STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350
Internet Address: http://www.dps.state.ny.us

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December 8, 2008

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Jaclyn A Brilling, Secretary
NYS Department of Public Service
Three Empire State Plaza
19th Floor
Albany, New York 12223-1350

Case 08-E-0539 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service.

Case 08-M-0618 - Petition for Approval, Pursuant to Public Service Law, Section 113(2) of a Proposed Allocation of Certain Tax Refunds Between Consolidated Edison Company of New York, Inc. and Ratepayers.

Dear Secretary Brilling:

Enclosed please find for filing in the above-captioned cases, the original and copies of the Reply Brief of the Department of Public Service Staff (Staff). Judge Lynch, Judge Jack and the parties on the service list for these cases were served electronically with copies of Staff's Reply Brief. Hard copies have also been served on the Judges and mailed to the active parties.

Sincerely yours,

Steven J. Kramer
Assistant Counsel

David R. Van Ort
Assistant Counsel

Enc.
cc: Judge Lynch
Judge Jack
Active Parties

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STAFF REPLY BRIEF

STEVEN J. KRAMER
Staff Counsel

DAVID R. VAN ORT
Staff Counsel

DATED: December 8, 2008

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PRELIMINARY STATEMENT

On November 21, 2008, Initial Briefs were filed in the above referenced cases by Consolidated Edison Company of New York, Inc. ("Con Edison" or "Company"); the Consumer Protection Board ("CPB"); the City of New York, Metropolitan Transportation Authority and Port Authority of New York and New Jersey (collectively "NYC Government Parties"); the New York Power Authority ("NYPA"); New York Energy Consumers Council ("NYECC"); Pace Energy and Climate Center; Consumer Power Advocates; Retail Energy Supply Association; Small Customer Marketer Coalition; Joint Supporters; and, the Department of Public Service Staff ("Staff"). An extensive record was generated in this case covering a multitude of issues presented by the parties, including the current national and international economic

downturn. As Staff's testimony demonstrates and our Initial Brief and this Reply Brief confirm, the record supports the Commission granting Con Edison a rate increase that would produce additional annual revenues of $346.117 million. The recommended revenue requirement is sufficient for Con Edison to provide safe, adequate and reliable service.

It is noted initially that this brief will not discuss each litigated issue that was presented in the Initial Briefs of the other parties. This is not intended to signify, and should not be construed as, Staff's concession of those issues; rather, Staff's silence on the issues in this brief merely indicates our belief that that the record on the issues is complete and the parties' Initial Briefs fairly accurately reflect the record. Thus, further clarification or discussion is not needed.

Not surprisingly, Con Edison points to the current economic downturn to bolster its updated rate relief request. Potential fears and strain on the Company's ability to raise and borrow money has been a principal theme in this rate case as well as in the

Company's last electric rate case.[1] The economic downturn is now recognized by economists as an economic recession. Con Edison, however, is not reacting to the economic recession as would an un-regulated business. Con Edison is not engaging in the fiscal "belt tightening" that should be expected of businesses, and, it is not paring down discretionary programs.[2] As demonstrated by the record of this case, the Company is instead proposing, among other things, new discretionary programs and simply shifting responsibility for cost of other programs from shareholders to ratepayers at a time when ratepayers can least afford them. The Company's failure to tighten its corporate belt means that the Commission must do it for them, by eliminating discretionary program funding and reflecting efficiencies that the Company has ignored.

Con Edison's Initial Brief represents an attempt to justify recovery of virtually every Company request, merits aside. The Company's self-serving spinning of evidence and discounting of arguments advanced by the other

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[1] Case 07-E-0523, Consolidated Edison Company of New York, Inc. - Rates, Order Establishing Rates for Electric Service (issued March 25, 2008) (2008 Rate Order).

[2] Con Edison may be considering or executing budget reductions, for example, the Company disclosed a $100 reduction in its 2009 T&D capital budget, however, no reductions are reflected in the Company's rate request.

parties is often coupled with inaccurate recollections of the record; thus, caution needs to be exercised in reviewing the Company's claim of record support for its positions.[3]

Con Edison's Initial Brief also contains a number of arguments that are internally inconsistent. For example, Con Edison argued that it is "grossly unfair" that it be required to fund up to 16 additional necessary employees during the current rate year - April 1, 2008 through March 31, 2009 - without providing the associated rate relief (CE IB, pp. 70-71). In contrast, the Company argued, in effect, that it is perfectly acceptable for customers to fund 346 employee positions for the entire current rate year and have the Company fill only 40% these position during the rate year (CE IB, pp. 46-47). Moreover, Con Edison argued that the Commission failed to mandate or articulate an expectation that the employees would actually be hired (CE IB, p. 47), and since the

[3] For example, on page 165 of its Initial Brief Con Edison stated "[a]s the rebuttal testimony noted, the Company is exceeding the overtime allocated under the 2008 Rate Order (4230-31). However, Tr. 4230-31 reflects the following: "Furthermore,. . . we have hired personnel into the six CSR positions and additionally we expect that the equivalent overtime ("EOT") used associated to this program will exceed the EOT allocation approved in Case 07-E-0523 for the program in 2008." The Company converted its "expectation" in the record into a "fact" in its brief.

Commission deemed the positions as necessary, no party has the right to challenge recoverability in this case (CE IB, p. 46, footnote 39). However, the fact that the overwhelming majority of these funded positions remain vacant, begs the question of actual need.

Staff appropriately guarded against a repeat performance in this case by applying a slippage factor to certain program change hires in this proceeding. Con Edison aggressively argued against the application of Staff's historic hiring practice adjustment in every instance. Con Edison completely misses the point. Staff simply attempted to provide appropriate rate recovery for the level of employees that can reasonable be expected to be in place for the rate year.

Con Edison argued that certain discretionary costs (variable pay, Director and Officer (D&O) insurance, employee benefit program changes, etc.) are necessary business costs "in order to remain competitive in terms of employee attraction and retention" (CE IB, p. 213). At the same time, Con Edison argued that some of Staff's labor adjustments are not appropriate since, given current economic conditions, the Company believes that employees will stay with the Company for a longer period of time (i.e., CE IB, p. 193 (Gold Program)). With the current

recession, major corporations are laying-off employees in record numbers. The Commission should seriously consider whether the discretionary costs are necessary to attract and retain employees, particularly in these difficult times, before burdening ratepayers with the costs of additional employee perks.

Con Edison was critical of parties' proposals to defer and amortized certain costs in order to provide for recovery of the costs over a longer period of time (CE IB, p. 184). The Company argued that this approach would do nothing more than artificially reduce rates in the near term at the expense of mounting costs for recovery from future customers - presumably due to interest costs. This argument is equally applicable to all of Con Edison's so called rate mitigation proposals with the exception of the pension related earnings base/capitalization (EB/CAP) adjustment and the 10% return on equity (ROE) request, which the Company appears to be withdrawing in favor of a higher request.

Staff expressed concerns that it was chasing a moving revenue requirement target (Tr. 2627). That concern is no less valid today. Con Edison stated that it doesn't even know what its ultimate rate request is. Con Edison characterized its updated revenue requirement request of

$819 million as insufficient, as it does not reflect current conditions (CE IB, p. 5). Moreover, the Company claimed that its current cost of capital has increased substantially, in excess of the levels postulated by Staff and the Company (CE IB, p. 8). Accordingly, Con Edison indicated that rate relief in excess of the update presentation may be required (CE IB, p. 13). Finally, Con Edison indicated that it may seek an ROE above 10% in its brief on exceptions (CE IB, p. 268).

Staff is concerned that Con Edison is attempting to circumvent the ground rules on updates as outlined in the Commission's Statement of Policy on Test Periods in Major Rate Proceedings (Policy Statement).[4] The Company's suggestion at this stage of the proceeding that it's pending updated rate request is insufficient, since its current costs are higher, is problematic. The Policy Statement requires that the utility immediately notify parties of material events that occur if it intends to revise a large portion of its rate case presentation. This allows the Administrative Law Judge(s) to design a process to address the new information and parties' concerns. Con Edison's election to disclose the scope and scale of its

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[4] 17 NY PSC 25-R.

updates in its brief on exceptions would deny interested parties their due process.

Due to the current economic downturn, Con Edison was afforded an extraordinary opportunity to update its revenue requirement request during the hearings. The Company elected not to do so; rather it had a Senior Con Edison official espouse on various potential negative impacts that the economic downturn could have on the Company. Yet, to argue in brief that its pending rate application does not reflect the Company's current cost of capital, the Company must have some estimate of its current costs. Staff submits that it is disingenuous for the Company to withhold this information, choosing rather to disclose the data and effects in brief on exceptions when Staff and the other parties may have extremely limited or no time to respond.

Staff recognizes that the economy may impact Con Edison's operating costs - positively and negatively. Con Edison has stated clearly its intent to seek increases for costs such as cost of capital and pension/OPEB[5] expenses, but has not committed to addressing declining costs - such as fuel and capital program costs - in this case.

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[5] Other post employment benefits.

Con Edison's penchant for addressing only increasing costs is further illustrated in its position on Financial Services costs, which reiterated the Company's formal update reflecting a $2.1 million increase related to the cost associated with letter of credit costs (CE IB, pp. 230-231). The Company historically used letters of credit to satisfy collateral requirements related to self insured workers compensation benefits. Con Edison's update claimed that while its security obligations declined, the cost of the letters of credit was expected to quadruple (CE IB, p. 231). Accordingly, the Company increased its rate request by the $2.1 million (Id.). Con Edison admitted that it recently has been able to obtain alternative collateral in the form of surety bonds at a cost that is equivalent to the letters of credit (Id., footnote 100).[6] Notwithstanding, Con Edison continues to seek recovery of the $2.1 million despite the fact that the Company will not actually incur the additional cost. Con Edison claimed that it did not update its rate request for this post-hearing known change since it likely experienced a myriad of other post-hearing increases and decreases in costs.

[6] Staff has not verified that the cost of the surety bonds is equal to the letters of credit. Given that the collateral requirements were reduced it is possible that the surety bonds are less than the Company's historic costs.

Thus, in direct contrast to its indication that the Company may seek to update its cost of capital post-hearing, it apparently does not subscribe to this theory for known changes for the financial services expenses.[7]

Con Edison strenuously argued against Staff's and other parties' proposals to impute productivity greater than the traditional 1%. While the Company acknowledged that its various program changes are expected to produce savings, none were reflected in its forecasts. Con Edison argued that savings either lag program costs or are difficult to forecast, so they should not be reflected as an offset to incremental program costs. Con Edison contends that to the extent savings are realized, such savings will be reflected in setting future rates (CE IB, p. 214).

While the Company's productivity argument sounds logical, there are practical realities that must be considered. For example, the Commission authorized recovery of a significant level of new program changes in

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[7] In a footnote to its Initial Brief (CE IB, p. 11, footnote 11), the Company stated that it expects a reduction of approximately $100 million in its 2009 capital budget. Whether this change, as well as other impacts resulting from the current economic downturn, will result in a reduction in the Company's requested revenue requirement, is undisclosed at this time.

Con Edison's last rate case.[8] The approval of funding for 346 incremental employees is clear evidence of the Commission's support for the Company's program changes. These program changes presumably are expected to result in savings which will be reflected in future rate setting. However, since these employees were not employed by Con Edison in the test year and no savings other than the Company's standard productivity were reflected in the Company's filing, customers will not realize any of the savings until they are reflected in the historic year used in a future rate proceeding.

Although the traditional 1% productivity might ordinarily satisfy Staff's concerns, in light of the recent historic growth in Con Edison program changes - capital and expense - higher productivity gains can be reasonably expected. In recent years, Con Edison has added 300 to 400 employees annually (CE IB, p. 93). Such growth in employee numbers is extraordinary and reflective of the Commission's support for Con Edison's program changes. For perspective, in 1999, before Con Edison divested the majority of its electric generating assets, the Company had 9,926 full-time

[8] Case 07-E-0523, supra.

electric department employees.[9] By 2007, that number grew to 11,124 and is projected to grow by 300-400 employees annually.

Due to the extraordinary growth in programs at Con Edison over the past several years it is reasonable to expect larger than normal productivity gains. Customers funded these program changes and it is not reasonable for the Company to retain reasonably expected benefits. A productivity imputation of greater than 1% is, therefore, justifiable in this case.

The Company's overarching theme in this case and recent Con Edison cases is that any program change is incremental. In other words, operational changes cannot be effectuated without more resources and added costs. Moreover, savings, if any, will be reflected prospectively. The increase in Con Edison's employee count is a prime example of the outcome. Con Edison is primarily a delivery Company yet it has significantly more employees than it did when it was a vertically integrated utility. The "everything is incremental" model is untenable. Having customers bear the incremental costs and not realize resulting savings is neither just nor reasonable.

[9] The employee count data was derived from Con Edison's Annual Report to the Commission.

Yet another example of inconsistent argument can be found in the Company's position on 28th Street rents. The Company argued that Staff mischaracterized and misunderstood Con Edison's testimony (CE IB, p. 177). The Company's claim is false. Con Edison claimed that it may be required to vacate its 28th Street facility to facilitate a New Jersey Transit project and that it expects to incur rents for an alternative location. Con Edison seeks rate recovery of these rents, which Staff has opposed. The Company conceded that the New Jersey transit should bear the relocation and replacement rental costs. The Company also stated that it will seek reimbursement and may receive partial or full reimbursement of its costs. For the first time in Initial Brief, Con Edison stated that there can be no question the Company was and is planning on providing customers with whatever reimbursement is received (CE IB, p. 177). However, Con Edison's description of its plans appears to be quite different. The Company stated that "to the extent the company receives reimbursement, it will share them with customers" (Id.). Clearly, question remains as to Con Edison's intentions. Sharing reimbursements is quite different than providing customers with whatever it receives.

Con Edison expressed that it is bewildered that no party took its three year rate proposal seriously. Staff expressed its rational for rejecting the Company's proposal in testimony and our Initial Brief so it won't be repeated here. It should be noted in addition to the discussion in Section X.C. below, that the Company's Initial Brief introduces so much uncertainty as to the level of rate relief the Company is actually seeking in the rate year ending March 31, 2010, that it would be incredibly difficult for the Commission to determine appropriate levels of rates for two subsequent rate years. Aside from the unknown short, intermediate and long term effects of the economic downturn, the Company raised some valid points in its Initial Brief. In responding to a party argument that rates should not be established including one-time costs, Con Edison argued that in a litigated case, rates are set for one year only, so presumably one-time expenses will not be included in the next filing. Con Edison's three-year rate proposal does not reflect the normalization of one-time or non-recurring costs out of the second and third rate years. Yet one more reason to reject the Company's three year rate plan.

I. SALES REVENUES

A. Sales Revenue Forecast

1. Sales Forecast ($15.7 Million)

Con Edison's Initial Brief addressing the sales and revenue forecast is telling because the Company agreed with the Staff proposal not based on the evidence adduced at the hearing, nor based upon econometric principles, but on the direction of the resulting adjustment. Con Edison accepted Staff's proposal to update the employment variable, because the change results in a decrease in forecast in total sales volume (CE IB, pp. 28-29). The Company rejected Staff's other three proposed changes to the Company's forecasting models which would have increased the forecasted total sales volume.

Staff believes that any revision or update should include all of Staff's four proposed changes to the Company's forecasting models. Furthermore, given the on-going dramatic changes in the national and state economy, revision or update should be done at the time when the Commission makes its revenue requirement determination in this case. Other problems with the Company's methodologies and analysis are addressed below by issue.

a) DSM Adjustment

In its Initial Brief, the Company indicated it is unsure which of the New York State Energy Research and Development Authority (NYSERDA) reports - the report used by Con Edison or the report used by Staff - was the correct one to use (CE IB, p. 29) to calculate the level of savings; yet the Company concluded that the NYSERDA report Staff used "contained incorrect and inconsistent information" (CE IB, p. 30). The Company claimed that the report used by Staff contained achievement data from NYSERDA's SBC 2 program because there is an overlap between SBC 3 and SBC 2 programs.

The Company misstated the facts. There is no such overlap in the NYSERDA report that we used. Moreover, as discussed in our Initial Brief, the overlap claimed by the Company does not exist because Staff's estimated achievements for the SBC 3 program is even smaller than the Company's estimate for March 2007 (Staff IB, pp. 16-17).

2. Low Income Program Funding

Con Edison argued that Staff failed to "demonstrate that increasing the low income discount that is currently in effect is necessary, provide a basis for determining what constitutes a 'reasonable funding level'

for low income programs, or, demonstrate that an increase would benefit all customers" (CE IB, p. 32). The necessity for increasing the discount is supported by Con Edison's proposed increase in the customer charge. The basis of a determination of reasonableness is the *de minimus* impact such a funding level would have on other customers' rates and bills. Staff did not claim that a low income program will benefit all customers, and rejects the notion that such a showing is required.

Con Edison further argued that "[t]here can be no question [Staff's recommended] level of discount places an unreasonable burden on all other customers (Tr. 1434)" (CE IB, p. 32). The Company has mischaracterized the record. In the testimony cited, the Company's Customer Operations Panel only stated that it "believes" this is the case; not a shred of supporting evidence was provided by Con Edison to support that belief. The hypothesis of the Company's witnesses hardly removes any question to this effect, and Staff's computation of the rate and bill impacts of its proposed program clearly showed the hypothesis to be false.

Finally, the Company falsely claimed that "Con Edison customers subsidize low income customers through various means, including the current annual discount of $17.4 million for the customer charge; payments of $38

million in 2008 for annual SBC low income programs for customers throughout the state; and in the uncollectible levels used to set rates" (CE IB, p. 32). As noted, $38 million is the statewide funding level for SBC low income programs; it is not Con Edison's funding level (Tr. 4700).

II. OTHER OPERATING REVENUES

1. Purchase of Receivables (POR) Discount

In its Initial Brief, Con Edison stated that it will accept Staff's forecast of POR discount revenues if it is corrected to reflect 12 months of revenues (CE IB, p. 35). The Company agreed to increase its forecast of POR discount revenues by $0.453 million, representing the annualization of January to June 2008 actual POR discount revenues. As indicated in Staff's Initial Brief, we recommended an update to its rate year forecast of POR discount revenues to reflect latest known and available data through August 2008 (Staff IB, p. 32). The update increased Staff's original adjustment by $0.100 million, from $0.730 million to $0.830 million (Staff IB, pp. 32-33). Staff's updated forecast is appropriate as it reflects the ever increasing trend in the POR discount revenues.

III. EXPENSES -- COMPANY LABOR

A. Staffing Requests ($23.7-29.7 Million)

1. Staff Historic Hiring Practices Adjustment

In its Initial Brief, the Company turned a deaf ear to Staff's argument concerning adjustments to the Company's capital, O&M projects and infrastructure investment programs discussed by the Staff Infrastructure Investment Panel. Con Edison complained that the Company will be unable to achieve the objectives of a specific project or program with Staff's adjusted budget (CE IB, pp. 41-56, 124-170 and 329-374).

Con Edison apparently misunderstands Staff's position. Staff did not propose adjustments to specific budgets and did not propose changes to the Company's T&D budget. The Company is entitled to spend at whatever level it deems appropriate to provide safe and adequate service (Tr. 2988).

The development of the historic hiring practices adjustment as a global adjustment (Exh. 469, Testimony, p. 11) clearly shows Staff's objective to adjust the overall budget, not micro manage spending on specific projects or programs. If adopted, it will set a rate allowance that reflects the programs and projects that Con Edison is most likely to execute during the rate year. The

historical relationship between budgeted and actual expenses provides a reasonable guide as to what the Company will likely expend, rather than simply relying on its budgeted forecasts (Tr. 3008). Numerous historical examples were cited where the Company's actual expenses were significantly less than the Company's budgeted expenses (Staff IB, pp. 220-221).

Staff's forecasting approach recognizes the likelihood of this occurrence within the overall budget without placing specific limitations on the Company's ability to manage its business, particularly its capital expenditure budget.

2. Staff and CPB Department-Specific Adjustments

In its Initial Brief, Con Edison claimed that "Staff's adjustments to Company labor are designed to penalize the Company, by denying the funding for new employees needed for programs that the Company is expected to execute, because they view the Company's pace of hiring to be too slow" (CE IB, p. 40). The Company's claim is erroneous. First, Staff's adjustments to the labor program change do not question the Company's need to hire new employees for its planned programs. Second, there is no evidence in the record indicating that Staff believes that the Company is not hiring new employees fast enough. The

Company's past hiring results are a good indication that Con Edison cannot fill the Commission approved positions as planned (Staff IB, p. 79). All the factors causing the slippage, such as difficulties in hiring employees with the required skill and knowledge sets, will likely exist in the rate year and cause delay in the Company's hiring plans. Staff's adjustments take into account these factors to more accurately forecast the incremental labor costs in rate year.

Con Edison erroneously argued in its Initial Brief that Staff's 60% adjustment to labor applied to employees already hired (CE IB, p. 47). While it may be true that Staff applied the 60% slippage adjustment for employees already hired in limited instances, the intent and purpose, as previously stated, is more global in nature and is intended to reflect a more representative level of employee count for the rate year. Moreover, since the factor was not applied to all program change requests, our adjustments are conservative.

Con Edison argued in its Initial Brief that Staff's proposed adjustment would effectively require that all new employees to be on-board by the start of the rate year, is not reasonable in various respects (CE IB, p. 48). The Company claimed that Staff's proposed adjustment could

cause the Company to hire someone other than the best candidate available to fill the position in the rush to hire. Con Edison further claimed that Staff's adjustment ignores the fact that the Company's training facilities are not designed to handle the hiring pattern being suggested by Staff (Id.).

The Company's arguments are without merit. First, Staff's proposal does not require that the Company fill all positions by the start of the rate year. Con Edison can take all the time it needs to find the best candidate for any position. Requesting funding for the positions for the entire rate year while having the position vacant during part or entire rate year is "grossly unfair" to customers (Tr. 255-256). Second, Staff did not suggest any hiring pattern the Company should follow. Rather, the rate year labor forecast and the corresponding revenue requirement impact should reflect the fact that the Company has experienced significant delays in filling positions, a fact supported by the Company's updated response to DPS-45 (Exh. 441).

Con Edison claimed that Staff's position presupposes that the Commission will authorize funding for all of the Company's proposed program changes and places the Company in an "untenable" position (CE IB, p. 48). The

Company argued that its hiring practices strike an appropriate balance between hiring some employees, for which funding is requested, in advance of the rate year and filling other positions once the Commission issues its rate order indicating the extent of its authorization for the Company's proposal.

The Company's argument is circular. It would require the Commission adopt the Company's entire labor program change which reflects the Company's anticipation of Commission disallowance of part of this program change. The fact is, however, that the Company has not filled all the positions it requested and the Commission authorized under the 2008 Rate Order (Staff IB, p. 79). As the Company's witness agreed, the Company's practice is "grossly unfair" to ratepayers because they fund these Commission approved positions for the entire rate year (Tr. 255-256).

i. Law Department

Con Edison's claim in Initial Brief that Staff removed the entire requested amount for the 14 law department positions (CE IB, p. 60) is not correct. The Company completely misrepresented Staff's proposed adjustment to funding for Law Department staffing. In

direct testimony, Staff allowed two positions actually hired, based on the Company's earlier response to DPS-45 (Tr. 2677, Lns. 20-23). In brief, Staff updated its recommendation to allow for the five law department positions actually filled based on the latest update to DPS-45 (Exh. 441) (Staff IB, p. 62).

Addressing the fact that Con Edison failed to fill the ten positions approved by the Commission and funded in the 2008 Rate Order, the Company claimed difficulties in hiring law employees with required specialized knowledge and skill sets (CE IB, p. 60). Con Edison did not provide any indication that these difficulties would not continue in the rate year and cause delays in the Company's planned hiring, thus, Staff's slippage adjustment is appropriate. In addition, in spite of the repeated requests and Commission authorized funding for law department employees in Case 06-G-1332[10] and Case 07-E-0523,[11] the actual number of employees in the law department has declined since 2005. Con Edison's average staffing level for its law department was 173 in 2005, 164

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[10] Case 06-G-1332, Consolidated Edison Company of New York, Inc. - Gas Rates, Order Adopting in Part The Terms And Conditions of the Parties' Joint Proposal (issued September 25, 2007)(2006 Gas Rate Order)

[11] Case 07-E-0523, supra, p. 11.

in 2006, 149 in 2007, and, 151 for the first six months of 2008 (Exh. 407, CPB 111).

Staff took into consideration past hiring for the law department and the current actual hiring status in recommending the allowance of funding for five incremental positions.

ii. NYISO Billing

Con Edison argued that its request for three new employees already reflected a 75% adjustment in its hiring request based upon operating efficiencies (CE IB, p. 63). As such, it claimed that Staff's adjustment to remove 60% of the program change is equivalent to double count (CE IB, p. 63).

Con Edison's arguments are very misleading. The Company's witness testified that the current NYISO monthly billing process requires three additional full time employees, and the NYISO weekly billing will require seven full time employees to perform the functions (Tr. 692). However, the Company expects to achieve operating efficiency with the increased volume of invoices processed and, therefore, the Company's staffing request is for an additional three employees for a total of six full time equivalents (FTE) devoted to NYISO invoice transactions (Tr. 692). As a result, the Company's staffing request of

three new employees represents 75% of the four additional employees the Company believes are required, or a 25% adjustment to its hiring request, not a 75% adjustment claimed by Con Edison. Additionally, Staff did not make the adjustments based on operating efficiencies. Staff's proposed allowance of 40% of the Company's staffing request is conservative in light of the fact the NYISO weekly billing will not commence until after the end of the rate year (Staff IB, p. 63).

B. Productivity Adjustments ($10 - $75 Million)

1. Staff - 2%

Con Edison's description of Staff's 2% productivity adjustment is misleading. The Company claimed that the Staff's 2% imputation will "result in a 5.2% adjustment in the Rate Year (CE IB, p. 74). On the contrary, traditionally the Commission applies its productivity adjustment to total employment compensation, including wages and benefits.[12] In this case, Con Edison used a different methodology, only applying the productivity adjustment to Company Labor Expense and

[12] Case 06-E-1433, Orange and Rockland Utilities, Inc. - Order Setting Permanent Rates, Reconciling Overpayments During Temporary Rate Period, and Establishing Disposition of Property Tax Refunds (issued October 18, 2008), pp. 18-19.

excluded employee benefits. Staff did not take exception to Con Edison's approach of applying productivity to a lower base (only wages). Staff's 2% productivity adjustment would equate to an almost 4% adjustment following the Company's wage-only methodology. If Staff's adjustment was applied to the Commission's traditional base (including employee benefits), it would produce approximately a 2.8% productivity adjustment. Con Edison's statement that: "Staff's proposal to "double" the Company's "1 percent" adjustment per annum would result in a 5.2 percent adjustment in the Rate Year" (CE IB, p. 74), grossly exaggerates Staff's position.

Con Edison further mischaracterized Staff's position as criticism of the Company's inability to identify or quantify potential costs savings associated with its projects and programs (CE IB, p. 74). Quite the contrary, Staff is not criticizing the Company's estimation process. Staff does, however, recognize that productivity adjustments are used to capture all types of savings (Tr. 3055).

Con Edison further argued that absent an analysis there is no basis for an increase to the 1% adjustment factor (CE IB, p. 75). This argument is misleading and should be rejected. The current adjustment was not based

on any analysis, nor was it required or necessary that an analysis be performed to support a higher imputation. The intention of the imputation is to capture all types of savings, specific enhancements resulting in operational efficiencies, as well as cost reductions that can not be specifically foreseen or quantified at the time rates are set (Tr. 3055).

Finally, the Company erroneously argued that "the productivity that Staff claims is achievable is reduced or potentially eliminated to the extent the Commission adopts other adjustments proposed in this case, such as Staff's proposed historic hiring adjustment to reduce staffing levels for new programs by 60 percent" (CE IB, p. 77). Staff's historic hiring adjustment accurately reflects the level of labor expense that will likely be incurred during the rate year and has no effect on the Company's productivity. These two issues are entirely separate and have no relevance to each other.

C. Labor Escalation

1. Progression Increase

Con Edison claimed in its Initial Brief that Staff's adjustment to the labor progression increase is based on an improper interpretation of the facts. The Company asserted, without any record basis, that the vast

majority of employees hired in the last several years are not near their maximum pay and they are entitled to and do receive progression increases (CE IB, p. 87). As an example, Con Edison indicated that, between 2004 and 2006, it hired approximately 3,000 new union employees who are all receiving progressions and to whom the Company expects to continue to pay progressions for some time (CE IB, p. 87). The Company, however, neglected to provide the number of union employees who have already reached the top pay rates for their job titles and will not receive progression increases. In Con Edison's calculation of labor escalation rate, the two annual progression increases were applied to the average union salary at December 2007 (Exh. 5, Sch. 2, p. 4). This average salary was then multiplied by the entire estimated 8,927 employee count in rate year (after the Company's 1% productivity imputation to the actual employee count of 9,127 at December 2007) to estimate the rate year payroll costs for union employees (Exh. 5, Sch. 2, p. 2). The Company's application of progression increases to all union employees over-estimates payroll costs, because not all union employees receive the progression increases (Staff IB, pp. 72-73).

In its Initial Brief Con Edison claimed that Staff's argument that "logically, employees who retire are

almost always higher along the progression plan than employees who replace them, who generally start at the bottom of their pay grade and begin working their way up, one step at a time" misunderstands the progression program (CE IB, p. 87). Con Edison failed to explain how Staff misunderstood the progression plan. In fact, the Company's argument actually supports Staff's position. Con Edison stated that "it is far from illogical (sic) to assume that many of the retirees are at the top of their pay scale and no longer receive progressions" (CE IB, p. 88). While the Company's statement is illogical and virtually incomprehensible, we interpret it as supporting our position. As Staff indicated in its Initial Brief, the savings resulting from a retiree leaving the Company and being replaced by a new employee at a lower pay level can offset significantly more than one employee's annual progression increases (Staff IB, pp. 73-74).

Con Edison tried to shift the burden of proof to Staff, asserting that "Staff's theory that there are not savings is not based on any study nor is intuitive" (CE IB, p. 88). The Company's statement about Staff's theory is also incorrect because Staff believes there are savings resulting from employees at top pay rate leaving Con Edison and being replaced by one at the lower pay rate of the job

title, not the opposite as stated by the Company. Moreover, it is the Company's burden to perform a study with the best information it has regarding the actual number of employees receiving progression increases, actual number of employees at the top pay rates and their job titles, etc. Finally, Staff's theory that there are savings from retired employees to offset the progression increases is logical, especially in the context of existing employees and existing job titles. When an employee leaves Con Edison before reaching the maximum pay rate of his title, his position can be filled by a new employee either at or below the job rate of the employee who left the Company. In the former situation, the new employee continues to receive incremental progression increases, but there are savings to at least offset the new employee progression increases in the latter situation. When an employee at top pay rate of his job title leaves Con Edison and is replaced by a new employee at lower pay rate, there can be net savings to the Company (Staff IB, pp. 73-74). It is Staff's position that, on average, the savings resulting from employees leaving the Company should at least offset the progression increases of existing employees (Tr. 2674-2675).

In summary, Con Edison's application of wage progression increases to union employees' salary over states the rate year labor expense. In addition, the Company ignored that fact that there are savings resulting from employee turn-over that also offsets the cost of wage progression increases for new union hires. Staff's proposed adjustment to eliminate the wage progression from the labor escalation calculation should be adopted by the Commission.

2. Escalation Level

Con Edison stated that it applied a labor escalation rate of 7.7% based on the total Company salaries as of the end of the historic year and compared it to the expected level of total salaries at the end of the rate year (CE IB, p. 88). This statement is not accurate. Although Con Edison's original filing reflected a 7.78% labor escalation rate (Exh. 5, Sch. 1, page 3), the Company's update increased the escalation rate to 8.21% (Tr. 2273).

In its Initial Brief, Con Edison argued that its methodology in developing a labor escalation rate has been unquestioned in previous cases (since 2003: two electric cases, three steam cases, and two gas cases) (CE IB,

p. 88). The Commission Orders in these cases did not prescribe a labor forecast methodology. Furthermore, simply because Staff did not question a methodology or position in a previous rate case or proceeding does not mean that such review is precluded in a future case, especially when the forecasts methodology results are greater than actual experience. For example, Company rate year labor forecast of $605.354 million (Exh. 265, Sch. 3) represents a 25.8% increase from the $481.297 million in the historic period (Exh. 5, Sch. 1, p. 3). This increase is significantly greater than the average annual labor expense increase of less than 1% from 2004 to 2007 (Staff IB, p. 72).

In its Initial Brief, the Company offered a new argument against Staff's reliance on the average employee count in 2007, stating that Staff's adjustment would effectively extend the linking period back to the middle of the historic year which would result in an unwarranted higher productivity imputation than the Company's 2.6% level already reflected (Tr. 2316). As noted in our Initial Brief, the use of average 2007 employee count mirrors the average employee count in rate year (Staff IB, p. 75). Comparing the middle of the historic year with the

middle of the rate year does not extend the link period to impute higher productivity.

D. Normalization (Vacancy) Adjustment

Con Edison claimed in its Initial Brief that Staff's adjustment, that considers vacancies in both the historic year and in the rate year, assumes a level of attrition that would not provide sufficient rate relief (CE IB, p. 92). The Company is wrong for two reasons. First, Staff did not assume a level of attrition in making its adjustment. Con Edison's Shared Service Panel (SSP) indicated that on average, about 700 union employees and 300 management employees (1,000 total) leave the Company's employ each year (Tr. 370-371). The costs savings in the rate year resulting from these vacant positions is greater than the Company's normalizing adjustment (Staff IB, pp. 77-78). Second, Staff's elimination of the Company's normalizing adjustment did not eliminate funding for any specific functions or deny the Company rate relief. Rather, Staff's position supports the Company's rate relief based on a more accurate estimate of the actual costs instead of the Company's unrealistic requests.

Con Edison argued that its normalization only assumes a certain level of jobs to be filled, not all of

them (CE IB, p. 92). Further, the Company stated that "a review of the list of the normalization demonstrates that the requested amount for normalization is less than the actual level of vacancies during the historic year", (CE IB, p. 92, citing its rebuttal testimony at Tr. 2308). However, there is no such list on Tr. 2308. Therefore, the Company's claim is not supported by the record. In addition, the Company failed to indicate how its level of normalization was determined, specifically why some vacancies were normalized and why others were not. The point is that employee attrition routinely occurs. It is wholly inappropriate to normalize vacancies in the test year and ignore savings from routinely occurring attrition.

Con Edison claimed that Staff's adjustment would not take into account the ever increasing number of employees, who are being added to the Company's payroll and are working (CE IB, p. 92). This argument is flawed. The Company's historic payroll costs reflected the increased number of employees during that period. The Company's expected rate year increase in the number of employees was reflected by its labor program changes. Staff's elimination of the normalization adjustment merely reflects expected attrition in the rate year, which mirrors the historic experience.

Con Edison also presented new arguments that employees will stay longer due to various steps the Company is taking as well as a result of the changing economy (CE IB, p. 92). However, the Company failed to recognize that its rate request is loaded with the costs to attract and retain employees.

E. Variable Pay ($15.9 Million plus removal of capitalized variable pay)

In its Initial Brief, the Company maintained that its request for variable pay for its management employees is properly recovered in rates (CE IB, pp. 93-105). Con Edison claimed for the first time in its Initial Brief, that a Commission decision that does not provide ratepayer funding of management variable pay and long term compensation would compel the Company to consider an alternative compensation package that may fit more neatly within the Commission's definition of basic pay. The Company argued that such a compensation plan may be more costly and provide fewer benefits to ratepayers in terms of the Company's ability to retain and attract qualified employees and maximize the performance of its workforce (CE IB, pp. 94-95). These claims lack merit since the 2008 Rate Order denied recovery of the Company's variable pay program costs and no changes in the management compensation

package was made. Moreover, the Company fully expects its employees to stay with the Company given the current economy (CE IB, p. 193).

Con Edison also argued that Staff's reliance on the Commission's long standing policy of denying rate recovery is misplaced, as it ignores the fundamental shift in compensation policy that has taken place in recent years (CE IB, p. 102). The Company's characterization of Commission policy is incorrect. No matter how Con Edison structures its management compensation package, pursuant to Commission policy, incentive compensation is not recoverable from customers unless the benefits flowing from an incentive compensation plan are reflected in the revenue requirement.

Con Edison claimed that in Opinion 91-16,[13] the Commission disallowed National Fuel Gas Corporation incentive compensation plan costs because the goals were related to financial parameters while, in contrast, a major component of the Company's management variable pay plan is performance indicators (CE IB, p. 102).

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[13] Case 02-E-0198, et al., RG&E - Rates, Order Adopting Recommended Decision with Modifications (issued March 7, 2003).

However, as explained by the Company's witness, the goal of any business is to realize a return for its equity investors (Tr. 2001), and, this goal dominates the performance indictors in measuring management variable pay awards, since no variable pay awards are made if the Company's adjusted net income is less than or equal to 90% of the target net income (Staff IB, p. 80). Accordingly, Con Edison's claim contradicts the basic underpinnings of its management variable pay plan-- maximizing shareholder profits.

Con Edison also claimed that Staff's reliance on the 2003 RG&E Rate Order[14] in rejecting the Company's request for management variable pay is misplaced (CE IB, p. 103). Specifically, the Company asserted that although the Commission decided to disallow RG&E's incentive compensation costs for non-officer employees, the decision was based on the Commission's conclusion that these payments were bonuses under an ill-defined plan that lacked any identified customer benefits; Con Edison asserted that this is not the case with its management variable pay plan (CE IB, p. 103). As explained in our Initial Brief, the Company failed to identify that the savings resulting from

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[14] Case 90-G-0734, et al., National Fuel Gas - Rates, Opinion 91-16 (issued July 19, 1991).

achieving the goals of its variable pay program are reflected in its revenue requirement presentation (Staff IB, p. 82). Accordingly, the Company's assertion that its position here is different from that of RG&E's plan is not supported by the record.

IV. EXPENSES - OTHER O&M

A. Pensions/OPEBs Expense Level ($30.2 Million)

The Company continued to argue in support of its update increasing its forecast of rate year pension expense by $30.2 million to account for an assumed negative 7% return on pension plan assets in 2008 (CE IB, pp. 110-115). According to Con Edison, Staff incorrectly determined that the Company is precluded from updating its forecast because the actual return on plan assets is not known. To clarify, it is Staff's position that an update based on actual results, and not hypothetical results, is appropriate and the Company has not advanced an update based on actual results.

The Company also asserted that Staff misunderstands the data associated with the Company's update. No, Staff had no trouble grasping the interim actuarial valuation reports; it merely takes exception to

the fact that the valuation is not based on actual 2008 results.

In addition, the Company maintained that although the actual return is reflected annually in the January actuarial report, there is no basis for ignoring the depressed condition of the Company's pension plan assets. As Staff explained, Con Edison's pension costs are determined annually based on a number of actuarial assumptions (Tr. 2141). While the Company's sole focus is on the decline in the value of its pension plan assets, it completely ignores the other actuarial assumptions used to measure pension cost (i.e. the discount rate, mortality rates, compensation levels and employee turnover). For example, an increase in the discount rate used to project the Company's future pension benefit obligation would cause a decrease in pension cost. The Company has failed to advance a comprehensive update that considers all actuarial assumptions impacted by the upheaval in the financial markets.

Finally, the Company maintained that the Commission should not ignore what is happening in the financial markets as a basis for minimizing rates in the short term when it is clear that rates will need to increase once actual results are in (CE IB, pp. 114-115).

As the record confirms, the Commission's Pension Policy Statement, among other things, fully protects Con Edison from unfavorable market outcomes via deferral accounting for the difference between is rate allowance for pension expense and its actual expense (Tr. 2693).[15]

B. Municipal Infrastructure Support Expense Level ($19.9 - $21.6 Million)

Con Edison claimed that the 2008 Rate Order rejected a similar proposal from CPB to rely solely on historic results rather than the City's forecast (CE IB, p. 117). The Company's claim is misleading. The 2008 Rate Order (p. 69) indicates that the rate year forecast for interference expense is supported by the parties' knowledge and review of the City's plans for infrastructure improvements and it is not limited to a review of the historic information. The 2008 Rate Order employed a rate year forecast for interference expense that was based on the parties' review of the City's plan at the time. The 2008 Rate Order, however, does not prohibit the parties in this proceeding from expanding their review of the City's plans, the City's actual historic capital expenditures or

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

Con Edison's actual historic interference expenses. Staff's change of methodology in this case is the result of a more detailed examination. As explained in our Initial Brief, Staff should not be bound by the methodology adopted in previous rate cases, especially when the existing methodology forecasts result in significant variances from recent actual experience (Staff IB, p. 102).

Staff's examination of Con Edison's electric and gas interference expenditures over the past few years showed that the Company has consistently recovered more in rates than its actual interference expense. Con Edison over-recovered $4.6 million, $15.3 million and $11.3 million in electric interference expense for the rate year ended March 31, 2006, 2007 and 2008, respectively.[16] In addition, the Company recorded a credit of $11.3 million for an over-recovery of gas interference expenses related to the rate year ended September 30, 2008, established in Case 06-G-1332.[17] This amount represents 90% of the over-collection of the interference expense per the Joint

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[16] The Company disclosed this information in the Compliance filings made in Case 04-E-0572, Rate Case Reconciliation Notice of Offset of Regulatory Liabilities Against Regulatory Assets, submitted to the Department of Public Service's Director of Accounting and Finance.

[17] Source, Con Edison Operating and Financial Report dated September 2008.

Proposal adopted by the Commission. Further, in the first four months (April 1 - July 31, 2008) of the current electric rate plan, the Company has over-recovered $5.72 million of electric interference expense as compared to the rate allowance (Tr. 2521).

Staff's forecast methodology results in a superior estimate of the Company's rate year interference expense and is supported by the fact that actual 2008 City capital expenditures of $667 million compares favorably with the five-year average (2003-2007) of the City's actual capital expenditures of $663 million which are reflected in Staff's forecast.(Staff IB, p. 95).

1. Reconciliation - Company (Symmetrical) vs. Staff/CPB (Asymmetrical)

Con Edison claimed that Staff's proposal for a one-way reconciliation and a forecast based on historic average costs will, by definition, result in the Company having rates that understate its costs (CE IB, p. 123). The Company further asserted that there is a significant likelihood that in any particular year actual costs will exceed the average and, consequently, the Company will not receive sufficient funding through rates to cover all interference costs (CE IB, p. 124). As discussed above, as well as in Staff's Initial Brief, the City's actual capital

expenditures of $667 million compares favorably with the five-year average (2003-2007) of the City actual capital expenditures of $663 million that Staff used in its forecast (Staff IB, p. 95).

Since 2005, the Company's methodology consistently resulted in forecasts of interference expense that were well in excess of actual expenses. Staff's methodology will result in a reasonable forecast. In its Initial Brief, Con Edison also proposed that the Commission reject Staff's one way true-up proposal, if it rejects the Company's two way true-up proposal in order to "provide the Company a fair opportunity to share the fruits of its actions to mitigate interference costs, which will, in any event, be captured for the long-term benefit of customers when rates are reset (CE IB, p. 122; Tr. 601). The Company's proposal is illogical and should be rejected. On one hand Con Edison would agree to a full true-up of interference expense because it claims the majority of the expenses are outside the Company's control. On the other hand, the Company wants to retain ratepayer provided funds as a result of its efforts to mitigate interference costs. Moreover, Con Edison's "no true-up" proposal enables the Company to retain any and all over-recovered amounts as a result of a rate allowance higher than actual expense. In

contrast, Staff's one-way true-up proposal, coupled with its more accurate interference forecast, seeks to provide maximum customer protection. Staff's rate year forecast and one-way true up should be adopted.

C. T&D Non-Labor Program Expenses ($15 - $20 Million)

Con Edison made several inaccurate assertions that Staff's position is unsupported for certain programs. To clarify, notwithstanding Staff's continued position that its adjustments do not constitute limitations to individual programs and projects, rather, that its program-by-program adjustment method is only an approach to develop an overall budget; Staff made the following program adjustments based on historical spending.

On page 139 of its Initial Brief, the Company stated that "Staff has not explained the basis for their proposed adjustment" for the Coating Refurbishment. Staff's $0.478 million adjustment is comprised of a historical hiring practice adjustment of $0.256 million and a historic cost adjustment of $0.222 million (Exh. 171). The $0.222 million historical costs adjustment is based on the Company's under-spending of its 2005-2007 budgets by 14.75% (Exh. 169); 14.75% of the proposed $1.5 million budget is about $0.222 million.

On page 139 of its Initial Brief, Con Edison responded to Staff's adjustment for Feeder Emergencies where it asserted that the low budget years are anomalies. Staff's proposed $2.214 million adjustment is comprised of a historical hiring practice adjustment of $1.688 million and a historical cost adjustment of $0.526 million (Exh. 171). Anomalies can be low or high. The Company focuses on the high anomalies and dismisses the low anomalies while Staff's historical cost adjustment reflects the 2004-2007 average actual expenses (Exh. 169).

On page 141 of its Initial Brief, the Company stated that "Staff provides no support for its adjustment" while in the preceding paragraph, it stated that "Staff reduces the program by $40,000 based on historic spending". The 2004-2007 average actual expenses of $98,500 support the $40,000 adjustment from $140,000 to $100,000 (Exhibit 169).

Furthermore, in its Initial Brief, the Company stated that Staff's adjustment of $0.499 million for Manhole Inspection would "effectively eliminate the enhanced portion of the program" (CE IB, p. 142). Staff's adjustments are based on the 2004-2007 average actual expense, since the 2008 actual expense through April did not reflect increased expenditures for the enhanced program

(Exhibit 169). The adjustment is based on Staff's forecasted expenditures for the program, not the program's objectives.

The Company stated that Staff's $0.137 million adjustment to Unit Substation and Repairs is "unexplained and unsupported" (CE IB, p. 143). The adjustment is explained (Exh. 171) and supported (Exh. 169) by the 2004-2007 actual average expense being 13.11% less than the 2004-2007 average budgeted expense; 13.11% of $1.097 million is about $0.137 million.

On page 147 of its Initial Brief, Con Edison stated that Staff's adjustment to the Dissolved Gas in Oil Analysis Program of $0.241 million would "lower the expenditures below the historic year level of spending". The adjustment is supported (Exh. 169) by the 2005-2007 actual average expense being 6.08% less than the 2005-2007 average budgeted expense; 6.08% of $3.941 million is about $0.241 million.

1. Structural Integrity/Station Betterment

Con Edison claimed that certain costs included in its response to Staff interrogatory DPS-476 (Exh. 169) are based on estimates that were as complete as possible and for certain items cost estimates were being developed (CE IB, p. 135). The Company further stated that "[t]here can

be no question that the data response provided a comprehensive review of the Company's future infrastructure requirements for this program" (Id.). Con Edison's characterization of DPS-476 supports Staff's adjustment to the Structural Integrity/Station Betterment Program. Con Edison then mischaracterized Staff's position by stating the Staff's assumed "that the response provided an incomplete list of future requirements costs" (CE IB, p. 135). Staff did not make any assertion that it believed the response provided an incomplete list of expected costs. Staff believes that the IR response provides that most accurate information, as the Company appears to agree, regarding the expected level of future costs. Those cost levels contained in Exh. 169 should, therefore, be used by the Commission to set rates.

D. Shared Services Non-Labor Program Expenses

1. Rents (28th Street)

The Company requested rent increases to cover possible need to vacate its 28th Street facilities due to a New Jersey Transit (NJT) project. Staff demonstrated that this request is premature and speculative and ill supported. CPB came to the same conclusions.

We are confused by conflicting statements included in Con Edison Initial Brief. In one sentence they state that: "There can be no question that the Company was, and is, planning on providing customer with whatever reimbursement is received should these costs materialize." (CE IB, p. 177) In another sentence they state: "To the extent the Company receives reimbursement, it will share them with customers." (CE IB, p. 177) We are unsure if the Company plans to "share" the reimbursements or provide the customers with "whatever" reimbursements it receives.

What is more troubling is if the Commission assumes no recovery and provides full rate relief upfront, the Company will have little or no incentive to pursue full reimbursement. We strongly believe Con Edison, and its customers, are fully entitled complete reimbursement, since it is New Jersey Transit that is requesting the move for its benefit.

In its Initial Brief, the Company mentioned a recently issued Final Environmental Impact Statement (FEIS) and noted that "while the FEIS notes the need for relocation and cost reimbursement, no arrangements have yet been made for either" (CE IB, p. 176). On page 5-17.4 of the FEIS states that:

> "NJ TRANSIT and PANYNJ will continue to coordinate with Con Edison regarding proposed infrastructure construction and operation, and temporary relocation of affected Con Edison equipment and vehicles from its property between West 28th and West 29th Streets and Eleventh and Twelfth Avenues (Block 674) one block north between West 29th and West 30th Streets and Eleventh and Twelfth Avenues (Block 675). Specific construction activities will be coordinated with existing and proposed Con Edison site operations to avoid, minimize or mitigate temporary impacts to these operations and Con Edison's ability to provide utility service to its customers."

The FEIS raises additional questions as to whether the proposed project will actually occur in the rate year. Addressing Con Edison's 28th Street properties it states:

> Con Edison was concerned with impacts to the existing flush pit on the site, which would be difficult to relocate during construction, and with interference to vehicle circulation. Based on these concerns, the proposed Twelve Avenue Fan Plant/Construction Access Shaft was shifted by 70 feet to the westernmost part of the Con Edison Workout facility. On this same site, the fan plant location has also been shifted west. The shift of the vent shaft and realignment of the fan plant would reduce the project's footprint at the Con Edison facility while allowing the existing Con Edison flush pit to remain… (FEIS, pp. 2-6).

The FEIS indicates that significant issues need to be resolved before the NJT project moves forward, if at all.

The project is too speculative at this time to be considered as an incremental cost driver in the rate year.

E. Informational & Institutional Advertising

Con Edison claimed that Staff's witness did not "provide any analysis to justify his recommendation that the Company's funding request be so drastically reduced and did not address the impact his 62-percent reduction in funding would have on the Company's proposed advertising program" (CE IB, p. 201). The Company is incorrect on both counts. Staff's analysis is firmly grounded in the application of the Commission's Policy Statement on advertising, supplemented by a comparison with historic expenditures, and consideration of the Company's arguments for expanded advertising budgets in specific topical areas (Tr. 4709-4712). In addressing Con Edison's specific budget requests in the categories of Energy Tips, Emergency Preparedness, Infrastructure Improvements, Workplace Diversity and other advertising, Staff offered general guidance - but not specific recommendations - regarding the relative priority that should be assigned to these areas (Tr. 4711-4712).

Con Edison stated that Staff's witness "concluded that the Company had justified some incremental funding over what the Commission's 1977 Statement of Policy on

Advertising and Promotional Practices[18] (Policy Statement) would have allowed, but his method for determining the funding to be allowed, that is, averaging spending in two years selected out of the most recent four years, was arbitrary" (CE IB, p. 201). Con Edison mischaracterized Staff's position. Staff, in fact, testified that the methodology adopted in the 1977 Policy Statement would allow a range between $3 million and $7.5 million (Tr. 4707-4708). Staff's recommended budget does not exceed this range. Staff reiterates that comparing its proposed level to historic expenditures did not constitute the sole method of developing that recommendation; furthermore, the company completely failed to explain why either the historic comparison, or the method employed by Staff to develop the historic average, was arbitrary. Both are reasonable.

Con Edison complained that "[t]he 1977 Policy Statement fails to take into account changes in the world since that statement was issued: the fact that deregulation of the commodity market has substantially reduced utility revenues against which the percentage is applied because many customers purchase their commodity from third parties; the fact that the cost of advertising has risen more

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rapidly than utility revenues; the fact that the population of the Company's service territory has become more diverse; and the fact that the advertising market has expanded to forms of media unanticipated in 1977" (CE IB, pp. 201-202). Staff respectfully submits that it is Con Edison that has failed to explain why all of these factors are not adequately accounted for in its historic expenditure levels for advertising, which, as previously established, are on average generally in line with both Staff's proposal and the Advertising Policy Statement.

In sum, Con Edison's contention that the effect of Staff's proposed funding reduction would eviscerate the company's advertising program (CE IB, p. 207) is baseless and should be rejected.

F. Employee Benefit Expense

1. Health Care Escalation

In its Initial Brief, Con Edison alleged that Staff's position is that the Company should collect more from its employees does not square with the facts (CE IB, p. 211). There is no record evidence indicating that such an allegation was made by Staff. Staff applied the general inflation rate to the latest known level in the forecast of

rate year employee contributions, consistent with our forecast of the underlying health care costs.

2. Employee Welfare Programs

Con Edison claimed Staff's position that the Company's proposed Occupational Supplemental Employee Benefit program, Child Care and Elder Care Services, and Work Home Wellness Programs should be self-funding on the basis of unquantifiable productivity savings is contrary to Commission precedent when rates reflect a productivity adjustment (CE IB, p. 213). The Company, however, provided no reference to a Commission Order or Policy Statement. Con Edison falsely claimed that the Staff Accounting Panel's recommendation is contrary to Staff Infrastructure Investment Panel's (SIIP) recommendation (CE IB, p. 213). The SIIP's productivity adjustment was based on Con Edison's substantial increases in infrastructure investments and related O&M programs, not the Company's proposed expansion of various employee welfare programs (Tr. 3054).

Con Edison did not dispute that there are savings associated with its proposed employee benefit programs. However, the Company did not reflect any savings in its rate request. The Company's position is unfair to customers as it would require them to fully fund such

programs and would permit the Company to retain all related benefits.

Con Edison claimed that it is important to offer these programs in order to remain competitive in terms of employee attraction and retention (CE IB, p. 213). However, the Company also stated that in the current economy, it expects that employees will stay with the Company for a longer period of time (CE IB, p. 193). Given the Company's expectations, it appears these new employee benefit programs are not necessary at this time. In these difficult economic times, it is particularly important not to burden customers with the costs of discretionary programs. The Company's proposed program changes should be denied.

G. Insurance

1. D&O Insurance

The Company claimed in its Initial Brief that D&O insurance is "no different than other types of liability insurance, like fire insurance" (CE IB, p. 220). This is incorrect. A fire event does not have a "wrongful act" threshold that is required to be met in order for a claim to be covered. A fire on Con Edison's property could be caused by any employee, a member of the public, or the

result of faulty wiring and the Company's losses would still be covered by insurance. Fire insurance is also intended to protect the Company against damage to its property and is not purchased to protect specific employees. Therefore, it is in the customer's interest that the Company have appropriate fire insurance to cover losses of property used in providing safe and adequate service.

2. Property Insurance Escalation Rate

The Company claimed in its Initial Brief that "Staff recommends the GDP deflator because normalized historic trends over the last three years show a downward trend in costs" (CE IB, p. 223) This is an incorrect characterization of Staff's position. As an example of how conservative its forecast was, Staff explained that the Company's insurance rates have actually decreased over the last few years (Tr. 2715). Even if Con Edison's insurance expense increased the last three years, Staff would have still advocated using the latest known available rates, plus the GDP the deflator.

Con Edison claimed that its insurance escalation figures reflect market risks today, which include the effects of hurricanes (CE IB, p. 223). Hurricane Katrina

and Rita which occurred over three years ago. The insurance losses and risk factors that those two massive hurricanes may have exposed should already be factored into current insurance premiums.

Con Edison argued that its 5% escalation rate is a "superior" indicator to using Gross Domestic Product (GDP) inflation rate, yet it offers no empirical evidence, or analysis to support it (CE IB, p. 223). Con Edison's basis for the 5% escalation factor was that its risk manager's discussions with insurers lead him to the conclusion that premiums will be increasing by more than the general rate of inflation, which increase he estimated to be about 5% (Tr. 2438). The risk manager was not a witness in this proceeding, nor did the Company supply any record analysis that the risk manager performed. Con Edison has not even offered to supply the notes he may have taken in his conversations with insurers. The Company's unsupported proposal should be rejected.

H. Research & Development

1. Capitalization

In its Initial Brief, Con Edison stated that "[i]f properly performed, Staff would have made a corresponding increase to the Company's capital costs, somewhere in the Company's revenue requirement to allow for

the affected operating organizations to pay for the capitalization cost to offset R&D's credit. No such adjustment was made and R&D is simply stripped of the proper level of funding for necessary projects" (CE IB, p. 226). This assertion is false. Staff made an adjustment increasing rate year rate base by $2.8 million for the capitalized R&D expenditures and it is reflected in Staff's Plant in Service Model (Exh. 355 (LAR-6)).

The Company also claimed that "Staff's capitalization ratio is inconsistent with the facts of the 2008 Rate Order adjustment" and, "Staff does nothing more than re-apply the same adjustment it made less than one year ago with not a scintilla of evidence supporting the adjustment" (CE IB, p. 226). These assertions are also false. Staff proposed to follow the methodology adopted by the Commission in the 2008 Rate Order, since all of the projects are the same in this case as that case. By not proposing to capitalize any of the R&D projects in the rate year, it is the Company that is deviating from the 2008 Rate Order.

I. Financial Services (Letters of Credit Costs)

In our Initial Brief, we acknowledged many of the consequences of the credit crisis, including its impact on the costs of letters of credit that the Company employs,

and in particular its impact on the letter of credit cost associated with Con Edison's self-insured workers' compensation loss obligations, for which the Company sought an additional $2.1 million in its formal update filing. We also recognized that the Company was properly pursuing cost-saving alternatives, such as surety bonds, and recommended that should the actual costs associated with the Company's self-insured workers' compensation loss obligations be known by the time the Commission decides this case, that the Company be permitted to provide them and that these costs be reflected in the Company's revenue requirement (Staff IB, p. 210).

In its Initial Brief, the Company acknowledges that it was recently able to obtain surety bonds to satisfy its workers' compensation self-insured loss obligations, and that the cost of these bonds was equivalent to what the Company had previously paid for a letter of credit. However, Con Edison is not offering to reduce its rate request by the $2.1 million sought in its update filing (CE IB, p. 231). The Company's actions are unconscionable; accordingly, its letter of credit costs should be reduced by $2.1 million to reflect the actual costs it will incur to satisfy its workers' compensation self-insured loss obligations.

J. Uncollectible Expenses

The Company indicated in its Initial Brief that a shorter average (determined on its two-year versus Staff's three-year average of write-offs) will provide a more complete recovery level (CE IB, p. 232). Further, it notes that it polled other New York utilities and found that methods other than a three-year average of write-offs had been used in setting the uncollectible factor.

With respect to Con Edison's statements about polling other NY utilities and finding that different methods had been used in establishing the uncollectible factor, we note that prior to the commencement of evidentiary hearings (on October 8, 2008), Staff asked for information (DPS-622) that supported the Company's survey. The Company has not provided a response to that discovery and did not provide anything for the evidentiary record, other than the unsupported claim. The Company's comments should be afforded no weight in this proceeding.

In addition, use of a two-year average, as Con Edison claimed, does not provide a more complete recovery level because a complete recovery is assured under either method; the two-year average would just provide for an earlier recovery.

In our Initial Brief, we recommended an update of our three-year average of actual write-off to reflect latest known and available information (January - June 2008). The update increased our three-year average write off rate from 0.59% to 0.61%, which compares to the Company's two-year write-off rate of 0.62% reflected in its rebuttal filing. It should be noted that the net base rate revenue difference between a two-year average write-off rate of 0.62% and a three-year average write-off rate of 0.61% is approximately $0.100 million.

Staff's recommendation is consistent with historic rate treatment, uses latest known information, avoids the need to litigate this issue from case to case, and, over time, if consistently applied, it will make the Company whole in periods of good and bad economic conditions (Staff IB, p. 144).

K. Regulatory Commission Expense

Con Edison's argument, that Staff's adjustment to normalize non-recurring items from the historic regulatory commission expense is without justification (CE IB, p. 233), is erroneous.

The Company claimed that the effect of a three-year average is to normalize non-recurring items. That is incorrect. For purposes of setting future rates, non-

recurring items must be removed. The effect would then be to provide the utility an allowance based on a historic average of recurring items. That approach results in a fair and reasonable result.

The Company also claimed that Staff's adjustment is inconsistent with Staff's treatment of various other expenses where a three-year average is used instead of the Company's specific projections (CE IB, p. 233). As an example, the Company's cited Staff's rejection of its adjustment of payroll expense in favor of a three-year average. The Company must be confused because Staff did not use an averaging methodology to forecast rate year payroll expenses. Accordingly, its claim is without merit.

L. Other A/P Item

1. Vehicle Fuel Expense

The Company claimed that Staff's forecasted average weighted fuel cost of $3.78 per gallon will not provide the Company with the rate relief necessary to run its vehicle fleet (CE IB, pp. 187-190). That claim is specious. Unless there is a drastic reversal of the current trend in vehicle fuel prices, the Company's projected average fuel cost level will not be reached at any time during the rate year ending March 31, 2010.

V. TAXES OTHER THAN INCOME TAXES

A. Property Taxes Expense Level ($86.7 Million)

1. Forecasted Level of Property Taxes (Tax Rates)

The Company claimed in its Initial Brief that its $75.4 million deferral petition speaks volumes against using the historical average (CE IB, p. 242).[19] What the Company fails to acknowledge is that the primary driver for the recent increase in property tax expense was due a large increase in assessed values. As discussed below, that should not be an issue in this case, since we projected Special Franchise assessed values in the rate year using the latest known Handy Whitman Index. A review of the NYC tax rate changes that went into effect on July 1st 2008 indicates that the tax rate only increased by slightly over 1% for class 3 property and decreased by close to 2% for class 4 property. To imply that this "speaks volumes against using historical averages to set future cost levels without considering current facts and circumstances that clearly indicate that the historical average is not

[19] Mid-year tax changes, and tax rate changes where deferral accounting is allowed, may need to be normalized out of the five-year average in future rate cases to ensure the Company does not double recover their costs.

indicative of future performance" (CE IB, p. 242) is misleading, to say the least.

As we stated in our Initial Brief, following the Commission precedent of using the historical average to calculate rate changes provides great symmetry and avoids potential double recovery of costs, that can result from inconsistent forecast methods, since this year's tax rate changes will be reflected in future cases.[20]

VI. COST OF CAPITAL

Con Edison's Initial Brief on the cost of capital is flawed on many levels. Statements which were shown to be incorrect during cross-examination are repeated as fact, Commission precedent is ignored, misleading statements are used to bolster arguments and data which has been shown to be flawed continues to be relied on by the Company.

A. Cost of Common Equity ($10 - $117 Million)

Concerning current conditions in the financial markets, the Company's Initial Brief begins with an argument which is quite simply contradicted by recent events. Specifically, the Company claims that its mitigated ROE of 10.0% is likely to be inadequate to

[20] Mid-year tax changes, and tax rate changes where deferral accounting is allowed, may need to be normalized out of the five year average in future rate cases to ensure the Company does not double recover their costs.

maintain its financial standing and access to the capital markets (CE IB, p. 268). This assertion is belied by the fact that even with Con Edison's currently authorized ROE of 9.1%, which is significantly lower than its mitigated ROE of 10.0%, the Company was able to raise $600 million of capital on December 2, 2008 through its issuance of new unsecured debt at terms that are consistent with its financial standing (Consolidated Edison Company of New York, Inc. Form 8-K of the United States Securities and Exchange Commission filed December 4, 2008).

With respect to its assertion that Dr. Morin's rate of return is sound and reasonable because his conclusions are "supported by numerous financial indices," the Company's initial brief is simply incorrect when it states that Dr. Morin's DCF estimate was "based on earnings growth estimates from several sources, including Value Line, Zacks, Moody's and Standard & Poor's" (CE IB, p. 273). As explained in Dr. Morin's own direct testimony he only used analyst's earnings growth forecasts contained in Zacks and Value Line in his analyses. We have already pointed out the inherent shortcomings of utilizing these short-term earnings forecasts in the DCF model, and that the Commission properly rejected Dr. Morin's DCF methodology in the 2008 Rate Order (Staff IB, pp. 175-176).

The Company chose to ignore clear Commission precedent regarding the application of several ROE methodology topics. Despite the fact that the weighting of the various equity costing methodologies has been decided by the Commission as two-thirds DCF, one-third CAPM repeatedly in litigated cases, Con Edison continues to argue that the Commission must reduce the weight accorded to the DCF methodology. The Commission has also repeatedly decided in favor of using Staff's annual dividend approach with the DCF methodology as opposed to Dr. Morin's quarterly dividend approach, and the Commission has repeatedly decided in favor of a six-month stock price rather than the spot price argued by Dr. Morin (Staff IB, pp. 177-179).

Con Edison alleged in its Initial Brief that Staff solely relied on Value Line to estimate the rate of growth in future dividends that investors expect. Con Edison asserts that our reliance on the Value Line data is somehow at odds with our recognition that all analysts' earnings forecasts are notoriously inaccurate (Company IB, p. 276). Leaving aside the fact that we rely on Value Line's dividend growth forecasts and not its earnings forecasts in our DCF methodology, we also point out in our direct testimony that Value Line's estimates reflect not

only its own in-house projections, but those of other industry analysts as well (Tr. 3340). As to the inaccuracy of analysts' forecasts in general, that is the reason we do not blindly assume (as does Dr. Morin) that their five-year growth estimates can be sustained into perpetuity, as required by the DCF methodology.

In what can only be described as remarkable arrogance, the Company suggests that Staff's DCF analysis is "inherently problematic since it fails to relate the market-derived return expectations to the book measures upon which the Commission sets returns" (Company IB, p. 277). What is remarkable about the Company's statement is that it uses the 2008 Rate Order to bolster its claim. On the contrary, as we explained on page 195 of our Initial Brief, the Commission found the Company's argument to go "against the foundation of historical cost rate base regulation."

The Company's Initial Brief also offered another remarkably contradictory argument when it attempted to undermine our check on the reasonableness of our proxy group's sustainable growth rate. As explained in our direct testimony, we compared the 5.3% sustainable growth rate of our proxy group with the consensus long-range estimates of Nominal GDP growth through 2019 (5.0% through

2014 and 4.8% through 2019) and found that it was somewhat stronger (Tr. 3338-3339). The Company argues that it was inappropriate to compare the long-term growth forecast of our proxy group with a "short-term growth rate forecast," such as the forecast in Nominal GDP through 2019, because "the growth term of the DCF model is perpetual in nature" (CE IB, pp. 277-278). Again, setting aside the fact that the ten-year Nominal GDP estimates are twice as long as the five-year time-frame of Dr. Morin's analysts earnings estimates, what is truly remarkable is the Company's insistence on growth estimates that are perpetual, while its own witness relies on five-year earnings growth estimates which we have already demonstrated are not sustainable over the long-run (Staff IB, pp. 175-176).

In yet another instance of conveniently ignoring facts that clearly undermine its argument, the Company's Initial Brief argued that the 4.14% risk-free rate estimate we use in our CAPM analysis, which is based upon treasury yield data over a six month period through June 2008, is stale. Given the many months that transpire over the course of a rate proceeding, all estimates become stale. In fact, this is precisely the reason that we recommend our approach be updated prior to a decision by the Commission (Tr. 3360). Nonetheless, Con Edison argued in its Initial

Brief that had we relied on the most current yield estimate on 30-year Treasury bonds, namely the June 2008 estimate of 4.69%, rather than the 4.14% six-month average of 10- and 30- year Treasury yields, our 10.03% CAPM estimate would be 55 basis points (4.69%-4.14%) higher, or 10.58%.

Any alleged staleness in our risk-free rate estimate will be addressed when the Commission updates our methodology using the most recent six-months of Treasury bond yield data, just as the Commission has done in all recently litigated cases. What is deceptive about the Company's argument is that it fails to mention that the CAPM approach advocated by Dr. Morin, which calls for using the most recent yield on 30-year Treasury bonds, currently produces much lower ROE estimates (Tr. 3146-3148). As explained in his direct testimony, Dr. Morin calculated an average CAPM estimate of 11.2% using a 4.5% risk-free rate, as that was the current level of 30-year Treasury bond yields at the time he filed his direct testimony (Tr. 3158-3159). Given that Treasury yields have fallen to historically low levels, and that the yield on 30-year Treasury bonds now stands at 3.17% (Federal Reserve Board Statistical Release data as of December 3, 2008), Dr. Morin's flawed CAPM methodology would currently produce an

ROE estimate of 9.87%, given the 133 basis point (4.5%-3.17%) decline in his risk-free rate estimate.

The Company's Initial Brief also commented on our criticism of Dr. Morin's risk premium methodology on the grounds that it is premised upon a constant risk premium over time. Specifically, the Company's Initial Brief continued to argue that Dr. Morin's risk premium methodology is reasonable because "he found no evidence that the market price of risk or the amount of risk in common stocks has changed over time" (CE IB, p. 283). It is difficult for us to fathom how the Company can continue to proffer such an argument in light of the views of one of its witnesses. Company witness Hoglund unequivocally contradicts Dr. Morin's conclusion of a static risk premium when he states that "[f]or several years, investors have made relatively little distinction in the cost of capital of entities based on the risk of those entities. This willful ignorance of risk no longer exists, and we can expect the aggressive distinction of risk to persist for a significant period" (Tr. 1831-1832).

The Company also presented a misleading discussion of the Commission's practice for allowing the recovery of common equity issuance expenses. While the Company is correct that the Commission has rejected the

explicit cost recovery of issuance expenses in exchange for an upward ROE adjustment, it leaps to the bizarre and unsubstantiated conclusion that our four basis point adjustment somehow disregards Commission practice as "it fail(s) to account for all the unrecovered flotation costs associated with all past equity issues" (CE IB, p. 285). As we pointed out in our Initial Brief, Dr. Morin's flotation cost adjustment was rejected by the Commission in a recent Orange and Rockland Rate Order; as the Commission stated: "The Company's attempt to reach back to past issuances is supported only by a hypothetical statement that such costs may not have been collected, rather than any proof to that effect" (Staff IB, pp. 203-204).

In yet another misleading attempt to discredit Staff's ROE recommendation, the Company states that our 9.5% ROE recommendation is well below the authorized ROEs for the 31 electric utilities in our proxy group. However, on cross-examination, Dr. Morin admitted that Staff's proxy group consists (as do his own proxy groups) of virtually all holding companies, none of whom were specifically authorized a return (Tr. 3258). What matters most to the financial viability of a company are its achieved ROEs, and we clearly demonstrated that under New York's regulatory regime, Con Edison has achieved ROEs over the past three

years that have consistently exceeded the achieved ROEs nationally for electric utility operating companies (Staff IB, p. 197).

In its discussion regarding the particular importance of credit quality in light of current credit conditions, the Company made an observation that requires our further clarification. Specifically, the Company's Initial Brief states that "Staff concluded that the maintenance of an "A" rating for the Company's debt obligations was in customers' best interests" (CE IB, p. 292). Our recommended equity ratio and overall rate of return would be sufficient to maintain the Company's ratings within the respective "A" categories of both S&P and Moody's, and that supporting ratings within those overall categories would be in customers' best interests (Tr. 3317).

We have pointed out that the Company's "A1" Moody's rating, which is the highest tier in Moody's "A" category, followed by "A2" and "A3," is not exceeded by any other electric utility holding or operating company (Tr. 3357). We have also acknowledged that the Company's Moody's ratings outlook is "Negative," and that current trading behavior suggests that Con Edison's debt is being priced more in line with the Company's "A-" S&P rating -

which is the lowest tier within S&P's "A" category; the two higher being "A+" and "A" (Staff IB, p. 202). In light of current conditions in the credit markets, we stated in our direct testimony that maintaining the Company's credit ratings within the "A" categories of S&P and Moody's (i.e., at least "A-" and "A3"), would be best for all parties "especially if the historically high credit spreads persist for a long period of time" (Tr. 3303). We also stated that "while authorizing higher equity ratios and ROEs that are higher than the returns required by investors would clearly help the Company to retain, or perhaps even improve its current credit ratings, neither of these actions appear to us to be consistent with the goal of optimizing its cost of capital" (Tr. 3317).

In sum, based upon Moody's Negative ratings outlook on the Company's securities, and the fact that current market pricing of Con Edison's debt obligations is more in line with the Company's "A-" S&P rating, it is certainly conceivable that Moody's could eventually downgrade the Company's securities by one or two notches, to either "A2" or "A3." While we believe that would be an unfortunate outcome, we do not believe that the Commission should authorize a higher equity ratio than we recommend or an ROE higher than the return required by investors that we

are recommending. Such an action would be inconsistent with optimizing the Company's cost of capital, and it would also be unnecessary as investors are already pricing the Company's debt obligations consistent with its "A-" S&P rating. Instead, we recommend that the Commission adopt our cost of capital recommendations, which we have demonstrated are sufficient to support both the Company's current "A-" S&P rating and a rating of at least "A3" by Moody's.

B. Capital Structure

1. Equity Ratio ($7.4 Million)

In our Initial Brief we discussed the reasonableness of a capital structure with a 48% common equity ratio, virtually identical to our recommended common equity ratio, and indicated our understanding that the Company is willing to agree to such a capital structure (Staff IB, p. 205). In its initial brief, however, the Company instead chose to pursue the very same arguments that were discredited by the Commission in its 2008 Rate Order.

Con Edison argued that Staff's adjustment to reflect the fact that CEI has used the strength of its utility operations to fund its unregulated non-utility investments with less equity than would be required for the

unregulated entities to achieve the same credit ratings as its utility operations (Tr. 3289-3290) is inappropriate. Further, while the Company attempts to argue that our adjustment is unwarranted because its non-regulated businesses are not as risky as they were in the past, its own witness admitted on cross-examination that the remaining non-regulated activities are still riskier than the Company's regulated activities (Tr. 3258-3259).

With respect to the Company's arguments in the 2008 Rate Order, the Commission was very clear when it stated on pages 112 and 113: "We find that Staff has used a proper approach for calculating the capital structure to be used for public utility ratemaking purposes. Staff's approach considers the capital structure of the consolidated operations and it assesses the amounts of capital used by the regulated and the unregulated firms. For our ratemaking purposes here, it is proper and necessary to determine the amounts of debt and equity capital that Con Edison is employing for ratepayers to be assured that they are only paying for the costs that the Company is incurring to support regulated operations and for no others. Con Edison's point about materiality is not logical, as it suggests that when competitive operations are small, cost assignment is not necessary and, therefore,

the subsidy can be ignored. Customers should not be providing credit support for competitive operations regardless of their size."

2. Cost of Long-Term Debt ($20.4 Million)

In our Initial Brief, we noted that the turmoil in the credit markets made forecasting the cost rates of the Company's proposed new debt far more difficult than it has been in the past (Staff IB, p. 208). As a result, and also because Con Edison is proposing to issue a significant amount ($1.7 billion) of new debt over the next year, we recommend a true-up of the average cost of debt. As we pointed out in our Staff's Initial Brief, a true-up would not only serve to insulate the Company from the added financial risk inherent in employing the most recently-available estimates (should forecasted cost rates fall short of actual costs), but it will protect ratepayers as well, should credit conditions improve and actual borrowing costs turn out to be more favorable than forecast (Staff IB, p. 209).

In its Initial Brief, however, the Company rejected Staff's proposal and proposes instead "that the Commission update interest rates as close as possible to the time of the Commission Order in this proceeding using a rate based on projections of Treasury rates and then-

current secondary spreads and new issue premiums" (CE IB, p. 301). Of course, the Company proposes estimates of the then-current secondary spreads and new issue premiums from its own source which can not be independently verified by Staff or any other party, and which Staff believes may be somewhat overstated in light of the actual cost rate incurred by the Company in its December 2, 2008 issuance of $600 million of unsecured debt. Con Edison also continues to argue for the use of forecasted Treasury rates, which both Staff and the Commission have rightfully rejected in the past (Tr. 3322).

As discussed above, after reflecting the Company's recent issuance of $600 million of unsecured debt on December 2nd, Con Edison can still be expected to issue an additional $1.1 billion ($1.7 billion - $600 million) of debt whose cost rate must be forecast in order to determine the Company's average rate year cost of debt. Based upon the 7.125% cost rate of the Company's December 2nd issuance, we believe that our approach for forecasting the interest rates of the roughly $1.1 billion of debt that is forecast for the rate year, is reasonable, with the proviso that it include a 40 basis point adder to reflect the new issue premium Con Edison incurred on its December 2nd issuance.

Our approach, using the spread requirements for A-rated utility issuers as of December 4, 2008, indicates a spread of 410 basis points (based upon the 6.78% current yield requirement for A-rated seasoned utility debt issues less the 2.68% 10-year Treasury yield), and thus indicates the necessity of a 40 basis point adjustment for the new issue premium required of Con Edison - which is notably lower than the 65 to 90 basis point new issue premium provided by Company witness Hoglund (Tr. 1845-1846). In any event, based upon the ongoing turbulence in the credit markets and for the reasons stated above, we continue to support a true-up of the Company's average cost of debt.

VII. RATE BASE

A. Lower Allowances for Infrastructure ($24.5 Million)

1. Transmission & Distribution

(i) Specific Project Adjustments

a. Transmission Operations Capital

The Company erroneously argued that it has "increased its budget for crucial repairs by $1 million over its average spending of $4 million from 2005 to 2007 in order to reflect the increased number and costs of these repairs (Exh. 59, p. 15)" and that "[t]he Company provided the expected costs of this program in Exhibit 169 (unredacted), p. 816" (CE IB, p. 44).

The Company's referenced Exh. 59, p. 15, states that "[b]ased on recent history, the number and cost of transmission repairs has increased." An examination of Exhibit 169, p. 18, however, reveals that for 2007 the Company budgeted $4.0 million and actually only spent $1.818 million, the lowest level of actual expenditures for this item since 2004. Thus, if the Company used recent history as a guide, it should have proposed a decrease and not an increase to this item.

In addition, Exhibit 169 (unredacted) (p. 816) does not provide any linkage nor demonstration of any connection with historic feeder failure frequency and their respective costs and expected future increases the Company is claiming will occur. It simply presents the Company's tabulated forecasts, equal for each year, for various expense items for years 2009 - 2012. Staff maintains that its proposed three year average is a reasonable approach to forecast expenditures for this budget item.

B. Electric Operations

1. Work Management Systems

The Company's reference to the Commission's interest in workforce management does not, by it self, warrant full funding of any project focused on workforce management (CE IB, pp. 371-372). Rates should be just and

reasonable while allowing the maintenance of safe and reliable service. By no means does the extension of this project hinder the safety and reliability of the system; it would be unreasonable to expose rate payers to higher rates simple to cover the wants of the Company. Furthermore, the Company has not provided evidence showing that the Commission has determined that the Company's current work management system is mediocre or lower quality.

2. General Equipment

In its Initial Brief, the Company repeatedly refers to its rebuttal/update testimony related to General Equipment (CE IB, pp. 386-387). However, this portion of the Company's rebuttal/update testimony was excluded from evidence in this case by the Ruling on Motion to Strike issued on November 4, 2008. Therefore, this portion of the Company's brief should not be considered. However, should Con Edison's Brief arguments on this issue be considered, consideration also needs to be given to the following.

The Company claimed that Staff eliminated $99.064 million of additional plant in service for General Equipment for the period starting on January 1, 2008 and continuing until the beginning of the Rate Year ("the linking period"), which includes expenditures already

approved by the Commission in the 2008 Rate Order for the rate year ending March 31, 2009 (CE IB, p. 374). The 2008 Rate Order has no bearing on the Company's burden of proof in this case. The Company's rate filing in this proceeding was based on the test year, twelve months ending December 2007. Con Edison has the obligation to present with competent testimony and evidence the linking period data and the rate year forecast data. The Company failed to do so, therefore, Staff's adjustments to the plant in service related to General Equipment should be adopted.

On page 376 of its Initial Brief, the Company claimed that Staff interrogatory DPS-318 was not specifically targeted to the General Equipment. This assertion is incorrect. Staff provided the Company with the General Equipment capital addition Excel spreadsheet from the Plant in Service Model, and requested that the Company identify where in its pre-filed testimony or exhibits it supports each of the specific capital additions (Exh. 190). According to the Company, it provided "references to a corporate instruction related to General equipment" and apparently expected Staff to follow up with additional interrogatories (CE IB, p. 377). Corporate Instructions do not constitute justification for the Company's funding request.

Con Edison argued that General Equipment has been a material component of each of the Company's past rate filings, but the Company has not historically addressed it in testimony (CE IB, p. 379). The General Equipment expenditure is in fact a significant component of the current filing and the Company should have presented and supported its request. Its unsupported claim of past practice should not be used to bolster its failure to support its proposed general equipment expense.

Therefore, Staff's recommendation that the total amount of plant added to the plant-in-service model for the linking period and the rate year, related to the General Equipment projects, be removed for ratemaking purposes, should be accepted by the Commission. The Company should not be allowed recovery of the carrying charges on these projects for the rate year.

C. Capital Expenditure Cap/Reconciliation

Con Edison asserted in its Initial Brief that Staff's downward reconciliation proposal unduly and unreasonably limits the Company's flexibility to react to unforeseen and unforeseeable circumstances to meet the needs of its customers and its system (CE IB, p. 404). This is simply not true. What Staff's proposal does is

protect customers by attempting to ensure that the Company actually completes the capital expenditure plans that it presented in this case and at the level of carrying costs that the Commission ultimately approves, by deferring for ratepayer benefit carrying charges on funds not spent. As acknowledged by Staff, if the Company incurs expenditures due to unforeseen and unforeseeable circumstances, those expenditures should be explained and reported to Staff quarterly and justified in its next rate filing (Staff IB, p. 314). To argue, as the Company did, that Staff's recommendation of a downward-only reconciliation will unavoidably discourage the Company from spending within the proposed cap on any projects not foreseen or foreseeable when this rate filing was made - but which are necessary to address customer and system needs borders on the Company renouncing its obligation to serve customers (CE IB, p. 405) - is ridiculous.

Con Edison attempted to characterize Staff's reconciliation mechanism as a one-way, downward-only cost tracker that would defer the Company's ability to recover increases in costs until its next rate proceeding, suggesting that the Company could potentially complete all the forecasted projects but incur higher costs of materials without any corresponding cost recovery mechanism (CE IB,

p. 407). What the Company failed to explain is that the Company's budget forecasts typically contain contingency factors that account for such situations and while ratepayers are funding those contingency amounts, it would be fair that they be provided with the protection of a downward reconciliation, as recommended by Staff, to capture savings resulting from cost reductions and/or canceled or delayed projects.

On page 408 of its Initial Brief, the Company questioned the interrelationship between the overall downward reconciliation proposal and the project-specific downward reconciliation mechanisms for the Electric Operations' Advanced Technology projects and the Storm Hardening and Response Programs. To clarify, Staff's goal is to ensure that the Company properly allocates funding to these specific projects and programs and therefore recommended the project-specific reconciliations. Obviously, these two projects are a special subset that would need to be accounted for separate and apart from all others that would be subject to the global net plant reconciliation. Staff does not intend for any double counting to occur.

Con Edison asserted that Staff's quarterly reporting recommendation would place an unnecessary cost

burden on customers, since rates must be adjusted to reflect the Company's costs in meeting such a requirement (CE IB, p. 415). The Company, however, provided absolutely no evidence for the record to support its position. Staff explained, the Company already tracks the data and information that would be included in the proposed quarterly reports, therefore any incremental expense should be immaterial (Staff IB, p. 316).

The Company devoted several pages of its Initial Brief (pp. 416-120) attempting to justify why it should not be required to explain and provide evidence in its next rate filing related to, project specific capital expenditures that varied from forecasts in this case and any new capital projects the Company has developed that have not been presented in this proceeding, as well as projects that were abandoned or materially altered in terms of scope. Specifically, it argued: 1) this would constitute a change to the Commission policy statement on test periods with respect to the types of expenditures that must be supported in testimony; 2) it would effect a fundamental change in the regulatory paradigm in New York State; 3)it would stand on its head the seminal ratemaking principle that an investment incurred by a utility is deemed to have been made in the exercise of reasonable

judgment in the absence of the showing of imprudence; and, that it is up to the party questioning an expenditure to provide an adequate basis for that allegation.

These claims border on being absurd. While it is true that utilities are at liberty to present their rate cases in a manner of their choice, the Commission's Rules of Procedure (16 NYCRR Part 61) require that in the a rate case, the utility establish by competent evidence the original cost of the property used and useful in the service and the accrued depreciation on that property. In addition, the NARUC Rate Case and Audit Manual (2003)[21] which "sets forth the most common, basic regulatory principles, processes, and procedures used by many regulatory commissions to examine and investigate general rate applications," in the discussion related to the review of plant in service, it recommends the following:

> The auditor will want to examine the major additions in the facilities that have occurred since the last rate proceeding. This examination can start with asking the utility to identify the major plant additions by year (with the auditor stating , for instance, projects that exceeded a specific dollar value or percentage of total plant), specifying the type of project, the need for the project, total cost of the project, and the project start and completion dates. Once this list is

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[21] Rate Case and Audit Manual Prepared by NARUC Staff Subcommittee on Accounting and Finance, Summer 2003.

> received, the auditor may wish to follow-up on specific projects, by examining the detailed work orders and the specific expenditures that were incurred. It may also be useful to compare the ultimate cost of the project to the initial projects submitted when the project was initially authorized or approved by management. It is also important to identify any plant that is replaced so as to verify that is retired properly.

Staff is not attempting to prejudge the prudence of the Company's current or future capital expenditures. Staff's proposed reporting requirement and rate case demonstration is simply proposing that the Company be required to provide information that it should normally include under standard regulatory practice, but which it has not included in its recent rate requests.

D. Rate Base Treatment for Deferred Overhaul and Local Law 11 Expenditures

Con Edison stated that it will agree to recover Local Law 11 repair costs over a two-year period and Scheduled Overhauls over a three-year period, subject to receiving full carrying charges, at the overall allowed rate of return, on the deferred balance (CE IB, pp. 428-431). The Company claimed that allowing for anything other than full recovery will not provide sufficient relief for the costs the Company will incur for these costs (CE IB, p. 430). The Company's proposal is akin to giving it a

blank check for these costs. Clearly, Con Edison's incentive to manage and minimize these costs would be eliminated if their request is approved. Customers would bear the entire risk of the Company spending more than it forecasted.

The Company also argued that Staff's position is inconsistent with the manner in which ERRP major maintenance costs that the Company owes the customer is handled (CE IB, p. 430). The claim is totally flawed. As explained in our Initial Brief, to date, there has been no actual rate recovery or outflow of cash for either the East River Unit 6 generator rewind or Local Law 11 work, whereas there has been actual rate recovery and outflow of cash related to ERRP maintenance work (Staff IB, pp. 260-261). Accordingly, rate base treatment is not appropriate for either the East River Unit 6 generator rewind or Local Law 11 work, but it is for the ERRP maintenance.

VIII. REVENUE ALLOCATION/RATE DESIGN

A. TCC Treatment vis-à-vis NYPA

As noted on page 31 of its Initial Brief, NYPA offered to meet with the Company and any other interested parties in a working group or collaborative to resolve issues related to implementation of its proposal prior to

the Company's compliance filing. Staff believes that the record in this case clearly demonstrates that NYPA's TCC proposal is flawed and should be rejected. Thus, there is no need for a working group or collaborative.

B. Submetering

1. SC 8 and SC 12 Customers

In its Initial Brief, Con Edison stated that Staff did not provide any "credible evidence (901)" that a SC 8 or SC 12 customer "receiving usage information will cause apartment occupants to change their behavior (901)" (CE IB, p. 462). Con Edison ignored Staff's testimony which demonstrated that the resulting behavioral impact associated with the installation of submetering has been reduction of individual tenant electric consumption based on research data from NYSERDA (Tr. 3595). According to the NYSERDA data, in apartment dwellings where submetering installations occurred, tenants who were being individually metered and charged used 18% to 26% less electricity than by those without submetering in their apartments (Tr. 3595).

Furthermore, Con Edison appears to now support Staff's position. As it indicated in its Initial Brief, "Energy consumers are people who live or work in the downstate region and use Con Edison service (1240). They

may or may not have responsibility for electric bills (1326). Their use of electric service should be guided by the same goal of conservation as customers' (1240-41)" (CE IB, p. 203, footnote 90).

IX. OTHER ISSUES

A. Performance Metrics

1. Reliability Performance Mechanism

a. The RPM with Rate Adjustments Should Remain in Effect

On page 471 of the Company's Initial Brief, it uses the Long Island City network outage as an example, for the first time, of how negative adjustments under the RPM are not needed since it was also exposed financially in the form of reimbursable claims for perishables and other customer property, and exposure to prudence inquiries. There are many years in which the Company was exposed to an adjustment under the RPM and not exposed to claims and prudence inquiries. Credits derived from the RPM are used to offset the cost of rates, while reimbursements and claims are associated with incidents resulting in the loss of customer's possession. Reimbursements and claims go directly to specific customers and only if the customer qualifies and/or submits a request. In addition, prudence inquiries are associated with how the Company handled the

operation of its system and does not need to be associated with any components of the RPM.

The Company follows by trying to link the Restoration mechanism and the Audit of Con Edison's Performance in Response to Outage Emergencies ("Audit"), for the first time, as examples of recommendations and requirements that are already in place that has worked and is similar to its recommended implementation plan to replace revenue adjustment under the RPM (Con Edison Initial Brief pp. 472). The Restoration mechanism is on a trial basis and is being used to gather information in its current form therefore making it an inappropriate example to justify removing rate adjustments.[22] The Audit makes recommendations that serve to alter the way the Company operates internally. The RPM is designed to allow shareholders to be accountable for system reliability, which is impacted by a mélange of different programs affecting rates. The Company has control over its performance under the RPM and should be held accountable.

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[22] There is no reason to remove the Restoration mechanism from the RPM. It is currently on a trial basis with expectations for it to be fully implemented in the future.

b. Suspend Network Frequency With No Change to Remaining System-Wide Threshold Standards

Con Edison exaggerated, in its Initial Brief, when it stated that the Company should not be "subject to tens of millions of dollars in penalties each year for failing to meet the outage frequency and duration targets" (CE IB, p. 469). Actually, the revenue adjustment associated with the current Reliability Performance Mechanism (RPM) is $20 million in total for the outage frequency and duration targets.

The Company repeatedly referenced adverse weather conditions and natural variability as a basis for it not meeting the targets. For example, it referenced the non-network system in 2006 failing to meet frequency threshold due to weather (CE IB, p. 483). Con Edison neglected to mention that interruptions associated with equipment failures in its control affected its performance value. The Company then made an attempt to use exclusions of major outages to support how duration could fluctuate (Id.). It mistakenly used the 2007 Yorkville/West Bronx network outage as an example. That outage, however, did not satisfy the major outage criteria, and therefore would not worsen the duration performance value. In fact, all large, short duration outages such as the 2007 Yorkville/West

Bronx would not adversely impact the annual duration target. Furthermore, excluded major outages would not impact its annual duration performance. Allowing the use of the two standard deviations would only provide the Company more leeway.

Regarding the Company's 'stepped' approach to rate adjustment on pages 486 and 487 of its Initial Brief, it only serves as a creative way to lower its level of financial exposure. The Company incorrectly states the level of adjustment would be equal to Staff's proposed maximum adjustment of $5 million per threshold standard when in reality the Company's proposed maximum adjustment would be $3 million (Tr. 3547).

Con Edison argued that the target modifications for outage frequency and duration should also be applied to the performance targets currently in effect for 2008 (CE IB, p. 473). The Company failed to recognize that this rate case is not regarding the 2008 RPM. In the last rate case the Commission put into place targets for 2008 and only referred to the potential change of future targets, not past. Con Edison was afforded the opportunity to state its case during the last rate case based on the same core data (Exh. 317). The Commission rejected its argument. The Company's proposal should be disallowed regarding

applying to the 2008 performance targets any 2009 target modifications to the outage frequency and duration.

c. Central Hudson Case

On page 474 of Con Edison's Initial Brief, the Company referenced Case 00-E-1273, the Central Hudson Electric Rate case, and asserted that the potential impact of implementing an outage management system (OMS) on the Central Hudson's frequency and duration standards was recognized by the Commission. Therefore, it argued the same consideration should be accorded Con Edison to result in relaxed metrics on the Company's performance. Staff notes that the Central Hudson standards were adopted from the negotiated terms of a joint proposal among the parties and, for that reason, may not be appropriate for consideration in this case.

d. Restoration

According to Con Edison, the restoration rate adjustment mechanism should not be adopted since it is premature and, goes against the "implicit purpose" of the Audit Report[23] recommendations (CE IB, p. 495). The Company's argument is without merit. The result of the

[23] Case 06-M-1078, Proceeding on Motion of the Commission, Audit of Con Edison's Performance in Response to Outage Emergencies.

Audit Report is irrelevant to the target set in the Restoration mechanism. An RPM sets the targets while the Audit Report provides recommendations on how the Company should go about achieving the targets. It was not the intent of the Audit report to change how Commission targets are set. The RPM does not dictate how to achieve the targets, while the Audit Report is focused on such activities. Furthermore, the Restoration mechanism does not prevent or hinder the Company from implementing the recommendations in the Audit Report.

The Company attempted to discredit the Restoration mechanism by stating that establishing a pre-set restoration time does not address Staff's concerns regarding the Company: not deriving restoration times in adequate time; communicating the restoration time to customers; and, adhering to the event restoration time (CE IB, p. 496). Staff, however, believes that if the Company knows that it has to re-establish service within a certain time frame or face a potential revenue adjustment, Con Edison will use its best efforts to quickly derive a restoration time and to continuously assess its resources to ensure that the restoration time is met.

e. Special Projects Should Not Change

Staff's asserted that all special projects with revenue adjustments should continue into the new rate period (Staff IB, pp. 310-311). The Company argued in opposition stating that special projects should be removed from the RPM's negative revenue adjustment with continued reporting during a transitional period (CE IB, p. 501). The transition period discussed by Con Edison would not provide an assurance that the Company will complete this work without a rate adjustment. If the Company continues to meet this target, it will not have a revenue adjustment. Thus, the special projects should remain as part of the RPM revenue adjustment.

f. Staff's Direct Case Increases Regulatory Risk

The Company stated in its Initial Brief that, "the Commission implements two metrics, Restoration and Remote Monitoring System Reporting, each with multi-million dollar per incident risks and unlimited overall exposure, as well as increased penalties for various older metrics carried over from the 2008 Rate Order" (CE IB, pp. 289-290). Mr. Hoglund's statement about unlimited overall exposure is incorrect. Overall exposure is the same as that established in the last 2008 Rate Order.

2. Customer Service Performance Incentive

Con Edison claimed that it proposed to maintain the CSPI performance measures and annual reporting requirement while suspending the revenue adjustment provision in order to test Staff's notion that earnings consequences are necessary for the achievement of good customer service (CE IB, p. 503). The Company made no specific recommendations regarding the CSPI, although it made such a recommendation concerning the RPM (Tr. 4708). Furthermore, the Company misrepresents Staff's position; Staff testified that "[a]s long as delivery service remains a monopoly, there are virtually no consequences to Con Edison for failing to provide good customer service, absent CSPIs" (Tr. 4714). Staff did not argue, and does not believe, that without a CSPI, customer service would necessarily deteriorate. The Company's arguments should, therefore, be rejected.

B. Capital Expenditure Report/Rate Case Demonstration

See Capital Expenditure/Reconciliation.

C. Three-Year Rate Plan

In its Initial Brief, Con Edison noted that no party addressed the substance of its three-year rate proposal and only Staff provided a reason for not doing so,

other than that Con Edison did not waive its right to reject the Commission's three-year rate plan and file for new rates if the Company finds the first year rates inadequate or the two out-year rates unreasonable (CE IB, p. 504). Con Edison noted that the Commission has historically favored multi-year plans rate plans and no party has provided any evidence that the Company's proposal is unreasonable and should not therefore be considered by the Commission as an alternative to a one-year case (CE IB, pp. 504-505).

The Company argued that there is no basis to require it to waive its statutory rights to file for new rates as a basis for asking the Commission to consider its multi-year proposal (CE IB, p. 504). Con Edison mysteriously pointed to boilerplate joint proposal provisions, arguing that its negotiated rights to pursue a litigated position - should the Commission reject joint proposal terms - is consistent with its reservation of rights in this case if the Commission alters the terms of the Company's proposed three-year rate plan.

Con Edison's equating of a right to retreat to a litigated position as part of negotiations, to a right to file for new rates during a multi-year rate plan resulting from a Commission determination in a litigated proceeding,

is ridiculous. Boiled down, the Company's position is essentially that it would be bound by the Commission's decision on a litigated three-year plan only if it, Con Edison, chooses to be so bound. Should it not find the second and third rate year allowances to its liking, the Company maintains that it could simply file for new rates for those rate years. Having the option to reject the multi-year portion of the Commission's rate plan and file for new rates would also provide the Company with another opportunity to challenge Commission determinations, aside from the traditional Article 78 proceeding.[24] Other potential issues with the Company's alternative multi-year rate plan have already been discussed and will not be repeated (Staff IB, pp. 320-321).

The Commission should reject the Company's alternative three-year rate plan and set rates based on the rate year ending March 31, 2010.

D. Deferral Accounting/Reconciliations (including 125th Street)

In its Initial Brief, Con Edison discussed its request for true-up mechanisms or deferral accounting for a number of its operating expenses. The Company also discussed its proposal for a mechanism to defer

[24] N.Y. Civ. Prac. Law and Rules, §§7801, et seq.

inflationary increases above a certain threshold, as well as a provision to address changes in legislation and new tax laws. Finally, the Company noted its request to reconcile costs related to approval of the sale of 125th Street facility.

With the exception of property tax and interference expense, Staff supported the Company's requests for true-up or deferral accounting for pension and OPEBs, environmental remediation costs, and SO2 allowance sale proceeds, storm costs and ERRP major maintenance costs (Staff IB, p. 322). Staff also proposed that the Company make use of true-up accounting for transmission service charge (TSC) revenues and all infrastructure plant additions (downward only) and deferral accounting for costs related to the East River Unit 6 generator rewind and NYC Local Law 11 expenditures (Staff IB, p. 322). Staff does not support the Company proposal for a provision to address changes in legislation and new tax law changes in a one-year rate plan. To the extent that changes in law affect the Company and are not addressed generically by the Commission, Con Edison is free to petition for appropriate relief. Since Staff is recommending that the Commission establish rates based on the single rate year (ending March 31, 2010), the Company's proposal for a mechanism to defer

inflationary increases above a certain threshold was not addressed and is moot.

Con Edison did not address Staff's objection in the context of the one-year rate plan, to the Company's rate filing request for netting of regulatory deferrals. The Company, in its Initial Brief, discussed its proposal to net outstanding deferred balances at the end of each rate year in the event the Commission adopts a multi-year rate plan (CE IB, pp. 507-08). The Company claimed, among other things, that having the ability to net regulatory deferrals simplifies the Company's external reporting requirements and would make its financial statements more meaningful to investors.

Although netting may simplify the Company's accounting for financial reporting purposes, it makes its more difficult for Staff to monitor the Company's accounting of deferrals for regulatory purposes. Accordingly, in the event the Commission's adopts a multi-year rate plan for Con Edison, the Company's proposal to net regulatory at the end of each rate period should be rejected by the Commission.

E. Retail Access Issues

1. O&E

According to SCMC, the Company should establish a reasonable and relevant separate budget for outreach and education (O&E) related to retail access activities (SCMC IB, p. 6). The record in this case is devoid of any evidence supporting SCMC's proposal to establish a separate budget for O&E activities related to retail access. The recent Commission Order[25] cited by SCMC (SCMC IB, p. 7) appears to direct just the opposite, and precisely what Con Edison proposes. In relevant part, the Order states that "[u]tilities are also required to continue to provide objective outreach and education (O&E) information on the availability of retail access. Expenditures on the dissemination of such objective information would fall within the ambit of usual utility O&E budgets for customer education purposes" (SCMC IB, p. 7).[26] SCMC's proposal should therefore be rejected.

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[25] Case 07-M-0458, Proceeding on Motion of the Commission - Retail Access, Order Determining Future of Retail Access Programs (issued October 27, 2008), p. 13.

[26] Case 07-M-0458, Proceeding on Motion of the Commission to Review Policies and Practices Intended to Foster the Development of Competitive Retail Energy Markets, Order Determining Future of Retail Access Programs, (issued October 27, 2008), p. 13.

F. Changes to Encourage CHP/DG/Solar

NYC, NYECC and Pace proposed that the Company receive incentives and/or penalties related to the interconnection of distributed generation, adopt practices that are alleged to make the interconnection process easier for customers, and/or adopt specific distributed generation reporting requirements (Exh. 365, pp. 19-24; Exh. 447, pp. 24-31; Tr. 4597-4599). The Company rejected the parties' proposals because none of these parties alleged nor provided any evidence to support an instance where the Company failed to work cooperatively with a customer seeking to install distributed generation that would operate in parallel with the Company's distribution system (Tr. 4240). Con Edison correctly noted that the Commission has a pending proceeding to address changes needed to the Commission's Standard Interconnection Requirements (SIR).[27]

Staff would agree that any changes a party wishes to recommend be addressed in that proceeding, not the instant rate case, for the sake of uniformity.

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[27] Case 08-E-1018, In the Matter of the Rates, Charges, Rules, and Regulations Related to the Interconnection and Operation of Customer-Owned Generation.

G. Outreach & Education reporting

Staff proposed that Con Edison submit its O&E plan prior to implementation for review and refinement in a collaborative process with Staff and other parties (Tr. 4705). Under cross examination, Con Edison's Public and Customer Information Panel acknowledged that the Company files O&E plans with Staff twice annually, and did not dispute that such biannual filings should continue (Tr. 1324). The Public and Customer Information Panel also acknowledged that its plans incorporate dialogue with Staff, as well as input from other agencies (Tr. 1325).

In brief, Con Edison argued that Staff's proposal is not workable because it requires a consultation process during the period the Company needs to be involved in preparing for its activities (CE IB, p. 521). There appears to be no disagreement between Staff and Con Edison regarding the filing of O&E plans; there appears to be some confusion regarding when collaboration with other parties should take place. Staff agrees with Con Edison that collaboration with other parties would be most productive during the development of its plan, not after the plan is filed and the Company is preparing for implementation.

On the other hand, filing its plan in advance is meaningless if there is no opportunity for Staff to provide

a careful review, to discuss any concerns, or to suggest changes. Staff did not propose that the Company's O&E plan should be submitted for formal Commission approval, nor did it suggest that any modifications to the Plan would require formal review. Rather, future plan development should, as it had in the past, reflect interactions between Con Edison and Staff, and reflect Staff's input, as well as that of other parties.

CONCLUSION

For the reasons stated herein, and in Staff's testimony and its Initial Brief, Staff's recommendations should be adopted.

Respectfully submitted,

Steven J. Kramer

David R. VanOrt

Dated: December 8, 2008