it charges to customers if they fully participate in DSM programs for new construction; and (2) that Con Edison amend its BIR tariff to require customer participation in applicable energy efficiency programs as a condition to receiving the BIR discount. Although the RD found that the proposals had merit but lacked specificity, NYC argues there is sufficient evidence to support a Commission order requiring Con Edison to develop draft tariffs so that other parties could comment, or for the Commission to require a small collaborative to develop the details of these proposals.

The Company responds that customers implementing DSM will reduce the need for CIAC and there is no justification for further reductions. Regarding the BIR proposal, the Company states that it is willing to discuss the proposal with NYC but there is no need for the Commission to order such a meeting.

Con Edison states that the RD errs by failing to specify the form that a collaborative would take if, as it recommends, a collaborative becomes necessary due to delay of a final determination in the EEPS proceeding. Con Edison urges that the Commission should specify the collaborative model approved in the Con Edison gas rate proceeding for developing an efficiency program for the last two years of the gas rate plan. This is a collaborative model that requires consultation but does not prevent the Company from moving forward with programs in the absence of a consensus.

Discussion

We agree with the RD that policy decisions regarding energy efficiency programs should be made in the EEPS proceeding. No new programs will be authorized at this time. In the context of the continuation of the targeted program, as discussed below, new measures may be adopted in consultation with interested parties and Staff.

Taking notice of developments in the EEPS proceeding, our assessment is that it is likely the proceeding will result in substantial utility involvement in delivering efficiency programs. In anticipation of further decisions to be made in the EEPS proceeding, we will authorize funds for hiring personnel, program development and market research. Because a lead time is needed to develop staffing and programs, it is reasonable to authorize the company to begin these activities now, without predetermining the outcome of the EEPS proceeding. The Company's proposal for $2 million will be adopted, provided that the costs will be recovered through the MAC. A minimum of $250,000 of that sum will be spent on market research, in coordination with Staff and interested parties, and the results of that research will not be deemed proprietary. The Company will submit to Department Staff within 30 days of this order its plan regarding the expenditure of the $2 million. In the event that an order is issued in the EEPS proceeding that is not consistent with the efforts authorized here, any uncommitted funds will be credited to customers.

The RD found that the Company is meeting its targets within the budget established by the Commission, and that while the program could potentially achieve more cost-effective results, continuation of the program is justified by the need to maintain continuity pending a determination in the EEPS proceeding.

We concur with the RD and accept the recommendation that the Company be authorized to contract during the rate year for up to 30 MW of targeted energy efficiency measures, subject to the funding limits and other terms established under the

2005-2008 Rate Plan. The Company will consult with interested parties and will present an implementation plan for Staff review and comment.

In light of our determination establishing a revenue decoupling mechanism, no lost revenue recovery mechanism will be applied to the Company's Targeted Program or to any other efficiency programs.

We also agree with Staff that an independent evaluation of the Targeted Program must be performed in order to assess that general effectiveness of the Company's program as well as the effectiveness of targeted programs versus system-wide programs. The evaluation should be performed by an outside contractor selected through a competitive process in consultation with the parties to the collaborative formed under the 2005-2008 Rate Plan. Staff will review the RFP, the contractor selection process, and important draft work products. The results of the evaluation should be submitted to the Commission within eight months of this order. Funding for this evaluation should be recovered through the Company's MAC.

The results of the evaluation shall be available to the public. The evaluation shall include: (a) evaluation of program design, delivery, and implementation including opportunities for program improvement; (b) quantification of energy and demand savings and other potential impacts such as environmental benefits; and (c) a net to gross analysis.

Regarding incentives, the Company has noted the probable short duration of the interim Targeted Program. The rationale of providing program continuity on an interim basis does not support the extension of any incentives at this time. This decision should not be interpreted as a precedent with respect to any consideration of incentives in the context of the EEPS proceeding.

NYSERDA's administration of the system-wide program under the 2005-2008 Rate Plan has been consistent with the intent of the program, including the proportion of permanent efficiency represented by energy efficiency and distributed

generation programs. NYSERDA has exceeded the program target at a cost below the amount of funds that Con Edison's customers have provided through the MAC. Using the funds already provided to NYSERDA under the 2005-2008 Rate Plan, the system-wide program administered by NYSERDA should be extended for the duration of the rate year, under the terms established in that plan. The extension of the system-wide program will not be limited to any specific MW level, but will be limited to the spending rate experienced under the 2005-2008 Rate Plan; NYSERDA may commit up to $5 million per quarter, as well as administration and evaluation costs. Prior to commitment of funds, NYSERDA will also consult with Staff and the collaborative to update its system-wide implementation plan.

Under the terms of the system-wide program, NYSERDA is required to return all unencumbered funds plus interest to Con Edison. The contract will be amended - or a new contract will be executed - to allow NYSERDA to continue the system-wide program under the terms described above, for no longer than the rate year. All other unencumbered funds will be returned to Con Edison as originally scheduled under the existing agreement, and any unencumbered funds that may be held by NYSERDA if the continuation of the system-wide program is preempted by a decision in the EEPS proceeding will be returned to Con Edison.

Such funds returned to Con Edison will be reserved, with interest, and dedicated toward funding of EEPS programs implemented by program administrators authorized by the Commission in a future order in the EEPS proceeding. The Company is also ordered to add to this reserve by continuing to collect, through the MAC, funds that were formerly dedicated to the system-wide program, at a monthly rate of collection equal to that which was utilized for the last six months to fund the system-wide program. Such funds will also be reserved and dedicated toward funding of EEPS programs pursuant to a future order of the Commission in that proceeding.

The extensions of the Targeted Program and the System-Wide program are both subject to revision or revocation pending

a determination in the EEPS proceeding that may be inconsistent with the continuation of either program, provided that any contracts previously entered into shall be honored.

Regarding the proposal of NYC to establish a separate DSM coordinating board, the issue of how efficiency programs will be structured among interested parties should be determined in the EEPS proceeding. NYC's proposal to reduce Contributions in Aid of Construction will not be adopted at this time, due to the potential impacts on ratepayers. NYC's proposal to require participation in efficiency programs from recipients of economic development power discounts is an issue that should be considered in the context of the EEPS proceeding.

RELIABILITY PERFORMANCE MECHANISMS

The 2005-2008 Rate Order established a reliability performance mechanism (RPM) for Con Edison.[56] The RPM consisted of seven performance metrics to encourage the Company to provide reliable service both generally, and with respect to several parameters of special importance. Four special metrics applied to the repair of poles, removal of shunts installed as temporary repairs, renewal of service to street lights and traffic signals, and the replacement of circuit breakers with high fault-current levels (over-duty breakers). General metrics measure system-wide frequency of outages and duration of outages, as well as major outages. Exclusions are provided for incidents beyond the Company's control such as major storms or other catastrophic events.

Staff proposed: 1) that the RPM continue into the rate year; 2) that adjustments under the system-wide duration index

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[56] Case 04-E-0572, Consolidated Edison of New York, Inc. – Electric Rates, Order Adopting Three-Year Rate Plan, issued March 24, 2005 (the 2005-08 Rate Plan). The Commission expressed a strong preference for performance-based ratemaking in Case 94-E-0952, In the Matter of Competitive Opportunities Regarding Electric Service, Opinion and Order Adopting Principles to Guide the Transition to Competition, June 7, 1995, at 8 (Opinion 95-7).

be increased from $4 million to $5 million to bring it to par with the frequency index; 3) that two new performance measures be established; and 4) that the amount at risk in the street light and traffic signal category be increased from $1 million to $1.5 million. Staff proposed that the metrics be placed in effect as of January 1, 2008.

The frequency index, or System Average Interruption Frequency Index (SAIFI) and the duration index, the Customer Average Interruption Duration Index (CAIDI) are divided into separate standards for network and radial distribution systems. The maximum annual exposure for the Company is $5 million for each of the two SAIFI targets and $4 million for each of the two CAIDI targets, with a total amount of $18 million at risk per year. Staff's proposal to increase the CAIDI adjustments would increase the total risk to $20 million per year. The RD recommended that Staff's proposal should be accepted.

The first new metric proposed by Staff relates to the Company's remote monitoring system for individual network transformers. Staff initially proposed that the Company should have 95% of its remote monitoring system units reporting properly in each network by January 1, 2008. If this was not achieved, the Company would incur a revenue adjustment of $5 million/network. After January 31, 2008, failure to achieve the target level would result in a revenue adjustment of $10 million/network with unlimited annual exposure.

The second new metric proposed by Staff would hold the Company accountable for restoration times for all outage events. Restoration targets would be established based on the emergency level created by the outage for overhead systems, and new thresholds would be developed for underground systems. Failure to meet those targets would result in a $5 million revenue adjustment per event, with unlimited annual exposure.

General RPM Issues

The Company objects to the continuation of the reliability performance mechanism. The Company claims that

performance adjustments are unnecessary and create unintended harmful economic incentives to investors. The Company states that positive incentive regulation, offering the Company a reward for exceeding historical overall service levels, would be more effective. The Company also argues that performance adjustments are "penalties" beyond the Commission's statutory authority under PSL §25. Staff responds that there must be clearly defined consequences for failing to provide adequate service. Staff observes that it is disingenuous for the Company to seek incentives when it has testified that its statutory obligations are sufficient to ensure reliability and quality service.

The Company confuses the Commission's authority to impose performance-related adjustments on utility rates with the penalty provisions of PSL Section 25. PSL Section 25 pertains to the failure to obey a statutory directive or an order or regulation of the Commission. These statutory penalties are independent of our authority to mandate the provision of safe and adequate service at just and reasonable rates. Built-in performance-related adjustments, such as those we adopt here, allow the Company to earn its fair return by meeting its obligation to provide safe and reliable service through the designated service and reliability metrics.

The Commission has authority to reduce rates of return to reflect poor service quality and to index portions of the Company's return for the rate year to achievement of key measures of safety and service quality, as part of the process of establishing just and reasonable rates. Moreover, the Commission has on many occasions approved provisions specifying performance adjustments in the context of approving multi-year rate plans, and these adjustments have been made, when necessary. Indeed, in November 2007, we directed Con Edison, according to its current rate plan, to defer $18 million for ratepayer benefit because the Company failed to meet the four system-wide reliability targets. In this context, the continuation and further adjustment of these performance

mechanisms which operate when Con Edison's service falls below the metrics we define in this order, provides continuing and consistent incentive for Con Edison to ensure safe and adequate electric service. We find that the reliability performance mechanisms approved in this order are an essential component of just and reasonable rates for the Company.

In implementing the mechanisms, we will continue to utilize the procedure developed under the last rate plan. The Company will submit an annual compliance report. The report will be published for comment pursuant to the State Administrative Procedure Act, after which Department Staff will recommend to the Commission the form and amount of any adjustment that may be indicated. The Commission will base its action on the report, any comments received, and Staff's recommendation.

SAIFI and CAIDI Target Levels

Con Edison argued that existing SAIFI and CAIDI standards must be adjusted to take into account the Company's recent implementation of a new outage management system called "System Trouble Analysis and Response" (STAR). According to the Company, STAR will detect more outages than its previous management system, resulting in a greater risk of exceeding thresholds mainly because the Company has gained better information.

The RD found that the Company has demonstrated that its enhanced outage reporting system is likely to result in higher reporting of outage frequency and duration, but that Staff had raised doubt regarding the degree to which increased outage reports would occur due to STAR. The RD recommended that the existing targets should remain in place pending development of new targets.

The RD also agreed with the Company that a standard based on a historical average should either reflect a standard deviation in setting the threshold levels, or allow for a deviation in the application of the standard. The RD found that

the Company has not demonstrated that its proposed two-standard-deviation deadband is the optimal alternative.

The RD further recommended that the adjustment amounts of the mechanism should be reevaluated. The RD noted that the significance of $5 million has diminished, relative to the Company's total revenues and relative to the size of the Company's infrastructure program.

Staff objects to the RD finding regarding the need to revise the target levels. Staff argues that, while STAR is an improvement, it is still prone to error. Staff notes that a review of the Company's past performance for the years 2001-2006 has found that performance has fluctuated regardless of the operating area examined or the date when STAR was fully installed. Staff also claims that the target levels already provide the Company with an adequate level of deviation.[57]

Staff further proposes a doubling of the revenue adjustment to $10 million for each target.

The Company objects to the RD's recommendation that existing targets remain in place until Staff proposes revised targets. The Company cites Case 00-E-1273, Central Hudson Electric Rates, Order Staying Reliability Targets and Rate Adjustments, Sept. 29, 2003 where the Commission ordered reliability targets to be reevaluated upon installation of a new Outage Management System.

Con Edison objects to the RD recommendation that the adjustment levels for SAIFI and CAIDI should be increased. According to the Company, the recommendation rests solely on an unsupported claim that the Company is unmotivated by the existing level of penalties to provide adequate service. The Company notes that its current exposure under all existing performance mechanisms would be $95 million or 89.2 basis points. The Company argues that the amount of exposure cannot

[57] The Company correctly objects that Staff's information provided on Exceptions was untimely and unfounded in the record. The information provided on Exceptions is not used to support the finding in this decision.

rationally be increased based on an increase of the Company's gross revenues or on the size of its infrastructure program because any reduction in equity return makes equity investments in the infrastructure program less attractive to investors.

The RD has correctly identified the policy that an improved outage management system may necessitate the reevaluation of reliability targets, if it is shown that the improved system results in indication of declining service that is caused by improved data collection rather than an actual decline in performance. The demonstration must be clear, however, in order to avoid the undesirable result of actual deterioration of service being confused with better reporting.

In the instant proceeding, the Company has not clearly demonstrated an increase in outage reporting caused by improved data collection, to the extent necessary to warrant a revision of the targets. Questions remain regarding the efficacy of modeling versus use of actual data, the efficacy of STAR in network systems as opposed to radial systems, and the extent to which deviations from historical norms should be incorporated into the existing targets. We concur with the RD that existing targets should be maintained, pending further development of facts regarding the efficacy of STAR and a potential revision of the targets in a future proceeding.

The Company is incorrect in arguing that the size of adjustment levels should not be evaluated in light of changes in the Company's revenues and construction program. The Company's overall spending and revenues are directly relevant to the effectiveness of potential adjustments. An adjustment level that was merely nominal would provide the Company with no incentive to achieve performance standards, and a disproportionately large adjustment level would risk encouraging uneconomic behavior. Staff's specific proposal to increase the

adjustment levels will not be considered at this time, but may be considered in a future proceeding.[58]

Major Outage Mechanism

Staff's proposed RPM includes a continuation of the major outage mechanism which provides for a $10 million negative incentive adjustment for each network shutdown event of three hours or more in duration or radial system interruption event in which 70,000 customers are interrupted for three hours or more. The RD recommended that the mechanism be continued, but that the definition of "major outage" should be reevaluated in light of the fact that neither the Long Island City outage nor the Westchester outages of 2006 met the definition.

The Company objects to the renewal of the major outage performance mechanism, claiming that Staff provided no evidence to support the extension and that metrics linked to one-time events are irrelevant to long-term reliability trends. The fact that the Long Island City outage did not meet the definition of "major outage" is deemed irrelevant by the Company, which observes that it suffered adjustments under the SAIFI and CAIDI mechanisms as a result of the outage. The Company also objects that the major outage metric serves unrealistic expectations that significant outage events can be entirely eliminated. Con Edison states that unlike the special metrics, the major outage metric does not directly encourage any positive actions on the part of the Company.

Staff responds that the Company should be accountable for major outages that are within its control and should have an incentive to prevent these outages.

We find that a major outage performance mechanism is not only relevant to reliability but is of critical importance.

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[58] On February 22, 2008 the Company submitted a letter requesting that the portion of Staff's Brief Opposing Exceptions related to the proposal to increase these adjustment levels should be disregarded. In light of our determination not to consider the specific proposal at this time, the Company's request is moot.

The Company's planning and operations must take into account system-side duration and frequency trends, but also must address the risk of localized major outages and their potentially severe impact on affected customers. A major outage performance mechanism will not, as the Company argues, simply reflect an occasional unfortunate happenstance; it will induce the Company to plan and to implement efficient and effective system improvements under this rate order so as to avoid such events.

In light of the impact on customers of the 2006 Long Island City outage, as detailed in the proceedings pursuant to Case 06-E-0894, it is apparent that the definition of "major outage" should be reevaluated.

Staff offers a proposal for a revised definition of major outage. Staff recommends modifying the threshold for a major outage event on network systems to be the interruption of service to 10% or more of the customers in any network for a period of three hours or more. Staff explains that a 10% threshold would have captured not only the Long Island City network outage, but also the initial network outages in the Washington Heights network in 1999, where 15,000 customers lost service before there was a complete network shutdown. Staff argues that this would address any concern of the Company that the major outage metric would discourage it from shutting down a network even when system needs call for it.

Staff explains that, for Con Edison's network systems, it is necessary to use a percentage rather than a specific number threshold because the networks vary considerably in the number of customers served. Networks with relatively few customers serve mostly large commercial buildings; an outage of 10% is significant regardless whether the network serves a small or a large number of customers.

Staff does not recommend modifying the definition of major outage as it applies to the radial system. Staff explains that the Westchester outages of 2006 were caused by major storm activity, which according to Staff supports the need for a restoration metric but not a redefinition of major outage.

The Company objects to Staff's proposal as untimely and unexamined. The Company is correct insofar as a proposal put forward on Exceptions should not be considered if there is no independent basis for it in the record of the case and there has been no discussion of the issue in hearings or on briefs to the ALJs.

In a continuation of this proceeding, we will publish for comment the Staff proposal for a revised definition of "major outage," and Staff will promptly submit a report and recommendation to the Commission upon completion of the public comment period. The Commission will consider further action at that time.

Remote Monitoring System (RMS)

Con Edison's Remote Monitoring System (RMS) provides near real-time information to operators as to the status of network transformers. This information is critical during major outage events. RMS can provide readings on voltage, oil temperature, oil level, and tank pressure. Components of RMS include transmitters, pickup coils, and receivers. The importance of RMS is highlighted by the numerous specifications and procedures of Con Edison that reference RMS or data derived from RMS.

Because Staff has found that RMS failure contributed to the severity of the outages at Long Island City and Washington Heights, Staff recommended a new performance mechanism designed to encourage RMS readiness. Staff's initial proposal was that the Company should have 95% of its remote monitoring system units reporting properly in each network by January 1, 2008. If this is not achieved, the Company would incur a revenue adjustment of $5 million/network. After January 31, 2008, failure to achieve the target level would result in a revenue adjustment of $10 million/network with unlimited annual exposure. Staff did not propose a specific measurement interval.

The Company argued that Staff's proposed RMS performance mechanism was both unnecessary and unreasonably aggressive. The Company's goal for RMS reporting is to maintain 95% availability on a regional basis, with no network at less than 90% availability. The Company first achieved this goal in all three regions in April 2007. The Company claimed that Staff's proposed target of 95% availability in every one of the Company's 60 networks was not realistic, given the Company's sustained efforts to maintain these levels that have been unsuccessful due to inadequate equipment. The Company described in detail its history of dealing with vendors whose transmitters did not perform as promised, and its attempts to develop improved equipment on its own initiative. Approximately 21,500 first and second generation RMS transmitters remain in the field. The current failure rate for these transmitters is 6% per year, and the Company is engaged in a 10-year, $125 million program to upgrade these transmitters to third generation units.

The RD agreed with Staff that an RMS performance mechanism was warranted, but agreed with the Company that a 95% reporting threshold for each network as of January 1, 2008 was not reasonable. According to the RD, the fact that Con Edison was able to improve its performance in the Long Island City network did not demonstrate that it could readily do so throughout its system. The RD also found that Staff's proposed adjustment levels were excessive, in the absence of a system wide cap on exposure.

The Company objects to the recommendation that a performance mechanism for monitoring systems is warranted. The Company argues that it has attained a high level of RMS performance despite the technological obstacles that it has faced, and that by the end of December 2007, only 16 of 60 networks reported less than 95% availability. The Company argues that it has steadily improved reporting rates but that the record does not show that the benefits of a 95% reporting rate would warrant the increased costs to customers,

particularly since service is not adversely affected at lower reporting levels.

On Reply, Staff proposes a temporary change to the target, establishing a target of 90% for each network, pending the outcome of a study to be submitted by Con Edison by May 1, 2008.

No party disputes the importance of network monitoring in ensuring safe and reliable service. We concur with Staff and the RD that maintaining a high level of RMS reporting is of such importance that it warrants establishing a performance mechanism.

We agree with Staff that 95% reporting for each network is an important goal, but we agree with the RD that a performance standard based on a 95% reporting rate is not reasonable at this time. Based on the Company's stated goal of 90% reporting for each network, we adopt a metric requiring 90% reporting for each network, measured at quarterly intervals commencing June 30, 2008. This is a reasonable standard that is well within the Company's ability to achieve, and the Company is given over three months to address any networks that may still fall below the target reporting level. The adjustment for failure to achieve this standard will be $10 million per network per measurement interval. A reasonable cap on system-wide exposure is needed, and we adopt an annual cap of $50 million.

The mechanism adopted in this order is an interim standard, with the intent of adopting a target level of 95% for each network when such a standard is found to be reasonable. The Company will provide a report to the Commission by June 1, 2008 that will: assess the problems that hinder the reporting rate of the RMS system, including any problems in attaining reporting rates of 95% for each network; identify possible

solutions; evaluate solutions as to their feasibility; and conduct a cost-benefit analysis for each solution.[59]

Special Projects

Regarding the other special projects--double poles, shunts, street lights, and over-duty circuit breakers--the Company has incurred no adjustments for any special project categories since these measures were established in 2005. The RD recommended that the measures should be continued.

The Company argues that because it achieved each of the performance standards for the special projects, the performance mechanism should be eliminated. We concur with the RD that the fact all targets were met indicates the success of the measures and that it would be premature to eliminate the measures at this time. Because the special project mechanisms are all existing mechanisms that utilize a calendar-year interval as a reference, the RD found that an effective date of January 1, 2008 is reasonable, and we concur.

Regarding the replacement of over-duty circuit breakers, the Company has met the annual target of replacing at least 60 over-duty breakers per year. Replacement of breakers is necessary to allow the interconnection of synchronous distributed generation (DG), and $8.8 million per year are included in the Company's revenue requirement to continue this program. The Company argued in the main case that the measure may not accomplish the result of facilitating interconnection, because the timing of outages to replace breakers is complex and the measure encourages replacing breakers on a piecemeal basis rather than replacing all of the breakers in a substation, which is necessary for interconnection of a synchronous generator.

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[59] The Company's letter of February 22, 2008 also requested that the Commission disregard the portion of Staff's Brief Opposing Exceptions related to a 90% RMS reporting standard. Our determination here is based on our own review of the record and information provided by the Company, most recently in its Brief on Exceptions, page 96, where the Company states that it has improved performance in each network to at least 90%.

Based on the incompleteness of the record on this question, the RD proposed that the Company's objection be denied.

Joint Supporters on exception argue that if the existing mechanism is not leading to increased connection of synchronous generators, it should be altered but not eliminated. Joint Supporters suggest a performance mechanism in which the Company faces an adjustment for failure to respond in a timely manner to a request for a substation upgrade to enable interconnection of a synchronous generator.

Staff replies that the complexity of the Company's network systems and the scheduling of construction work render the Joint Supporters' proposal unreasonable. Staff recommends that the existing mechanism remain in place, as the breaker replacement program is performing at near maximum capacity given the constraints facing the Company.

The Company argues that the proposal is untimely. The Company also notes that its website already provides information regarding the substation upgrade program and that the Company is open to input from market participants on targeting specific stations. The Company objects that the proposal of the Joint Supporters is not practical, due to the complexities of scheduling substation upgrades. In addition, the Company notes that the proposal fails to address: the potential for simultaneous interconnection proposals; the varying firmness of proposed DG projects; and the likelihood that some substations will not be able to accommodate interconnection even after an upgrade.

We agree with Staff and the Company that the proposal of Joint Supporters is untimely and not feasible. Because of the importance of demand reduction in the Con Edison service territory, and the potential contribution of synchronous distributed generation, we encourage further consideration of this issue.

Restoration

Staff proposed a performance mechanism that would hold the Company accountable for restoration times for all outage events. Restoration targets would be established based on the emergency level created by the outage. Failure to meet those targets would result in a $5 million revenue adjustment per event, with unlimited annual exposure. Staff proposed specific threshold targets for outages affecting overhead systems based on estimated restoration times in the Company's emergency plans. Similar estimated restoration times do not exist for the Company's underground systems. Staff recommended that the Company propose underground thresholds within 30 days of the Commission's order in this case.

The Company argued that there are no current performance standards for emergency management and that rather than a performance standard, best practice standards should be developed.

Regarding the restoration mechanism itself, the Company argued that it is based on a preliminary event classification for storms that does not reflect restoration times established upon the assessment of actual damage. The Company pointed out that factors out of its control will frequently affect actual restoration time, while the exception in the mechanism for factors outside the Company's control is not well-defined.

The Company further argued that the restoration mechanism as proposed by Staff could have counterproductive outcomes because it would encourage the Company to focus exclusively on the restoration of customers rather than working collaboratively with local municipalities to address local concerns, and because it could inhibit the provision of mutual aid among utilities.

The RD found that Staff has demonstrated that restoration times are a problem that needs to be addressed, but that the Company's arguments concerning Staff's specific proposal were persuasive. The RD further noted that a revised

proposal for a restoration mechanism should be submitted following a full review of the Audit Report regarding emergency management.

Staff urges the Commission to adopt its proposed restoration metric at this time, arguing that an assessment of the audit report may change the methods the Company uses to achieve compliance but would not change the targeted values proposed in the metric.

The Company argues that the Commission's approach to audit compliance requires forward-looking cooperation as opposed to performance standards.

We find that communication of restoration times, and achieving restoration time estimates, are an essential component of the provision of safe and reliable service. We agree with the RD that Staff has demonstrated the need for a performance mechanism tied to restoration times. We also agree with the RD that the Company's criticisms of Staff's proposed mechanism have merit.

In order to advance the process of developing an optimal restoration mechanism, without placing an undue burden on the Company, we will adopt Staff's proposal on a trial basis with the proviso that there will be no negative rate adjustment for failure to meet the standard. The Company shall file a compliance report with the Commission within 30 days following any restoration period for which the restoration mechanism applies, detailing its performance relative to the restoration mechanism, and noting any exceptions that would apply.

CUSTOMER SERVICE STANDARDS

The judges did not specifically address Con Edison's proposal to discontinue the customer service performance incentive (CSPI) mechanism that was implemented with the three-year rate plan that is about to end. The Company has not proposed any similar customer service standards for the upcoming rate year.

DPS Staff has proposed that the prevailing CSPI mechanism be continued and that certain changes be made to the outage notification incentive (ONIM) portion of the mechanism. Staff also proposed that we double the existing amounts at risk and that conference calls with local public officials be covered by the mechanism. Staff proposed that the total amount at risk for the ONIM be increased to $8 million and that the total amount at risk under the CSPI be increased to $40 million. Staff states that its proposal here is consistent with the proposals it made for the reliability performance mechanism. Staff observes that the judges generally endorse the use of negative incentives and recommended increases in the amounts at risk.

In response, Con Edison states that performance mechanisms consisting of monetary penalties are needlessly harmful to the Company. It also believes that they are inefficient and inequitable. Further, Con Edison asserts that a penalty structure is beyond the Commission's statutory authority. The Company proposes that the entire CSPI structure proposed by Staff be rejected and that the performance standards only be used to monitor whether any remedial actions are needed. The Company urges us to establish a separate phase of this proceeding to give thought to a new, symmetrical structure of incentives and disincentives.

Con Edison does not believe that the Commission has subscribed to a negative-adjustment system of performance mechanisms. It states that the Commission previously indicated a willingness to determine the preferred structure for a given company on a case-by-case basis. In 1995, the Company states that its approved rate plan provided it opportunity to earn annual financial rewards and to incur financial adjustments. In recent times, the Company believes that its customer service performance has not warranted either an extension of the CSPI mechanism or an increase in the adjustment amounts. The Company has no objection to reporting its ongoing performance related to

the CSPI and ONIM standards; however, it insists that the adjustment-only measures are unjustified.

We find that the customer service standards that have been in place for the last three years should not come to an end with the end of the existing rate plan. Continuity and adequate protection of customer interests requires that such standards continue to apply until such time as any better standards or approaches are sufficiently supported for us to adopt them. We are not persuaded that we should completely forego the use of negative incentives as the Company suggests. We believe that they are useful and necessary to ensure that the Company seriously considers the customer standards and adheres to them.

Staff has proposed that we increase the monetary incentives for the ONIM portion of the CSPI mechanism and we agree that the higher amount is desirable as a measure of the significance of these standards in the context of the larger program. In a recent rate proceeding involving National Fuel Gas Distribution Corporation, and elsewhere in this order, we have addressed our legal authority to require utility companies adhere to the service standards that are support by the use of financial incentives. We find no reason or basis to reach any contrary results for the customer service standards at issue here. Accordingly, we accept the DPS Staff proposals to continue the CSPI mechanism and to increase the amounts applicable to the ONIM portion of the program.

The Commission orders:

1. Consolidated Edison Company of New York, Inc. is directed to file cancellation supplements, effective on not less than one day's notice on or before March 28, 2008 canceling the tariff amendments and supplements listed in Appendix 1 to this order.

2. Consolidated Edison Company of New York, Inc. is directed to file, on not less than one day's notice, such further tariff revisions as are necessary to effectuate the provisions adopted by this order, including a $425 million

annual increase to take effect April 1, 2008 as detailed in Appendix 2 to this order. The Company shall serve copies of its filing on all parties to this proceeding. Any comments on compliance must be received at the Commission's offices within 14 days of service of the Company's proposed amendments. The amendments specified in the compliance filing shall not become effective on a permanent basis until approved by the Commission.

3. Consolidated Edison Company of New York, Inc. is directed to file, on not less than one day's notice to become effective April 1, 2008, such further tariff revisions as are necessary to effectuate an adjustment clause mechanism to recover, in the same manner as the Company's delivery revenue requirement is recovered in base rates, that portion of the revenue requirement associated with the overspent amounts ($236.7 million). Such language shall specify that this portion of the revenue requirement will be subject to further Commission audit and review and refund and, continue to be recovered in this manner until such time as the Commission determines otherwise. The tariff amendments specified above shall not become effective on a permanent basis until approved by the Commission.

4. The requirement of Section 66(12)(b) of the Public Service Law that newspaper publication be completed prior to the effective date of the proposed amendments directed in Clauses 2 and 3 above is waived and the Company is directed to file with the Commission, not later than six weeks following the amendments' effective date, proof that a notice to the public of the changes made by the amendments has been published once a week for four successive weeks in newspapers having general circulation in the areas affected by the amendments.

5. Consolidated Edison Company of New York, Inc. is directed to file within 90 days of the issuance of this order, a plan that revises its Market Supply Charge so that the Market Supply Charge reflects actual day-ahead market prices that were in effect during each customer's billing period, identifies specific issues that will need to be resolved and includes a

proposed implementation schedule along with milestones. The plan shall include draft tariff amendments and will be subject to Commission approval.

6. Consolidated Edison Company of New York, Inc. is directed to file further tariff revisions, within 30 days of the issuance of this order, to become effective on not less than one days notice, that contain annual class-specific revenue targets and detailed descriptions of the revenue decoupling mechanism and the reconciliation process to be employed. The requirement of Section 66(12)(b) of the Public Service Law that newspaper publication be completed prior to the effective date of the proposed amendments is waived. The tariffs specified above shall not become effective on a permanent basis until approved by the Commission.

7. Consolidated Edison Company of New York, Inc. is directed to: a) revise its current funding agreement with NYSERDA, as required, in order to extend commitments to system-wide programs at quarterly levels not to exceed $5 million plus administrative and evaluation costs; b) establish a reserve fund consisting of: unencumbered funds returned from NYSERDA previously collected for purposes of the system-wide program; and continued collection of funds that were formerly dedicated to the system-wide program, at a monthly rate of collection equal to that which was utilized for the last six months to fund the system-wide program; and c) within 30 days of the issuance of this order, submit a report to Department Staff describing the Company's plans regarding the expenditure of up to $2 million related to energy efficiency for market research, personnel, and program development.

8. Consolidated Edison Company of New York, Inc. is directed to file a Report thoroughly explaining the Company's internal management control processes as they were applied in the oversight and control of its capital expenditures during the period affecting by the 2005-2008 Rate Plan expenditures and including, at a minimum, the information set forth in Appendix 3 attached hereto, as well as the descriptions and explanations of

its budgeting and construction program, as detailed within the body of this order. This Report shall be filed within 60 days of the issuance of this order or by some other later date as may be allowed by the Secretary.

9. Consolidated Edison Company of New York, Inc. is directed to provide as part of its next rate case filing, for each year of a five-year planning horizon, a statement of its expected capital needs, (including changes to net plant), all its delivery and supply costs, its sales, and associated revenue requirements, and the future level of both Transmission/Distribution and Supply Prices for each major service classification over the time period. Further, Con Edison is directed to demonstrate that all reasonable means available for mitigating the size of any requested rate increase have been considered.

10. Consolidated Edison Company of New York, Inc. is directed to file within 60 days of the issuance of this order a report reassessing the expenses of the mobile stray voltage testing program as related to the program's standby cost and reassessing its current operation to optimize utilization of its current fleet of vehicles.

11. Consolidated Edison Company of New York Inc. is directed to file within 60 days of this order, an initial report describing, as detailed in the body of this order, the methods and practices it currently employs to integrate energy efficiency and demand response resource planning with its T&D infrastructure planning to maintain the required reliability standards.

12. Consolidated Edison Company of New York, Inc. is directed to file not later than June 1, 2008 a report regarding the feasibility of achieving a 95% reporting rate per network for remote monitoring systems, as described in the body of this order.

13. Except as herein granted, all exceptions to the January 8, 2008 Recommended Decision are denied.

14. Except as herein modified, the January 8, 2008 Recommended Decision is adopted as part of this order.

15. This proceeding is continued.

By the Commission,

(SIGNED) JACLYN A. BRILLING
Secretary

Filing by: CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

Amendments to Schedule P.S.C. No. 9 – Electricity

Original Leaves Nos. 160-A, 168-C, 168-D
First Revised Leaves Nos. 136-A-1, 141, 142
Second Revised Leaves Nos. 144, 158-Y-2, 168-A, 168-B
Third Revised Leaves Nos. 34, 59-D, 188, 236, 249, 279
Fourth Revised Leaves Nos. 7, 8, 10, 26, 36-A, 46, 59-H, 278
Fifth Revised Leaves Nos. 9, 158-Y-4, 259-A, 320
Sixth Revised Leaves Nos. 59-B, 159-A, 161, 168, 205, 255, 323, 325
Seventh Revised Leaves Nos. 80-A, 140, 213, 215-A, 237, 296-A
Eighth Revised Leaves Nos. 138, 159, 234, 243, 266, 270, 276
Ninth Revised Leaves Nos. 137, 160, 163-A, 281-A
Tenth Revised Leaves Nos. 81, 164, 281, 316
Eleventh Revised Leaf No. 238-A
Thirteenth Revised Leaves Nos. 59-A, 210, 251-A
Fourteenth Revised Leaves Nos. 89, 143
Fifteenth Revised Leaves Nos. 3, 202-A, 212-A, 240-A-1, 240-C
Sixteenth Revised Leaf No. 311-A-2
Seventeenth Revised Leaf No. 138-A
Nineteenth Revised Leaf No. 163
Twenty-Fourth Leaf No. 162
Twenty-Fifth Revised Leaves Nos. 96, 230, 232, 233, 240, 262, 264, 265,272, 274, 275, 311, 313, 322
Twenty-Sixth Revised Leaves Nos. 245, 314
Twenty-Seventh Revised Leaves Nos. 202, 315
Twenty-Eighth Revised Leaves Nos. 212, 251

Statement of Merchant Function Charge – MFC Statement No. 1

Supplement Nos. 60, 64

Amendments to Schedule P.S.C. No. 2 – Retail Access

Original Leaf No. 8-C
Second Revised Leaf No. 2-A
Third Revised Leaves Nos. 8-B, 173,
Fourth Revised Leaves Nos. 181, 182
Fifth Revised Leaf No. 180
Sixth Revised Leaves Nos. 177, 179
Seventh Revised Leaves Nos. 4-B, 22, 25, 27, 29, 139, 143, 144, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 178
Eighth Revised Leaf No. 2
Thirteenth Revised Leaves Nos. 8, 13
Sixteenth Revised Leaves Nos. 16, 18, 24
Seventeenth Revised Leaves Nos. 21, 23, 26, 28, 30

Supplement Nos. 22, 25

Amendments to PASNY No. 4

Original Leaf No. 7-B
Second Revised Leaf No. 10-C
Third Revised Leaves Nos. 23, 32
Fifth Revised Leaves Nos. 6-A, 6-C, 6-D, 6-E, 6-F
Eighth Revised Leaf No. 4
Ninth Revised Leaf No. 7-A
Twelfth Revised Leaf No. 5
Thirteenth Revised Leaf No. 3

Supplement Nos. 21, 24

Amendments to Economic Development Delivery Service No. 2

Seventh Revised Leaves Nos. 6-A, 7-B
Tenth Revised Leaves Nos. 4, 5

Supplement Nos. 17, 20

Consolidated Edison Company of New York, Inc.
Electric Service
Operating Income, Rate Base & Rate of Return
For the Twelve Months Ending March 31, 2009
($000's)

	Per Recommended Decision	Adj. No.	Commission Adjustments	As Adjusted By Commission	Revenue Requirement Adjustment	As Adjusted For Revenue Requirement
Operating Revenues						
Sales Revenues	$ 6,672,226	1a	$ (4,600)	$ 6,667,626	$ 425,289	$ 7,092,915
Other Operating Revenues	187,311	1b	76,061	263,372		263,372
Total Operating Revenues	6,859,537		71,461	6,930,998	425,289	7,356,287
Operating Expense						
Fuel	3,041,326			3,041,326		3,041,326
Operation & Maintenance Expenses	1,610,247	Sch. A Pg. 2	(38,609)	1,571,638	2,339	1,573,977
Depreciation Expense	567,009	1c	(24,763)	542,246		542,246
Taxes Other Than Income Taxes	1,007,063	Sch A Pg 3	(4,269)	1,002,794	12,333	1,015,127
Gains from Disposition of Utility Plant	(30,812)			(30,812)		(30,812)
Total Operating Expenses	6,194,832		(67,641)	6,127,192	14,672	6,141,864
Operating Income Before Income Taxes	664,705		139,102	803,806	410,617	1,214,423
New York State Income Tax	18,304	Sch A Pg. 4	10,579	28,882	29,154	58,036
Federal Income Tax	54,074	Sch. A Pg 5	44,548	98,622	133,512	232,134
Utility Operating Income	$ 592,327		$ 83,975	$ 676,302	$ 247,951	$ 924,253
Rate Base	$ 12,935,238		$ (348,376)	$ 12,586,862		$ 12,586,862

Consolidated Edison Company of New York, Inc.
Electric Service
Operation & Maintenance Expenses
For the Twelve Months Ending March 31, 2009
($000's)

	Per Recommended Decision	Adj. No.	Commission Adjustments	As Adjusted By Commission
Admin & General Expenses Capitalized	$ (11,374)			$ (11,374)
Asbestos Removal	813			813
Bowline and Roseton Charges	373			373
Bank Collection Fees	230			230
Benefit Cost - Program Change Labor	7 082			7,082
Betterment Program	-			-
Boiler Cleaning	612			612
Building Services / Facilities	30,574			30,574
Central Engineering - Administrative	1			1
Central Engineering - Distribution	1,145			1,145
Collection Agency Fees	458			458
Communications - Telephone	14,503			14,503
Company Labor - Program Change	-			-
Company Labor	556,336	2a	(18,709)	537,628
AMR / AMI Saturation Savings	-			-
Consultants	10 517			10,517
Contract Labor	1 601			1,601
Corrective Maintenance	4,258			4 258
DC Incentive Program	-			-
Disposal of Obsolete M&S	8,051			8,051
DSM	20,356			20,356
Duplicate Misc Charges	(19,970)			(19 970)
EDP Equipment Rentals & Maintenance	3,769			3,769
Electric and Gas Used	215			215
Employee Pension / OPEBs	81,151			81,151
Employee Welfare Expense - Net	99,594	2b	(3,369)	96,225
Environmental Affairs	2,379			2,379
Environmental Programs	1,064			1 064
ERRP - Major Maintenance	7,442			7,442
Exec and Mgt Incentive Plan	-			-
Facilities Maintenance	4,448			4,448
Financial Services	6,096			6 096
Gas Turbines	3,108			3,108
Grounds and Buildings	331			331
Information Resources	24,098			24,098
Informational Advertising	4,477			4,477
Injuries and Damages Reserve	39,601			39,601
Institutional Dues & Subscriptions	1,421			1,421
Insurance Premiums	25,612			25,612
Interference	91,985			91,985
LIC Outage	1,064			1,064
Corporate and Fiscal Expenses	3 607			3,607
Major Maintenance Projects	-			-
Manhour Expense	33,298			33,298
Marshall's Fees	1,345			1,345
Materials and Supplies	14,934			14,934
MGP / Superfund	24,739	2c	(12,621)	12,118
NY Power Pool	21			21
Other (Fossil)	2,576			2,576
Outside Legal Services	1,877			1,877
Paving	271			271
Plant Component Upgrade	292			292
Plant Inspection and Repair	-			-
Postage	13 554			13,554
Preventive Maintenance	2,356			2,356
Promotional Advertising	-			-
RCA - Pension	-			-
RCA - Amortization of Hudson-Farragut	477			477
RCA - Interference	-			-
RCA - Amortization of Hudson Avenue	-			-
System Benefit Charge / Renewable Portfolio Standard	118,287			118,287
Real Estate Expenses	2,070			2,070
Regulatory Commission Expenses	26,431			26,431
Rents	54,433			54,433
Rents (ERRP)	71,162			71 162
Rents (Interdepartmental)	4,834			4 834
Research and Development	19,000			19,000
Routine Maintenance	-			-
Scheduled Overhauls	1 273			1,273
Security	2,278			2,278
Shared Services	(7,989)			(7 989)
Steam Transfer Credit (Fossil)	(1)			(1)
Storm Costs	5,600			5 600
Transformer Installations	55			55
Tree Trimming	16,899	2d	4,001	20 900
Trenching	7 963			7 963
Uncollectible	37,124			37 124
Water	744			744
Water Chemicals	88			88
Waterside (includes labor)	-			-
Other	127,227	2e	(7,911)	119,316
Total O & M Expenses	$ 1,610 247	Sch A Pg 1	$ (38,609)	$ 1 571 638

Consolidated Edison Company of New York, Inc.
Electric Service
Taxes Other Than Income Taxes
For the Twelve Months Ending March 31, 2009
($000's)

	Per Recommended Decision	Adj. No.	Commission Adjustments	As Adjusted By Commission	Revenue Requirement Adjustment	As Adjusted For Revenue Requirement
Property Taxes						
New York City	$ 671,930			$ 671,930		$ 671,930
Westchester	81,572	3a	(2,437)	79,135		79,135
Property Tax Reconciliation Deferral	-			-		-
Total Property Taxes	753,502		(2,437)	751,065	-	751,065
Revenue taxes	178,149			178,149	12,333	190,482
Payroll Taxes	54,426	3b	(1,832)	52,594		52,594
Subsidiary Capital Tax	4,228			4,228		4,228
Receipts Tax	15,079			15,079		15,079
All Other Taxes	1,679			1,679		1,679
Total Taxes Other Than Income Taxes	$ 1,007,063	Sch. A Pg. 1	$ (4,269)	$ 1,002,794	$ 12,333	$ 1,015,127

Consolidated Edison Company of New York, Inc.
Electric Service
New York State Income Tax
For the Twelve Months Ending March 31, 2009
($000's)

	Per Recommended Decision	Adj. No.	Commission Adjustments	As Adjusted By Commission	Revenue Requirement Adjustment	As Adjusted For Revenue Requirement
Operating Income Before Income Taxes	$ 664,705	Sch. A Pg 1	$ 139,102	$ 803,806	$ 410,617	$ 1,214,423
Flow Through Items:						
Deduct Non-Taxable Income and Additional Deductions:						
Interest Expense	391,081		(9,894)	381,187		381,187
Medicare Part D Subsidy - Post-Employment Benefits	15,824			15,824		15,824
Total Deductions	406,905		(9,894)	397,011	-	397,011
Normalized Items						
Add. Additional Income and Unallowable Deductions						
Book Depreciation	567,009	Sch. A Pg. 1	(24,763)	542,246		542,246
Contributions in Aid of Construction	1,855			1,855		1,855
Capitalized Interest	10,055			10,055		10,055
Pension and OPEB Expenses Per Books	81,151			81,151		81,151
Total Additions	660,070		(24,763)	635,307	-	635,307
Deduct. Non-Taxable Income and Additional Deductions						
NYS Depreciation	585,810			585,810		585,810
Removal Costs	160,688			160,688		160,688
Repair Allowance	14,553			14,553		14,553
Amortization of Capitalized Interest	3,881			3,881		3,881
Loss on MACRS Retirement	44,763			44,763		44,763
Pension / OPEB Expense - Funding	141,739			141,739		141,739
Westchester Property Tax Adjustment	597			597		597
Correction of ADR Tax Amortization	16,059			16,059		16,059
Interest on Federal Income Tax Audit Adjustments - Net	7,404			7,404		7,404
New York State Tax Law Changes	9,207			9,207		9,207
Interest on First Avenue Properties	2,752			2,752		2,752
WTC Expenses	(14,000)			(14,000)		(14,000)
Carrying Charges on T&D Expenditures	(49,883)		40,383	(9,500)		(9,500)
Gain on the Sale of First Avenue Properties	30,812			30,812		30,812
Total Deductions	954,382		40,383	994,765	-	994,765
Total Adjustments to Income	$ (701,217)		$ (55,252)	$ (756,469)	$ -	$ (756,469)
Taxable Income - New York State	$ (36,512)		$ 83,850	$ 47,337	$ 410,617	$ 457,954
Tax Computation						
Current NYS Income Tax Payable @ 7.1%	(2,592)		5,953	3,361	29,154	32,515
Deferred NYS Income Tax @ 7.1%	20,896		4,625	25,522	-	25,522
Total New York State Income Tax	$ 18,304	Sch. A Pg 1	$ 10,579	$ 28,882	$ 29,154	$ 58,036

Consolidated Edison Company of New York, Inc.
Electric Service
Federal Income Tax
For the Twelve Months Ending March 31, 2009
($000's)

	Per Recommended Decision	Adj. No.	Commission Adjustments	As Adjusted By Commission	Revenue Requirement Adjustment	As Adjusted For Revenue Requirement
Operating Income Before Income Taxes	$ 664,705	Sch A Pg 1	$ 139,102	$ 803,806	$410,617	$1,214,423
New York State Income Tax	18,304	Sch A Pg 4	10,579	28,882	29,154	58,036
Operating Income Before Federal Income Tax	646,401		128,523	774,924	381,463	1,156,387
Flow Through Items						
Add: Additional Income and Unallowable Deductions						
Book Depreciation	567,009	Sch A Pg 1	(24,763)	542,246	-	542,246
Hudson-Farragut Amortization - Per Books	477			477		477
Capitalized Interest	10,055			10,055		10,055
Total Additions	577,541		(24,763)	552,778	-	552,778
Deduct: Non-Taxable Income and Additional Deductions						
Interest Expense	391,081		(9,894)	381,187		381,187
Statutory Depreciation - at Current Book Rates	268,443			268,443		268,443
Statutory Depreciation - Change at Proposed Book Rates	21,367			21,367		21,367
Statutory Depreciation - Change with Reserve Deficiency	1,648	5a	(13,627)	(11,979)		(11,979)
Removal Costs	160,688			160,688		160,688
Medicare Part D Subsidy - Post-Employment Benefits	15,824			15,824		15,824
Amortization of Capitalized Interest	2,039			2,039		2,039
Westchester Property Tax Adjustment	597			597		597
Dividends Paid on $5 Cumulative Preferred Stock	3,327			3,327		3,327
Total Deductions	865,014		(23,521)	841,493	-	841,493
Normalized Items:						
Add: Additional Income and Unallowable Deductions						
Contributions in Aid of Construction	1,855			1,855		1,855
Pension / OPEB Expenses - Rate Year	81,151			81,151		81,151
Deferred NYS Income Tax	20,896	Sch A Pg. 4	4,625	25,522	-	25,522
Total Additions	103,902		4,625	108,528	-	108,528
Deduct: Non-Taxable Income and Additional Deductions						
Statutory Depreciation - at Current Book Rates	366,332			366,332		366,332
Statutory Depreciation - Change at Proposed Book Rates	(21,367)			(21,367)		(21,367)
Statutory Depreciation - Change with Reserve Deficiency	(1,648)	5b	13,627	11,979		11,979
Repair Allowance	14,553			14,553		14,553
Amortization of Capitalized Interest	1,842			1,842		1,842
Loss on MACRS Retirement	26,426			26,426		26,426
Pension / OPEB Expense - Funding	141,739			141,739		141,739
Correction of ADR Tax Amortization	16,059			16,059		16,059
Interest on Federal Income Tax Audit Adjustments - Net	7,404			7,404		7,404
New York State Tax Law Changes	9,207			9,207		9,207
Interest on First Avenue Properties	2,752			2,752		2,752
WTC Expenses	(14,000)			(14,000)		(14,000)
Carrying Charges on T&D Expenditures	(49,883)		40,383	(9,500)		(9,500)
Gain on the Sale of First Avenue Properties	30,812			30,812		30,812
Total Deductions	530,228		54,010	584,238	-	584,238
Total Adjustments to Income	(713,799)		(50,627)	(764,425)	-	(764,425)
Taxable Income - Federal	$ (67,398)		$ 77,897	$ 10,499	$ 381,463	$ 391,961
Tax Computation						
Current Federal Income Tax @ 35%	(23,589)		27,264	3,674	133,512	137,186
Deferred Federal Income Tax @ 35%	149,214		17,285	166,499	-	166,499
Amortization of Previously Deferred Federal Income Tax						
Depreciation - ADR/ACRS/MACRS - at Current Book Rates	(38,759)			(38,759)		(38,759)
Depreciation - ADR/ACRS/MACRS - at Proposed Book Rates	(1,436)			(1,436)		(1,436)
Depreciation - ADR/ACRS/MACRS - Reserve Deficiency	(2,539)			(2,539)		(2,539)
Loss on MACRS Retirements	(3,232)			(3,232)		(3,232)
Repair Allowance	(9,617)			(9,617)		(9,617)
Capitalized Overheads	(11,197)			(11,197)		(11,197)
Investment Tax Credit	(4,771)			(4,771)		(4,771)
Total Federal Income Tax	$ 54,074	Sch A Pg 1	$ 44,548	$ 98,622	$ 133,512	$ 232,134

Consolidated Edison Company of New York, Inc.
Electric Service
Rate Base
For the Twelve Months Ending March 31, 2009
($000's)

	Per Recommended Decision	Adj. No.	Commission Adjustments	As Adjusted By Commission
Utility Plant				
Book Cost of Plant	$ 17,337,861			$ 17,337,861
Accumulated Reserve for Depreciation	(3,781,062)	6a	12,381	(3,768,681)
Net Plant	13,556,799		12,381	13,569,180
Non-Interest Bearing CWIP	349,858			349,858
Preferred Stock Expense	2,366			2,366
Unamortized Debt Discount Premium and Expense	135,947			135,947
Deferred Fuel - Net of Tax	37,008			37,008
FIT Refund Deficiency - Include Interest - Net of Tax	18,971			18,971
Unamortized Balance - Hudson Farragut	1,800			1,800
Customer Advances for Construction	(206)			(206)
MTA Surtax - Net of Tax	1,789			1,789
Working Capital	540,193	Sch. A Pg 7	(4,807)	535,386
Excess Rate Base Over Capitalization Adjustment	184,509			184,509
Early Retirement Termination Benefit (1993) - Net of Tax	-			-
Early Retirement Termination Benefit (1993) - Net of Tax	9,095			9,095
Low Income Fund - Net of Tax	-			-
Arrears Avoidance Program - Net of Tax	-			-
DC Service Incentive - Net of Tax	(5,808)			(5,808)
System Benefits Charge/Retail Portfolio Standard - Net of Tax	(3,845)			(3,845)
Amounts Billed in Advance of Construction - Net of Tax	(5,218)			(5,218)
BIR Discounts - Recovery - Net of Tax	-			-
Emergency Demand Response Program - Initial Costs - Net of Tax	-			-
Direct Load Control Program - Net of Tax	-			-
NOX Emissions Allowances - Net of Tax	-			-
Sale of NOX Emissions Allowances - Net of Tax	-			-
Cogen Technologies - Reimbursement for O&M - Net of Tax	-			-
Sale / Appropriation of Property	-			-
CATV Pole Attachment Revenue - Net of Tax	-			-
Partial Pass Thru Fuel Adjustment - Net of FIT	-			-
Washington Heights & WTC Security Initiative - Net of Tax	-			-
Customer Refund Associated with Divested Plants - Net of Tax	-			-
Customer Refund Associated with Waterside - Net of Tax	-			-
Electric Reliability Penalty - Net of Tax	-			-
Rate Case Pension Deferral - Net of Tax	-			-
Rate Case OPEB Deferral - Net of Tax	-			-
Expiring Amortization of Deferred Costs - Net of Tax	-			-
Forgoing Rental Income - West 24th Street - Net of Tax	-			-
				-
Rate Case Reconciliations - Net of Federal Income Taxes				-
Refund of Gain From Sale of First Avenue Properties	(46,315)			(46,315)
Refund of Customer Benefits From the Correction of ADR Taxes	(23,758)			(23,758)
Refund of Interest on ADR Tax Benefits	(831)			(831)
Refund of Interest on Federal Income Tax Audit Adjustments	(11,129)			(11,129)
Refund of Over Collection of NYS Tax Law Changes	(12,632)			(12,632)
Refund of Property Taxes	-	6b	(3,746)	(3,746)
Recovery of Carrying Charges on T&D Expenditures	74,969	6c	12,534	87,503
Recovery of WTC Costs	156,508	6d	(156,508)	-
Recovery of DC Conversion Incentive Program	(4,500)			(4,500)
Recovery of ERRP Major Maintenance Unexpended Fund	(5,244)			(5,244)
Accumulated Deferred Income Taxes				
ADR / ACRS / MACRS Deductions	(1,643,505)	6e	(208,230)	(1,851,735)
Change of Accounting Section 263A	(298,381)			(298,381)
Vested Vacation	12,101			12,101
Prepaid Insurance Expenses	(1,729)			(1,729)
Unbilled Revenues	105,914			105,914
Contributions in Aid of Construction	14,231			14,231
Capitalized Interest	4,861			4,861
Advanced Refunding of Mortgage Bonds	-			-
Repair & Maintenance Allowance - 2002-2006 IRS Audit	6,193			6,193
Customer Deposits	33,799			33,799
Call Premium	(20,307)			(20,307)
Excess Deferred SIT (2007)	6,050			6,050
Deferred SIT	(234,315)			(234,315)
Total Rate Base	$ 12,935,238	Sch A Pg 1	$ (348,376)	$ 12,586,862

Consolidated Edison Company of New York, Inc.
Electric Service
Working Capital Allowance
For the Twelve Months Ending March 31, 2009
($000's)

	Per Recommended Decision	Adj. No.	Commission Adjustments	As Adjusted By Commission
Materials & Supplies				
Liquid Fuel Inventory	$ 5,715			$ 5,715
Materials & Supplies, Excluding Fuel	86,787			86,787
Total Materials & Supplies	92,502		-	92,502
Prepayments				
Insurance	10,747			10,747
Rents	15,138			15,138
Property Taxes	166,119			166,119
PSC Assessment	7,949	7a	19	7,968
Interference	1,694			1,694
EPRI	173			173
Other	12,012			12,012
Total Prepayments	213,832		19	213,851
Cash Working Capital				
Total Operations & Maintenance Expenses	4,651,573	Sch. A Pg. 2	(38,609)	4,612,964
Less:				
Purchased Power Expenses	2,781,137			2,781,137
Gas Portion of Fuel	232,879			232,879
Recoverable Fuel Costs	25,382			25,382
Interdepartmental Rents	4,834			4,834
Uncollectibles	37,124			37,124
Pensions / OPEBs	81,151			81,151
Subtotal	3,162,507		-	3,162,507
Cash Working Capital Subject to 1/8th Allowance	1,489,066		(38,609)	1,450,457
Cash Working Capital @ 1/8th	186,133		(4,826)	181,307
Add: Cash Working Capital @ 1/12th on Recoverable Fuel	2,115		-	2,115
Total Cash Working Capital	188,248		(4,826)	183,422
Total	494,582		(4,807)	489,775
Add: Working Capital Related to Purchased Power @ 1.64%	45,611			45,611
Total Working Capital	$ 540,193	Sch A Pg. 6	$ (4,807)	$ 535,386

Consolidated Edison Company of New York, Inc.
Electric Service
Computation of Revenue Requirement
For the Twelve Months Ending March 31, 2009
($000's)

		Per Commission
Average Rate Base (Schedule A, page 6)	$	12,586,862
Rate of Return		7.34%
Required Return	$	924,253
Income Available for Return (Schedule A, page 1)		676,302
Deficiency	$	247,951
Retention Factor		58.302%
Additional Revenue Requirement	$	425,289
Revenue Requirement	$	1,206,872
Difference	$	(781,583)

	Percentages	Revenue Requirement
Calculation of Retention ("Gross-Up") Factor:		
Revenues	100.000%	$425,289
Revenue Taxes	2.900%	12,333
Uncollectibles	0.550%	2,339
Subtotal	96.550%	$410,617
NYS Income Tax @ 7.1%	6.855%	29,154
Federal Income Tax @ 35%	31.393%	133,512
* Retention Factor	58.302%	$247,951

Consolidated Edison Company of New York, Inc.
Electric Service
Explanation of Commission Ordered Adjustments
For the Twelve Months Ending March 31, 2009
($000's)

Adj. No.	Explanation				Amount
	Operating Revenues - Schedule A Page 1				
1a	**Sales Revenues**				
	Low Income Program				
	To reflect Commission increase to the low-income program.	$ (4,600)			
	Total Adjustment to Sales Revenues		$ (4,600)		
1b	**Other Operating Revenues**				
	To reflect the return of deferred property tax refund.	11,200			
	To reflect $9.5 million allowed recovery of deferred T&D carrying charges.	40,383			
	To reflect the return of Stony Point Tax Refund.	1,208			
	To reflect $14 million recovery of deferred WTC costs.	23,270			
	Total Adjustment to Other Operating Revenues		76,061		
	Total Adjustment to Operating Revenues			$	71,461
1c	**Depreciation Expense - Schedule A Page 1**				
	To reflect 15 year amortization of reserve deficiency in excess of 10% band.			$	(24,763)
	Operation and Maintenance Expenses - Schedule A Page 2				
2a	Company Labor				
	To reflect an allowance of 20 percent of the 5 Year OH Inspection Program.	$ (3,155)			
	To reflect the disallowance of Company's Variable Plan Program.	(11,200)			
	To reflect adjustment to Company historic year normalization.	(2,617)			
	To reflect the allowance of 24 Trouble Shooters for Control Center Emergency Screening.	(613)			
	Tracking adjustment to reflect escalation on incremental allowed labor cost.	(1,124)			
	Total adjustment to Company Labor		(18,709)		
2b	Employee Welfare Expense				
	Tracking adjustment to reflect increases in allowed employee levels.		(3,369)		
2c	MGP/Superfund				
	To reflect a 10-year amortization of projected costs.		(12,621)		
2d	Tree Trimming				
	To reflect allowance of $13.755 million for distribution line clearance program.		4,001		

Consolidated Edison Company of New York, Inc.
Electric Service
Explanation of Commission Ordered Adjustments
For the Twelve Months Ending March 31, 2009
($000's)

Adj. No.	Explanation				Amount
2e	Other				
	To reflect the disallowance of Company's fuel cost update.	$ (366)			
	To reflect 75,447 underground inspections at $319.20 per inspection.	4,931			
	To reflect an allowance of 20 percent of the 5 Year OH Inspection Program.	(1,199)			
	To reflect an allowance of $4.357 million for network transformer vault cleaning.	(1,131)			
	To reflect an additional allowance of $4 million for stray voltage detection.	4,000			
	To reflect disallowance of stock-based Deferred Compensation Plan.	(14,146)			
	Total adjustment to Other O&M		$ (7,911)		
	Total Adjustment to O&M Expenses			$	(38,609)
	Taxes Other Than Income Taxes - Schedule A Page 3				
3a	Property Taxes				
	To reflect savings from Stony Point Settlement.		(2,437)		
3b	Payroll Taxes				
	Tracking adjustment to reflect increases in authorized employee payroll.		(1,832)		
	Total Adjustment to Taxes Other Than Income Taxes			$	(4,269)
	Federal Income Tax - Schedule A Page 5				
	Flow Thru Items:				
5a	Tracking adjustment for Statutory Depreciation reflecting adjustments to reserve deficiency.		(13,627)		
	Normalized Items:				
5b	Tracking adjustment for Statutory Depreciation reflecting adjustments to reserve deficiency.		13,627		

Consolidated Edison Company of New York, Inc.
Electric Service
Explanation of Commission Ordered Adjustments
For the Twelve Months Ending March 31, 2009
($000's)

Adj. No.	Explanation				Amount
	Rate Base - Schedule A Page 6				
6a	Accumulated Reserve for Depreciation				
	To reflect depreciation change related to amortization of deficiency.		12,381		
6b	Property Tax Refund				
	To reflect unamortized property tax refund balance in rate base.	(3,382)			
	To reflect Stony Point Tax Refund.	(364)			
			(3,746)		
6c	Deferred T&D Carrying Charges				
	To reflect Commission allowed recovery.		12,534		
6d	WTC Costs				
	To remove WTC costs from rate base.		(156,508)		
6e	Deferred Federal Income Taxes				
	To reflect tax benefits from 2008 Economic Stimulus Act.		(208,230)		
	Subtotal Adjustment to Rate Base			$	(343,569)
	Working Capital - Schedule A Page 7				
	Cash Working Capital Adjustment		(4,826)		
7a	Prepayments				
	To reflect the tracking adjustment related to the change of prepaid PSC Assessment.		19		
	Total Adjustment to Working Capital			$	(4,807)
	Total Adjustments to Rate Base			$	(348,376)

Con Edison Procurement/Budget Questions

1. Provide the detailed annual Capital Budgets applicable to the 2005-2008 Rate Plan.
2. Describe the overall business strategy on which the Capital Budgets identified in Question 1 are based. Provide all engineering, financial and operating forecasts used to develop this business strategy and any related planning documents used in its development.
3. Provide the "guidance document" used by management in the preparation of each Capital Budget identified in Question 1.
4. Provide the "Capital Budget Request Forms" for each project identified in Question 1.
5. Provide the budget documentation that was prepared and submitted by Program and Construction Managers that was required for budget submission for each project identified in Question 1.
6. Provide all documents and analyses used by management to develop the budgets identified in Question 1, and all recommendations made by Financial Forecasting and Corporate Budgeting, as well as the Corporate Policy Committee during the preparation of the final budget and as part of the formal presentation before the Board of Directors.
7. Provide the budget packages that were submitted to the Board of Directors for approval for each budget identified in Question 1.
8. Provide the Board of Director meeting minutes showing the review and approval of each budget identified in Question 1.
9. Provide all budget additions and amendments to the annual Capital Budgets identified in Question 1 including supporting documentation. To the extent these changes were reviewed and approved by the Board of Directors, provide the supporting documentation. To the extent these changes were not approved by the Board of Directors, explain why.
10. Provide the Capital Budget Status Report for every month starting in April 2005.
11. Provide the "post completion review and evaluation" as required for all projects with a total cost of $2 million or more that are included in Question 1.
12. For each project identified in Question 1, in addition to the budgeted cost, provide the original approved authorization amount, original approved in-service date, actual installed cost or current cost estimate, and actual or current in-service date estimate.

Con Edison Procurement/Budget Questions

13. For each project identified in Question 1, where the actual cost exceeded or current cost estimate exceeds the original budgeted cost, defined as the amount first presented to the Board of Directors, by more than 10%, provide a detailed explanation and justification for the variance broken down between labor, materials, and other categories as needed.
14. For the list of projects identified in Question 1, identify each project where the "Current Working Estimate" exceeded the approved authorization and provide the "Capital Budget Request" to increase the authorization and/or appropriation.
15. Provide the purchase requisitions for all expedited, emergency, non-competitive or sole-source bids and/or contracts for the period covered by the 2005-2008 Rate Plan, including all documentation supporting the purchase.
16. For the period covered by the 2005-2008 Rate Plan, by year, provide a list of contractors or suppliers who provided goods and/or services to Con Edison. Identify the specific contracts and costs in the following categories:

    •Less than $100,000
    •$100,000 to $1 million
    •$1 million to $2.5 million
    •Over $2.5 million

Record Request No. 18

Request:

Please provide support for the proposition that the Beta of debt is zero.

Response:

As discussed in more detail below, the position that debt Betas (Beta coefficients generally are referred to below as "*B*") are at or near zero is supported in corporate finance texts and academic research, assumed in practice, and consistent with Mr. Rothschild's own data and assumptions.

The position that debt Betas are zero, or are near zero, has long been assumed in corporate finance text books. In the 1984 edition of their widely-used text, for example, Brealey and Myers note that:

> Debt betas are typically close to zero – close enough that for large blue-chip companies, many financial analysts just assume $B_{debt} = 0$.[1]

Here, of course, the reference to "blue-chip companies" would include highly-rated firms; Mr. Rothschild's position is that the adoption of the Company's RPC decoupling mechanism would "drive NG's cost of equity down to the cost of highly rated debt."[2] According to Brealey and Myers, then, the Beta of that would debt would be "close to zero."

The academic position that debt Betas are close to zero has been maintained to the present day. In their 2008 text, Ross, Westerfield and Jaffe state that:

> The beta of debt is very low in practice. If we make the common assumption beta of debt is zero, we have:
>
> $$B_{Asset} = \frac{S}{B+S} x B_{Equity}$$ [3]

[1] Richard Brealey, Stewart Myers, Principles of Corporate Finance, 2nd Ed., 1984, McGraw-Hill, at 175.

[2] Direct Testimony and Schedules of James A. Rothschild, at 39 – 40.

[3] Stephen Ross, Randolph Westerfield, Jeffery Jaffe, Corporate Finance, 8th Ed., 2008, McGraw-Hill/Irwin, at 351.

Importantly, the equation provided by Ross, Westerfield and Jaffe results in the "Hamada Adjustment," which explicitly assumes that the Beta of debt is zero. As discussed below, the assumption of zero debt Betas in general, and the Hamada Adjustment in particular, have been adopted by regulatory commissions both within and outside of the U.S.

The assumption that debt Betas are approximately zero is not limited to corporate finance text books. In a book focused on the relationship between regulatory risk and the cost of capital, author Burkhard Pedell assumes "…by approximation that the debt beta is zero."[4] Similarly, in his widely-regarded text, New Regulatory Finance, Dr. Roger Morin addresses the issue of debt Betas in his explanation of the Hamada Adjustment:

> The Hamada equation is derived as follows. If you owned both the debt and the common equity securities of a company, you would bear all risks and be entitled to the company's cash flows. Therefore, the company's asset beta equals the beta of a portfolio of all the company's debt and its equity. The beta of a company's assets (left-hand side of the balance sheet) is equal to the weighted average beta of its debt and equity (right-hand side of the balance sheet), with the weights represented by the relative proportions of such financing in the capital structure:
>
> $$B_{Asset} = B_{debt}[debt/(debt+equity)] + B_{equtiy}[equity/(debt+equity)]$$
>
> (1)
>
> **If it is assumed that corporate bonds have zero systematic risk that is $B_{debt} = 0$ in the above equation, then the above equation reduces to:**
>
> $$B_{Asset} = B_{equtiy}[equity/(debt+equity)](2)$$
>
> ***
>
> If corporate taxes are introduced, an the tax rate is T, the Hamada relationship becomes:
>
> $$B_{equtiy} = B_{asset}[1+(1-T)D/E](6)$$ [5]

Importantly, the "Hamada Adjustment" has been adopted by utility regulators within the U.S. The New York Public Service Commission ("NYPSC"), for example, has recognized the Hamada Adjustment for several years[6], thereby adopting the position that debt Betas are zero. In that regard, the use of zero, or near-zero debt Betas by

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Burkhard Pedell, Regulatory Risk and the Cost of Capital, Springer Science+Business Media, 2006, at 176-177.

[5] Roger A. Morin, New Regulatory Finance, Public Utilities Reports, Inc, 2006, at 243. Emphasis added.

[6] *See*, for example, CASE 93-C-0182; OPINION NO. 94-8, New York Public Service Commission

regulatory commissions is not limited to the NYPSC. A simple internet search reveals that regulators in Australia, for example, have assumed debt Betas ranging from zero to .30[7] (recall that Mr. Rothschild's equity beta is .88) for regulated utilities.

Although there has been a considerable body of academic research regarding debt Betas, a 2005 article by King and Khang provide a succinct summary of the underlying reasons why debt Betas are low, and an empirical test of the systematic risk associated with debt (as Mr. Rothschild explains in his testimony, Beta is a measure of systematic risk; *see* Rothschild Direct at 37, 38). As King and Khang explain, the returns on corporate bonds are a function of credit spreads, or the difference between bond yields and the yield on equivalent term government bonds. In a review of academic literature on the topic, the authors point out that yield (or credit) spreads are attributable to three factors: (1) the possible loss from default; (2) the tax differential between corporate and government bonds; and (3) systematic risk of the equity market.[8] Of those three factors, the first two are company-specific (or "diversifiable"); only the third relates to market (or "systematic") risk. Although the model used by King and Khang is a multi-factor version of the CAPM, the intent of the analysis is to isolate the effect of the systematic risk with which Mr. Rothschild is concerned. As the authors note:

> once the default-related variables are controlled for, bond betas or sensitivities to aggregate equity market risks have very limited explanatory value.[9]

In other words, King and Khang found that when returns are controlled for company-specific (i.e., diversifiable) risks, debt Betas are effectively zero. Consequently, any assessment of debt Betas using the simple CAPM approach (i.e., a regression with only one explanatory variable) may well over-state the systematic risk captured by Beta.

Even if the CAPM approach over-states the systematic risks associated with debt, using Mr. Rothschild's own data suggests rather low implied debt Betas. As Mr. Rothschild points out, the CAPM formula is given as:

$$k = r_f + B(r_m - r_f)$$

Where k is the cost rate, r_f is the risk-free rate, B is Beta, and the term $(r_m - r_f)$ is the market risk premium.

---

7 See "Estimating the WACC for Victorian Water Businesses", Strategic Finance Group, 1 September 2004, at 8, 9.

8 T.-H.D. King, K. Khang, "On the importance of systematic risk factors in explaining the cross-section of corporate bond spreads", Journal of Banking and Finance, Vol. 29 (2005)

9 Ibid., at 3144.

Under Mr. Rothschild's notion that the decoupling mechanism transforms the Company's equity risk to AA-rated debt, the yield associated with such debt is 4.89 percent (*see* Rothschild Direct at 39 - 41). Assuming Mr. Rothschild's risk-free rate of 4.45 percent and his market risk premium of 5.59 percent (*see* Hevert Direct at 31), the implied debt Beta is .08 (4.89% ≈ 4.45% + (.08 x 5.59%)). Assuming Mr. Moul's market risk premium of 7.39 percent (*see* Moul Direct at 47), the implied debt Beta is .06 (4.89% ≈ 4.45% + (.06 x 7.39%)). In either case, the implied debt Beta of .06 to .08 is far closer to zero than to Mr. Rothschild's equity Beta estimate of 0.88.

Consequently, Mr. Hevert's position that debt Betas are at or near zero is supported in finance texts, academic research, regulatory practice, and by Mr. Rothschild's own data and assumptions.

Record Request No. 19

Request:

Who is obligor on Narragansett Electric Company debt for electric and gas operations?

Response:

The obligor on Narragansett Electric Company debt for electric and gas operations is The Narragansett Electric Company.

Prepared by or under the supervision of: Paul Moul and Andrew Dinkel

Record Request No. 20

Request:

Please review Data Request COMM 1-10 and provide support that the proposed ratemaking treatment for charitable contributions is appropriate.

Response:

Attached are the adopted guidelines by the Public Utilities Commission on charitable contributions by regulated utilities in accordance with Report and Order No. 12467, pursuant to an open meeting decision on September 7, 1989.

Per the calculation below, the amount of charitable contributions included by the Company in its cost of service in this proceeding falls within these guidelines.

Test Year Operating Revenue	$448,536,508
Cost of Service Percentage Limitation	0.08%
Cost of Service $ Limitation	$358,829
Test Year Donations Included in Cost of Service (1)	$236,428

(1) See NG-MDL-1, Page 3, Line 48

Prepared by or under the supervision of: Mike Laflamme

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PUBLIC UTILITIES COMMISSION
100 Orange Street
Providence, R.I. 02903

MEMORAMDUM

TO: Gas, Electric and Telephone Utilities

FROM: Luly E. Miller, Commission Clerk

SUBJECT: Charitable Contributions - Docket No. 1862

DATE: September 8, 1989

Attached are the adopted guidelines by the Public Utilities Commission on charitable contributions by regulated utilities in accordance with Report and Order No. 12467, pursuant to an open meeting decision on September 7, 1989.

cc Joseph R. Vanni, Fund for Community Progress
Albert Sisti, Injured Workers of Rhode Island
William J. Allen, United Way of Southeastern of NE
Bernadette Farina, March of Dimes
Henry Shelton, George A. Wiley Center

GUIDELINES ON CHARITABLE CONTRIBUTIONS BY REGULATED UTILITIES

I. PREAMBLE

The Public Utilities Commission's treatment of charitable contributions by regulated utilities is circumscribed by the pronouncements of the Rhode Island Supreme Court in United Transit Authority v. Nunes, 99 R.I. 501, 513-514, 209 A.2d 215, 59 PUR 3d 11 (1965) and Providence Gas Company v. Burman, 119 R.I. 78, 99-100, 376 A.2d 687, 22 PUR 4th 103 (1977): when charitable contributions are modest in amount, and productive of good community relations which will benefit the utility or its patrons, they must be allowed as legitimate operating expenses.

The Commission has reviewed the charitable contribution policies of its regulated utilities pursuant to its Report and Order in Docket 1862. (Order 12467, entered November 5, 1987). To delineate its own understanding of the Supreme Court standards and assist the regulated utilities' development of charitable giving plans, the Commission hereby announces its guidelines for contributions qualifying for operating expense treatment. The Commission's posture on cost of service treatment should not be interpreted as limiting the utilities' charitable giving. The utilities' ratepayers contribute a modest amount; decisions regarding a utility's "fair share" rest with the utility's shareholders. The utilities are encouraged to give back to the community some of the benefit they derive from doing business here.

II. OPERATING EXPENSE TREATMENT GUIDELINES

A. To qualify for operating expense treatment, a charitable contribution must be modest in amount and productive of good community relations:

(1) Modest in amount means equal to or less than .08% of operating revenues.

(2) Productive of good community relations means that the gifts shall be made to organizations operating within the service district, or which provide benefits to the utility, its employees, or its patrons.

B. Other Considerations

(1) The recipient charity must qualify as an IRC §501(c)(3) non-profit charitable organization.

(2) The utility shall establish a committee to draft internal guidelines, review solicitations and distributions, and keep records. At a minimum, the committee shall:

a. require solicitations to be in writing;

b. issue its decisions approving or rejecting solicitations in writing.

c. determine whether and under what conditions employees are solicited in the work place.

(3) A list of charitable contributions which are included in cost of service shall be filed in the utility's Annual Report to the Commission, and shall be provided by the company to its ratepayers, upon request.

(4) The time spent by executives on loan to charities shall not be included in the percentage limitation set forth in II A (1). However, if additional employees (part or full-time) must be hired to replace loaned executives, all expenses incurred therefrom shall be considered charitable contributions and included as part of the utility's annual contributions, subject to the percentage limitation established above.

Adopted in Open Meeting 9/7/89

Record Request No. 22

Request:

Please revise the decoupling example to illustrate the example of adding one customer with below average usage for the class.

Response:

Please see Attachment RR-22 for the decoupling example, including the example of adding one customer with below average usage for the class (Page 4).

Prepared by or under the supervision of: James D. Simpson

DECOUPLING EXAMPLE

Line			Customer 1	Customer 2	Customer 3	Customer 4	Customer 5	Customer 6	Customer 7	Customer 8	Customer 9	Customer 10	Total Company	
1	**Base Line**													
2														
3	Usage - Units		200	200	200	100	100	100	100	50	50	50	1,150	
4														
5	Commodity		$0.70	$0.70	$0.70	$0.70	$0.70	$0.70	$0.70	$0.70	$0.70	$0.70		
6	Delivery		$0.30	$0.30	$0.30	$0.30	$0.30	$0.30	$0.30	$0.30	$0.30	$0.30		
7														
8	Commodity		$140.00	$140.00	$140.00	$70.00	$70.00	$70.00	$70.00	$35.00	$35.00	$35.00	$805.00	
9	Delivery		$60.00	$60.00	$60.00	$30.00	$30.00	$30.00	$30.00	$15.00	$15.00	$15.00	$345.00	
10	Total Bill - Base Line		$200.00	$200.00	$200.00	$100.00	$100.00	$100.00	$100.00	$50.00	$50.00	$50.00	$1,150.00	
11														
12														
13	**Scenario 1 - Customer 1, Customer 5 and Customer 10 Conserve 5%**													
14														
15			Customer 1	Customer 2	Customer 3	Customer 4	Customer 5	Customer 6	Customer 7	Customer 8	Customer 9	Customer 10		
16														
17														
18	Usage - Units		190	200	200	100	95	100	100	50	50	47.5	1,133	
19														
20	Commodity		$0.70	$0.70	$0.70	$0.70	$0.70	$0.70	$0.70	$0.70	$0.70	$0.70		
21	Delivery		$0.30	$0.30	$0.30	$0.30	$0.30	$0.30	$0.30	$0.30	$0.30	$0.30		
22														
23	Commodity		$133.00	$140.00	$140.00	$70.00	$66.50	$70.00	$70.00	$35.00	$35.00	$33.25	$792.75	
24	Delivery		$57.00	$60.00	$60.00	$30.00	$28.50	$30.00	$30.00	$15.00	$15.00	$14.25	$339.75	$345.00
25	Decoupling Adj	$0.0046	$0.88	$0.93	$0.93	$0.46	$0.44	$0.46	$0.46	$0.23	$0.23	$0.22	$5.25	
26	Total Bill		$190.88	$200.93	$200.93	$100.46	$95.44	$100.46	$100.46	$50.23	$50.23	$47.72	$1,137.75	
27														
28	Total Bill - Base Line		$200.00	$200.00	$200.00	$100.00	$100.00	$100.00	$100.00	$50.00	$50.00	$50.00		
29														
30	Change in Total Bill		($9.12)	$0.93	$0.93	$0.46	($4.56)	$0.46	$0.46	$0.23	$0.23	($2.28)		

Computation of Decoupling Adjustment

Base Line Revenue Per Customer = Total Targeted Delivery Revenue Divided by Number of Customers ($345 / 10)	$34.50
Actual Number of Customers	10
	$345.00
Actual Billed Revenue	$339.75
Decoupling Adjustment	$5.25
Number of Billing Units	1,133
Decoupling Rate Adjustment	$0.0046

DECOUPLING EXAMPLE

Line			Customer 1	Customer 2	Customer 3	Customer 4	Customer 5	Customer 6	Customer 7	Customer 8	Customer 9	Customer 10	Total Company	
1	**Base Line**													
2														
3	Usage - Units		200	200	200	100	100	100	100	50	50	50	1,150	
4														
5	Commodity		$0.70	$0.70	$0.70	$0.70	$0.70	$0.70	$0.70	$0.70	$0.70	$0.70		
6	Delivery		$0.30	$0.30	$0.30	$0.30	$0.30	$0.30	$0.30	$0.30	$0.30	$0.30		
7														
8	Commodity		$140.00	$140.00	$140.00	$70.00	$70.00	$70.00	$70.00	$35.00	$35.00	$35.00	$805.00	
9	Delivery		$60.00	$60.00	$60.00	$30.00	$30.00	$30.00	$30.00	$15.00	$15.00	$15.00	$345.00	
10	Total Bill - Base Line		$200.00	$200.00	$200.00	$100.00	$100.00	$100.00	$100.00	$50.00	$50.00	$50.00	$1,150.00	
11														
12														
13	**Scenario 2 - All Customers Conserve 5%**													
14														
15			**Customer**	**Customer**	**Customer**	**Customer**	**Customer**	**Customer**	**Customer**	**Customer**	**Customer**	**Customer**		
16			**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**		
17														
18	Usage - Units		190	190	190	95	95	95	95	47.5	47.5	47.5	1,093	
19														
20	Commodity		$0.70	$0.70	$0.70	$0.70	$0.70	$0.70	$0.70	$0.70	$0.70	$0.70		
21	Delivery		$0.30	$0.30	$0.30	$0.30	$0.30	$0.30	$0.30	$0.30	$0.30	$0.30		
22														
23	Commodity		$133.00	$133.00	$133.00	$66.50	$66.50	$66.50	$66.50	$33.25	$33.25	$33.25	$764.75	
24	Delivery		$57.00	$57.00	$57.00	$28.50	$28.50	$28.50	$28.50	$14.25	$14.25	$14.25	$327.75	
25	Decoupling Adj	$0.0158	$3.00	$3.00	$3.00	$1.50	$1.50	$1.50	$1.50	$0.75	$0.75	$0.75	$17.25	$345.00
26	Total Bill		$193.00	$193.00	$193.00	$96.50	$96.50	$96.50	$96.50	$48.25	$48.25	$48.25	$1,109.75	
27														
28	Total Bill - Base Line		$200.00	$200.00	$200.00	$100.00	$100.00	$100.00	$100.00	$50.00	$50.00	$50.00		
29														
30	Change in Total Bill		($7.00)	($7.00)	($7.00)	($3.50)	($3.50)	($3.50)	($3.50)	($1.75)	($1.75)	($1.75)		

Computation of Decoupling Adjustment

Base Line Revenue Per Customer = Total Targeted Delivery Delivery Divided by Number of Customers ($345 / 10)	$34.50
Actual Number of Customers	10
	$345.00
Actual Billed Revenue	$327.75
Decoupling Adjustment	$17.25
Number of Billing Units	1,093
Decoupling Rate Adjustment	$0.0158

DECOUPLING EXAMPLE

Line		Customer 1	Customer 2	Customer 3	Customer 4	Customer 5	Customer 6	Customer 7	Customer 8	Customer 9	Customer 10	Total Company
1	**Base Line**											
2												
3	Usage - Units	200	200	200	100	100	100	100	50	50	50	1,150
4												
5	Commodity	$0.70	$0.70	$0.70	$0.70	$0.70	$0.70	$0.70	$0.70	$0.70	$0.70	
6	Delivery	$0.30	$0.30	$0.30	$0.30	$0.30	$0.30	$0.30	$0.30	$0.30	$0.30	
7												
8	Commodity	$140.00	$140.00	$140.00	$70.00	$70.00	$70.00	$70.00	$35.00	$35.00	$35.00	$805.00
9	Delivery	$60.00	$60.00	$60.00	$30.00	$30.00	$30.00	$30.00	$15.00	$15.00	$15.00	$345.00
10	Total Bill - Base Line	$200.00	$200.00	$200.00	$100.00	$100.00	$100.00	$100.00	$50.00	$50.00	$50.00	$1,150.00
11												
12												
13	**Scenario 3 - No Change in Customer usage, Company Adds 1 Additional 200 Unit Consumer**											
14												

Line			Customer 1	Customer 2	Customer 3	Customer 4	Customer 5	Customer 6	Customer 7	Customer 8	Customer 9	Customer 10	Customer 11	Total Company	
15															
16															
17															
18	Usage - Units		200	200	200	100	100	100	100	50	50	50	200	1,350	
19															
20	Commodity		$0.70	$0.70	$0.70	$0.70	$0.70	$0.70	$0.70	$0.70	$0.70	$0.70	$0.70		
21	Delivery		$0.30	$0.30	$0.30	$0.30	$0.30	$0.30	$0.30	$0.30	$0.30	$0.30	$0.30		
22															
23	Commodity		$140.00	$140.00	$140.00	$70.00	$70.00	$70.00	$70.00	$35.00	$35.00	$35.00	$140.00	$945.00	
24	Delivery		$60.00	$60.00	$60.00	$30.00	$30.00	$30.00	$30.00	$15.00	$15.00	$15.00	$60.00	$405.00	$379.50
25	Decoupling Adj	($0.0189)	($3.78)	($3.78)	($3.78)	($1.89)	($1.89)	($1.89)	($1.89)	($0.94)	($0.94)	($0.94)	($3.78)	($25.50)	
26	Total Bill		$196.22	$196.22	$196.22	$98.11	$98.11	$98.11	$98.11	$49.06	$49.06	$49.06	$196.22	$1,324.50	
27															
28	Total Bill - Base Line		$200.00	$200.00	$200.00	$100.00	$100.00	$100.00	$100.00	$50.00	$50.00	$50.00	$0.00		
29															
30	Change in Total Bill		($3.78)	($3.78)	($3.78)	($1.89)	($1.89)	($1.89)	($1.89)	($0.94)	($0.94)	($0.94)	N/A		

Computation of Decoupling Adjustment

Base Line Revenue Per Customer = Total Targeted Delivery Revenue Divided by Number of Customers ($345 / 10)	$34.50
Actual Number of Customers	11
	$379.50
Actual Billed Revenue	$405.00
Decoupling Adjustment	($25.50)
Number of Billing Units	1,350
Decoupling Rate Adjustment	($0.0189)

DECOUPLING EXAMPLE

Line		Customer 1	Customer 2	Customer 3	Customer 4	Customer 5	Customer 6	Customer 7	Customer 8	Customer 9	Customer 10	Total Company
1	**Base Line**											
2												
3	Usage - Units	200	200	200	100	100	100	100	50	50	50	1,150
4												
5	Commodity	$0.70	$0.70	$0.70	$0.70	$0.70	$0.70	$0.70	$0.70	$0.70	$0.70	
6	Delivery	$0.30	$0.30	$0.30	$0.30	$0.30	$0.30	$0.30	$0.30	$0.30	$0.30	
7												
8	Commodity	$140.00	$140.00	$140.00	$70.00	$70.00	$70.00	$70.00	$35.00	$35.00	$35.00	$805.00
9	Delivery	$60.00	$60.00	$60.00	$30.00	$30.00	$30.00	$30.00	$15.00	$15.00	$15.00	$345.00
10	Total Bill - Base Line	$200.00	$200.00	$200.00	$100.00	$100.00	$100.00	$100.00	$50.00	$50.00	$50.00	$1,150.00
11												
12												
13	**Scenario 4 - No Change in Customer usage, Company Adds 1 Additional 50 Unit Consumer**											
14												

Line			Customer 1	Customer 2	Customer 3	Customer 4	Customer 5	Customer 6	Customer 7	Customer 8	Customer 9	Customer 10	Customer 11	Total Company	
15															
16															
17															
18	Usage - Units		200	200	200	100	100	100	100	50	50	50	50	1,200	
19															
20	Commodity		$0.70	$0.70	$0.70	$0.70	$0.70	$0.70	$0.70	$0.70	$0.70	$0.70	$0.70		
21	Delivery		$0.30	$0.30	$0.30	$0.30	$0.30	$0.30	$0.30	$0.30	$0.30	$0.30	$0.30		
22															
23	Commodity		$140.00	$140.00	$140.00	$70.00	$70.00	$70.00	$70.00	$35.00	$35.00	$35.00	$35.00	$840.00	
24	Delivery		$60.00	$60.00	$60.00	$30.00	$30.00	$30.00	$30.00	$15.00	$15.00	$15.00	$15.00	$360.00	$379.50
25	Decoupling Adj	$0.0163	$3.25	$3.25	$3.25	$1.63	$1.63	$1.63	$1.63	$0.81	$0.81	$0.81	$0.81	$19.50	
26	Total Bill		$203.25	$203.25	$203.25	$101.63	$101.63	$101.63	$101.63	$50.81	$50.81	$50.81	$50.81	$1,219.50	
27															
28	Total Bill - Base Line		$200.00	$200.00	$200.00	$100.00	$100.00	$100.00	$100.00	$50.00	$50.00	$50.00	$0.00		
29															
30	Change in Total Bill		$3.25	$3.25	$3.25	$1.63	$1.63	$1.63	$1.63	$0.81	$0.81	$0.81	N/A		

Computation of Decoupling Adjustment

Base Line Revenue Per Customer = Total Targeted Delivery Revenue Divided by Number of Customers ($345 / 10)	$34.50
Actual Number of Customers	11
	$379.50
Actual Billed Revenue	$360.00
Decoupling Adjustment	$19.50
Number of Billing Units	1,200
Decoupling Rate Adjustment	$0.0163