

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

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**Proceeding on Motion of the Commission to  
Implement Transmission Planning Pursuant  
to the Accelerated Renewable Energy Growth  
and Community Benefit Act**

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**Case 20-E-0197**

**COMMENTS OF THE CITY OF NEW YORK**

Dated: January 19, 2021

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**PRELIMINARY STATEMENT**

In enacting the Climate Leadership and Community Protection Act (“CLCPA”), the State Legislature set the State of New York on a bold path to decarbonization. Achieving that goal will require fundamental changes to the electric system, including expansion of electric transmission and distribution infrastructure to connect renewable resources to load and continuously provide safe and adequate service. While achievement of the CLCPA goals will have an attendant cost, care is needed to minimize cost impacts on customers, including most importantly, the approximately 500,000 New York City households who are already energy cost burdened today.<sup>1</sup> As the Commission has held, the infrastructure projects selected must be cost-effective,<sup>2</sup> and they should be the most technically meritorious options.

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<sup>1</sup> See Case 14-M-0565, Proceeding on Motion of the Commission to Examine Programs to Address Energy Affordability for Low Income Utility Customers, Petition of the City of New York to Re-Examine Statewide Utility Low Income Program Discounts (filed January 31, 2020). The City of New York (“City”) conducted an energy cost burden study to assess the effectiveness of the utility low income discount levels in reducing low income families’ energy cost burdens to the level established by the Public Service Commission (“Commission”) – 6% of pre-tax income. The study demonstrated that about 500,000 households, or more than one million New Yorkers, have utility costs that exceed 6% of their income.

<sup>2</sup> Case 20-E-0197, Proceeding on Motion of the Commission to Implement Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act. Order on Transmission Planning Pursuant to the Accelerated Renewable Energy Growth and Community Benefit Act (issued May 14, 2020) (“May 14 Order”).

The City notes that there are helpful and useful aspects of the utilities' report on upgrades to their local transmission and distribution systems,<sup>3</sup> such as the proposal to engage in joint research and development efforts, which the City supports, while offering some recommendations for further improvement. Other aspects of the proposals are conceptually a good start, but do not offer sufficient detail to provide a reasonable evaluation of them, especially from a cost or technical perspective. There is very little detail as to how cost estimates were developed for these project concepts, what types of alternatives were evaluated, and how it was determined that the proposed projects are the most technically meritorious and cost-effective solutions.<sup>4</sup> A few issues, such as cost containment, have not been developed at all.

For issues that are not reasonably developed, or not developed at all, the Commission should conduct additional process (*e.g.*, technical conferences, stakeholder forums, directives for supplemental utility filings). Given the potential magnitude of the infrastructure expenditures, it is imperative that the Commission conduct a thorough assessment of the proposed projects and possible alternatives, or combinations of alternatives, before making any decisions. Because of the limited explanations and justifications for Con Edison's proposals, which are the focus of the City's comments, the absence of cost information for each proposed project, and the lack of a legitimate basis for the request, the Commission should not grant Con Edison's request for pre-approval of cost recovery for any of its projects.

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<sup>3</sup> Case 20-E-0197, *supra*, Utility Transmission and Distribution Investment Working Group Report (filed November 2, 2020) ("T&D Report").

<sup>4</sup> Most of the infrastructure projects proposed by Consolidated Edison Company of New York, Inc. ("Con Edison") fall in the latter category.

## COMMENTS<sup>5</sup>

In general, the City supports the targeted expansion of the Zone J transmission system to connect renewable resources to load, reduce congestion, and minimize curtailments of renewable resources. The existing system was constructed largely between the 1950s to the 1980s based on the locations of the then-existing generating facilities and then-existing load centers. Over time, the distribution of load across the State has changed. More significantly, generating facility locations have changed as the portfolio shifts from reliance on large deliveries of fossil fuels and large quantities of water for cooling to areas with favorable climatic conditions, such as steady winds and minimal cloud coverage. New transmission is needed from these production areas to load centers. Separately, customers' energy needs are changing and are expected to continue to increase over time with increasing use of electric vehicles, heat pumps, and broader electrification of heating and cooling. The utilities' distribution systems need to keep pace with the changing and growing demand for electricity.

### **POINT I**

#### **THE T&D REPORT DOES NOT FULLY ADDRESS THE ITEMS SET FORTH IN THE MAY 14 ORDER**

In the May 14 Order, the Commission noted that the Accelerated Renewable Energy Growth and Community Benefit Act (“Accelerated Renewables Act”)<sup>6</sup> required it to conduct a “comprehensive study” to identify transmission and distribution infrastructure improvements

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<sup>5</sup> The City offers comments on portions of Parts 1 and 3 and Sections I and III of Part 2 of the T&D Report (pertaining to Con Edison's plans). The City offers no comments on the plans advanced by the other utilities, and its silence on those plans and on others aspects of Parts 1 and 3 should not be interpreted as concurrence with or opposition to those issues or proposals.

<sup>6</sup> Part JJJ of Chapter 58 of the Laws of 2020 of New York.

“that are necessary or appropriate to facilitate the timely achievement of the CLCPA targets.”<sup>7</sup>

The Commission explained that it would satisfy this obligation by: (i) identifying a “strong portfolio” of infrastructure projects that would foster the development of renewable resources and delivery of renewable energy to customers consistent with the CLCPA; (ii) evaluating and prioritizing the proposed projects, “while preserving the obligation of the State’s utilities to ensure safe, reliable, and cost-effective service;” (iii) reexamining and potentially modifying cost recovery and cost containment mechanisms; and (iv) considering ways to employ new technologies.<sup>8</sup>

The Commission also directed the utilities to provide a proposal for, among other things “[a] transparent planning process ... that will identify additional projects on the distribution and local transmission systems that support achievement of CLCPA goals; [and] [a]n approach to account for CLCPA benefits in the utilities’ planning and investment criteria.”<sup>9</sup> Finally, in discussing potential alternative approaches to cost recovery, the Commission stated “we anticipate that the utilities will have to define the benefits of such a project in a way that is fair and **objectively quantifiable**, and then develop mechanisms for recovering costs from the identified beneficiaries.”<sup>10</sup>

The City agrees that it is important to move forward expeditiously with infrastructure projects needed to achieve the CLCPA’s goals. However, as the Commission explained in the May 14 Order, there first must be a proper assessment of what projects are most appropriate and most cost-effective. There also must be transparency and the ability to understand and objectively

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<sup>7</sup> May 14 Order at 2-3, quoting Section 7(2) of the Accelerated Renewables Act.

<sup>8</sup> *Id.* at 4.

<sup>9</sup> *Id.* at 7.

<sup>10</sup> *Id.* at 9 [emphasis added].

quantify the benefits of the utilities' proposed projects. While the T&D Report is a good start, it does not satisfy these requirements and does not provide the complete set of information the Commission determined is needed. Particularly in New York City for Con Edison's proposed infrastructure projects, transparency is needed to evaluate and objectively quantify the benefits of individual projects, but project details and costs were not provided.

The Accelerated Renewables Act and the May 14 Order envisioned that comprehensive utility infrastructure investment plans would be developed. The T&D Report provides a starting point for the development of comprehensive plans, but it does not fulfill the complete requirements or expectations set forth in the May 14 Order. New technologies and other innovations are advancing at a rapid pace. In determining how best to proceed, the utilities should give due consideration to all available technologies and, as appropriate, combinations of technologies.

Accordingly, the City respectfully urges the Commission to conduct further process and develop a proper record on the merits, benefits, costs, and cost-effectiveness of the utilities' proposed projects, their ability to facilitate achievement of the CLCPA goals, and assessment of cost-effective possible alternative methods of achieving the CLCPA goals before rendering any decisions in this proceeding.

## **POINT II**

### **THE COST ALLOCATION AND COST RECOVERY APPROACHES SELECTED SHOULD MAINTAIN COMMISSION CONTROL**

The utilities propose four approaches to cost allocation and cost recovery.<sup>11</sup> In doing so, they indicate that three of those approaches could lead to Federal Energy Regulatory Commission ("FERC") jurisdiction over the utilities' capital plans. Because it cannot be predicted what the

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<sup>11</sup> T&D Report, Part 1, Section V.

policies of future federal administrations will be, the State should not take the risk that a future administration will institute policies that are inconsistent with the CLCPA or restrict the extent to which the utilities should undertake capital projects that are intended to achieve State public policies. Accordingly, the City recommends that the Commission consider one or more cost recovery approaches that remain solely or predominantly within its own jurisdiction. Inasmuch as the utilities offer only one approach that does so, the Commission should engage in additional process to solicit and develop alternative mechanisms that would preserve Commission jurisdiction while allowing for equitable allocations of costs among all of the State's utilities and customers.

To be clear, the City anticipates that the energy policies established by the Biden Administration will be generally aligned with those of New York State, and the City looks forward to advancing climate and clean energy priorities alongside the Biden Administration. The City fully expects that there will be a much better relationship between the Commission and the FERC for at least the next four years, and that the FERC will not actively seek to undermine State policies. However, achievement of the CLCPA goals will take continuous efforts for the next two decades. The past four years of FERC decision-making amply demonstrate why the State should retain full control over implementation of its policies.

Moreover, as noted in the T&D Report, the Voluntary Agreement and Renewable Generator Sponsorship approaches will be challenging to implement and their viability is not certain (*e.g.*, as noted, the Long Island Power Authority (“LIPA”) could not participate in voluntary agreements with the utilities). As for the New York State Energy Research and Development Authority (“NYSERDA”) Payment approach, NYSERDA already has a sizable and growing portfolio of responsibilities. Adding this component, which could be large and complex,

could detract NYSERDA from its other efforts. Even if NYSERDA has the capacity to take on this responsibility, the T&D Report indicates that this structure would invoke FERC jurisdiction, although no basis for this conclusion is provided. It is not clear why a central funding mechanism would fall under the control of the FERC.

Another important consideration is that under the NYSERDA Payment and Renewable Generator Sponsorship approaches, and arguably under the Voluntary Agreement approach, there is either no or a very limited ability of consumers and other stakeholders to provide input.<sup>12</sup> Because customers are responsible for all of the prudently-incurred costs, it is imperative that they have a full opportunity to provide input before any decisions are made. Indeed, the ratemaking construct in New York is founded on the constitutional principle of due process – notice and a meaningful opportunity to be heard.<sup>13</sup>

Finally, it is unclear what specific benefits the Renewable Generator Sponsorship approach provides. The T&D Report suggests that costs would be shifted to generators and locational pricing signals would be created.<sup>14</sup> However, these suggestions appear to ignore the fact that new renewable resource projects in New York receive subsidies via the Clean Energy Standard for essentially the difference between their costs and market revenues. If transmission and distribution costs are imposed on generators, their costs – and their need for subsidies – will increase. Since customers bears the cost of the subsidies, they will bear the costs in a similar manner as if they

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<sup>12</sup> Figure 11 of the T&D Report indicates that customers and other rate case intervenors would be a key stakeholder group under the Voluntary Agreement approach. However, the Report does not explain how customers would have a material role when all details would be negotiated, presumably in private, among the utilities.

<sup>13</sup> See generally State Administrative Procedure Act Article 2; *Mathews v. Eldridge*, 424 U.S. 319, 348-349 (1976).

<sup>14</sup> T&D Report at 56.



were charged directly by the utilities. The manner is similar, but not the same, because the generators may seek higher returns because of increased risk as compared to the utilities (which have captive ratepayers). The higher returns could translate to higher costs, higher subsidies, and larger burdens for customers.

As to the locational-pricing contention, it is important to recognize that local transmission and distribution remain monopolistic businesses. While there may be some, very limited competition for non-wires alternatives, there is no competition for traditional infrastructure. The concept of locational pricing makes sense where competition and the opportunity for customers to reduce their costs exist. Here, local transmission and distribution costs remain socialized among all of a utility's customers, and the utilities offer no evidence that this cost allocation/cost recovery approach will lower traditional infrastructure costs to customers.

For all of the foregoing reasons, the Commission should not, at this time, accept any of the alternatives offered by the utilities. Rather, the City recommends that the Commission establish additional steps, including stakeholder forums or technical conferences, to explore ideas that stakeholders other than the utilities may have regarding alternative approaches. Up to this point, the City is not aware of any external outreach that the utilities engaged in to develop their proposals, and there has been no opportunity to explore any other alternative cost recovery and cost allocation approaches. One or more meetings at which concepts could be presented, explained, and discussed should be an integral step in developing viable alternate approaches for the Commission to consider than a round of written comments.

**POINT III**

**THE COMMISSION SHOULD REQUIRE COST  
CONTAINMENT FOR LARGE UTILITY TRANSMISSION  
PROJECTS**

With respect to cost containment, the May 14 Order was clear that existing mechanisms “must be reexamined,” not simply continued without change.<sup>15</sup> The T&D Report does not assist with this contemplated reexamination.

The City respectfully submits that one of the biggest challenges of the current regulatory paradigm is the lack of cost containment, however, the 280-page T&D Report only included one paragraph on this topic. Utilities have long argued – successfully – that they should be permitted full recovery of all prudently-incurred costs and expenses. Of course, the utilities are not guaranteed recovery of all of their costs. Rather, they have only a right to “a reasonable opportunity to earn a fair return on [their] investment[s].”<sup>16</sup> Nevertheless, because the utilities need only establish that their costs were prudently-incurred, and because their returns are directly correlated to the amount they spend, they may have less motivation to be efficient in, or minimize, their capital spending.

In contrast, the NYISO’s competitive solicitation process for public policy-based transmission projects demonstrates the benefits of competition for constructing transmission projects. For the two projects for which there were competitive solicitations, non-incumbent utility developers were selected in whole or in part because their projects were deemed superior and more cost-effective.

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<sup>15</sup> May 14 Order at 4.

<sup>16</sup> *Consol. Ed. Co. of N.Y., Inc. v. Pub. Serv. Commn.*, 53 A.D.2d 131,132 (3d Dept. 1976), *lv. denied* 40 N.Y.2d 803 (1976).

For transmission projects needed to facilitate achievement of CLCPA goals – both bulk system and local projects, the Commission should consider ways to impose cost containment on the utilities. One option would be to require utilities, through an independent third party, to conduct competitive solicitations for transmission projects (similar to the NYISO’s competitive solicitation process for public policy-based projects). If the utilities are forced to compete to construct new transmission infrastructure, they are likely to find ways to reduce their project costs.

A second option, which is similar to the cost containment provisions included in formula rates for many of the non-incumbent transmission developers operating in New York, would be to prohibit or limit the ability of the utilities to earn a return on their cost overruns.<sup>17</sup> Importantly, the Commission, itself, prescribed this type of cost containment for the AC Transmission Project.<sup>18</sup> There is no legitimate reason not to apply similar requirements to major utility transmission projects.

The May 14 Order required a reexamination of cost containment mechanisms. The T&D Report reinforces the need for this reexamination. The City respectfully submits that the Commission should expressly solicit ideas and proposals for cost containment mechanisms from interested parties, evaluate the proposals, and adopt one or more mechanisms that will effectively incentivize utilities to proceed more diligently in controlling their costs for infrastructure projects.

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<sup>17</sup> See, e.g., *New York Transco, LLC*, 161 FERC ¶ 61,161 (2017); *NextEra Energy Transmission New York, Inc.*, 164 FERC ¶ 61,117 (2018).

<sup>18</sup> Cases 12-T-0502, *et al.*, Proceeding on Motion of the Commission to Examine Alternating Current Transmission Upgrades, Order Establishing Modified Procedures for Comparative Evaluation (issued December 16, 2014) at 43-45.

## POINT IV

### **THE COMMISSION SHOULD REQUIRE A FURTHER ANALYSIS OF AND NOT GRANT PRE-APPROVAL OF COST RECOVERY OF THE TRANSMISSION AND DISTRIBUTION PROJECTS PROPOSED BY CON EDISON**

In section III of Part 2 of the T&D Report, Con Edison proposes a set of transmission and distribution projects but offers few details and no project-specific costs for most of the projects (the exception relates to distribution projects that were included in the Company's 2019 rate case and for which no further action is needed). For the reasons set forth below, the Commission should deny the Company's request for pre-approval of the lump sum cost estimates for these projects.

#### A. More Information Is Needed Regarding The Proposed Phase 1 Transmission Projects

In the T&D Report, Con Edison offers some information regarding the nature and reason for short-term reliability needs in New York City, and its proposed solutions to those needs. The City does not dispute that the closure of the in-City peaking generating facilities will lead to reliability needs in certain load pockets within New York City. The City also agrees that Con Edison must take action to address these reliability needs. However, it is not clear that the Phase 1 projects proposed by the Company constitute the most appropriate and cost-effective option. The City's concern is based on the lack of discussion of alternatives considered by the Company and a lack of explanation or discussion as to why its proposals are superior to any alternative solution.

Moreover, it is unclear whether Con Edison considered solutions that include combinations of technologies within a portfolio approach (*e.g.*, traditional infrastructure, utility-side technologies, and customer-side solutions) as it did for the Brooklyn-Queens Demand Management program (where the Company has not yet been required to either expand a

transmission substation or add a distribution substation).<sup>19</sup> Given the substantial cost proposed here, the City submits that further scrutiny is needed before the Commission endorses the Company's proposed solution.

B. More Information Is Needed Regarding The Proposed Phase 2 Transmission Projects

In the T&D Report, Con Edison provides few details regarding its Phase 2 projects, offering that they would assist with the interconnection of offshore wind and unbottle upstate renewables but not explaining how the projects would do so. Also, the Company indicates that at least two of the Phase 2 proposals are conceptual only and require detailed engineering studies.<sup>20</sup>

Given the absence of technical analysis and cost information, the Commission has no basis to consider whether the proposals are cost-effective or appropriate. The Commission should instead direct Con Edison to make a filing setting forth complete descriptions of its proposed projects, analyses justifying the projects, and detailed cost information. Stakeholders should then be given an opportunity to review and comment on this filing.

C. More Information Is Needed Regarding The Proposed Distribution Projects

The Company proposes Phase 2 distribution projects with a lump sum cost of \$1.3 billion, but it does not provide details for each individual project. The Company acknowledges that the projects are subject to change based on market conditions and other factors.<sup>21</sup> Accordingly, the Commission should direct Con Edison to supplement the T&D Report with details on and

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<sup>19</sup> Case 14-E-0302, Petition of Consolidated Edison Company of New York, Inc. for Approval of Brooklyn/Queens Demand Management Program, Petition (filed July 15, 2014); BQDM Quarterly Expenditures & Program Report – Q4-2016 (filed February 28, 2017). There, the Company employed a portfolio of solutions including energy efficiency, voltage optimization, storage, distributed energy resources, load shifting, and traditional infrastructure upgrades.

<sup>20</sup> T&D Report at 111-112.

<sup>21</sup> *Id.* at 122.

supporting analysis of its Phase 2 plans so that a proper review of the proposed projects can take place.

D. The Reasonableness Of The Order Of Magnitude Cost Estimates For The Proposed Projects Has Not Been Demonstrated

In the T&D Report, Con Edison provided only “order of magnitude cost estimates” and only lump sum amounts for most of its Phase 1 and Phase 2 projects.<sup>22</sup> In total, these rough estimates amount to over \$7 billion.<sup>23</sup> The City is not aware of any previous instance in which the Commission approved cost recovery of that scale based on such limited information.

The City recognizes that the Commission can consider capital project proposals and requests for cost recovery outside of rate cases and noted in the May 14 Order that alternative approaches may be needed for these projects. Regardless, utilities have an obligation to justify their requests and provide adequate information to provide a record basis for the Commission to act. In the T&D Report, Con Edison has not presented information that would allow the Commission to determine that the costs are prudent, just, and reasonable.

E. There Is Extensive Precedent For Denying Con Edison’s Request For Pre-Approval

For many years, utilities, including Con Edison, have asked the Commission to pre-approve large expenses. The Commission has routinely denied such requests, and the Company offers no justification for deviating from this precedent.<sup>24</sup> Importantly, the Company has not asserted that

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<sup>22</sup> *Id.* at Figures 44, 45, 46, and 48. For the Phase 1 distribution projects included in the Company’s 2019 rate case, no further action is needed by the Commission.

<sup>23</sup> *Id.*

<sup>24</sup> *See, e.g.*, Case 90-E-0775, Consolidated Edison Company of New York, Inc., Long Island Lighting Company and Orange and Rockland Utilities, Inc. – Joint Petition for Approval of Long-Term Hydro Quebec Firm Power Purchase Contracts, Order Accepting Contracts for Filing and Denying Petition (issued December 10, 1990) at 6-9 (the Commission denied requests by Con Edison and other utilities for pre-approval of contracts to purchase power from Hydro Quebec, holding that utility management must determine in the first instance whether

pre-approval is needed for it to proceed with any of these projects.<sup>25</sup> The Commission has no legal obligation to pre-approve cost recovery in order for Con Edison to satisfy its statutory obligations.

For the foregoing reasons, the Commission should not entertain the Company's request for pre-approval of its proposed and potential infrastructure investments (potential in that it is not certain that the Company will proceed with all of the proposed projects).

## POINT V

### A JOINT RESEARCH AND DEVELOPMENT EFFORT IS APPROPRIATE

In Part 3 of the T&D Report, the utilities discuss a series of potential technological advances and plans to develop a joint research and development ("R&D") program to further explore some of these technologies. In general, the City supports the concept of a joint R&D program because it should better leverage the knowledge and expertise of all of the utilities, avoid duplication of effort, and be more cost-effective. However, there are some gaps in the proposal as presented. The City offers the following comments and recommendations to identify and fill these gaps.

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its business decisions are prudent, and the Commission's role is later to review the utility's decisions and make its own determination as to their prudence); Cases 07-E-1507, *et al.*, Proceeding on Motion of the Commission to Establish a Long-Range Electric Resource Plan and Infrastructure Planning Process, Order Initiating Electricity Reliability and Infrastructure Planning (issued December 24, 2007) at 26 (the Commission declined to pre-approve contracts before their details were known, holding that it must first review the relevant facts and circumstances).

<sup>25</sup> In a related petition, Con Edison acknowledged that it has a statutory obligation to undertake the Phase 1 projects. *See* Case 19-E-0065, Consolidated Edison Company of New York, Inc. – Electric Rates, Petition of Consolidated Edison Company of New York, Inc. for Approval to Recover Costs of Certain Transmission Reliability and Clean Energy Projects (filed December 30, 2020) at 3.

1. The Scope Of The Working Group Should Be Expanded

As proposed, a joint R&D advisory working group would be formed that consists of the utilities, NYISO, LIPA, NYISO, and NYSERDA. However, there are several groups whose absence from this list is notable. First, many, if not all, of the technologies listed in the T&D Report are common among transmission owners and not unique to New York. Therefore, the New York utilities' R&D efforts should be integrated with those conducted by other transmission owners and industry trade groups. Indeed, the utilities note that they engaged the Electric Power Research Institute ("EPRI") to compile the list of technological advances to be considered. It may be helpful for EPRI and potentially other relevant organizations to continue to be active participants in the R&D working group to ensure that the New York utilities are not duplicating efforts being undertaken elsewhere and to provide a broader perspective on the issues.

Second, the technological advances described in the T&D Report apply generally to transmission at all voltage levels; they are not limited to local transmission (*i.e.*, lower voltages). New York now has at least two new transmission providers – NextEra Energy and LS Power – who should be invited to participate in the R&D working group. These are large companies with much broad national and international experience, and they could bring a wealth of knowledge and different perspectives that could be very valuable. Because the technologies could apply equally to their transmission facilities, they may be interested in participating, and they should be given the opportunity to do so.

Third, at the beginning of Part 3 of the T&D Report, the utilities note the existence of other R&D efforts underway on the same topics, some of which are occurring within New York State. The utilities should be leveraging the expertise within the State as much as possible for the same reasons stated above – avoiding duplication of effort, obtaining different perspectives, and



maximizing cost efficiencies. The entities involved in similar R&D activities also should be invited to join the R&D working group. Examples of such entities include: (i) Brookhaven National Laboratory; (ii) Advanced Energy Research and Technology Center at Stony Brook University; (iii) Center for Ultra-wide-area Resilient Electric Energy Transmission Networks at Rensselaer Polytechnic Institute; and (iv) Smart Energy Research Group at New York University. The utilities should develop a complete list of the academic and research institutions actively engaged in research on electric transmission technology issues that are pertinent to the utilities' transmission systems and invite them to collaborate on the joint utility R&D projects, as appropriate. Fourth, the utilities should explore some sort of participation by or relationship with the Department of Energy for the same reasons set forth above.

## 2. Utility Ratepayers Should Benefit From R&D Achievements

In the event the utilities' R&D efforts are successful, it is likely that the products(s) and/or process(es) developed will have applications for utilities beyond New York. Because customers will be funding the R&D efforts, the Commission should require that the utilities seek appropriate protections for their projects (*e.g.*, patent, trademark, copyright) and retain the rights to license or sell the technology.

Moreover, the majority of any revenues received by the utilities should inure to the benefit of customers. In recognition of the Commission's preference for incentive-based approaches, it may be reasonable for the shareholders to receive some percentage of the revenues. However, the shareholders should receive only a percentage of the profits (*i.e.*, revenues collected after all R&D costs have been recovered). That is, it would not be fair or equitable for shareholders to receive a portion of the benefits while customers bear all of the costs. Limiting shareholder incentives to net profits ensures that an appropriate balance is struck between customers and shareholders.

Further, the shareholder incentive should be limited in recognition that customers bear all of the risk of R&D projects not being successful. For projects with small revenue potential, the incentive could be fixed at no more than 15% of the net profits. For projects with larger or uncertain revenue potential, it may be more appropriate to set a sliding scale to encourage the utilities to maximize the revenues. However, there should remain a cap on the scale such that the majority of any profits inure to customers. The City recommends that the cap never exceed 25% of the net profits.

### 3. Funding Considerations

The utilities propose that all joint projects be funded through NYSERDA, and that the Commission should provide incremental funding to NYSERDA for this effort.<sup>26</sup> While the City has no objection to NYSERDA serving as the coordinator for the joint research efforts, the City disagrees with the proposal for incremental funding for this effort. The utilities are engaged in R&D efforts on most of the proposed technologies,<sup>27</sup> meaning that they already receive ratepayer funding for these efforts.<sup>28</sup>

The existing R&D funding should be reallocated in whole or in part, as appropriate, to the joint projects. The City anticipates that contributions from all of the utilities, plus LIPA and the New York Power Authority (“NYPA”) and possibly other transmission owners operating in New York, should provide sufficient funding for the joint efforts. Incremental funding should not be considered at this time, and the Commission should entertain such a request only once the joint

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<sup>26</sup> T&D Report at 268.

<sup>27</sup> *Id.* at 264-265.

<sup>28</sup> For example, in its last rate cases, Con Edison sought to include more than \$11 million in R&D spending each year in its revenue requirements. *See* Cases 19-E-0065, *et al.*, *supra*, Pre-Filed Direct Testimony of Shared Services Panel, Exhibit\_\_(SSP-2), p. 3.

efforts have begun to produce positive results and a strong justification for increased funding is presented (and subject to scrutiny as would occur in a rate case setting).

Additionally, as proposed, it appears that the utilities want broad discretion as to the manner and extent of their participation in the joint R&D effort.<sup>29</sup> For this effort to be successful and effective, there should be full support from all of the utilities regarding projects that would have benefits throughout the State. To avoid duplication and unnecessary expenditures, the Commission should prohibit the individual utilities from engaging in discrete R&D projects that are the same or similar to joint projects, unless there are potentially unique, extenuating circumstances.

### **CONCLUSION**

The utilities' T&D Report provides a first step toward development of a comprehensive plan for transmission and distribution investments needed to facilitate achievement of the CLCPA goals. However, the T&D Report is itself insufficient to constitute a comprehensive plan. The City respectfully recommends that the Commission institute additional process as discussed herein to clarify, develop, evaluate, and refine the proposals in the T&D Report. On the issue of cost recovery, the Commission should deny Con Edison's requests for pre-approval as the T&D Report does not provide sufficient information to provide a rational basis for such a decision. Finally, the

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<sup>29</sup> T&D Report at 268.

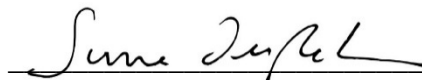
Commission should institute the process discussed herein to consider mechanisms for cost containment to help control the costs of the additional infrastructure that will be needed.

Respectfully submitted,



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