STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 09-S-0794 – 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.

CASE 09-S-0029 – Proceeding on Motion of the Commission to Consider Steam Resource Plan and East River Re-powering Project Cost Allocation Study, and Steam Energy Efficiency Programs for Consolidated Edison Company of New York, Inc.

JOINT PROPOSAL

May 18, 2010

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JOINT PROPOSAL

THIS JOINT PROPOSAL ("Proposal") is made as of the 18th day of May 2010, by and among Consolidated Edison Company of New York, Inc. ("Con Edison" or the "Company"), New York State Department of Public Service Staff ("Staff"), the City of New York (the "City" or "NYC"), Consumer Power Advocates ("CPA"), New York Energy Consumers Council, Inc. ("NYECC"), The E-Cubed Company, LLC ("E-Cubed") on behalf of the Joint Supporters, and other parties whose signature pages are or will be attached to this Proposal (collectively referred to herein as the "Signatory Parties").

Procedural Setting

Con Edison is operating under a steam rate order that established new steam rates effective October 1, 2008.[1] On November 6, 2009, Con Edison filed tariff leaves and supporting testimony for new rates and charges for steam service effective in October

[1] Case 07-S-1315, Consolidated Edison Company of New York, Inc. – Steam Rates, *Order Establishing Rate Plan* (issued September 22, 2008) ("2008 Steam Rate Order").

2010. In that filing, the Company also proposed terms for a four-year rate plan for steam service that would continue through September 30, 2014. [2]

Consistent with established Commission practice, administrative law judges were appointed to conduct the rate proceeding to review the Company's rate filing. Parties to this proceeding engaged in discovery activities, submitting over 650 discovery requests on the Company's gas and steam filings, on issues common to both filings and gas-specific and steam-specific issues. On March 3, 2010, Staff, the City, County of Westchester ("Westchester"), CPA and NYECC filed testimony in response to the Company's filing in this steam rate proceeding. On March 24, 2010, the Company filed steam rebuttal and update testimony. Also on March 24, 2010, Westchester, NYECC and the City filed rebuttal testimony.

A. Steam Planning Proceeding

Independent of the rate process, on January 15, 2009, the New York State Public Service Commission (the "Commission") instituted a planning proceeding to consider steam resource needs and plans, cost allocation for the East River Repowering Project ("ERRP") and other issues confronting the steam system ("Steam Planning Proceeding").

The ERRP cost allocation issue was litigated before Administrative Law Judge Rudy Stegemoeller. Parties to the Steam Planning Proceeding propounded approximately 200 questions through the discovery process, submitted two rounds of testimony and participated in a two-day hearing on September 23-24, 2009. On January 6, 2010, the Commission issued a *Notice of Consolidation of Issue,* which stated (p. 3)

[2] The Company made a concurrent filing respecting rates and charges for gas service. Case 09-G-0795, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Gas Service. Although the gas and steam proceedings were not consolidated, the parties to the proceedings treated them as consolidated for purposes of discovery and settlement negotiations.

that "[t]he evidentiary record developed on ERRP cost allocation and related issues will be deemed part of the evidentiary record in the Steam Rate Case and the ERRP cost allocation issue will be briefed and decided in the Steam Rate Case, not in the Steam Planning Case."

Another issue examined in the Steam Planning Proceeding related to the price elasticity of steam. The parties to that proceeding engaged in collaborative discussions on this issue, resulting in the filing of a *Report Regarding Steam Price Elasticity and Long Term Steam Revenue Requirement Forecast* on February 5, 2010. As a result of certain parties' view that the price elasticity portion of this report has a bearing on ERRP cost allocation, the procedural rulings[3] in this steam rate proceeding provided for a hearing regarding price elasticity as it relates to the ERRP cost allocation.

A third issue examined in the Steam Planning Proceeding relates to the replacement of the Hudson Avenue Generating Station ("Hudson Avenue"). The Commission addressed this issue in a December 17, 2009 *Order Regarding the Hudson Avenue Generating Facility* in Case 09-S-0029 ("December 17 Order"), stating "[w]e expect this proceeding to examine – and the Company to undertake where warranted – cost-effective measures to reduce the need for generation at Hudson Avenue, thereby deferring or eliminating the need to install all of the planned package boilers at the site."[4] In accordance with this directive, the parties have convened the Steam Peak Reduction Collaborative ("SPRC") to examine the potential for energy efficiency, demand response and other measures that could mitigate the need for replacement capacity at Hudson Avenue. The Proposal recognizes that these efforts are underway and discusses the

[3] Case 09-S-0029, *Notice of Evidentiary Hearing*, issued April 5, 2010.

[4] December 17 Order, p. 33.

manner in which certain results of those efforts should be addressed in the context of this proceeding.

B. Settlement Negotiations and Hearings

By notice dated March 19, 2010, Con Edison notified all parties of the commencement of settlement negotiations on March 29, 2010.[5] Settlement negotiations were held on March 29 and 31, 2010, and April 1, 5-9, 12-13, 2010, at which point a number of the parties agreed on the principles of a joint proposal. All settlement negotiations were subject to the Commission's Settlement Rules, 16 NYCRR §3.9, and appropriate notices for negotiating sessions were provided. At each session, teleconferencing was made available to all parties.

An evidentiary hearing on the steam filing and the parties' testimony was scheduled to commence on April 19, 2010. However, because parties had reached an agreement in principle, and after consultation with the presiding Administrative Law Judges, the Secretary issued a notice on April 14, 2010 cancelling the hearing. For the same reason, the Secretary issued a second notice on April 16, 2010 cancelling a hearing on the price elasticity impact of a change in the ERRP cost allocation, scheduled for April 28, 2010. By *Ruling Adopting Process and Schedule*, issued April 29, 2010, the presiding Administrative Law Judges established May 14, 2010, as the date by which the settling parties would prepare, execute and file this Proposal.[6]

The parties' negotiations have been successful and have resulted in this Proposal, which is presented to the Commission for its consideration.

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[5] A copy of the notice was filed with the Secretary to the Commission ("Secretary").

[6] The presiding ALJs thereafter provided the parties until May 18, 2010 to file the Joint Proposal.

Overall Framework

The Signatory Parties have developed a comprehensive set of terms and conditions for a three-year plan for Con Edison's steam service. These terms and conditions are set forth below and in the attached Appendices. Specifically, this Proposal addresses the following topics:

I. Term

II. Steam Rates and Revenue Levels

III. Computation and Disposition of Earnings

IV. Reconciliations

V. Additional Rate Provisions

VI. Other Programs and Matters

VII. Miscellaneous Provisions

I. **Term**

The Signatory Parties recommend that the Commission adopt a three-year steam rate plan for Con Edison as set forth herein, commencing October 1, 2010, and continuing through September 30, 2013 ("Steam Rate Plan"). For the purposes of this Proposal, Rate Year means the 12-month period starting October 1 and ending September 30; Rate Year 1 ("RY1") means the 12-month period starting October 1, 2010 and ending September 30, 2011; Rate Year 2 ("RY2") means the 12-month period starting October 1, 2011 and ending September 30, 2012; and Rate Year 3 ("RY3") means the 12-month period starting October 1, 2012 and ending September 30, 2013.

II. Steam Rates and Revenue Levels

A. Rate Levels

This Proposal recommends increases to the Company's retail steam sales and steam transportation service rates and charges designed to produce an additional $84.1 million in revenues on an annual basis starting in RY1, an additional $10.4 million in revenues on an annual basis starting in RY2, and an additional $22.4 million in revenues on an annual basis starting in RY3.

The Signatory Parties propose that these three base rate increases be implemented on a levelized basis to mitigate the impact on customers of the RY1 increase. The annual levelized rate increases would be $49.5 million in revenues on an annual basis starting in RY1, an additional $49.5 million in revenues on an annual basis starting in RY2, and an additional $49.5 million in revenues on an annual basis starting in RY3.[7] The increase to each service class associated with the proposed additional revenues is shown in Appendix H.

Since the annual levelized rate increases would result in higher base rates at the end of the three-year term of the Steam Rate Plan than they would otherwise be under a non-levelized approach, $31.7 million of the levelized increase in RY3[8] will be collected in RY3 by class-specific temporary surcharges. Such surcharges would only be effective for the duration of RY3. The surcharges, which will be shown on statements filed

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[7] The levelized rate increases are inclusive of interest (totaling $1.7 million over the three year period) on the deferred rate increase calculated at the 2010 Other Customer-Provided Capital Rate of 4.2 percent. The Company will calculate the change in interest for any change in the Other Customer-Provided Capital Rate in future years, and defer the difference for surcharge or credit to customers, as applicable.

[8] See Appendix A, p. 6.

separately from the Company's rate schedules, will be collected in the same manner as if they were collected in base rates.

The rate increase for RY1 would take effect on October 1, 2010, the rate increase for RY2 would take effect on October 1, 2011, and the rate increase for RY3 would take effect on October 1, 2012.

The major components of the revenue requirements underlying this Proposal are set forth in Appendix A. These revenue requirements are net of the amortizations of various customer credits and debits on the Company's books of account that have previously been deferred by the Company. The list of deferred customer credits and debits to be applied during the Steam Rate Plan is set forth in Appendix B.

B. <u>Austerity</u>

The steam revenue requirements for RY1, RY2 and RY3 include the following austerity costs reductions for which associated austerity measures have not been identified as of the date of this Proposal: $4.5 million for RY1, $3.0 million for RY2, and $1.5 million for RY3.

The austerity related cost reductions may be achieved through a combination of O&M expense reductions, capital construction cost reductions, and/or the allocable share for steam of any corporate-wide austerity measures.

If the Company elects to achieve the austerity imputations through capital cost reductions, the reconciliation mechanism related to net plant described in Section M.1 shall be calculated so as to exclude the effects of capital cost reductions that are identified as being undertaken to meet the austerity imputations. In addition, the avoided revenue requirement effect of capital cost reductions undertaken for the purpose of achieving the austerity cost reductions will be recognized as contributing toward achieving the austerity imputation in the Rate Year in which the associated capital project was scheduled to be undertaken and in each subsequent Rate Year(s) that the project remains deferred or delayed.[9]

The Company will file a report with the Secretary on or before November 1, 2010 respecting RY1, November 1, 2011 respecting RY2, and November 1, 2012 respecting RY3 indicating the Company's plan to achieve such cost reductions in the applicable Rate Year; provided, however, to the extent the Company elects to achieve austerity imputations in RY1, RY2 and/or RY3 through capital cost reductions, such reductions shall be identified in the report filed on November 1, 2010, for the applicable Rate Year(s). The Company's management will be responsible for determining how best to achieve these cost reductions while maintaining reliability, service quality and safety.

C. <u>Productivity</u>

The revenue requirements for RY1, RY2, and RY3 each reflect an annual two (2) percent labor-productivity adjustment. One (1) percent per rate year of this labor-productivity imputation represents a proxy for efficiency gains that have not been specifically identified or quantified related to the Company's implementation of the Liberty Audit recommendations.

[9] For example, if the Company reduces spending on a capital project for the specific purpose of achieving an austerity target, as identified in the annual austerity report to be filed with the Secretary (discussed below), and does not increase spending for that project in a subsequent Rate Year to offset the reduction in the prior Rate Year, the revenue requirement impact of that reduction in capital spending will be recognized for austerity purposes in the Rate Year in which such reduction is made and in each subsequent Rate Year that spending is not increased to offset the prior reduction in spending.

D. Sales Forecast

The steam sales and delivery revenue forecasts used to determine the revenue requirement for each of RY1, RY2 and RY3 are set forth in Appendix C and Appendix H.

E. Uncollectible Accounts

The steam revenue requirements for each of RY1, RY2 and RY3 reflect an annual allowance for uncollectible accounts write-offs in the amount of $250,000. If the Company's actual steam uncollectible accounts write-offs during any Rate Year exceed $1.0 million, the Company will be allowed to defer for future recovery from customers the total amount of write-offs for that Rate Year less the $250,000 allowance that has been reflected in the revenue requirement for that Rate Year.

F. Fuel Adjustment Clause ("FAC")

Any variations between the actual cost of fuel and the cost of fuel reflected in rates will continue to be recovered through the FAC. The Company will continue to charge or credit the annual reconciliation of the steam fuel expenses and revenues through the FAC.

The Company will continue to recover all costs associated with oil storage and handling through the FAC, except Company labor costs. Effective October 1, 2010, Company labor costs associated with oil storage and handling are included in base rates.

The Company will recover through the FAC its fuel costs associated with the actual Steam System Variance to the extent such costs are not recovered in base rates. The Steam System Variance reconciliation mechanism established by the 2004 Steam

Rate Order[10] and set forth in the steam tariff will continue, except that the levels above and below which the Company and customers will share variance related fuel costs will be as follows: if the variance is greater than 4,200 MMlb in any Rate Year, the Company will recover 90 percent of the variance-related fuel costs in excess of 4,200 MMlb; and if the variance is less than 3,900 MMlb in any Rate Year, the Company will retain 10 percent of the variance-related fuel cost savings less than 3,900 MMlb. The Company's exposure for unrecovered variance-related fuel costs will not exceed $5 million in any Rate Year. In no event will the Company retain more than $5 million in variance-related fuel cost savings in any Rate Year.

Consistent with the Commission's *Order Setting Electric Rates*, issued April 24, 2009 in Case 08-E-0539, the "Special Monthly Adjustment" section of the Steam FAC will be amended to provide for the recovery of steam's allocable share of Clean Air Act § 185 fees.

The additional ERRP fuel costs to be recovered from steam customers commencing in RY2, in accordance with Section VI.A, will also be recovered through the FAC.

G. Base Cost of Fuel

In RY1, a final adjustment may be made to the usage charges in each class to reflect any increase or decrease made to the current base cost of fuel of $8.049 per Mlb.[11] Any adjustment to the base cost of fuel will be based on the (i) the actual monthly fuel costs and equivalent sales for the twelve months ended June 30, 2010 and (ii) the

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[10] Case 03-S-1672, Consolidated Edison Company of New York, Inc. – Steam Rates, *Order Adopting the Terms of a Joint Proposal* (issued September 27, 2004) ("2004 Steam Rate Order").

[11] As of the date of the Proposal, there is no expectation that the base cost of fuel will be lower than $8.049 per Mlb.

Company’s forecasted monthly fuel costs and equivalent sales for RY1. The average cost of fuel for the 24-month period will be equal to the quotient of the total monthly fuel costs for the period and the total equivalent sales for the same period. The Company will provide Staff with the calculation supporting any increase to the base cost of fuel by August 1, 2010. Any unrecovered deferred fuel costs resulting from any such change in the base cost of fuel will be reflected in the fuel reconciliation.

III. <u>Computation and Disposition of Earnings</u>

Following each of RY1, RY2 and RY3, Con Edison will compute, separately, the rate of return on common equity for its steam business for the preceding Rate Year. The Company will submit to the Secretary the computation of earnings no later than 60 days after the end of each Rate Year.

As set forth in the following paragraphs, the earnings sharing thresholds and the customers’ shares of earnings above the thresholds for all three Rate Years have been established to capture for customers’ benefit a greater portion of savings that may be realized as a result of the Company’s implementation of recommendations set forth in the Liberty Audit, (see Case 08-M-0152, Comprehensive Management Audit of Consolidated Edison Company of New York, Inc., *Order Directing The Submission Of An Implementation Plan*, issued August 21, 2009).[12]

For purposes of determining the amount of shared earnings under this Proposal, the level of earned equity return will be calculated on an annual basis, as set forth below,

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[12] The Signatory Parties duly considered that implementation of the Liberty Audit may result in more efficient Company operations in any Rate Year and designed the Steam Rate Plan to capture a reasonable share of such potential savings for customers through various provisions, including the earnings sharing provisions for all three Rate Years and a one (1) percent labor productivity imputation in each Rate Year as noted in Section II.C.

but measured on a cumulative basis for RY1, RY2 and RY3, in accordance with the methodology set forth in Appendix G.

If the level of earned common equity return for RY1 exceeds 10.35 percent ("RY1 Earnings Sharing Threshold"), as may be adjusted pursuant to Section IV.L, the amount in excess of the RY1 Earnings Sharing Threshold will be deemed "shared earnings" for the purposes of this Proposal, subject to the measurement of shared earnings on a cumulative basis in accordance with Appendix G. For RY1, sixty (60) percent of the revenue requirement equivalent of any shared earnings above 10.35 percent up to and including 11.59 percent will be deferred for the benefit of customers and the remaining forty (40) percent of any such shared earnings will be retained by the Company; seventy-five (75) percent of the revenue requirement equivalent of any shared earnings equal to or in excess of 11.60 percent up to and including 12.59 percent will be deferred for the benefit of customers and the remaining twenty-five (25) percent of any shared earnings will be retained by the Company; and ninety (90) percent of the revenue requirement equivalent of any shared earnings equal to or in excess of 12.60 percent will be deferred for the benefit of customers and the remaining ten (10) percent of any shared earnings will be retained by the Company.

If the level of earned common equity return for RY2 and/or RY3 exceeds 10.10 percent ("RY2-3 Earnings Sharing Threshold"),[13] as may be adjusted pursuant to Section IV.L, the amount in excess of the RY2-3 Earnings Sharing Threshold will be deemed "shared earnings" for the purposes of this Proposal, subject to the measurement of shared earnings on a cumulative basis in accordance with Appendix G. For RY2 and RY3, sixty

[13] The RY2-3 Earnings Sharing Threshold is subject to modification pursuant to Section V.A.

(60) percent of the revenue requirement equivalent of any shared earnings in excess of 10.10 percent up to and including 11.59 percent will be deferred for the benefit of customers and the remaining forty (40) percent of any such shared earnings will be retained by the Company; seventy-five (75) percent of the revenue requirement equivalent of any shared earnings equal to or in excess of 11.60 percent up to and including 12.59 percent will be deferred for the benefit of customers and the remaining twenty-five (25) percent of any shared earnings will be retained by the Company; and ninety (90) percent of the revenue requirement equivalent of any shared earnings equal to or in excess of 12.60 percent will be deferred for the benefit of customers and the remaining ten (10) percent of any shared earnings will be retained by the Company.

For each Rate Year, for purposes of determining whether the Company has earnings above the Earnings Sharing Threshold:

1. The calculation of return on common equity capital will be "per books," that is, computed from the Company's books of account for each Rate Year, excluding the effects of (i) Company incentives and performance-based revenue adjustments; (ii) the Company's share of property tax refunds earned during the applicable Rate Year; (iii) any other Commission-approved ratemaking incentives and revenue adjustments in effect during the applicable Rate Year; and (iv) the net revenue effect during the applicable Rate Year of steam sales related to colder-than-normal weather, which shall be excluded as calculated in the manner described in Appendix G.

2. Such earnings computations will reflect the lesser of: (i) an equity ratio equal to 50.0 percent, or (ii) Con Edison's actual average common equity ratio. Con Edison's actual common equity ratio will exclude all components related to "other

comprehensive income" that may be required by generally accepted accounting principles; such charges are recognized for financial accounting reporting purposes but are not recognized or realized for ratemaking purposes.

If the Company does not file for new base delivery rates to take effect within fifteen (15) days after the expiration of RY3, the earnings sharing thresholds will continue at the RY3 levels until reset by the Commission. Such calculation will be performed on an annual basis in the same manner as set forth above. Revenue targets (*i.e.*, revenue per customer factors) and trued up expenses contained in Appendix D will be based on RY3 levels. To the extent that the stay-out period is less than 12 months, the earnings sharing calculation will be prorated. The calculation will use actual period earnings with rate base and the caps for interference and property taxes to be prorated for the number of months being measured.

IV. Reconciliations

The Company will reconcile the following costs and related items to the levels provided in rates, as set forth in Appendix D. Variations subject to recovery from or to be credited to customers will be deferred on the Company's books of account over the term of the Steam Rate Plan, and the revenue requirement effects of such deferred debits and credits, as the case may be, will be addressed in future rate proceedings, except as addressed in Section IV.L.

A. Property Taxes

The steam revenue requirements for RY1, RY2 and RY3 reflect property tax expense at the levels set forth in Appendix D based on the property tax assessment values and tax rate information available at the time of this Proposal ("property tax rate allowances"). The property tax rate allowances set forth in Appendix D for RY1, RY2 and RY3 will be restated based on the actual property tax rates for the NYC 2010/2011 fiscal year, if available, as of July 15, 2010, solely for purposes of this property tax reconciliation mechanism ("target levels").[14] If the property tax rate allowances are restated, the Company will defer 100 percent of the difference between the property tax rate allowance and the restated property tax rate allowance (*i.e.*, the target level) for each Rate Year.

If the level of actual steam expense for property taxes, excluding the effect of property tax refunds (as defined in paragraph V.D), varies in any Rate Year from the target levels, eighty (80) percent of the variation between the actual expense and the target level will be deferred and either recovered from or credited to customers, subject to the following cap: the Company's twenty (20) percent share of property tax expenses above or below the target levels will be capped at an amount equal to ten (10) basis points on common equity for each Rate Year.[15] The Company will defer on its books of account, for recovery from or credit to customers, one hundred (100) percent of the variation above or below the level at which the cap takes effect.

The Company will not be precluded from applying for a greater share of lower than forecasted property tax expenses (including the period beyond RY3) if its extraordinary efforts result in fundamental taxation changes and produce substantial net benefits to customers.

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[14] The actual tax rates will be used to recalculate the five-year average growth rate used in forecasting each Rate Year's rate allowance solely for purposes of establishing the target levels for purposes of the property tax reconciliation mechanism. The actual rate allowances as reflected in the revenue requirements resulting from this Proposal will not be changed. If actual tax rates are not available as of July 15, 2010, the rate allowances will be the same as the target levels.

[15] Ten (10) basis points is estimated to equate to approximately $1.0 million. The actual value of a basis point will be determined at the end of each Rate Year.

B. Municipal Infrastructure Support Expense (Other Than Company Labor)

If actual steam non-Company labor Municipal Infrastructure Support expenses (*e.g.*, contractors' costs) vary from the level provided in rates for any Rate Year, which levels are set forth in Appendix D, one hundred (100) percent of the variation below the target will be deferred on the Company's books of account and credited to customers and eighty (80) percent of the variation above the target within a band of thirty (30) percent (*e.g.*, a maximum deferral of $1.1 million in RY1)[16] will be deferred on the Company's books of account and recovered from customers. Expenditures above the target plus thirty (30) percent are not recoverable from customers except as follows: if steam actual non-Company labor Municipal Infrastructure Support expenses vary from the level provided in rates above the target plus thirty (30) percent, and such increased expenses are due to (a) City projects that result from the award of federal stimulus funds[17] granted after the date of this Proposal, (b) the City Water Tunnel #3 Project,[18] and/or (c) the construction of major new public works or infrastructure projects that are developed and announced after the date of this Proposal ("major" shall be defined as a public works

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[16] RY1 rate allowance for interference of $4.5 million x 30 percent x 80 percent = $1.1 million.

[17] Federal stimulus funds are funds available under the American Recovery and Reinvestment Act of 2009.

[18] The New York City Department of Environmental Protection's ("DEP") City Water Tunnel #3 project consists of eleven different shaft locations and one street inter-tie location in Manhattan. This project includes 48-inch and 36-inch trunk water mains and large regulating valve stations that create a high potential to impact Company infrastructure assets. Some of the locations for the shaft piping and regulating stations may involve relocation of Company oil filled pipe-type high voltage transmission cables and gas transmission mains. In addition most locations will involve major relocation of primary and secondary electric systems, gas systems and steam distribution systems. This project has been underway since the 1970's and the eleven shafts have been installed but not connected to the City's 48" and 36" water main distribution system. The Department of Design and Construction ("DDC")/DEP is in the process of designing and awarding eleven projects to connect the shafts to the water distribution system as well as the inter-tie. Of the eleven locations, one (1) has been completed; one (1) has been designed, bid and awarded and is in the initial stages of construction; two (2) have been designed and bid; two (2) are in final design with bid dates projected for Spring 2010; and five (5) are in design with a bid date of October 2010 through March 2011. The DEP has an aggressive target date of the fall of 2013 for completing these projects.

project with a projected total cost in excess of $100 million), eighty (80) percent of the variation above the target plus thirty (30) percent that is attributable to the above-described projects will be deferred on the Company's books of account for future recovery from customers.

In addition, if there is a change in law, rules and/or customary practice relating to interference (*e.g.*, responsibility for costs associated with New York City transit projects), the Company will have the right to defer on its books of account for future recovery from customers such incremental costs pursuant to Section VII.F.

C. <u>Pensions /OPEBs</u>

Pursuant to the Commission's Pension Policy Statement,[19] the Company will reconcile its actual steam pensions/Other Post-Employment Benefits ("OPEBs") expenses and, in addition, tax benefits related to the Medicare subsidies to the level allowed in rates as set forth in Appendix D.

The Pension Policy Statement provides that companies may seek prospective interest accruals or rate base treatment for amounts funded above the cost recoveries included in rates.[20] During the term of the Steam Rate Plan, the Company may be required to fund its pension plan at a level above the rate allowance pursuant to the annual minimum pension funding requirements contained within the Pension Protection Act of 2006. The Company, its actuary and the parties are unable to predict with certainty if the minimum funding threshold will exceed rate recoveries during the term of

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[19] Case 91-M-0890, In the Matter of the Development of a Statement of Policy Concerning the Accounting and Ratemaking Treatment for Pensions and Post-Retirement Benefits Other Than Pensions, *Statement of Policy and Order Concerning the Accounting and Ratemaking Treatment for Pensions and Post-Retirement Benefits Other Than Pensions* (issued September 7, 1993) ("Pension Policy Statement").

[20] See Pension Policy Statement, Appendix A, page 16, footnote 3.

the Steam Rate Plan. In lieu of a provision in this Proposal addressing the Company's additional financing requirements should it be required to fund its pension plan above the level provided in rates during the term of the Steam Rate Plan, the Proposal does not preclude the Company from petitioning the Commission to defer on its books of account for future recovery from customers the financing costs associated with funding the pension plan at levels above the current rate allowance should funding above the rate allowance be required; the Company's right to obtain authority to defer such financing costs on its books of account will not be subject to requirements respecting materiality.

D. <u>Environmental Remediation</u>

If the level of actual expenditures for site investigation and remediation allocated to Steam,[21] including expenditures associated with former manufactured gas plant sites, Superfund and 1994 DEC Consent Order Appendix B sites, varies in any Rate Year from the level provided in rates, which levels are set forth in Appendix B, such variation will be deferred on the Company's books of account and recovered from or credited to customers. The deferred balances subject to interest will be reduced by accruals, insurance recoveries, associated reserves, deferred taxes and amounts included in rate base (see Appendix B).

E. <u>Deferred Income Taxes – 263A</u>

The Company and the Internal Revenue Service have an open audit issue concerning the Section 263A tax deduction claimed by Con Edison beginning with tax

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[21] These costs are the costs Con Edison incurs to investigate, remediate or pay damages (including natural resource damages) with respect to industrial and hazardous waste or contamination, spills, discharges, and emissions for which Con Edison is deemed responsible. These costs are net of insurance reimbursements (if any); nothing herein will require the Company to initiate or pursue litigation for purposes of obtaining insurance reimbursement, nor preclude or limit the Commission's authority to review the reasonableness of the Company's conduct in such matters.

returns filed for 2002 and later years. At issue is the appropriate method(s) to be applied to different classes of plant in order to calculate the Section 263A deduction. Resolution of this matter is pending for all those tax years and may result in a disallowance of a portion of the tax deduction claimed by the Company. This Proposal continues the established 263A deferred tax balances for steam that reflect the anticipated outcome of this dispute.

The Company will defer interest at a rate equivalent to the pre-tax rate of return of 10.52 percent on any difference between the actual deferred Section 263A tax benefits that result from the Section 263A deduction and the amount allowed by the Internal Revenue Service. The final Section 263A deduction reflected in rate base will recognize any related partial offset (*i.e.*, higher/lower tax deduction) impacting the Modified Accelerated Cost Recovery System ("MACRS") rate base balances.

F. <u>Long Term Debt Cost Rate</u>

As set forth in Appendix A, the weighted average cost of long term debt during the term of the Steam Rate Plan is 5.57 percent. The Company will be allowed to true-up its actual weighted average cost of long term debt during each Rate Year to the 5.57 percent cost rate reflected in Appendix D. In the event variable rate or auction rate debt is refinanced prior to October 1, 2013 (including under circumstances not contemplated by the Commission's Order, issued March 12, 2009, in Case 08-M-1244, and therefore requiring Commission authorization), the Company will include its costs associated with the retirement and refinancing of the variable rate and auction rate debt in the amounts to be reconciled.[22]

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[22] If the Company refinances any variable rate or auction rate debt, or issues new tax-exempt debt, it may require the use of one or more credit support measures, such as letters of credit or bond insurance.

G. Research and Development Expense

Research and Development ("R&D") expenses reflected in the revenue requirements for each of RY1, RY2 and RY3 for steam are set forth in Appendix D ("target levels"). In the event the Company's actual R&D expenses for steam are less than the target level for a particular Rate Year, the Company will defer on its books of account the amount of such under spending for future credit to customers, subject to any such deferred amount being reduced by up to the amount of actual expenditures in any and all subsequent Rate Years that exceeds the target level for that Rate Year(s) by not more than 20 percent.[23]

The Company has the flexibility over the term of the Steam Rate Plan to modify the list, priority, nature and scope of the R&D projects to be undertaken.

H. Proceeds from the Sales of SO_2 Allowances

If the level of proceeds from the sale of SO_2 allowances allocated to steam varies in any Rate Year from the level provided in rates, which levels are set forth in Appendix D (*i.e.*, $281,000), such variation will be deferred on the Company's books of account and recovered from or credited to customers. The allocation of such proceeds between steam and electric will continue to be computed according to the method established in the *Order Determining Revenue Requirement And Rate Design*, issued September 22, 2006, in Case 05-S-1376.

[23] For example, if actual spending in RY1 is $300,000 below the target level, the Company will defer that amount for future credit to customers. If the target level for RY2 is $1 million, and actual spending in RY2 is $1,150,000, the deferred credit will be reduced by the extra $150,000 spent. However, if the actual spending in RY2 is $1,300,000, the deferred credit will be reduced only by $200,000. A separate, but similar, reconciliation will be performed for RY3, up to the amount of any remaining deferred credit.

I. Metropolitan Commuter Transportation Mobility Tax

In the event a tax rate and/or tax structure change is enacted into law affecting the Company's costs associated with the Metropolitan Commuter Transportation Mobility Tax ("MTA Mobility Tax") prior to the commencement of RY1, the Company will defer the full effects of any such tax rate or tax structure change during the term of the Steam Rate Plan.

In the event a tax rate and/or tax structure change related to the MTA Mobility Tax is enacted during the term of the Steam Rate Plan, such event shall be treated in accordance with Section VII.F of this Proposal.

J. Steam Capital Expenditures

1. Net Plant Reconciliation

The steam revenue requirements for RY1, RY2 and RY3 are based on the net plant targets set forth in Appendix D ("Average Plant In Service Balances") for steam production and steam distribution (which includes Municipal Infrastructure Support (interference)) capital costs.

The steam distribution capital net plant targets reflect an agreed upon aggregate level of capital expenditures. Nonetheless, the Signatory Parties acknowledge that the Company has the flexibility over the term of the Steam Rate Plan to modify the list, priority, nature and scope of its steam production and steam distribution capital projects.

By December 15, 2010, the Company will provide to Staff and interested parties its most recent projected expenditures by project and/or program for Steam Distribution, Steam Production and Municipal Infrastructure Support for calendar years 2011, 2012, 2013 and 2014 ("Program/Project List"). By December 15, 2011, the Company will provide to Staff and interested parties its Program/Project List for calendar years 2012, 2013 and 2014. By December 15, 2012, the Company will provide to Staff and interested parties its Program/Project List for calendar years 2013 and 2014.

The Company will meet with Staff and other interested parties by December 15 of Rate Year 2 and Rate Year 3 to review its capital plans for the upcoming calendar year.

The Company will defer on its books of account for credit to customers the revenue requirement impact (defined below) of the amount by which the Company's actual expenditures for capital programs result in average net plant (excluding removal costs) that is less than the related Average Plant In-Service Balance target (excluding removal costs) as set forth in Appendix D for RY1, RY2 and RY3. The revenue requirement impact will be calculated separately for production and steam distribution (including interference) by applying an annual carrying charge factor for the applicable average net plant in service category (see Appendix D) to the amount by which the actual net plant was below the target. As noted in Section II.B, if any of the austerity targets are met through capital reductions, then the Average Plant In-Service Balance target will be reduced by the net plant amount of the capital reduction.

Con Edison may petition the Commission to defer for later recovery the carrying charges associated with an unplanned capital investment in its steam production plant, provided that: (i) the project is due to circumstances outside the Company's control; (ii) the capital expenditures are made during the term of the Steam Rate Plan; (iii) the inclusion of the unplanned capital investment in the total average net plant in service (excluding removal costs) results in the Average Plant in-Service Balances for steam production exceeding the levels set forth in Appendix D; and (iv) the Company has considered its flexibility to reprioritize steam production capital projects within the target levels set forth in Appendix D. Any such petition is subject to the materiality, incremental, and earnings criteria applied by the Commission to deferral petitions. The manner of recovery of any amounts authorized to be deferred shall be as determined by the Commission.[24]

For purposes of this Steam Rate Plan, only steam production and steam distribution (including interference) capital are subject to the downward reconciliation mechanism.

2. Capital Expenditure Projections

Appendix D also sets forth capital expenditure projections for steam production and steam distribution, which include capitalized pensions and other capitalized overheads.

For each of RY1, RY2, and RY3, if the Company makes capital expenditures for steam production and steam distribution, above the total of the capital expenditure projections shown in Appendix D, the Company will not accrue carrying charges on such amounts during the term of this Steam Rate Plan.

If aggregate expenditures during RY1, RY2 and RY3 exceed the sum of the capital expenditure projections by more than 10 percent, in the Company's next base rate case filing, the Company shall specifically address these additional capital expenditures, including providing justification for the need for and reasonableness of such expenditures.

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[24] For purposes of this Proposal, the Signatory Parties propose that a deferral petition submitted pursuant to this provision for a project with a capital investment of $5 million or more should not be rejected by the Commission for consideration solely on the grounds that the amount of the proposed investment is not material.

The capital spending projections are exclusive of capital expenditures made by the Company associated with projects for which the Company receives grants from the Department of Energy pursuant to the federal stimulus program. The capital spending projections are also exclusive of (1) expenditures that are recovered outside of base rates (*e.g.*, customer-funded capital for expenditures on facilities); (2) Company expenditures on public policy projects that the Company is specifically authorized or directed to undertake by the Commission; (3) Company expenditures on Municipal Infrastructure Support projects related to federal stimulus projects conducted by the New York City, the City Water Tunnel #3 project and new major projects (as defined Section IV.B.); (4) Company capital expenditures recovered through alternative rate mechanisms (*e.g.*, capital expenditures associated with Energy Efficiency Portfolio Standard ("EEPS") programs funded through the System Benefits Charge); (5) expenditures to comply with DEC consent orders that are not in the capital projections; and (6) gas additions for 59th Street/74th Street.

The revenue requirements reflect steam's share of expenditures on the Enterprise Resource Project. Under the Electric Rate Plan, the capital spending target for the Enterprise Resource Project is capped at $160 million on a Company-wide basis, and expenditures in excess of this amount related to the implementation of the Enterprise Resource Project will not be recoverable from customers, including from steam customers.

The Company's reporting on expenditures above projections for shared services is covered by the Electric Rate Plan.[25]

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[25] Case 09-E-0428, Con Edison – Electric Rates, *Order Establishing Three-Year Electric Rate Plan*, (issued and effective on March 26, 2010) ("Electric Rate Plan").

3. Gas Additions for 59th Street and 74th Street Generating Stations

The net plant targets do not include any costs associated with the 59th Street or 74th Street gas addition projects proposed by the Company in its initial filing. If, during the term of the Steam Rate Plan, the Company needs to install gas-burning capability (or implement other measures) at either or both stations in order to comply with a change in rule, law and/or regulation (*e.g.*, a change in the environmental laws relating to permissible levels of emissions from the Stations), the Company's recovery of and a return on these investments, incremental O&M expenses, if any, and incremental property taxes, if any, will commence on the date that such equipment is placed in service, subject to Commission approval of the petition described below.

If, for reasons other than those described in the preceding paragraph, the Company commences the gas addition project(s) for the Station(s) on or after the later of (i) commencement of RY2, (ii) the completion of the studies to be performed by the Company pursuant to Section XI.D, and (iii) a determination by the Company that either or both Stations will continue to be a part of the steam system for the foreseeable future, the Company's recovery of and a return on these investments, incremental O&M expenses, if any, and incremental property taxes, if any, will commence on the date that such equipment is placed in service, subject to Commission approval of the petition described below. The Company should consult informally with Staff and the City prior to commencing work on the project(s).

In the event the Company proceeds with the project(s), it shall submit a filing for Commission review and approval containing: (1) a detailed justification as to why the company proceeded with the project(s), (where the project was undertaken to comply with a change in rule, law and/or regulation, the Company will be required only to cite to the change); (2) the underlying costs associated with the investments; and (3) a proposed method of recovery, including the justification for such method, for the period from the in-service date to the next time base rates are reset. This filing should be made at least ninety (90) days before the expected in-service date. Any incremental property taxes related to these projects shall be excluded from the property tax reconciliation discussed in Section IV.A.

4. Astoria Consent Order

On April 22, 2010, the DEC and the Company entered into a Consent Order relating to the Company's Astoria site. The Astoria site is considered a common Company facility. At the time of the execution of this Proposal, a reasonable estimate of the costs to comply with the Astoria Consent Order is not available. Accordingly, when a reasonable estimate of such costs is available, the Company will file a report with the Commission, and provide a copy to Staff and all Active Parties to Case 09-S-0794, setting forth the amount and nature of the costs needed to comply with the Order. To the extent such facilities are placed in service during RY1, RY2 or RY3, the Company will defer on its books of account for recovery from customers steam's share of such costs (*i.e.*, a carrying charge that includes a return on investment plus depreciation) through an adjustment to the Interdepartmental Rents, provided that the Company's capital expenditures related to any such common plant investment(s) result in the Interdepartmental Rents exceeding the amount reflected in rates.

5. Reporting Requirements

On or before February 28 of each year during the term of the Steam Rate Plan, the Company will file with the Commission, and provide copies to Staff and all interested parties, a report containing the following information:

a. for steam production and distribution capital expenditures during the prior calendar year:

i. for each completed project, the date it was commenced and completed, and its total cost.

ii. for each ongoing project, the project's status, date of commencement, estimated date of completion, costs expended to date, and projected total project cost.

iii. for each project (steam production) and program (steam distribution) where the Company's expenditures have varied by more than fifteen (15) percent from the estimates contained in the Project/Program List, a detailed explanation and justification for such variation.

iv. for each new project (*i.e.*, a project not previously identified in the Company's filings in this steam rate case), a detailed project description, justification of the need for the project, cash flow requirements from inception through completion, an explanation of how the cost figures were derived, and supporting work papers and/or other back up material.

b. for steam plant availability and performance statistics, plant availability and performance statistics for each steam production unit for the winter and summer periods.

c. for steam production and distribution O&M expenditures, (i) the Company's plans regarding major maintenance for the current calendar year, including a description of the anticipated major activities and total planned expenditures using the Company's currently effective O&M functional categories; (ii) where the Company's actual O&M

expenditures for the previous calendar year vary by more than fifteen (15) percent from the previous year's estimates by major maintenance O&M functional category; the report will also provide an explanation for any such variations.

K. Additional Reconciliation / Deferral Provisions

In addition to the foregoing reconciliation provisions (*i.e.*, paragraphs IV.A through IV.J) along with all other provisions of this Proposal embodying the use of a reconciliation and/or deferral accounting mechanism, all other applicable existing reconciliations and/or deferral accounting will continue in effect through the term of the Steam Rate Plan and thereafter until modified or discontinued by the Commission, including, but not limited to, Financial Accounting Standards ("FAS") 109 taxes, System Benefits Charges, MTA taxes, and the New York Public Service Law §18-a regulatory assessment.

The steam revenue requirements reflect the amortization of $3.934 million per Rate Year of World Trade Center ("WTC")-related capital costs that the Company has deferred, as set forth in Appendix B.[26] The balance of the Company's WTC-related capital costs allocated to steam will continue to be deferred in accordance with the 2008 Steam Rate Order. Actual deferred WTC balances will be subject to interest at the Company's pre-tax Allowance for Funds Used During Construction rate of return. The Company will continue to seek recovery for all WTC costs from governmental agencies and insurance carriers. All recoveries will be applied to reduce the deferred balance,

[26] The deferred WTC-related capital costs for steam reflect the use of $2.736 million of unbilled steam revenues to write down the deferred balance.

except to the extent that the Company is required to use insurance proceeds to reimburse government entities.

L. Limitations on Deferrals

For steam earnings above the RY1 Earnings Sharing Threshold or the RY2-3 Earnings Sharing Threshold, as calculated on a cumulative basis for RY1, RY2 and RY3 as discussed in Section III and in Appendix G, the Company will apply fifty (50) percent of its share of any such earnings to reduce deferred undercollections of pension and OPEBs, Municipal Infrastructure Support costs and property taxes, if any. The Company will apply the customers' share of earnings above the sharing threshold that would otherwise be deferred for the benefit of customers to first offset deferred debits. The customers' allocated share of shared earnings will be applied against deferred pension and OPEB costs, property taxes, WTC O&M costs, Municipal Infrastructure Support costs and environmental remediation costs.

The Company's annual earnings report (see Section III) will include a schedule showing deferrals that may be written down at the end of the Steam Rate Plan with the Company's and the customers' respective shares of earnings above the earnings sharing thresholds.

V. Additional Rate Provisions

A. Recovery of Variable Pay Program Costs

The revenue requirements for RY1, RY2 and RY3 do not reflect any costs of the Company's Variable Pay Plan for management employees. The non-Company parties assert that the Commission's prior directives to the Company on a Variable Pay Plan and recommendations in the Liberty Audit on such a Plan afford the appropriate guidance to the Company for changes to its Variable Pay Plan that could potentially justify the transfer of such costs to ratepayers.

If the Company modifies its existing Variable Pay Plan, effective on or after January 1, 2011, the Company shall have the opportunity to demonstrate to the Commission that the Company should receive rate recovery for its modified program and the non-Company parties shall have the right to oppose the Company's petition.

If the Commission grants the Company's petition, in whole or in part, the Company will be permitted to recover the costs of the Variable Pay Plan for RY2 and RY3 in the manner and to the extent determined by the Commission. Since rates have been set for the period of this steam rate plan, the Signatory Parties' consensus recommendation is, that if there is any Commission authorized recovery mechanism for purposes of this rate plan, that there be an adjustment to the earnings sharing mechanism (*i.e.*, by increasing the level at which customers begin to share in any earnings above a threshold).

B. <u>Depreciation Rates and Reserves</u>

The average services lives, net salvage factors and life tables used in calculating the depreciation reserve and establishing the revenue requirements for steam service are set forth in Appendix E.

C. <u>Interest on Deferred Costs</u>

The Company is required to record on its books of account various credits and debits that are to be charged or refunded to customers. Unless otherwise specified in this Proposal or by Commission Order, the Company will accrue interest on these book amounts, net of federal and state income taxes, at the Other Customer-Provided Capital Rate published by the Commission annually. FAS 109 and MTA tax deferrals are either offset by other balance sheet items or reflected in the Company's rate base and will not be subject to interest.

D. **Property Tax Refunds and Credits**

Property tax refunds allocated to steam that are not reflected in the Steam Rate Plan and that result from the Company's efforts, including credits against tax payments or similar forms of tax reductions (intended to return or offset past overcharges or payments determined to have been in excess of the property tax liability appropriate for Con Edison), will be deferred for future disposition, except for an amount equal to fourteen (14) percent of the net refund or credit which will be retained by the Company. Incremental expenses incurred by the Company to achieve the property tax refunds or credits will be offset against the refund or credit before any allocation of the proceeds is calculated. The deferral and retention of property tax refunds and incentives will be subject to an annual showing in a report to the Secretary by the Company of its ongoing efforts to reduce its property tax burden, in March of each Rate Year. Additionally, the Company is not relieved of the requirements of 16 NYCRR Part 89 with respect to any refunds it receives.

E. **Allocation of Common Expenses/Plant**

During the term of the Steam Rate Plan, common expenses and common plant will be allocated according to the percentages shown in Appendix F. Should the Commission approve different common allocation percentages for electric prior to the next base rate case for the steam business, the resulting annual revenue requirement impact to steam will be deferred for future recovery from or credit to customers.

F. GRT Refund

On January 22, 2010, the Company notified the Commission that it had received a refund, totaling $5.6 million of previously paid GRT taxes from New York City. On February 11, 2010, the Company amended its filing to update the allocation of this refund among electric, gas and steam to 54.3 percent, 9.4 percent and 36.3 percent, respectively. These percentages are based on the Commission's allocation of the gain from the sale of the First Avenue Properties (Case 01-E-0377). The resulting refund applicable to electric, gas and steam would be approximately $3,050,000, $530,000 and $2,040,000, respectively.

The revenue requirements for steam include a credit to customers for a portion of the refund allocable to steam over the three Rate Years. Thus, steam rates are lowered by $1,755,000 at $585,000 per Rate Year as shown in Appendix B.

The final amounts allocable to gas and steam customers will be determined by the Commission as part of Case 10-M-0039. After the Commission decision in that proceeding, the Company will defer on its books of account for the benefit of customers or the Company, as applicable, any difference between the placeholder amounts reflected in rates and the amount the Commission determines is allocable to customers.

G. Rate Adjustment Clause ("RAC")

Pursuant to the Commission's June 25, 2009 *Order Establishing Adjustment Clause Mechanisms to Recover Gas and Steam Rates,* issued in Case 09-M-0114, the steam tariff shall continue to include a RAC, pursuant to which recovery of $6 million per year is subject to refund until otherwise determined by the Commission.

VI. Other Programs and Matters

A. East River Repowering Project Cost Allocation

For RY1, the Company will make no change to the allocation of ERRP fuel and non-fuel costs between steam and electric under the allocation method approved in Case 07-S-1315. For RY2 and RY3, $7.5 million of ERRP fuel costs will be re-allocated from electric to steam. The reallocation of $7.5 million of ERRP fuel costs shall continue beyond the term of the Steam Rate Plan unless and until changed by the Commission. No other changes to the allocation method adopted in Case 07-S-1315 are proposed. The additional ERRP fuel costs allocated to steam will be recovered from steam customers through the Steam FAC.

The Signatory Parties participated in both the Steam Planning Proceeding and this Steam Rate Proceeding. The testimony submitted in these proceedings presented a range of positions regarding the resolution of the ERRP allocation issue. The Signatory Parties believe that the additional $7.5 million of ERRP fuel costs to be borne by steam customers, commencing in RY2, reflects a reasonable resolution of the varying positions taken on the ERRP allocation issue, including positions taken by non-Signatory Parties; and reflects a thorough and careful consideration of the arguments raised and all of the other information exchanged between and among the parties to these proceedings.

B. Performance Metrics

The steam safety performance measures described herein will be in effect for the term of the Steam Rate Plan. The response time and steam leak backlog performance measures for calendar year 2013 will remain in effect thereafter unless and until changed by the Commission.

1. Emergency Response – 45-Minute Response Time

If Con Edison does not respond to steam leak/vapor calls from third parties within 45 minutes at the percentages set forth below for calendar years 2011 through 2013, the following negative rate adjustment will be applied to the benefit of customers for each calendar year that the performance measure is not attained, as directed by the Commission.

Response Percentage	Negative Adjustment
90% or more	No adjustment
More than 85% but less than 90%	1.5 basis points[27]
85% or less	3.0 basis points

2. Emergency Response – 60-Minute Response Time

If Con Edison does not respond to steam leak/vapor calls from third parties within 60 minutes at the percentages set forth below for calendar years 2011 through 2013, the following negative rate adjustment will be applied to the benefit of customers for each calendar year that the performance measure is not attained, as directed by the Commission.

Response Percentage	Negative Adjustment
95% or more	No adjustment
More than 90% but less than 95%	1.5 basis points
90% or less	3.0 basis points

3. Emergency Response – Exceptions

Steam leak/vapor calls resulting from major weather-related occurrences, and other circumstances outside of the Company's control will be excluded from the calculations for the 45- and 60-minute response times.

[27] The basis point negative rate adjustment associated with each measure is stated on a pre-tax basis. As indicated in footnote 14, the revenue requirement equivalents of a basis point on common equity capital per the steam revenue requirements under this Proposal are estimated to be $100,000.

If a performance metric is not met, the associated negative revenue adjustment will be excused when the Company can demonstrate to the Commission extenuating circumstances that prevented it from meeting such performance metric. The determination of whether such circumstances exist will be made on a case-by-case basis by the Commission.

4. Steam Leak Backlog

For the calendar years 2011 and 2012, separate negative rate adjustments of 1.5 basis points will be applied to the benefit of customers if the average month-end steam leak backlog of the 12-month period ending June 30 ("June Average") or December 31 ("December Average") exceeds 24 (for a maximum of 3.0 basis points); provided, however, that if the June Average is more than 24 but the December Average is less than 24, there will be no negative rate adjustment for exceeding 24 in June if the December Average is less than or equal to 24 minus the June overage. For example, if the June Average is 26, there would be no negative rate adjustment for exceeding 24 in June if the December average is 22 or less.

For the calendar year 2013, separate negative rate adjustments of 1.5 basis points will be applied to the benefit of customers if the June Average or the December Average exceeds 22 (for a maximum of 3.0 basis points); provided, however, that if the June Average is more than 22 but the December Average is less than 22, there will be no negative rate adjustment for exceeding 22 in June if the December Average is less than or equal to 22 minus the June overage. For example, if the June Average is 24, there would be no negative rate adjustment for exceeding 22 in June if the December average is 20 or less.

5. Steam Leak Backlog - Exceptions

Con Edison shall have the right to petition the Commission with any extenuating circumstances or additional information for consideration before determination of any negative rate adjustments. If a performance metric is not met, the associated negative revenue adjustment will be excused if the Company can demonstrate to the Commission extenuating circumstances that prevented it from meeting such performance metric. The determination of whether such circumstances exist (*e.g.*, extreme weather, Department of Transportation work embargos) will be made on a case-by-case basis by the Commission.

6. Reporting

Con Edison shall report to the Secretary no later than 60 days following the end of the calendar year regarding the Company's performance for each of the three measures noted above.

C. Customer Satisfaction

To assess the satisfaction level of steam customers, the Company will conduct two surveys per year.

i. Con Edison will perform two surveys per year of a representative sample of the steam customers who have contacted the Company. The representative sample is defined as a valid statistical sample of customers who have contacted the Company developed in consultation with an independent professional survey vendor.

ii. The Company will continue to use the same survey instrument that it used as part of the 2006 Steam Rate Plan. The surveys will be conducted within one month of the end of each six-month period.

iii. Con Edison will prepare an annual report that compiles, summarizes, and identifies key issues associated with the two surveys conducted during the previous Rate Year. This report will be completed within 90 days of the end of each Rate Year and submitted to the Secretary, with copies provided to interested parties who request them.

iv. Con Edison will be subject to a $50,000 revenue adjustment each Rate Year if it fails to conduct the two surveys and submit the report described above.

D. <u>Steam Peak Reduction Collaborative</u>

In its December 17 Order in Case 09-S-0029, the Commission stated that "[w]e expect this proceeding to examine – and the Company to undertake where warranted – cost-effective measures to reduce the need for generation at Hudson Avenue, thereby deferring or eliminating the need to install all of the planned package boilers at the site."[28] The Commission also stated that "[s]uch measures could include, for example: a standard offer for customers to propose efficiency measures or customer-sited generation that would reduce steam demand; a comprehensive energy efficiency program available to all customers; or a program to assist low-margin customers in switching to alternative heating sources."[29]

In response to the concerns raised by the Commission and in order to explore ways to mitigate the need to build new capacity for its steam system by reducing the steam peak demand, the Company, Staff and interested parties established the SPRC to consider methods to better manage the Company's steam peak demand. The SPRC will focus on six major areas: (1) demand response; (2) the Company's obligation to serve (*e.g.*, to properly apportion cost responsibility of new customers, including low margin customers); (3) energy efficiency; (4) the structure of steam demand rates (*e.g.*, to

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[28] December 17 Order, p. 33.

[29] Id.

provide price signals to low margin customers); (5) steam air-conditioning; and (6) alternative sources of steam supply (*e.g.*, customer sited combined heat and power supply). All programs and measures on which the SPRC members reach consensus will be submitted by the Company to the Commission for information and/or approval, as appropriate. Since the rates developed in connection with this Proposal do not reflect the implementation of any such programs, the Company will be permitted to seek recovery of all net lost revenues (*i.e.*, net of avoided costs, if any) attributable to the implementation of such programs or measures in a manner to be determined by the Commission.

The Company's filing(s) with the Commission will, to the extent practicable, include information on the amount of the revenues projected to be lost during each Rate Year, support for any calculations provided, estimated bill impacts of the lost revenues on an overall customer class basis, and the details of the Company's proposed mechanism for identifying, measuring and recovering lost revenues attributable to the implementation of any such programs or measures. If the Company's request for recovery of lost revenues is related to programs other than energy efficiency or demand response programs, the Company will demonstrate why the Company should be permitted such lost revenue recovery.

Any rate changes approved by the Commission will be implemented on an overall revenue neutral basis.

At the conclusion of the collaborative, the Company, with input from interested parties, will file a report with the Commission on the results of the collaborative efforts. All parties shall have the right to comment on the report. The Company will separately file with the Commission any proposed program(s) for approval.

Nothing in this Steam Rate Plan is intended to limit the Company's right to propose to the Commission, on or after August 1, 2010, programs or measures designed to reduce steam demand and/or steam sales in addition to any programs or measures that may be recommended by the collaborative. Before seeking Commission approval, the Company will first seek input from the SPRC on the proposed program or measure.

By the end of the first quarter of 2011, the Company will complete and report to the parties on the following: (1) an examination of the end-to-end fuel efficiency of the steam system; (2) an assessment of the long range incremental costs of steam service over the horizon of the steam long range plan, including production costs; (3) identification of potential measures to balance load and supply, including rate incentives to attract, limit and reduce steam load, as the case may be; (4) an assessment of the costs and benefits of alternatives to steam supply (steam to gas or steam to electric customer conversions) on: (i) the steam system; (ii) steam customers with and without reasonable alternatives to steam supply; and (iii) the gas and electric systems and their customers, including an evaluation of the investment that would be needed in new electric and gas infrastructure to support such conversions; and (iv) the environment. The Company will notify Staff and the parties in the event that consultants are needed to conduct any of the assessment(s) as well as the estimated cost of such consultants. Upon Staff's concurrence that such assessment should go forward, the Company would be permitted to defer on its books of account any associated incremental costs (*i.e.*, for consultants) up to $100,000, for later recovery from customers. Should such costs be projected to exceed $100,000, the Company shall convene a discussion among interested parties and, upon concurrence by the parties that such additional costs should be incurred, the Company shall continue with such studies and would be permitted to defer such costs for consultants for later recovery.

E. Heat Recovery Steam Generators ("HRSGs")

In order to address manufacturer design concerns related to the ERRP HRSGs, the Company, in consultation with Staff, will conduct a one-day technical assessment of the HRSGs. The results of this one-day assessment will be documented in a report to the Commission by December 31, 2010. The Company will consider the results of the one-day assessment in formulating its future O&M and/or capital plans related to the ERRP HRSGs.

F. Informational Filing

During the third quarter of RY2, the Company will make an informational filing with the Commission regarding the status of the 59th and 74th Street Gas Addition Projects and the Hudson Avenue Replacement Project the Steam Variance, and the results of all programs and measures implemented as a result of the SPRC, and programs developed by the Company and presented to the SPRC as discussed in Section VI.D; to the extent data are available, the filing will discuss and provide details on the reductions in peak and total demand and sales achieved to date and projected to be achieved, and projected avoided costs.

With respect to the Steam Variance, the Company will provide an update of actual annual thermal losses on the steam system (in MMlb) for the period ending August 31, 2011. The Company and interested parties will meet to discuss the report and determine whether to recommend any changes to the Steam Variance for RY3. In the absence of a consensus among the Company and all interested parties, the Steam Variance established by this Steam Rate Plan will remain in effect for RY3.

G. <u>Thermal Efficiency (ABS) Study</u>

As recommended by the *Thermal Efficiency and Losses: Review and Action Plan* ("ABS Report"), prepared by ABS Consulting, the Company will complete its study of increasing superheat by reducing steam system operating pressure. To do so, the Company may retain the assistance of one or more third-party consultant(s), provided that the sum of all fees paid to such consultant(s) do not exceed $50,000. The Company will recover through the FAC all amounts paid to such consultant(s).

On or before October 31, 2010, the Company will file with the Secretary a Report summarizing the results of its study. If the Company determines that it may increase the amount of superheat on its steam system by reducing steam system operating pressure, the Report will include an implementation plan that sets forth: (a) the operational changes that it proposes to implement lowering operating pressures at each Con Edison steam generation facility; (b) proposed dates for each major milestone necessary to achieve those operational changes; (c) an estimate of costs associated with implementation of the proposed operational changes; and (d) the anticipated thermal loss reductions, and associated cost savings, anticipated as a result of the proposed operational changes. If the Company determines that increasing the amount of superheat on its steam system by reducing the pressure of steam system operating pressures is not feasible, the Report will include a detailed explanation justifying that conclusion and all supporting work papers.

The Company examined increasing the amount of superheat by raising steam temperature and the utilization of pumpable insulation per the ABS Study and has determined that such actions are not cost effective at this time. As such, the Company will not pursue these options during the term of the Steam Rate Plan.

H. <u>Rate Design/Tariff Changes</u>

The Rate Design and Revenue Allocation changes to be made as part of this proceeding are included in Appendix H. In addition to the tariff changes required to implement various provisions of this Proposal, a number of tariff changes will be made, as summarized below. The specific language of the changes will be shown on tariff leaves to be filed with the Commission.

- The tariff will be amended to reflect the lowering of the consumption threshold for SC2 and SC3 customers eligible for steam demand billing from the current consumption level of 22,000 Mlbs to 14,000 Mlbs annually. In addition, the Company will amend its tariff to lower the threshold for the transfer from demand billing under SC2 and SC3 Rate II to Rate I (Non-demand) from the current level of 14,000 Mlbs to 12,000 Mlbs. Corresponding changes will be made to the applicability sections of SC No. 4 Rates III and IV and SC6 Rates III and IV to reflect these changes being made in SC- 2 and SC3.

- The Special Provision sections of SC2 and SC3 will be amended to allow the Company to continue accepting applications for the air-conditioning incentive program until September 30, 2013. This program provides eligible customers with a $2.00 per Mlb reduction in base rates during each summer billing cycle month for two years for steam usage in excess of 250 Mlb under SC2 and in excess of 50 Mlb under SC3.

- Changes will be made to the tariff regarding special services performed at stipulated rates. The charge for the temporary disconnection and reconnection of service, currently applicable to a request in excess of one disconnection and reconnection performed in a 12-month period, will be applicable to all requests.

- The Company's tariff will provide for recovery of purchases of RGGI allowances and credit to customers of proceeds from the sale of such allowances, if applicable.

VII. Miscellaneous Provisions

A. Maintaining A Goal-Oriented And Responsive Corporate Culture

The Company will continue efforts to identify changes to improve the overall culture of the enterprise, specifically to increase the Company's effectiveness and accountability to the Commission, customers, appropriate customer groups or representatives, community leaders, investors and other stakeholders. The Company will focus specifically on identifying opportunities to advance the Company's prospects for operating and project excellence, including efforts stemming from the Liberty Audit, focused cost control, and planning. The Company effort to implement culture change and achieve desired traits of business excellence will continue to focus on management, departmental and executive leadership and accountability. The Company will seek to continue to employ assessment techniques including individual and organizational performance targets designed to identify areas for improvement and deficiencies in individual and organizational performance and to take appropriate measures to address them.

B. Capital Construction Planning

In its October 5, 2009 submission in Case 08-M-0152, the Company provided a plan to implement the Liberty Audit recommendations. That plan addresses the recommendations related to capital construction planning (*e.g.*, in developing the construction programs, the planning and budgeting process will correlate capital spending to program objectives and benefits to customers.)

Con Edison will issue written directives to its managers with responsibility for capital planning and budgeting that direct them to consider rate impacts on customers in developing capital plans and budgets. These directives will be part of the Company's ongoing communications to its managers and employees regarding the budgeting process, which include directives that address maintaining reliability, planning for future system requirements, project prioritization and good utility practice.

C. Liberty Audit Report

In addition with respect to the Liberty Audit, the Company will submit to all parties in the instant proceedings an annual report addressing progress made in implementing the Liberty Audit recommendations, per the schedule established by the Commission in its March 26, 2010 Order Establishing the Electric Rate Plan in Case 09-E-0428 and Case 08-M-0152.

D. New York State Energy Plan

The Signatory Parties believe that the Proposal will further objectives of the New York State Energy Plan, issued December 15, 2009, in that it recognizes the need for maintaining service reliability standards, promotes the State's economic development and environmental values and addresses energy affordability objectives through rate design and cost allocation, revenue requirement levelization (as applicable), and revenue requirement mitigation measures, including capital expenditure and operating expenses austerity.

E. Continuation of Provisions; Rate Changes; Reservation of Authority

Unless otherwise expressly provided herein, the provisions of this Proposal will continue after RY3, unless and until steam base delivery service rates are changed by Commission order. For any provision subject to RY1, RY2 and RY3 targets, the RY3 target shall be applicable to any additional Rate Year(s).

Nothing herein precludes Con Edison from filing a new general steam rate case prior to October 1, 2013, for rates to be effective on or after October 1, 2013. Except pursuant to rate changes permitted by this subparagraph, the Company will not file rates to be become effective prior to October 1, 2013.

Changes to the Company's base delivery service rates during the term of the Steam Rate Plan will not be permitted, except for (a) changes provided for in this Proposal; and (b) subject to Commission approval, changes as a result of the following circumstances:

a. A minor change in any individual base delivery service rate or rates whose revenue effect is *de minimis*, or essentially offset by associated changes within the same class or for other classes. It is understood that, over time, such minor changes may be necessary and that they may continue to be sought during the term of the Steam Rate Plan, provided they will not result in a change (other than a *de minimis* change) in the revenues that Con Edison's base delivery service rates are designed to produce overall before such changes.

b. If a circumstance occurs which in the judgment of the Commission so threatens Con Edison's economic viability or ability to maintain safe, reliable and adequate service as to warrant an exception to this undertaking, Con Edison will be permitted to file for an increase in base delivery service rates at any time under such circumstances.

c. The Signatory Parties recognize that the Commission reserves the authority to act on the level of Con Edison's steam rates in the event of unforeseen circumstances that, in the Commission's opinion, have such a substantial impact on the range of earnings levels or equity costs envisioned by the Steam Rate Plan as to render

Con Edison's steam rates unreasonable or insufficient for the provision of safe and adequate service or just and reasonable rates.

d. Nothing herein will preclude Con Edison from petitioning the Commission for approval of new services, the implementation of new service classifications and/or cancellation of existing service classifications, or rate design or revenue allocation changes, or new programs or tariff changes relating to the Company's steam demand reduction and energy efficiency efforts, on a basis that is revenue neutral to the Company.

e. The Signatory Parties reserve the right to oppose any filings made by the Company under this or any other section of this Proposal.

F. <u>Legislative, Regulatory and Related Actions</u>

a. If at any time after the date of this Proposal the federal government, State of New York, the City of New York and/or other local governments make changes in their tax laws (other than local property taxes, which will be reconciled in accordance with Section IV) that result in a change in the Company's steam costs in an annual amount of $830,000 or more, and if the Commission does not address the treatment (*e.g.*, through a surcharge or credit) of any such tax law changes, including any new, additional, repealed or reduced federal, State, City of New York or local government taxes, fees or levies, Con Edison will defer on its books of account the full change in expense and reflect such deferral as credits or debits to customers in the next base rate change subject to any final Commission determination in a generic proceeding prescribing utility implementation of a specific tax enactment, including a Commission determination of any Company-specific compliance filing made in connection therewith.[30]

b. If at any time after the date of this Proposal any other law, rule, regulation, order, or other requirement or interpretation (or any repeal or amendment of an existing rule, regulation, order or other requirement) of the federal, State, or local government or courts, including a requirement that Con Edison refund its tax exempt debt, results in a change in Con Edison's annual gas and/or steam costs or expenses not anticipated in the expense forecasts and assumptions on which the rates in this Proposal are based in an annual amount of $830,000 or more for steam,[31] Con Edison will defer on its books of account the full change in expense, with any such deferrals to be reflected in the next base rate case or in a manner to be determined by the Commission.

c. The Company will retain the right to petition the Commission for authorization to defer on its books of account extraordinary expenditures not otherwise addressed by this Proposal

G. <u>Trade Secret Protections</u>

Nothing in this document prevents Con Edison from seeking trade secret protection under 16 NYCRR Part 6 for all or any part(s) of any document or report filed (or submitted to Staff) in accordance with the Steam Rate Plan, or prohibits or restricts any other party from challenging any such request.

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[30] All Signatory Parties reserve all of their administrative and judicial rights in connection with such generic proceeding(s).

[31] For purposes of this Proposal, the $830,000 threshold will be applied on a case-by-case basis and not to the aggregate impact of changes of two or more laws, rules, etc.; provided, however, that this threshold will be applied on a Rate Year basis to the incremental aggregate impact of all contemporaneous changes (*e.g.*, changes made as a package even if they occur or are implemented over a period of months) affecting a particular subject area and not to the individual provisions of the new law, rule, etc.

H. **Provisions Not Separable**

The Signatory Parties intend this Proposal to be the complete resolution of all the issues in Case 09-S-0794 and the complete resolution of the ERRP allocation and associated price elasticity issues presented in Case 09-S-0029. It is understood that each provision of this Proposal is in consideration and support of all the other provisions, and expressly conditioned upon acceptance by the Commission. Except as set forth herein, none of the Signatory Parties is deemed to have approved, agreed to or consented to any principle, methodology or interpretation of law underlying or supposed to underlie any provision herein. If the Commission fails to adopt this Proposal according to its terms, then the Signatory Parties to the Proposal will be free to pursue their respective positions in this proceeding without prejudice.

I. **Provisions Not Precedent**

The terms and provisions of this Proposal apply solely to, and are binding only in, the context of the purposes and results of this Proposal. None of the terms or provisions of this Proposal and none of the positions taken herein by any party may be referred to, cited, or relied upon by any other party in any fashion as precedent or otherwise in any other proceeding before this Commission or any other regulatory agency or before any court of law for any purpose other than furtherance of the purposes, results, and disposition of matters governed by this Proposal.

J. **Submission of Proposal**

The Signatory Parties agree to submit this Proposal to the Commission and to individually support and request its adoption by the Commission as set forth herein. The Signatory Parties hereto believe that the Proposal will satisfy the requirements of Public

Service Law §79(1) that Con Edison provide safe and adequate service at just and reasonable rates.

K. Effect of Commission Adoption of Terms of this Proposal

No provision of this Proposal or the Commission's adoption of the terms of this Proposal shall in any way abrogate or limit the Commission's statutory authority under the Public Service Law. The Parties recognize that any Commission adoption of the terms of this Proposal does not waive the Commission's ongoing rights and responsibilities to enforce its orders and effectuate the goals expressed therein, nor the rights and responsibilities of Staff to conduct investigations or take other actions in furtherance of its duties and responsibilities.

L. Further Assurances

The Signatory Parties recognize that certain provisions of this Proposal require that actions be taken in the future to fully effectuate this Proposal. Accordingly, the Signatory Parties agree to cooperate with each other in good faith in taking such actions.

M. Execution

This Proposal is being executed in counterpart originals, and shall be binding on each Signatory Party when the counterparts have been executed.

The Signatory Parties hereto have affixed their signatures below as evidence of their agreement to support before the Commission and be bound by the provisions of this Proposal.

Case 09-S-0794, Case 09-S-0029

CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.

Dated: May 18, 2010

By Marc Richter

Case 09-S-0794, Case 09-S-0029

NEW YORK STATE DEPARTMENT OF
PUBLIC SERVICE

Dated: 5/18/10

By: ______________________

Case 09-S-0794, Case 09-S-0029

CONSUMER POWER ADVOCATES

Dated: 5/18/10

By: Catherine Luthin