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NEW YORK STATE
PUBLIC SERVICE COMMISSION

Case 05-S-1376 - Proceeding on Motion of the
Commission as to the Rates, Charges,
Rules and Regulations of Consolidated
Edison Company of New York, Inc. for
Steam Service.

Before the
Hon. Rafael Epstein
Administrative Law Judge

**TRANSGAS ENERGY SYSTEMS LLC'S
COMMENTS IN OPPOSITION TO THE
JOINT PROPOSAL FILED ON JUNE 2, 2006**

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Dated: June 19, 2006
Albany, New York

NEW YORK STATE PUBLIC
SERVICE COMMISSION

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Introduction

TransGas Energy System LLC ("TransGas"), hereby submits its Comments In Opposition To The Joint Proposal ("05-S-1376 JP") filed in the captioned proceeding on June 2, 2006. While TransGas' comments basically focus on one provision of the 05-S-1376 JP, its lack of comment on the balance of the provisions should not be construed as support for, or concurrence with, them.

**I. THE STEAM PRODUCTION STUDY CONTRAVENES
COMMISSION ORDERS AND POLICIES**

The provision of the 05-S-1376 JP which TransGas opposes is Section I, "Steam Production." In general, the provision requires Consolidated Edison Company of New York, Inc. ("Con Edison" or "the Company") to prepare an investment grade evaluation of two Hudson Avenue repowering options and consider the results, together with other possible options, in the development of a Steam Resource Plan which is to be filed with the Commission in about fourteen months or so.

The Commission has determined that steam production must be increased. Indeed, the 05-S-1376 JP subjects Con Edison to a "\$2 million revenue adjustment" if it fails to file a Steam Resource Plan by the stated deadline.

The Steam Production proposal, however, is unfair to entities that seek to supply steam to Con Edison at competitive prices. The proposal contravenes the terms and intent of the last joint proposal adopted by the Commission in Case 03-S-1672 ("03-S-1672 JP").¹ In that Order, the Commission approved the following provision:

Steam Production Study

The Company will contract for an investment-grade study of long-term steam production options. The Company may defer the cost of the study for later recovery. The study must be developed and performed by an independent engineering firm. The independent engineering firm shall be procured through a Request for Proposal process.

The scope of the study will be developed in coordination with the Department of Public Service and New York City Economic Development Corporation, and with input from other members of the Task Force. Generally, the study will examine the Company's present costs of production at each steam unit and estimate costs for the next 20 years, analyze the potential of, and cost for, repowering Hudson Avenue, 74th Street, and 59th Street, consider other alternative steam production sources to existing steam plants, evaluate emission reduction benefits, and address other related issues identified by the Task Force.

Cost projections will be treated as confidential data and shall not be disclosed to any party (including steam supplier representatives) other than the core members of the Task Force [emphasis added].²

The preparation of the referenced Steam Production Study has been, and is, controlled by the Core Members of the Steam Business Development Task Force ("SBDTF"). TransGas is not

¹ Case 03-S-1672 – Consolidated Edison Company of New York, Inc. – Steam Service-Order On Consolidated Edison Company of New York, Inc.'s Steam Business Development Plan (Issued December 5, 2005, p. 5).

² Cases 03-G-1671, 1672 – Consolidated Edison Company of New York, Inc. – Order Adopting Terms of A Joint Proposal – Joint Proposal, p. 54.

a “core member,” but participated in meetings of the entire Task Force and submitted a proposal to sell steam to Con Edison for consideration by the consultant and Core Members. The Department of Public Service Staff (“DPS Staff”), Con Edison, New York City Economic Development Corporation and New York State Empire State Development are the Core Task Force Members (*Id.* at 51).

In the Case 05-S-1376 JP, paragraph I, 1(a) requires Con Edison to prepare an investment grade evaluation “. . . of two Hudson Avenue repowering options identified in Phase I of the Steam Production Study.” The Case 03-S-1672 JP, however, requires that the investment grade evaluation “. . . consider other alternative steam production sources to existing steam plants. . . .” The 05-S-1376 JP leaves it to Con Edison to decide whether another option is “. . . a clear and convincing preferred option from Phase I” (para. I.a). Unless Con Edison decides otherwise, the study will focus only on company-owned assets.

The 03-S-1672 JP also requires the engagement of an “independent engineering firm” to perform the investment grade study. The 05-S-1376 JP, however, allows a combination of Con Edison personnel and consultants, with Con Edison personnel used “. . . to the maximum extent practical.” Consultants “. . . will be used as determined by Con Edison” and under “. . . the sole direction of Con Edison” (para. I.b). The 05-S-1376 JP allows Con Edison to control the study whereas the Commission wanted an independent firm to produce the analysis upon which a decision would be based.

After participating extensively in meetings, and reviewing drafts for the development of the Steam Business Development Plan, and then the scope of the Production Cost Study on February 3, 2006, TransGas submitted responses to information sought by the consultant in connection with a possible alternative steam sale to Con Edison as part of Phase I to the Steam

Production Study. TransGas subsequently provided additional information or clarification to the consultant on several occasions and also met with them. TransGas responded to the last inquiry by the consultant on April 20, 2006, and asked the consultant to notify TransGas and its counsel if further information is required. No further inquiries were made to TransGas. In the 05-S-1376 JP, the Core Members apparently decided that the TransGas information should not be considered any further. On June 1, 2006, TransGas requested a meeting with the Core Members and the consultant to find out what happened to its proposal.

TransGas received a response from the Core Members on June 15, 2006, asserting that its proposal was incomplete. According to the response, TransGas was being excluded from further consideration. However, the scope of work for the consultant provides that “. . . Worley Parsons will discuss the potential exclusion of an alternative with the Working Group” (p. 9). TransGas is part of the Working Group. Accordingly, TransGas intends to follow-up to assure that the information it provided is fully and fairly considered jointly.

Con Edison is studying various proposals for Hudson Avenue. As Con Edison has approximately fourteen months to further the study of multiple proposals for Hudson Avenue, that time could also be used to negotiate in good faith with other suppliers. Con Edison did not negotiate with TransGas concerning its proposal as part of the Core Member’s review. That good faith negotiation is required by the Commission Orders, discussed below.

The 05-S-1376 JP appeared to be teeing up Con Edison to perform a repowering of the Hudson Avenue Station or some variation thereof. In approximately fourteen months, when Con Edison files a Steam Resource Plan, as required by the 05-S-1376 JP (para. I.2), an extremely detailed study of Con Edison plant options will have been done, with no requirement to further develop or study the details concerning “. . . alternative steam production sources to existing

plants,” as specified in the 03-S-1672 JP. Paragraph I.d of the Case 05-S-1376 JP details the components of the study of the Hudson Avenue options and demonstrates the significant information and completeness advantage those options will have over the TransGas proposal that Con Edison apparently will put on the shelf for fourteen months.

TransGas is not arguing that the same “investment grade” study requirements are necessary for its proposed project or any other competitive source. TransGas is advocating a level playing field so the Commission, Con Edison and the parties will have complete, updated information on possible competitive options. Having the evaluations of the Con Edison resource options updated and completed and having stale data for competitive options is highly prejudicial, anti-competitive and is not in the interest of steam ratepayers. The 05-S-1376 JP does not even go so far as to require Con Edison to evaluate alternative steam product sources. Paragraph I.2 only suggests that Con Edison “seek competitively procured capacity” as an example.

There is no dispute that the cost of steam service needs to be kept as low as possible so it may remain competitive. The objectives sought by many of the other provisions of the Case 05-S-1376 JP demonstrate this goal. Furthermore, it is Commission policy to have Con Edison explore and negotiate, in good faith, alternative sources of steam production. The 05-S-1376 JP, however, would relieve Con Edison of these obligations.

Working backwards, the Commission endorsed the following provision of the Steam Business Development Plan, issued by the SBDTF:³

Ameliorating Capacity Constraints. Subject to the findings of the Steam Production Study, Con Edison should explore cost-effective and economic production capacity from its own or merchant central

³ Case 03-S-1672 – *Order on Consolidated Edison Company of New York, Inc. 's Steam Business Development Plan* (Issued December 5, 2005, App. A. para. 15, p. 5).

cogeneration facilities. The company should also evaluate demand management that could alleviate constraints.

The Commission had previously determined that TransGas effectively needed to obtain an Article X certificate before the Commission would determine Con Edison's avoided costs for steam purchase pricing.⁴ The Commission stated:

- A. Addressing the comments TransGas submitted in these cases as the developer of a proposed cogeneration facility, this party correctly observed that the cost allocations we are adopting here for ratemaking purposes would not control (and would probably have no application) in the calculation of Consolidated Edison's avoidable steam costs for competitive market purposes. Whenever TransGas is in a position to provide steam that competes with Consolidated Edison's service, a proper determination of the utility company's avoidable costs will be necessary. However, until TransGas can offer steam to customers, there is no need for us to consider any such cost calculations, nor any reason for us to specify the terms of any such cost studies here [emphasis added].

Note that the Commission stated that avoided costs would be determined for "competitive market purposes" and TransGas needed to be in a position to ". . . provide steam that competes with Consolidated Edison's service. . . ."

As further evidence that the Commission is seeking to foster more competitive options for the supply of steam, the Order also stated:

- F. It is also worth noting, at this point, that the Commission recently addressed the provision of electricity and natural gas in the State's developing competitive markets. We have stated goals and a vision for the further development of robust retail energy competition, and we have provided a flexible framework for analyzing and responding to evolving market conditions. From our review of the Joint Proposal submitted in these proceedings, we find that its terms and provisions are consistent with

⁴ Case 03-S-1672 – *Order Adopting The Terms Of A Joint Proposal* – p. 29. A recent recommendation by the Examiners in the TransGas Article X proceeding, inconsistently argues that TransGas should have an executed steam contract with Con Edison before it can obtain an Article X certificate. Case 01-F-1276 – *Recommendation Concerning Further Proceedings* (Issued April 12, 2006 at 3).

the stated goals as they are clearly designed to foster the development of competitive markets [emphasis added].⁵

Con Edison is also obligated to negotiate in good faith with potential suppliers of competitively-priced steam. In 1999, the Commission directed Con Edison to negotiate in good faith for the purchase of steam from any producer that can offer pricing terms competitive with Con Edison's own avoided costs so long as doing so does not allow the new entrant to obtain excessive market power.⁶ The Commission specifically directed Con Edison that it "... shall negotiate in good faith for the purchase of steam from any producer, subject to the discussion set forth in the body of this Order" (*Id.* at 13). In the same Commission order, the Commission stated that "...we see no reason to prohibit new entrants to the steam market" (*Id.* at 7).

The Case 05-S-1376 JP, however, would eliminate these obligations while Con Edison developed proposals for its own plants and the TransGas proposal would languish and grow stale. As the decision date approached in the next fourteen months, only the Con Edison plant proposals would be ready for timely and orderly implementation to address pressing steam system demand constraints.

Accordingly, to create a level playing field, TransGas proposes the following revision to Section I of the 05-S-1376 JP:

New Paragraph (g)

(g) Contemporaneously with the preparation of the investment grade study required herein, and within the deadlines established herein, Con Edison will agree to negotiate with TransGas, and separately with each interested potential supplier of steam that so requests, if any, the potential terms of a steam sales agreement based upon Con Edison's

⁵ Case 03-S-1672 – *Order Adopting The Terms Of A Joint Proposal* – p. 30.

⁶ Cases 96-S-1065, 96-S-1121 – *Consolidated Edison Company of New York, Inc. Order Concerning Phase II Steam Plan Report* (Issued December 2, 1999, at 7, 13).

full avoided steam production and capacity costs ("Potential Terms"). DPS Staff and/or a DPS administrative law judge will assist the negotiations if requested by a party. The Potential Terms resulting from each negotiation will be filed with the Commission and disseminated to interested parties together with the evaluation provided in (e) above. The Potential Terms will be compared to the results of the investment grade study required herein and any other resource options studied by Con Edison and said comparison will be included in the Steam Resource Plan provided herein. Con Edison's rationale for accepting or rejecting the Potential Terms shall be provided in the Steam Resource Plan with supporting cost details.

This provision would not impose an obligation for Con Edison to purchase steam from an alternate supplier. It would simply allow alternate suppliers of steam to be on the same footing as the Hudson Avenue options when the decision is made to select an option some fourteen months from now.

Dated: June 19, 2006

Respectfully submitted,

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Comments

05-S-1376

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June 19, 2006

VIA HAND DELIVERY

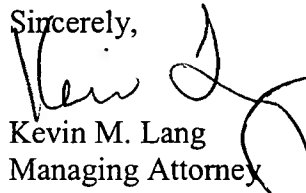
Hon. Rafael Epstein
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New York State Department of Public Service
Three Empire State Plaza
Albany, NY 12223-1350

Re: Case 05-S-1376 – Consolidated Edison Company of New York, Inc. – Steam Rates.

Dear Judge Epstein:

Enclosed please find the Department of Public Service Staff's Statement in Support of the Joint Proposal. Copies of this Statement are being served on the active parties by electronic and first class mail.

Sincerely,


Kevin M. Lang
Managing Attorney

Enclosure

cc: Active Parties to Case 05-S-1376

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05-S-1376
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June 19, 2006

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Re: Case 05-S-1376 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Steam Service.

Dear Secretary Brilling:

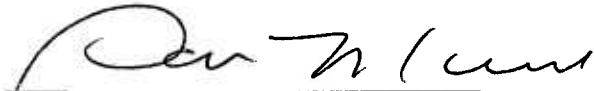
Enclosed please find for filing in the captioned proceeding an original and five copies of the "Comments in Opposition to the Joint Proposal Filed on June 2, 2006."

Copies are being served electronically and by first class mail on the active parties.

Very truly yours,

READ AND LANIADO, LLP
Attorneys for TransGas Energy Systems LLC

By:


Sam M. Laniado

SML/lac
Enclosures

cc: Hon. Rafael Epstein (By Electronic and First Class Mail)
Active Parties (By Electronic and First Class Mail)
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Of Counsel to TransGas Energy Systems LLC

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION



CASE 05-S-1376 – Proceeding on Motion of the Commission as to the Rates,
Charges, Rules and Regulations of Consolidated Edison
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**STATEMENT OF THE STAFF OF THE
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PUBLIC SERVICE
IN SUPPORT OF THE JOINT PROPOSAL**

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 05-S-1376 – Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Steam Service.

**STATEMENT OF THE STAFF OF THE
NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE
IN SUPPORT OF THE JOINT PROPOSAL**

INTRODUCTION

Consolidated Edison Company of New York, Inc. (Con Edison) is operating its steam business pursuant to a rate plan approved by the Commission in 2004 that expires on September 30, 2006.¹ On November 2, 2005, Con Edison filed proposed tariff leaves that would take effect October 1, 2006, and testimony and exhibits supporting the modifications set forth in those proposed tariff leaves (the Steam Rate Filing).

On February 27, 2006, seven parties filed testimony in response to the Steam Rate Filing. On March 13, 2006, four parties, including Con Edison and Department of Public Service Staff (Staff) filed rebuttal testimony. To provide time for the parties to pursue settlement, the introduction of testimony and the cross examination of witnesses was postponed at a hearing held on April 5, 2006.

Two rounds of settlement negotiations were held, the first being conducted in March 2006, and the second round continuing from April 25, 2006 to June 2, 2006.² The second round of negotiations resulted in a Joint Proposal that was filed on June 2, 2006. As of June 19, 2006, the signatories to the Joint Proposal are Con Edison, Department of Public Service Staff (Staff),

¹ Case 03-S-1672, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Steam Service, Order Adopting the Terms of a Joint Proposal (issued September 27, 2004) (2004 Rate Order).

² Con Edison notified all parties and the Secretary of the Commission of the pending settlement negotiations by letters dated March 10, 2006 and April 24, 2006, as required by 16 NYCRR §3.9(a).

the City of New York (NYC), Consumer Power Advocates, New York Energy Consumers Council, Inc., Pace Law School Energy Project, The E Cubed Company, LLC, and ConsumerPowerline. The provisions of the Joint Proposal, if approved or adopted by the Commission, will take effect October 1, 2006.

This Statement in Support represents the basis and rationale for Staff's agreement with the Joint Proposal and recommendation to the Commission that it approve or adopt the Joint Proposal's terms and conditions. Staff will be available at the July 12, 2006 hearing to respond to questions by the Administrative Law Judge (ALJ) and other parties on the Joint Proposal and this Statement.

OVERVIEW OF THE JOINT PROPOSAL

The Joint Proposal recommends a two-year rate plan that runs from October 1, 2006 to September 30, 2008. The Joint Proposal also recommends no changes to base rates except for the shift of the recovery of certain costs between base rates and the Fuel Adjustment Clause beginning in Rate Year (RY) 2.

The proposed revenue requirement is based on return on equity (ROE) of 9.8%, with earnings sharing occurring above a deadband of 100 to 120 basis points (the size of the deadband depends on whether Con Edison incurs any revenue adjustments each year). Earnings up to 100 basis points above the deadband would be shared equally between customers and shareholders, and earnings greater than 100 basis points above the deadband would be shared 75% to customers and 25% to shareholders.

Con Edison will continue to provide sample demand bills to customers having annual consumption at or above 22,000 Mlbs and who have demand meters installed, continuing the sample billing that the company began during the 2005-2006 winter. Thereafter, Con Edison is to report to the parties by July 1, 2007 the results of its sample demand billing, and will use that report to design demand rates that will become effective November 1, 2007. Because there is no change to base rates, the signatories do not recommend any other rate design changes. However, because prospective rate design, especially rate allocation among the service classes, is a concern to many parties, the Joint Proposal recommends that Con Edison convene a collaborative beginning in the second quarter of 2007 to discuss rate design issues.

The Commission stated in Opinion No. 00-15 that recovery of operating costs for the company's 74th and 59th Street Steam Stations should be transferred from electric rates to steam rates.³ During this proceeding, Con Edison demonstrated that portions of those stations are used to support Con Edison's electric operations; they both contain gas turbines and related equipment that are used to support the local area electric networks in which the stations are located. The company also explained that it plans to build an electric substation within the 74th Street Steam Station. Accordingly, the Joint Proposal recommends that a portion of the operating costs for both stations be allocated to Con Edison's electric department based on the square footage occupied and to be occupied by the steam and electric facilities located therein. The Joint Proposal also recommends an allocation methodology between Con Edison's electric and steam businesses for proceeds received from the sale of sulfur dioxide (SO₂) allowances.

The Joint Proposal includes a series of recommendations, with performance metrics, for steam business development efforts that are intended to promote growth in Con Edison's steam business. It is expected that these efforts will benefit current and future customers by increasing the company's steam sales, helping to ensure the viability of the steam system, and potentially lowering future steam rates. The Joint Proposal also includes customer satisfaction provisions, with performance metrics, that are intended to help the company retain the system's existing customers, thus avoiding any substantial loss to the current customer base.

The Joint Proposal should be read and considered in its entirety and arguments against any specific provision should not be considered outside of the context of the whole agreement. Staff recommends that the Joint Proposal be approved or adopted as proposed because it represents a fair balancing of customer and shareholder interests, as evidenced by the large number of signatories.

³ Case 99-S-1621, Consolidated Edison Company of New York, Inc. – Steam Rates, Opinion No. 00-15 (issued December 1, 2000).

COMPLIANCE WITH THE COMMISSION'S SETTLEMENT GUIDELINES

In Opinion No. 92-2, the Commission identified the criteria for judging whether a joint proposal is in the public interest.⁴ The Commission explained that in considering a joint proposal it reviews the extent to which that proposal is supported by generally adverse parties, and it also determines whether the record for the decision to adopt a joint proposal is adequate. To be approved, a joint proposal should be consistent with law and public policy, have a rational basis, balance the interests of customers and shareholders, and compare favorably with the probable outcome of litigation. The Joint Proposal here satisfies these criteria and should, therefore, be adopted.

All parties to this proceeding received reasonable and sufficient notice of settlement negotiations as required by 16 NYCRR §3.9(a). Con Edison and/or Staff routinely circulated e-mails to all active parties advising them of upcoming dates for negotiating sessions. Moreover, telephone conferencing was made available to all parties for every negotiating session. No interested party was denied an opportunity to participate in the negotiations, and many parties participated during every single negotiating session.

The settlement negotiations resulted in a Joint Proposal that has received broad support. In addition to Staff and Con Edison, other signatories to the Joint Proposal include NYC and a number of consumer groups and advocates. Although some parties may oppose discrete provisions of the Joint Proposal, Staff believes that the Joint Proposal must be considered as a whole as the product of fair and balanced negotiation. When considered in its proper context, it is clear that the Joint Proposal protects customers, is fair to shareholders, promotes the Commission's objective of ensuring the future viability of Con Edison's steam business, and that its provisions are reasonable relative to the possible outcome of this case had it been fully litigated.

Additionally, the record is adequate to justify adoption of the Joint Proposal. The testimony and exhibits filed by Con Edison, Staff, and NYC provide and explain the rationale and basis for many of elements of the Joint Proposal.⁵ Additionally, a review of rebuttal

⁴ Case 90-M-0255, Proceeding on Settlement Procedures and Guidelines, Opinion No. 92-2 (issued March 24, 1992).

⁵ Staff incorporates by reference in this Statement its pre-filed testimony, as identified in Appendix A. Staff understands that Con Edison and NYC will similarly be incorporating all or portions of their witnesses' pre-filed direct testimony in support of the Joint Proposal.

testimony submitted by some of the parties shows the wide range of disputed issues that have been brought to balance in the Joint Proposal. That testimony and the exhibits thereto provide ample support for the provisions contained in the Joint Proposal. Moreover, Staff expects there to be further support provided at the hearing to be conducted on July 12, 2006.

The Commission's remaining criteria for judging whether a joint proposal is reasonable is determining whether the terms in such proposal are in the public interest. For the reasons discussed below, the Joint Proposal offered here meets that standard.

THE JOINT PROPOSAL IS IN THE PUBLIC INTEREST

The terms of the Joint Proposal are in the public interest. In considering the provisions below, Staff notes that some provisions may seem to appear to favor one or another party. Such a view of individual elements is inappropriate and should be tempered by the fact that the Joint Proposal is intended to be considered as a whole, with each individual section providing support to the others.

In executing and submitting the Joint Proposal to the Commission, Staff is aware that such Proposal is only a series of recommendations to the Commission and is not a contract.⁶ The Commission may accept, reject, or modify, in whole or in part, any recommendation contained therein. Moreover, such adoption of any of the terms of the Joint Proposal do not create a contract between the Commission and Con Edison or any other signatory party, but only represents the Commission's execution of its statutory responsibility and duty to determine the rates and rules applicable to Con Edison's steam business for the duration of the rate plan. Any belief that the Joint Proposal is a binding agreement on the Commission or that it gives rise to contractual claims against the Commission is erroneous as a matter of law.⁷

A. Term of the Rate Plan

The rate plan contained in the Joint Proposal covers two years with each rate year comprising a 12-month period. Thus, RY1 is the period October 1, 2006 to September 30, 2007,

⁶ MCI Telecommunications Corp. v. Public Serv. Comm'n, 231 A.D.2d 284, 291 (3d Dep't 1997).

⁷ *See, e.g.,* United Water New York, Inc. v. Public Serv. Comm'n, 252 A.D.2d 810, 811 (3d Dep't 1988).

and RY2 is the period October 1, 2007 to September 30, 2008. Although Staff's testimony in this case advocated for a one-year rate plan, the benefits to customers that could be achieved in a negotiated rate plan led Staff to agree to a two-year deal.

B. Rate and Economic Provisions

1. Cost of Capital

The revenue requirement reflected in the Joint Proposal is premised on a 7.75% cost of capital. This cost of capital is derived from a 48.0% equity ratio and a 9.8% ROE. The company's Steam Rate Filing proposed an 8.35% cost of capital, based on a 48.9% equity ratio and an 11.0% ROE (for a three-year rate plan). Staff Witness Hogan proposed a 7.20% cost of capital, based on a 47.6% equity ratio and an 8.7% ROE, as being more appropriate for Con Edison's steam business (for a one-year rate plan). The 7.75% cost of capital contained in the Joint Proposal is a reasonable outcome given the current interest rate environment as well as the two-year term of the Rate Plan.

The 48.0% equity ratio is the same percentage agreed to in Con Edison's current steam, gas, and electric rate plans. More importantly, that ratio falls within the range a utility of Con Edison's business risk would expect to have, as evidenced by Standard & Poor's report included in Staff's Exhibit __ (JSH-3).

2. Return on Equity

The Rate Plan's ROE is 9.8%, 110 basis points higher than that found in Staff Witness Hogan's direct testimony and 120 basis points lower than that in the company's filing. This ROE is fair and reasonable given that the ROE contained in Staff's direct testimony was predicated on a one-year litigated case. Additionally, the ROE reflects the risks inherent in the Joint Proposal. For instance, the company is taking the risk that, by agreeing to a multiyear plan, the allowed capital cost rates will become "stale" over its term. This risk is especially relevant given today's interest rate environment and the likelihood that interest rate increases are likely to occur in the future. For example, the ten-year Treasury Bond Rate increased by 42 basis points between the date Staff filed its direct testimony and the date the Joint Proposal was filed. In addition, and as discussed below, the Joint Proposal contains a relatively small deadband before sharing of excess earnings begins.

Furthermore, the ROE is reasonable given that a premium is typically added to the allowed ROE in multi-year rate plans to account for the risk assumed by the utility that much of its non-commodity operations and maintenance (O&M) expenses, such as labor costs and health care costs, may increase faster than expected over the term of the Rate Plan. With the exception of several deferrals, discussed below, the level of revenues available to Con Edison under the Rate Plan is limited.

3. Earnings Sharing Mechanism

The Joint Proposal contains an earnings sharing mechanism that allows the company and its customers to share earnings above a certain amount (Joint Proposal, p. 15). If the company does not incur any revenue adjustment pursuant to the performance metrics related to steam business development and retention, customer satisfaction, the demand metering program, or steam production, revenue sharing will begin at 11.0% (Earnings Sharing Threshold). Should the company incur any revenue adjustments, the Earnings Sharing Threshold will be decreased to 10.8%.

The first 100 basis points of the company's earnings above the Earnings Sharing Threshold will be shared equally between customers and shareholders. For earnings more than 100 basis points above the Earnings Sharing Threshold, 75% of the earnings will be deferred for the benefit of customers. Earnings sharing will be an annual calculation, the methodology for which is fully described in Section D of the Joint Proposal. The equity ratio used in the earnings sharing mechanism will be limited to the lower of the company's actual equity ratio or 50%. This assures that if Con Edison's parent corporation, Con Edison, Inc. (CEI), issues debt which is then treated by Con Edison as equity, the intent of the earnings sharing mechanism will not be thwarted. The use of actual equity ratios (assuming they are below 50%) acts as an incentive to Con Edison to keep its equity level close to what is forecast in the Rate Plan and not to decrease it substantially, which would have negative consequences for CEI's bond rating.

Staff's direct testimony was for a one-year rate case and, as such, appropriately did not provide for an earnings sharing mechanism. The earnings sharing mechanism as detailed in the Joint Proposal is an important part of any multi-year rate plan. Such a mechanism provides Con Edison with a strong incentive to minimize costs and improve efficiencies, while allowing its customers to share in savings produced by those efforts. In addition, if Con Edison exceeds the

parties' expectations of its financial performance, the mechanism ensures that customers receive a fair share of the benefits associated with that performance and prevents the company from wholly receiving an undue windfall. Further, the incentive provided by the mechanism could result in the company having lower-than-forecast expenses at the end of the Rate Plan and when rates are reset.

The size of the deadband is similarly reasonable. It provides a sufficient incentive for the company increase efficiencies or otherwise reduce costs, but it is not so large that benefits from such activities will inure only to shareholders. From a comparability perspective, the deadband is smaller than the deadband approved in the 2004 Rate Order and about the same as that approved for the company's electric business.⁸

4. Reconciliations

Section E of the Joint Proposal lists the cost and revenue categories that will be reconciled annually and for which Con Edison may use deferral accounting to account for differences between actual costs or proceeds and those levels provided for in the Rate Plan. Such costs include property taxes, interference expenses (other than company labor), production plant expenditures, pension and other post-employment benefits (OPEB) expenses, environmental remediation costs, and proceeds from the sale of SO₂ allowances. Each of these costs or imputations will be reconciled based on the levels delineated in Appendix D of the Joint Proposal. Staff's testimony supported the company's request to reconcile pension and OPEB expenses, environmental remediation costs, and interference expenses. Staff opposed reconciliation of property taxes and certain other costs in its pre-filed testimony because such reconciliations are unnecessary in a one-year rate case.

⁸ Case 04-E-0572, Consolidated Edison Company of New York, Inc. – Electric Rates, Order Adopting Three-Year Rate Plan (issued March 24, 2005) (Electric Rate Order).

5. Property Taxes

The Joint Proposal allows for reconciliation of 90% of the variation from the specified annual expense level for property taxes (other than property taxes associated with the East River Repowering Project (ERRP) that are recoverable through the FAC and also excluding the effect of property tax refunds) (Joint Proposal, p. 17). The expense levels in the Joint Proposal assume that there will be no increase in the tax rate in either rate year. Staff's testimony advocated for such a zero percent escalation rate.

Additionally, the property tax expense level in the Joint Proposal incorporates a reduction of \$9.2 million in RY1 and \$7.2 million in RY2 related to a reduction in assessments based on Con Edison's argument to the State Office of Real Property Services ("ORPS") that the value of its steam transmission and distribution should be reduced due to economic obsolescence of the facilities. The company's testimony did not include any reduction in property tax expense levels based on this issue, while Staff's testimony recommended that any property tax reduction attributable to a reduction in assessed values due to economic obsolescence be deferred by the company for the future benefit to customers. ORPS recently granted Con Edison an approximate 38% reduction in its steam special franchise values due to economic obsolescence, and Staff understands that ORPS uses a rolling five-year average in its calculations. Therefore, it is expected that Con Edison will receive an economic obsolescence reduction next year as well. Based on this new information, the Joint Proposal reasonably reflects a reduction to property taxes related to this issue.

Any property tax refunds, including credits against tax payments, received by the company as a result of its efforts would be shared 90%/10% between customers and shareholders, respectively. Also, any incremental costs incurred by Con Edison to achieve tax refunds or credits will be taken from the refunds or credits before such sharing factor is applied. The company's retention of any property tax refunds remains subject to an annual showing by the company of its ongoing efforts to reduce its property tax burden (Joint Proposal, p. 22). Such treatment of property taxes is reasonable because those costs, to a large extent, are outside Con Edison's control and their partial reconciliation is appropriate as an incentive for the company to minimize its costs to the extent possible.

6. Interference

Reconciliation of interference expenses, exclusive of company labor, has been included in Con Edison's rate plans for some time. As with the property taxes, the company will absorb or retain 10% of any variance from the specified annual expense level (Joint Proposal, p. 17). Reconciliation of this item is appropriate given the two-year term of the rate plan because these costs are largely beyond the company's control. Additionally, Con Edison has committed to continue to work with New York City to plan this work in order to reduce costs. Partial reconciliation is appropriate to provide the company an incentive to control, to the extent practicable, the costs associated with its interference work.

7. Production Plant Expenditures

The Joint Proposal requires Con Edison to defer the revenue requirement impact of any shortfall between a target set for net steam production plant expenditures, as set forth in Appendix D of the Joint Proposal, and the actual average net steam production plant expenditures at the end of each rate year. The deferral protects customers from shortfalls in capital spending by Con Edison and ensures that the company does not earn a return on investments that it has not actually made.

Con Edison is at risk for any capital expenditures above the levels specified in Appendix D. Should the company incur an unplanned and unexpected capital investment in steam production plant greater than \$5 million, Con Edison may petition the Commission to defer carrying cost associated with that new project, subject to the criteria applied by the Commission to such deferral petitions.⁹ The specified limitations contained in Appendix D are appropriate because they assign to Con Edison the responsibility for keeping within its forecast for plant additions and ensure that customers will not pay for plant that is not in service. Additionally, the company will not be permitted to defer costs associated with such unplanned production plant expenditures without Commission approval.

⁹ This provision applies to extraordinary and unanticipated events, such as an explosion or major equipment failure. It does not apply to projects of which the company was aware, but, for whatever reason, omitted from its capital budget.

8. Pension and OPEB Expenses

The Joint Proposal requires Con Edison to defer any difference between actual pension and OPEB costs, as well as certain tax benefits related to Medicare subsidies to the levels specified in the Rate Plan (Joint Proposal, p. 18). Such treatment is consistent with the Commission's Statement of Policy and Order Concerning the Accounting and Ratemaking Treatment for Pensions and Postretirement Benefits Other Than Pensions in Case 91-M-0890.

9. Environmental Remediation

Environmental remediation costs will be reconciled to the levels provided in the Rate Plan (Joint Proposal, p. 18). The deferral balances will be subject to interest and reduced by accruals, insurance recoveries, associated reserves and deferred taxes. Full reconciliation of these costs should eliminate any company disincentive to clean up its environmental liabilities in a timely fashion.

10. Additional Reconciliation Provisions

The Joint Proposal continues other specified reconciliations and/or deferral accounting provisions for term of the Rate Plan and thereafter (Joint Proposal, p. 19). Treatment of deferred World Trade Center (WTC) capital costs allocated to steam will be in accordance with the Commission's determination in Case 01-M-1958 and subject to interest at Con Edison's allowed pretax Allowance for Funds Used During Construction (AFUDC) rate of return. Recovery of any WTC costs received by the company from governmental agencies and insurance carriers will be applied to reduce the deferred balance.

The reconciliation provisions are standard accounting practices for utilities in New York, with the exception of the provision related to WTC costs. Their inclusion is therefore reasonable. Requiring the company to offset WTC costs with recoveries or awards from governmental agencies and insurance carriers is appropriate because recovery of the costs related to that extraordinary and tragic event should be sought first from sources other than customers. The recovery level and reconciliation provisions included in the Joint Proposal are consistent with Staff's testimonial recommendations.

11. Limitations on Deferrals

The Joint Proposal limits Con Edison's ability to defer certain expenses as its earnings increase (Joint Proposal, p. 20). Specifically, for earnings between the Earnings Sharing Threshold and 100 basis points above the Earnings Sharing Threshold, the company may defer only 50% of its eligible expenses, provided that such a reduction in deferrals will not cause the resulting earnings to decrease below the Earnings Sharing Threshold.

For earnings more than 100 basis points above the Earnings Sharing Threshold, the company will reduce its deferrals up to 100%, provided that such a reduction in deferrals will not cause the resulting earnings to decrease below 100 basis points above the Earnings Sharing Threshold.

The calculation for such limitations will be conducted independently for each Rate Year. Deferrals associated with the steam FAC, deferred taxes and surcharges, SO₂ allowances, WTC-related expenditures, steam variance incentives and revenue adjustments, and losses on property sales are excluded from the foregoing limitations.

This limitation provision in the Joint Proposal fairly balances customer and shareholder interests by substantially limiting deferral of costs for future recovery in rates when the company is in an excess earning position. Similar limitations on deferrals were approved by the Commission in the 2004 Rate Order and Electric Rate Order.

12. Depreciation and Reserves

The average service lives, net salvage factors, and life tables used in calculating the depreciation reserve and establishing the revenue requirement set forth in the Joint Proposal are the same as those proposed by Staff in its testimony. In addition, the Joint Proposal provides that the reserve deficiency will be amortized over five years. In its testimony, Staff agreed with Con Edison's recommended proposal to amortize the reserve deficiency over three years. Extending the amortization over a longer period of time, however, decreases the revenue requirement impact of such an amortization, thereby benefiting customers.

13. Interest on Deferred Costs

As in most utility rate plans, the Joint Proposal specifies that interest will, subject to a few specified exceptions, accrue on the deferred net-of-tax balances at the unadjusted customer

deposit rate as determined by the Commission on an annual basis (Joint Proposal, p. 21). Such treatment is reasonable because it applies equally to balances owed to and from customers and because it is consistent with past practice.

14. Allocations of Common Costs

The Joint Proposal proposes to continue the common expenses and common plant allocations according to the percentages reflected in the steam revenue requirement calculation (Joint Proposal, p. 21). Should the Commission approve different common cost allocation factors prior to the next steam rate case, the Joint Proposal requires the company to defer the resulting change in the steam revenue requirement for future credit to, or collection from, customers. Such treatment of common costs also is consistent with past practice.

C. Other Revenue Requirement and Rate Issues

1. Steam Sales

Staff's filed testimony asserted that Con Edison's steam sales forecast was deficient by 332 MMBtu; Staff contended that the company erroneously reduced its sales forecast for what it termed an "extraordinary" level of sales during the test year. Additionally, Staff proposed a sales imputation of 880 MMBtu related to steam business development activities. Staff's proposed adjustments would have increased Con Edison's revenues by about \$7 million.

The Joint Proposal creates a compromise between the parties' positions. For the purpose of setting steam rates for the Steam Rate Plan, the parties agreed to increase the RY1 sales forecast by \$2 million and the RY2 sales forecast by \$4.5 million. The forecasts in the Joint Proposal recognize moderate sales growth and motivate Con Edison to acquire new steam sales during the term of the rate plan.

2. 74th and 59th Street Steam Stations

As discussed above, the Joint Proposal allocates certain portions of the operating costs of the 74th and 59th Street Steam Stations to the electric department due to Con Edison's present and intended future use of the Stations to support its electric system. During this proceeding, Con Edison provided drawings of the Stations that indicate the respective use of the buildings for steam and electric purposes. Given these indisputable facts, the building is properly considered a

common facility and it is appropriate for the steam and electric departments to share in the costs of operating and maintaining the building (equipment costs are fully segregated between the steam and electric departments). Using each department's square footage of each Station is the fairest and most equitable manner of allocating the costs among them. Moreover, both steam and electric customers benefit from this treatment. Steam customers receive an additional revenue source, thereby reducing their expected revenue requirement, and electric customers save millions of dollars since Con Edison will avoid the high cost of acquiring a new property on the Upper East Side of Manhattan for the substation.

3. Proceeds from the Sale of SO₂ Allowances

The steam department's share of actual proceeds received from the sale of SO₂ allowances will be reconciled to the \$3.5 million imputed in rates each year (Joint Proposal, p. 8). Any variance from the imputed levels will be deferred and recovered from, or credited to, customers after expiration of the Rate Plan. The reconciliation related thereto will continue unless and until base rates are changed. This treatment of the SO₂ proceeds is reasonable because customers will receive all of the benefits of all sales of SO₂ allowances, while the reconciliation of amounts below the imputed \$3.5 million per rate year provides Con Edison with some protection because it essentially is advancing that amount to customers by imputing prospectively those anticipated proceeds in its rates.

4. East River Repowering Project

Con Edison's testimony recommends that the Commission allow the cost recovery associated with ERRP to be moved from the FAC to steam base rates on a volumetric basis consistent with the manner such costs currently are recovered. Staff objected to this treatment on the basis that the cost of ERRP has increased significantly and that such costs should be thoroughly reviewed before being placed into rate base. Staff also was concerned because the cost of ERRP was not reflected in Con Edison's Embedded Cost of Service (ECOS) study.

Under the Joint Proposal, the steam business' share of ERRP carrying charges will continue to flow through the steam FAC for RY1 with a provision that the total investment on which the carrying charges are based will not exceed \$ 788.3 million. For RY2, ERRP's costs will be transferred into rate base, subject to any adjustments made as a result of Staff's audit of

the costs. The transfer is designed to be revenue neutral. The ERRP carrying charges for both rate years will be allocated to each class on the basis of each respective rate year's forecast for sales volumes. Also, this treatment will allow Con Edison to properly allocate the ERRP costs in its next ECOS study.

5. Fuel Adjustment Clause

Steam line losses, including variations between the actual cost of fuel and the base cost of fuel, are currently reconciled through the steam FAC. Minimization of line losses serves the interests of both the company and its customers in that it promotes system efficiency while reducing fuel costs associated with that lost steam. Because there have not been any significant changes in line losses, or changes in technology or O&M practices that would warrant reconsideration of this matter, the Joint Proposal continues the incentive mechanism approved in the 2004 Rate Order. Neither the company nor Staff submitted testimony on this issue, so the proposed approach is no different than the outcome had this case proceeded along a litigation track.

6. Base Cost of Fuel

The Joint Proposal provides for a revision to the base cost of fuel at the start of RY2 based on the average fuel costs projected for that year, but limits any adjustment to \$3 per Mlb. Con Edison proposed in testimony to modify the base cost of fuel currently collected in rates reasoning that the current base cost of fuel is \$5.049 per Mlb and that the average cost of fuel is expected to range from \$9 to \$18 per Mlb during the rate year. Staff did not submit testimony on this issue. The Joint Proposal's provision regarding the base cost of fuel is reasonable as it allows for Con Edison to change such costs to reflect fuel prices more contemporaneous to that rate year while limiting such an adjustment to protect customers and Con Edison against over-forecasting resulting in the company being subjected to an extreme negative fuel adjustment.

7. Water and Water Chemicals

The Joint Proposal provides that Con Edison may recover the cost of purchased water and water chemicals directly related to steam production through the FAC starting in RY2. The recovery of the cost of purchased water and water chemicals through the FAC rather than base

rates is reasonable because such costs are similar to fuel costs in that purchased water and water chemical costs vary with the amount of steam produced.

8. ECOS and Rate Design Collaborative

Con Edison submitted an ECOS study with its testimony indicating that the rate of return attributed to customers in Service Classification (SC) 1 was deficient. The company's ECOS study also demonstrated that the class rates of return for SC 2 and SC 3 fell within the tolerance band. The Joint Proposal recommends that there be no reallocation at this time to recognize any class deficiencies or surplus based on its provision that revenues would not be increased during the term of the Rate Plan.

While parties may disagree on the various inputs used in calculating the rates of return for each respective service class, such as the D01 Demand Allocator, fuel expenses related to steam losses, and the allocation of ERRP costs, the Joint Proposal provides for a compromise on these disputed issues. The signatories recommend allocating fixed line losses based on the footage of mains allocator and allocating costs associated with ERRP through a demand allocator. Con Edison has also agreed to include such changes in its future ECOS studies.

Because some of the rate design issues were not resolved, and could not be resolved due to a lack of necessary information (e.g., the impacts of demand rates, which have not yet gone into effect), the Joint Proposal provides that the company will convene a collaborative to be held during the summer of 2007 to discuss and analyze: (i) customer usage characteristics and load data in order to evaluate whether or not the SC 1, SC 2, and/or SC 3 classes should be realigned to increase homogeneity; and (ii) the relevant costs of SC 4 back-up/supplementary service and consider the appropriate design for back-up/supplementary service based on cost causation characteristics and principles of revenue neutrality. These provisions are reasonable in that further discussion and analysis to achieve rate structures based on sound ratemaking principles is fair and equitable for both customers and the company. Moreover, such an outcome as provided for in the Joint Proposal could not have been obtained in a litigated case.

9. Demand Rates

The Joint Proposal recommends that Con Edison provide sample bills to certain demand metered customers during the winter period 2006-2007.¹⁰ Using data collected during that winter period, Con Edison will design winter demand rates that will become effective November 1, 2007. Prior to implementing such demand rates, the company will convene a meeting during the summer of 2007 to discuss the impact of the demand charges on customer bills, the company's plans to amend the steam tariff to include demand charges, the need for, and nature of, any modifications to the demand rates, and other related issues.

Demand charges appropriately recover demand related costs in non-volumetric rate structures. Further explanation and discussion of the methodology used to calculate the demand rates, as provided for in the manner described above, is in the best interest of Con Edison's steam customers.

D. Non-Rate and Other Issues

Staff and other parties have had significant concerns with the manner in which Con Edison has operated the steam department for a number of years. The need for heightened focus and emphasis was a primary issue in Case 03-S-1376, and continues in this proceeding. Towards this end, the Joint Proposal incorporates a number of performance metrics designed to incent the company to improve performance in critical areas.

1. Steam Business Development Plan

All parties to the Joint Proposal believe that the continued viability of Con Edison's steam system largely depends on both the preservation of the existing load and the expansion of steam service through attracting new customers. The Joint Proposal requires that the company perform several activities related to market share preservation and expansion. Moreover, each activity provides for an associated revenue adjustment for non-performance.

¹⁰ A prerequisite to the implementation of demand billing is the installation of demand meters for all SC 2 and SC 3 customers with annual sales equal to, or in excess of, 22,000 Mlbs, excluding instances where the delay is caused by the customer. If the company fails to install meters for other than customer caused delays, it will be subject to the revenue adjustments set forth in the Joint Proposal (p. 32). In testimony, Staff proposed that all SC 2 and SC 3 customers with annual sales equal to or in excess of 22,000 Mlbs should have a least one year of sample billing prior to the implementation of "live" demand billing.

In its testimony, Staff's position was that the company did not sufficiently address steam business development. Accordingly, Staff recommended that the Commission impute a sales adjustment in the company's revenue requirement to reflect the steam business development activities the company should have been and continue to be undertaking. The Joint Proposal provides a different approach to this same goal. The business development activities discussed in the Joint Proposal (*e.g.*, promoting hybrid chiller systems, performing energy audits for customers, actively meeting and following up with industry representatives, and measuring and monitoring customer satisfaction), and their associated revenue adjustments (see Joint Proposal, Section G) provide Con Edison with direction and incentive to maintain and improve its steam business development efforts.

2. Steam Production

The Joint Proposal addresses concerns with Con Edison's current and future steam production plants by requiring the company to complete an investment grade evaluation of two Hudson Avenue re-powering options. The options will be identified in Phase I of the Steam Production Study that is now being completed. Additionally, the Joint Proposal requires Con Edison to produce and file with the Commission a Steam Resource Plan approved by Con Edison's Chief Executive Officer that examines and discusses various steam resource options. Staff testified that the company's current steam production planning was not sufficient. The Joint Proposal's provisions ensure that the company will perform the steam production planning necessary for the continued viability of the steam system as a whole.

3. Reporting Requirements

The Joint Proposal requires the company to provide detailed reports on steam production plant capital expenditures, plant availability, O&M expenditures, combined heat and power projects, and strategic planning. These provisions are included in the Joint Proposal because of Staff's concern with the constantly changing projects and funding levels related to the company's capital and O&M expenditures on production plant. Information provided to Staff during discovery included a number of inconsistencies and Staff was unable to discern whether the company had any definite short- and long-term plans for capital and O&M projects. Rather, the information suggested that Con Edison was proceeding on an ad hoc and inconsistent basis with

regard to its generating facilities. The reporting requirements are included in the Joint Proposal to provide Staff with a mechanism to more closely monitor Con Edison's activities in these areas.

4. Other Provisions

The Joint Proposal contains a number of additional provisions that are similar to those the Commission has adopted in the past (Joint Proposal, pp. 37-41). For example, the Joint Proposal addresses its binding effect in an approach similar to that adopted in other proceedings. The Joint Proposal does not abrogate or inhibit the Commission's or Staff's statutory authority under the Public Service Law, or Staff's rights and responsibilities to enforce the Commission's Orders. This reservation of authority resembles those the Commission has previously adopted. Because the Rate Plan contains a number of performance metrics, which prior plans did not, the Other Provisions section of the Joint Proposal contains an extraordinary circumstances clause. Staff does not dispute that the company should have the opportunity to seek a waiver or modification of a performance metric should an event or situation arise that is outside the company's control and prevents the company from satisfying that performance metric. Staff notes that similar provisions exist in the Electric Rate Order for the same reason. In general, the provisions of this section are reasonable and appropriate.

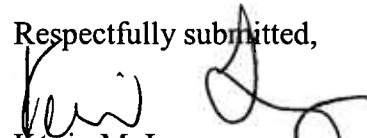
Further, many of the provisions of the Joint Proposal, including certain of the performance metrics, are intended to extend beyond the terms of the Rate Plan, unless or until modified or terminated by the Commission. While Staff expects Con Edison to file for new rates to take effect upon expiration of this Rate Plan, this provision ensures that the customer protections applicable over the next two years will continue in the event the company elects not to seek new rates in two years.

CONCLUSION

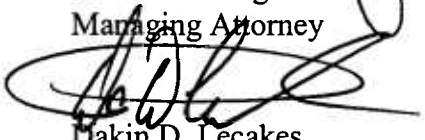
Staff respectfully requests that the ALJ and the Commission approve or adopt the Joint Proposal. The proposed terms and conditions avoid an overall rate increase for two years, provides an incentive to Con Edison to increase its focus and emphasis on all aspects of its steam system, furthers the Commission's objectives in ensuring the continued viability of Con Edison's steam service, furthers the Commission's Pension Policy Statement and other policy objectives,

balances the interests of all parties, is within the bounds of the potential outcome of a litigated result in this proceeding, and constitutes fair resolution of the issues in dispute.

Respectfully submitted,



Kevin M. Lang
Managing Attorney



Dakin D. Lecakes
Assistant Counsel

Dated: June 19, 2006
Albany, New York

APPENDIX A

STAFF PRE-FILED TESTIMONY*

| <u>WITNESS</u> | <u>TOPIC(S)</u> |
|----------------------------|--|
| Accounting & Finance Panel | Accounting, O&M, and Rate Issues |
| Barney | Sales Forecast |
| Hogan | Capital Structure & Cost of Capital |
| Padula | Steam Business Development |
| Rate Panel** | Rate Design, Price-out of Sales Forecast, Embedded Cost of Service Study, ERRP Cost Recovery |
| Rieder | Depreciation |
| Roberts | Capital and O&M Adjustments |

* Staff served its pre-filed direct testimony on all parties and the assigned Administrative Law Judge on February 27, 2006 and its pre-filed rebuttal testimony on March 13, 2006. Copies of the pre-filed testimony will be provided for the record at the time of evidentiary hearings.

** The Rate Panel filed both direct and rebuttal testimony.