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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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CASE No. 16-E-0060 - 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 No. 16-G-0061 - Proceeding on Motion of the
Commission as to the Rates, Charges, Rules and
Regulations of Consolidated Edison Company of New
York, Inc. for Gas Service

CASE No. 15-E-0050 - 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 No. 16-E-0196 - Tariff filing by Consolidated
Edison Company of New York, Inc. to revise General
Rule 20 Standby Service contained in its electric
tariff schedules, P.S.C. Nos. 10 and 12

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Evidentiary Hearing
90 Church Street, 4th Floor
New York, New York 10007

November 3, 2016
9:30 a.m.

PRESIDING:

DAKIN D. LECAKES, ESQ.
Administrative Law Judge

BEN WILES, ESQ.
Administrative Law Judge

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2 A P P E A R A N C E S:

3 (In alphabetic order)

4 ARTHUR W. ADELBERG, ESQ.

5 WILLARD R. BURNS, ESQ.

6 AMANDA DE VITO TRINSEY, ESQ.

7 GEORGE DIAMANTOPOULOS, ESQ.

8 JOHN L. FAVREAU, ESQ.

9 MARY KRAYESKE, ESQ.

10 KEVIN M. LANG, ESQ.

11 SAM M. LANIADO, ESQ.

12 GARY D. LEVENSON, ESQ.

13 KATHLEEN O'HARE, ESQ.

14 CHINYERE A. OSUALA, ESQ.

15 ALAN M. POLLACK, ESQ.

16 MARC RICHTER, ESQ.

17 ELIZABETH B. STEIN, ESQ.

18 MICHAEL W. ZIMMERMAN, ESQ.

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2 ALJ LECAKES: Yesterday, when we
3 adjourned, we had the staff electric and gas
4 rates panel. We put their testimony, their
5 direct testimony, into the record and we turned
6 them over for cross-examination. Before we
7 start that cross-examination, I would just like
8 the panel members to introduce themselves again
9 and spell their last names.

10 MS. MILLER: Johanna Miller,
11 M-I-L-L-E-R.

12 MS. SORRENTINO: Mary Ann Sorrentino,
13 S-O-R-R-E-N-T-I-N-O.

14 MS. RANDT: Liliya, L-I-L-I-Y-A, last
15 name is Randt, R-A-N-D-T.

16 ALJ LECAKES: All I have is UIU for
17 cross-examination; is that correct? Is there
18 any other party at this time, without having
19 heard anything else, that plans on
20 cross-examining this panel?

21 (No response.)

22 ALJ LECAKES: Okay.

23 Mr. Zimmerman, you may proceed.

24 MR. ZIMMERMAN: Thank you. Good
25 morning, panel.

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PANEL MEMBERS: Good morning.

MR. ZIMMERMAN: I'd like to start by directing your attention to page 19, your testimony on the joint proposal, specifically the sentence beginning at line four reading: "No, we do not agree that distribution main costs should be classified as entirely demand-related." Do you see that passage?

MS. MILLER: Yeah.

MR. ZIMMERMAN: Does the NARUC Gas Distribution Manual recognize that distribution mains may be allocated on a 100 percent demand basis?

MS. MILLER: Can you point me to where you are in the manual?

MR. ZIMMERMAN: Sure. And I point out that the manual is included as an exhibit in last testimony.

Page 23, beginning on the third line of that page.

MS. MILLER: On page 22, it says a portion of the costs associated with the distribution system may be included as the cost.

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2 MR. ZIMMERMAN: Can you read what it
3 says on page 23, beginning on the third line of
4 that page, the sentence beginning, "The contra
5 argument."

6 MS. MILLER: Yes, I can.

7 "The contra argument, to the
8 inclusion of certain distribution costs as
9 customer costs, is that mains and services are
10 installed to serve demands of the consumers and
11 should be allocated to that function."

12 MR. ZIMMERMAN: Please continue.

13 MR. FAVREAU: Your Honor, I object.

14 ALJ LECAKES: I'm going to let her
15 read it anyway. It's essential and central to
16 the argument the UIU is making.

17 MS. MILLER: "Under this basic system
18 theory only those facilities such as meters,
19 regulators and service taps are considered to
20 be customer-related, as they vary directly with
21 the number of customers on the system."

22 MR. ZIMMERMAN: Thank you.

23 Have any members of this panel ever
24 advocacy for a 100 percent demand related
25 treatment of gas distribution mains in prior

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cases?

MS. MILLER: Yes.

MR. ZIMMERMAN: Which case was that, Ms. Miller?

MS. MILLER: In the Orange and Rockland rate case, as well as Central Hudson.

MR. ZIMMERMAN: Thank you.

Now, the company's gas embedded cost of service facility used a two-inch size of steel main in its minimum system, correct?

MS. SORRENTINO: Yes.

MR. ZIMMERMAN: Now, is it true that main that is two inches or smaller diameter still has a certain load of carrying capability?

MS. MILLER: Main with any diameter greater than zero could serve a load.

MR. ZIMMERMAN: Thank you.

I'm holding here a publicly filed document, again, filed in the Corning Gas Rates case, 16-G-0369, entitled Prepared Testimony of the Staff Gas Rates Panel. This document was filed on DMM on Friday, six days ago. I'd like to read a passage and ask the panel a question

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2 on it. We have copies for the panel.

3 ALJ LECAKES: You may approach.

4 MR. LANG: Is this being offered as
5 an exhibit?

6 ALJ LECAKES: No, it's a publicly
7 available document. As I understand,
8 Mr. Zimmerman just identified the case number
9 and it's been filed on DMM as of the last week,
10 and all he's planning on doing is looking for
11 potential contradictions and staff's position
12 in that case versus this case.

13 MR. LANG: But it's still an exhibit,
14 isn't it, your Honor, even though it's publicly
15 available?

16 ALJ LECAKES: No, it doesn't need to
17 be an exhibit. We could mark it if you'd like.

18 MR. LANG: I'm just concerned to ask
19 them about testimony that hasn't actually been
20 adopted, simply filed.

21 ALJ LECAKES: Well, it has the same
22 weight and meaning that an exhibit from the
23 pre-filed litigated case in this matter has.
24 It doesn't have the same weight that it would
25 have for the sworn testimony that goes directly

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2 to the joint proposal in this case, but we're
3 all aware of that.

4 MR. FAVREAU: I also know, your
5 Honor, that none of these witness on this panel
6 are part of this.

7 ALJ LECAKES: So noted. Thank you,
8 Mr. Favreau.

9 MR. ZIMMERMAN: Please turn to
10 page 22 of that document.

11 ALJ LECAKES: I'm sorry,
12 Mr. Zimmerman, I have the case number, I didn't
13 get a copy of the testimony. What is the
14 utility?

15 MR. ZIMMERMAN: Corning.

16 ALJ LECAKES: Corning. Thank you.

17 MS. MILLER: What page?

18 MR. ZIMMERMAN: Page 22. The passage
19 beginning on line two reading, "First, as
20 explained in the NARUC Utility Cost Allocation
21 Manual, main that is two inches or smaller
22 diameter still has a certain load carrying
23 capability. Thus, the entire cost should not
24 be classified as customer costs."

25 Was the panel aware the staff filed

1
2 testimony on Friday?

3 MS. SORRENTINO: Yes.

4 MR. ZIMMERMAN: Thank you.

5 Does this panel believe that staff's
6 position in the Corning gas rates case is
7 unreasonable?

8 MR. DIAMANTOPOULOS: Objection, your
9 Honor. This panel is not involved in that rate
10 case.

11 ALJ LECAKES: Right, but the question
12 went to an evaluation of whether the staff
13 position, which is their colleagues, as laid
14 out in a similar gas utility case, is
15 unreasonable.

16 MS. SORRENTINO: Are you referring to
17 just the sentence that you read earlier?

18 MR. ZIMMERMAN: Yes.

19 MS. SORRENTINO: "Thus, the entire
20 cost should not be classified as customer
21 cost."

22 MR. ZIMMERMAN: That's correct.

23 MS. SORRENTINO: Yes.

24 MR. ZIMMERMAN: You believe that that
25 is unreasonable?

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2 MS. SORRENTINO: No, I believe it's
3 reasonable.

4 MR. ZIMMERMAN: Okay, thank you.

5 Is it the panel's understanding that
6 advanced metering infrastructure, once
7 implemented in the company service territory,
8 will yield energy and/or capacity savings?

9 MS. SORRENTINO: Can you please
10 repeat the question.

11 MR. ZIMMERMAN: Sure. Is it the
12 panel understanding that AMI, once implemented
13 in the company's service territory, will yield
14 energy savings and/or capacity savings?

15 MS. SORRENTINO: I would say
16 anticipated to.

17 MR. ZIMMERMAN: Anticipated to.

18 So is it staff's understanding that
19 AMI, when implemented, will allow the company
20 or is anticipated to allow the company to
21 purchase less energy commodity than it would
22 have to absent the implementation of AMI?

23 MR. FAVREAU: It calls for
24 speculation, doesn't it, your Honor?

25 MS. SORRENTINO: It depends on what

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2 studies are done and the results of the studies
3 with operating under CVO once AMI is
4 implemented; I can't tell that right now.

5 MR. ZIMMERMAN: Well, the AMI
6 business plan was filed in one of the cases
7 under this docket number, 15-E-0050. Parties
8 commented on, Commission approved it and this
9 panel spoke to the subjects of AMI in this
10 testimony. So are you saying that you're not
11 aware if AMI is anticipated to allow the
12 company to purchase less energy?

13 MS. SORRENTINO: I'm aware that AMI
14 is anticipated to allow the company to
15 implement CVO.

16 MR. ZIMMERMAN: Is CVO anticipated to
17 allow the company to purchase less energy
18 commodity than it would absent CVO?

19 MS. SORRENTINO: Yes.

20 MR. ZIMMERMAN: And the savings of
21 these reduced purchases of commodity, those
22 savings would flow through to customers,
23 correct?

24 MS. SORRENTINO: Yes.

25 MR. ZIMMERMAN: Is the panel aware of

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2 any other aspects of AMI that may allow the
3 company to purchase less energy commodity?

4 MS. SORRENTINO: I believe there's
5 other areas identified that may allow them to
6 purchase less energy commodity in that business
7 plan.

8 MR. ZIMMERMAN: Thank you.

9 To the panel's knowledge, has the
10 Department of Public Service staff ever
11 proposed using the benefits of a utility
12 investment such as energy or capacity savings
13 as a guide for recovering the costs of
14 investment?

15 MS. SORRENTINO: Ever?

16 MR. ZIMMERMAN: To the best of your
17 knowledge.

18 MS. SORRENTINO: I'm not aware.

19 MR. ZIMMERMAN: I'm holding and I'd
20 like to ask the panel briefly about a passage
21 contained in a document entitled -- I'll give
22 you copies -- Staff Report and Recommendations
23 in the Value of Distributed Energy Resources
24 Proceeding, case 15-E-0751 filed October 27,
25 2016, 1 week ago.

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2 ALJ LECAKES: Mr. Zimmerman, how many
3 documents like this are you going to --

4 MR. ZIMMERMAN: This is the last one.

5 ALJ LECAKES: Okay. Maybe it's
6 better, then, if we do mark the documents as
7 exhibits. I believe we left off at 312
8 yesterday, so let's mark the testimony,
9 prepared testimony, of the Staff Gas Rates
10 Panel in the matter of Corning Natural Gas
11 Corporation, case 16-G-0369, which is a 34-page
12 document with a cover sheet, as Exhibit 313.

13 Then the document that was just
14 handed out right now, case 15-E-0751, Staff
15 Report and Recommendations in the Value of
16 Distributed Energy Resources Proceeding, looks
17 like a 57-page written document with six or
18 so -- seven pages of appendices and a cover
19 page on that, and that will be Exhibit 314.

20 (Whereupon, Exhibit 313, prepared
21 testimony of the Staff Gas Rates Panel in
22 the matter of Corning Natural Gas
23 Corporation, case 16-G-0369, is marked for
24 identification, as of this date.)

25 (Whereupon, Exhibit 314, Staff Report

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2 and Recommendations in the Value of
3 Distributed Energy Resources Proceeding,
4 case 15-E-0751, is marked for
5 identification, as of this date.)

6 ALJ LECAKES: Thank you. You may
7 proceed.

8 MR. ZIMMERMAN: Thank you.

9 So was panel aware that staff filed
10 this document on DMM on Thursday?

11 MS. SORRENTINO: We were just made
12 aware of that.

13 MR. ZIMMERMAN: I'd like to your turn
14 your attention to page 24.

15 MR. LANG: Objection, your Honor, I
16 believe Mr. Zimmerman needs to create some
17 foundation that witnesses are actually aware of
18 this before he starts asking them about it and
19 I don't believe he's done so.

20 ALJ LECAKES: Mr. Zimmerman, can you
21 find out any knowledge or involvement that the
22 panel members have had with either this
23 proceeding or at least this area of this topic
24 area.

25 MR. ZIMMERMAN: Is the panel familiar

1
2 generally with the value of the proceeding,
3 15-E-0751?

4 MS. SORRENTINO: Generally.

5 MR. ZIMMERMAN: Have any members of
6 the panel worked on issues in that proceeding?

7 MS. SORRENTINO: No.

8 MR. ZIMMERMAN: So have any members
9 of the panel seen this document before?

10 MS. SORRENTINO: No.

11 ALJ LECAKES: I will let
12 Mr. Zimmerman ask questions of the panel
13 members about this document considering it's a
14 staff-produced document. However, I will
15 seriously take into consideration that they're
16 seeing this document for the first time and may
17 not be familiar with these areas.

18 MR. ZIMMERMAN: Understood that there
19 are many people in the Department of Public
20 Service and not all have seen every document.
21 I understand that. I do not know that this
22 document doesn't list an author other than
23 Department of Public Service.

24 I just want to ask questions on a
25 couple of passages in here on page 24. Page

1
2 beginning section 2.3.3, Cost Allocation. I'll
3 gift panel a moment to take a look at the first
4 paragraph in this passage, given that it hasn't
5 had the opportunity to see this before.

6 The first passage I'd like to ask
7 about, the first two sentences: "As further
8 described below, a significant portion of the
9 compensated [sic] projects under the Phase
10 One tariff reflects direct, immediate, or
11 short-term utility savings in order to avoid
12 unnecessary reallocation of net revenue
13 requirement across customer classes. Recovery
14 for that compensation should come from the same
15 group of customers who benefit from the
16 savings."

17 Do the panel see that passage?

18 MS. SORRENTINO: Yes.

19 MR. ZIMMERMAN: Does the passage
20 "Recovery for that compensation should come
21 from the same group of customers who benefit
22 from the savings" represent a reasonable
23 statement of policy?

24 MR. DIAMANTOPOULOS: Objection.

25 MR. FAVREAU: Objection.

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2 MR. ZIMMERMAN: In the panel's
3 opinion.

4 ALJ LECAKES: I agree, they're not --
5 first of all, they're not involved in this and
6 they're not policy makers for the Department.
7 You can ask whether they agree with the
8 statement or not, but to the phrase is that a
9 reasonable statement of policy, I think, goes
10 across their expertise.

11 MR. ZIMMERMAN: Okay.

12 MR. LANG: Is there a pending
13 question, your Honor?

14 MR. ZIMMERMAN: There is. I just see
15 the panel is discussing.

16 MS. KRAYESKE: I thought there was an
17 objection to the question.

18 ALJ LECAKES: No, he's waiting to ask
19 the question. He was letting the panel members
20 discuss among themselves before he asked.

21 MR. ZIMMERMAN: I'd like to move to
22 the first bullet point on that page, passage
23 reading:

24 "Compensation for energy and capacity
25 values will be recovered from the same

1
2 customers that benefit from reduced utility
3 purchases of energy and capacity."

4 Does the panel agree with that
5 statement?

6 MR. LANG: Again, your Honor, I would
7 raise an objection.

8 MS. SORRENTINO: Not knowing what the
9 Phase One projects are, we --

10 MR. LANG: I would raise an
11 objection, your Honor. This is a report that
12 relates to how we've going to value distribute
13 energy resources provided by third parties. It
14 is not a report that addresses the way that we
15 set rate cases or we do rate cases, how we set
16 revenue allocations of utility cost. It is not
17 relevant to the issues of how we set Con
18 Edison's utility cost for purposes of this rate
19 case. So there's no relevant reason to go into
20 this report for purposes of determining the
21 revenue allocation for Con Ed's electric and
22 gas cases.

23 ALJ LECAKES: Overruled. I think
24 there is some tangential relevance to setting
25 rates for utility. Although, I do understand

1
2 the City's point on the full relevance of this.

3 MR. ZIMMERMAN: Does the panel agree
4 with that statement?

5 MS. SORRENTINO: We can't agree or
6 disagree without knowing what the projects on
7 the tariff would be.

8 MR. ZIMMERMAN: I'd like to ask you
9 again, the panel agrees, does it not, that AMI
10 is anticipated to allow the utility to realize
11 energy and capacity savings, correct?

12 MS. KRAYESKE: Objection, your Honor.
13 That question was asked and answered.

14 ALJ LECAKES: It was asked and
15 answered, it was. And the answer was they did
16 agree with that statement.

17 MR. ZIMMERMAN: I have no additional
18 questions. Thank you.

19 ALJ LECAKES: One more time, does any
20 other party have any questions for this panel?

21 (No response.)

22 ALJ LECAKES: Okay, I do.

23 Panel members, one of the main
24 disputes, not the only one, but one of the main
25 disputes that UIU has is the use of specific

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2 infrastructure to establish or create the
3 minimum system. What guidance does the panel
4 use, or if you're aware of it, does the
5 company's panel or company's personnel use when
6 they decide what infrastructure should go into
7 designing that minimum system?

8 MS. SORRENTINO: So the answer would
9 be a little bit different for electric and gas.
10 Which are you referring to?

11 ALJ LECAKES: Actually, for both. If
12 you would start with electric.

13 MS. SORRENTINO: So I think that we
14 covered pretty well yesterday how the minimum
15 size components were determined. There's a
16 variety of approaches that were taken on the
17 primary distribution system of one single feet
18 or size of the spigot. On the secondary level
19 there's a memorandum of understanding on the
20 ten sizings that are going to be used, and for
21 the transformers there's been historic practice
22 to use the 25 and below reading.

23 ALJ LECAKES: When you say historic
24 practices, is that historic practice with this
25 particular company, with staff, or more

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2 generically with NARUC?

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MS. SORRENTINO: We think it's
4 particular to this company.

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ALJ LECAKES: Does the panel see any
6 need for complete conformity when designing a
7 minimum system across similarly situated
8 electric utilities or similarly situated gas
9 utilities?

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MS. SORRENTINO: The data for
11 similarly situated utility may be very
12 different even though they're geographically
13 similar. So I would say you we need to
14 contractor the data.

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ALJ LECAKES: Okay. And you also
16 said even when they're geographically similar,
17 but isn't it correct that utilities in New York
18 State are not necessarily geographically
19 similar? For example, Consolidated Edison is
20 located here in New York City, whereas somebody
21 like National Grid Upstate, like Niagara
22 Mohawk, has a rural and a City component to its
23 system.

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MS. SORRENTINO: That's correct.

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ALJ LECAKES: Although, AMI and the

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2 panel agreed that it's intended to create
3 energy savings or capacity savings -- those
4 savings are not guaranteed, correct?

5 MS. SORRENTINO: Those savings are
6 have not been guaranteed, and I wouldn't
7 necessarily characterize it as intended to. I
8 mean, AMI is predominantly a metering function
9 that's intended to be able to meter the usage
10 of the customer and those are additional
11 benefits that are provided by AMI.

12 ALJ LECAKES: Additional benefits
13 because, by allowing the customer to monitor
14 his or her own usage, they can adapt their
15 energy consumption behavior. Is that what
16 you're referring to?

17 MS. SORRENTINO: Yeah.

18 ALJ LECAKES: So to get savings, it
19 actually requires a third party to do something
20 based on their own it reading of the AMI
21 equipment. Is that your point?

22 MS. SORRENTINO: Under CVO, there
23 would be no customer action needed to obtain
24 savings. So you can have a passive customer
25 that will obtain savings and you can have an

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2 active customer that would obtain more savings.

3 ALJ LECAKES: But even if we put all
4 those savings together, that doesn't take into
5 account the fact, necessarily, that there are
6 other things, such as construction projects in
7 Manhattan or elsewhere in New York City or
8 Westchester, that may be adding new load onto
9 the company's system; isn't that is right?

10 MS. SORRENTINO: Right.

11 ALJ LECAKES: How does the minimum
12 system specification work? So, for example,
13 the two-inch main that was used for the minimum
14 system specific here, how does that work in the
15 cost of service study to show whether a service
16 class is in deficiency or a surplus area.

17 MS. SORRENTINO: Well, in and of
18 itself doesn't show whether a service class is
19 deficient or surplus, it just seems to price
20 out the entire distribution system of that type
21 of main at that unit cost, and that two-inch
22 units cost is then determined to be the
23 customer component. In and of itself it
24 doesn't dictate whether there's a surplus or
25 deficiency?

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2 ALJ LECAKES: Judge Wiles, do you
3 have any further questions.

4 ALJ WILES: No.

5 ALJ LECAKES: Okay. I have no
6 further questions.

7 Mr. Favreau?

8 MR. FAVREAU: One minute.

9 ALJ LECAKES: Okay.

10 Mr. Favreau, do you have any
11 redirect?

12 MR. FAVREAU: Yes, I've got a couple
13 of questions, your Honor.

14 Panel, there was the mention of O and
15 R testimony, and your recommendation in that
16 case. Can you explain why in O and R you
17 recommended 100 percent demand?

18 MS. MILLER: In the O and R case we
19 recommended classifying cost associated with
20 distribution mains as 100 percent demand with
21 that particular study in that particular case,
22 and we clearly indicated in our testimony that
23 a customer component is useful when there are
24 groupings of similar types.

25 MR. FAVREAU: Panel, can you clarify

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2 your position on what benefits AMI provides.

3 MS. SORRENTINO: Well, with respect
4 to the CVO, we indicated that AMI would provide
5 that benefit. However, we would like to
6 clarify that CVO can be impleted without
7 complete AMI deployment with the auxillary
8 equipment that allows CVO operation and CVO is
9 anticipated to provide benefits under QDM
10 without AMI implementation at this point.

11 ALJ LECAKES: What does the acronym
12 CVO stand for?

13 MS. SORRENTINO: Conservation voltage
14 optimization.

15 MR. FAVREAU: And one final question.
16 Does the NARUC manual support the government
17 component concerning transformers.

18 MS. RANDT: Yes. NARUC may now
19 support the customer and the main components
20 for transformers.

21 ALJ LECAKES: Mr. Zimmerman, any
22 recross?

23 MR. ZIMMERMAN: Very briefly, your
24 Honor.

25 ALJ LECAKES: Sure.

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2 MR. ZIMMERMAN: Panel, you mentioned
3 CVO just now. In the initial
4 cross-examination, when you were speaking about
5 AMI, I asked if there were other aspects of AMI
6 that were anticipated to produce energies
7 and/or capacity savings, do you recall that?

8 MS. SORRENTINO: Yes.

9 MR. ZIMMERMAN: And, as I recall, you
10 answered in the affirmative; is that correct?

11 MS. SORRENTINO: Yes.

12 MR. ZIMMERMAN: Can panel articulate
13 what some of those aspects of AMI are that are
14 anticipated to yield capacity and/or energy
15 savings?

16 MS. SORRENTINO: We believe that the
17 meter accuracy may provide energy savings.

18 MR. ZIMMERMAN: Meter accuracy.

19 And how much savings are attributable
20 to meter accuracy in the company's business
21 plan?

22 MS. SORRENTINO: In the business
23 plan?

24 MR. ZIMMERMAN: The one that the
25 Commission approved.

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2 MS. SORRENTINO: The twenty-year net
3 present value is \$491 million.

4 MR. ZIMMERMAN: Can you identify
5 which document you're looking at right now?

6 MS. SORRENTINO: The business plan
7 that you referred to.

8 MR. ZIMMERMAN: Which page?

9 MS. SORRENTINO: 51.

10 MR. ZIMMERMAN: Were there any other
11 aspects of AMI that are anticipated to yield
12 energy and/or capacity savings?

13 MS. SORRENTINO: I'm not aware.

14 MR. ZIMMERMAN: Not aware.

15 Is it true that the revenue
16 protection benefit of AMI is anticipated to
17 yield a supply-related benefit?

18 ALJ WILES: Could you me repeat that
19 question or ask the reporter to read it back?

20 MR. ZIMMERMAN: Sure.

21 ALJ WILES: Let's ask the reporter to
22 read it back.

23 MR. ZIMMERMAN: Could you read back
24 that question, please.

25 (Whereupon, the question was read

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back by the reporter.)

MR. LANG: Objection, your Honor.
It's beyond the scope of the redirect
examination.

ALJ LECAKES: It's close, but I'll
allow it.

MS. SORRENTINO: I'm sorry, can you
repeat the question?

MR. ZIMMERMAN: Is it true that the
revenue protection benefit AMI is also
anticipated to yield supply-related benefits?

ALJ WILES: I'm sure the witnesses
understand this, but I'm a little confused.
The revenue protection benefit, is that a term
that's used in the report?

MR. ZIMMERMAN: It is. It's on page
51 in the business plan, the first benefit
listed after letter B.

ALJ WILES: And when you use the
term, are you using that term the same way the
report does?

MR. ZIMMERMAN: Yes; revenue
protection is how it's characterized in the
report.

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2 ALJ WILES: What do you understand
3 that to mean?

4 MR. ZIMMERMAN: I understand that to
5 mean -- and I'm not the expert. I understand
6 it to mean reduced unaccounted for energy.

7 MS. SORRENTINO: I'm sorry, can you
8 repeat the question one more time?

9 MR. ZIMMERMAN: Is it true that the
10 revenue protection benefit attributable to AMI
11 is a supply-related benefit?

12 MS. SORRENTINO: It's considered a
13 supply-related benefit in the twenty-year net
14 present value, I believe that is not on a
15 societal basis.

16 MR. ZIMMERMAN: I just want to make
17 sure that I understood this right. When
18 discussing supply-related benefits of AMI, is
19 it true that, in addition to conservation
20 voltage optimization, AMI will produce
21 supply-related benefits, including meter
22 accuracy and revenue protection benefits?

23 MR. FAVREAU: Your Honor, this is
24 right there.

25 ALJ LECAKES: I understand that. The

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witnesses can answer.

MS. SORRENTINO: When you say supply related benefits, to whom?

MR. ZIMMERMAN: I'm sorry, to whom?

MS. SORRENTINO: Yes.

MR. ZIMMERMAN: To customers.

MR. LANG: Objection; vagueness, your Honor. What customers is he talking to, all customers, full-service customers?

ALJ LECAKES: The witness started to answer. I think she has in her mind what her definition of customers can mean.

MS. SORRENTINO: So overall it's not considered in the societal cost test because the customer that is potentially stealing the service may consider it a benefit but others are paying for it.

MR. ZIMMERMAN: I'm sorry, you're speaking to revenue protection in particular?

MS. SORRENTINO: Yeah.

MR. ZIMMERMAN: But that benefit is listed at one of the benefits of AMI in the business plan, is it not?

MS. SORRENTINO: In the twenty year,

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I think it is.

MR. ZIMMERMAN: So just to -- you didn't exactly answer the last question I asked, which was, in addition to conservation voltage optimization, is it true that AMI is anticipated to yield supply-related benefits including revenue protection and meter accuracy?

MS. SORRENTINO: I think I indicated that in the societal cost test neither revenue protection, meter accuracy, or the debt was considered to be a benefit.

MR. ZIMMERMAN: Is it the panel's understanding this BCA does not representative societal cost test?

MR. LANG: Objection, your Honor. Now we're going way beyond the scope.

ALJ LECAKES: Yes, I agree at this point.

MR. ZIMMERMAN: Okay. So, again, you still haven't answered that last question I asked.

ALJ LECAKES: Actually, I think they did.

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MS. SORRENTINO: I believe I did.

MR. FAVREAU: Three times.

ALJ LECAKES: I think the last one
was very clear.

MR. ZIMMERMAN: I have no further
questions. Thank you.

PANEL MEMBERS: Thank you.

ALJ LECAKES: This panel is excused.
Why don't we go off the record while the UIU
Rates Panel comes forward, and I meant the UIU
Electric Rates Panel; we'll start with them.

(Whereupon, there is a pause in the
proceeding.)

ALJ LECAKES: Mr. Zimmerman, can you
call your next witness or panel?

MR. ZIMMERMAN: I call the UIU
Electric Rate Panel.

ALJ LECAKES: Thank you.
Panel members, could you please
identify yourselves by name, spelling your last
names, please.

MS. PANKO: Danielle Panko,
P-A-N-K-O.

MS. SMITH: Lee Smith, S-M-I-T-H.

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MS. NEAL: Mary Neal, N-E-A-L.
ALJ LECAKES: Thank you, panel members.

WHEREUPON,

DANIELLE PANKO,
having been first duly sworn by
ALJ Van Ort, is examined
and testifies as follows:

MS. PANKO: Yes, I do.

WHEREUPON,

LEE SMITH,
having been first duly sworn by
ALJ Van Ort, is examined
and testifies as follows:

MS. SMITH: Yes, I do.

WHEREUPON,

MARY NEAL,
having been first duly sworn by
ALJ Van Ort, is examined
and testifies as follows:

MS. NEAL: Yes, I do.

ALJ LECAKES: Mr. Zimmerman, proceed to get their testimony into the record.

MR. ZIMMERMAN: Panel, did you

1
2 prepare and file on October 13th a document
3 entitled Direct Testimony of the UIU Electric
4 Rate Panel and Joint Proposal?

5 MS. NEAL: Yes.

6 MR. ZIMMERMAN: Do you have any
7 corrections or modifications to make to that
8 testimony?

9 MS. SMITH: Yes; we have two
10 corrections. If you turn to page 22, line 14,
11 in the middle of that line, the sentence
12 begins, "The minimum size used is 1.0 inch," we
13 want to delete those words. So the sentence
14 begins with "We," with a capital W, and the
15 sentence then reads, "We used size 1.0 as the
16 minimum size for our calculations." The words
17 "size 1.0" is added after "used."

18 Another change --

19 MR. ZIMMERMAN: Can I just clarify
20 for the record, that's 1.0?

21 MS. SMITH: "We used size 1.0 as the
22 minimum size for our calculation."

23 The next change is on page 24, lines
24 4 and 5 are both going to be deleted and we end
25 the sentence with a new phrase, modifying class

1
2 revenue requirements. So the sentence now --
3 the end of the sentence reads, "It could
4 mitigate those increases by modifying class
5 revenue requirements."

6 I believe that's all of our
7 corrections.

8 MR. ZIMMERMAN: Thank you, panel.
9 The CDs that we handed to the judges and the
10 court reporter have the clean version of the
11 testimony with the corrections made.

12 ALJ LECAKES: Thank you,
13 Mr. Zimmerman. I will take that as a request
14 to have the testimony put into the transcript
15 as if orally given, and that motion is granted.
16 At this point in the hearing transcript, there
17 is a CD that's been handed out titled, "UIU
18 Clean Testimony on JP." There are two files in
19 it, two Word files. The file that should be
20 inserted at this point in the transcript is a
21 Word file titled "UIU Electric Rates Panel
22 Direct Testimony on JP-Clean."

23 (The following is prefiled testimony
24 submitted by UIU Electric rates panel.)
25

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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 16-E-0060

Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Gas Service.

Case 16-G-0061

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

Case 15-E-0050

Tariff filing by Consolidated Edison Company of New York, Inc. to revise General Rule 20 Standby Service contained in its electric tariff schedules, P.S.C. Nos. 10 and 12.

Case 16-E-0196

DIRECT TESTIMONY

OF

UIU ELECTRIC RATE PANEL ON THE JOINT PROPOSAL

Dated: October 13, 2016
Albany, New York

UTILITY INTERVENTION UNIT
DIVISION OF CONSUMER PROTECTION
NYS DEPARTMENT OF STATE
99 WASHINGTON AVENUE
SUITE 640
ALBANY, NY 12231-0001
www.dos.ny.gov

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1 **I. INTRODUCTION AND OVERVIEW**

2 Q. Would the members of the panel please state your names, business addresses,
3 and backgrounds?

4 A. **(Neal)** My name is Mary Neal. My business address is One Washington Mall,
5 Boston, MA 02108.

6 Currently, I am a Senior Consultant at Daymark Energy Advisors
7 ("Daymark"). I have been with this energy planning and regulatory economics
8 firm for over six years. In my time at Daymark, I have provided extensive
9 analysis of electric utility cost allocation models and assisted in analyzing electric
10 and gas rate design in various regulatory proceedings. I was the lead consultant
11 in creating the cost allocation model for Stowe Electric Department in Vermont
12 Docket No. 8463 and recently built a revenue requirement and rate design model
13 for Kauai Island Utility Cooperative's new LED streetlight rates, which were
14 approved by the Hawaii PUC (Transmittal 2015-03). I also developed electric
15 vehicle rates for the Village of Swanton, Vermont. Moreover, I have reviewed
16 electric utility plans for the acquisition and building of new resources, as well as
17 capital upgrades to existing units for utilities in four states and in two Canadian
18 provinces. Prior to working for Daymark, I worked for Solar Turbines, Inc. for
19 three years, designing low-emissions combustion systems for industrial gas
20 turbine engines. I received my B.S., Mechanical Engineering in 2005 from the
21 University of California, Davis, and my M.A., Energy and Environmental Analysis
22 in 2010 from Boston University.

23 I have submitted prefiled direct and rebuttal testimony before the New
24 York Public Service Commission ("Commission") as part of the UIU Electric Rate
25 Panel in this proceeding, Cases 16-E-0060 *et. al* . I also presented testimony in

1 three rate cases in Wisconsin and three proceedings in Nova Scotia regarding
2 Nova Scotia Power's Annual Capital Expenditure Plans. I also filed testimony in
3 Joint Dockets 05-CE-145/05-CE-147, relating to Wisconsin Electric Power
4 Company's application to upgrade the Elm Road Generating Station and its
5 associated fuel handling system to accommodate increased fuel flexibility.

6 **(Panko)** My name is Danielle Panko. I currently hold the position of a Utility
7 Analyst with the Utility Intervention Unit ("UIU") of the New York State
8 Department of State's Division of Consumer Protection representing residential
9 and small commercial utility consumers. I received a Bachelor of Science degree
10 in Mathematics from the State University of New York at New Paltz in 2001 and a
11 Master's of Science in Electrical Engineering from the State University of New
12 York at New Paltz in 2008.

13 From 2000 to 2001, I served as an intern with Central Hudson Gas and
14 Electric Corporation located in Poughkeepsie, New York, in the Accounts Service
15 Department and subsequently in the Electrical Engineering Department. From
16 2004 to 2007 I worked as an engineer for Philips Semiconductors. From 2007 to
17 2012, I worked for Consolidated Edison Companies of New York, Inc. ("Con
18 Edison" or "the Company") in the Rate Engineering Department as an Analyst,
19 and later a Senior Analyst, in the Gas Rate Design Section. I joined UIU in 2012.
20 My primary responsibilities include assisting with UIU's participation in
21 Commission proceedings, researching utility policy and regulatory related issues,
22 and representing UIU during various utility-related meetings and rate case
23 negotiations. Recent electric cases that I have worked on include Cases 13-E-
24 0030, 14-E-0318, 15-E-0283 and 15-E-0285, in addition to over a dozen other

1 rate and policy proceedings. I previously submitted testimony in Cases 13-E-
2 0030, 13-G-0031, 14-E-0318, 14-G-0319, 14-E-0493, 14-G-0494, 15-E-0283, 15-
3 G-0284, 15-E-0285, 15-G-0286, 16-G-0257, and 16-G-0058 and 16-G-0059. I
4 also have submitted prefiled direct and rebuttal testimony as part of the UIU
5 Electric Rate Panel and UIU Gas Rate Panel in these proceedings, Cases 16-E-
6 0060 *et. al.*

7 **(Smith)** My name is Lee Smith. My business address is One Washington Mall,
8 Boston, MA 02108.

9 I am an independent consultant working exclusively for Daymark Energy
10 Advisors. Previously I worked as an employee of La Capra Associates, an
11 energy planning and regulatory economics firm that is now Daymark Energy
12 Advisors, for 28 years.

13 I have a B.A. in International Relations (with a minor in Economics) with
14 honors from Brown University. I also completed all the work except for the
15 dissertation for a Ph.D. in Economics from Tufts University. Prior to my
16 employment at La Capra Associates, I was Director of Rates and Research, in
17 charge of gas, electric, and water rates, at the Massachusetts Department of
18 Public Utilities. Prior to that period, I taught economics at the college level.

19 I have prepared testimony on gas and electric rates, rate adjustors, cost
20 allocation and other issues regarding more than 40 utilities in 20 states, in
21 Canada, for a number of municipal regulatory authorities, and before the Federal
22 Energy Regulatory Commission. I participated in development of the New
23 England ISO, and advised a number of clients on various aspects of electric
24 restructuring. My clients have included public advocates, gas and electric utilities,
25 regulatory commissions and other public bodies. I assisted in writing testimony
26 for New York Power Authority many years ago but had not testified in New York

1 until this case. I have submitted prefiled direct and rebuttal testimony as part of
2 the UIU Electric Rate Panel in this proceeding, Cases 16-E-0060 *et. al.*

3 Q. Please summarize Daymark and its business.

4 A. Daymark Energy Advisors provides consulting services in energy planning,
5 market analysis, and regulatory policy in the electricity and natural gas industries.
6 We serve clients throughout North America from our offices in Boston,
7 Massachusetts, and Portland, Maine, providing consulting services to a broad
8 range of organizations involved with energy markets, including public and private
9 utilities, energy producers and traders, financial institutions and investors,
10 consumers, regulatory agencies, and public policy and energy research
11 organizations. Our technical skills include power market forecasting models and
12 methods, economics, management, planning, rates and pricing, and energy
13 procurement, and contracting. Over the past several years, our firm has been
14 very active in electric industry planning issues, including integrated resource
15 planning, transmission planning, wholesale and retail market analysis,
16 competitive bidding and procurement, and renewable energy.

17
18 Q. Have you prepared any exhibits to be filed with your testimony?

19 A. Yes, Exhibit ____ (UERP–JP-1) through Exhibit ____ (UERP–JP-10) accompany
20 our testimony. All of these exhibits were prepared by us or under our
21 supervision.

22
23 Q. Has the panel requested additional information from the Company to assist in
24 preparing this testimony?

25 A. Yes the panel has sent information requests and received responses from the
26 Company explained in further detail below. UIU Information Requests 261 and

1 263 each address questions regarding the use of DC power in the Company
2 service territory. (Exhibit___(UERP-JP-6) UIU-19-263 and UIU-19-261). The
3 panel is also familiar with the Company Response to UIU Information Request
4 260 which addresses the conditions under which the Company replaces a 1.0
5 Awg OH conductor. (Exhibit___(UERP-JP-6) UIU-19-260.) In UIU Information
6 Request 209, UIU asked questions regarding underground transformers and data
7 contained in prefiled Company Exhibit DAC-2 Schedule 1 (Confidential), tab
8 2013 UG Transformers. (Exhibit___(UERP-JP-6) UIU-10-209.) Additionally, in
9 UIU Information Request 207, UIU asked questions regarding overhead
10 transformers and data contained in Exhibit DAC-2 Schedule 1 (Confidential), tab
11 2013 OH Transformers. (Exhibit___(UERP-JP-6) UIU-10-207.) In addition, in
12 response to UIU Information Request 268, Company provides information
13 regarding a “typical” transformer serving 6 customers. (Exhibit___(UERP-JP-6)
14 UIU-10-268.) In response to UIU Information Request 241, Company provides
15 limited information on what components of distribution plant were planned to
16 meet the ICMDs of multifamily dwelling units. (Exhibit___(UERP-JP-6) UIU-15-
17 241 which refers to Company Response to UIU 150 Exhibit___(UERP-JP-6) UIU-
18 8-150.) In response to UIU Information Request 18-257, Company provided a
19 Commonwealth Edison Company report entitled “Survey of Approaches to
20 Distribution Cost Allocation by Voltage” (October 28, 2011).

21
22 Q. What is the nature of this testimony?

23 A. We will focus on some key aspects of the rate and tariff changes contained in the
24 Joint Proposal filed in these proceedings on September 20, 2016 (“JP”). These
25 aspects include the portions of the JP that adopt the Company's electric
26 embedded cost of service (“ECOS”) study, revenue allocation methodology,

1 various aspects of the Company's rate design, and a few other miscellaneous
2 issues.

3
4 Q. How is your testimony organized?

5 A. This introduction concludes with a brief summary of our recommendations. In
6 the next section, we summarize the electric ECOS methodology and the cost
7 allocation process used in the JP. In the third section, we critique the
8 methodology the Company used to classify and allocate various costs to
9 customer classes. Following that section, we provide corrections to allocators
10 that reflect our critique of the Company's cost allocation. Next, we address the
11 subject of the proposed revenue distribution and recommend an alternative
12 based on our modifications to cost allocation. The following section discusses
13 Advanced Metering Infrastructure ("AMI") and how costs associated with it should
14 be allocated. The final section addresses rate design.

15
16 Q. Would you please briefly summarize your recommendations?

17 A. Yes. We recommend a number of changes to the JP's allocation of electric
18 distribution costs and rate design:

- 19 ○ The demand allocator for distribution plant should be based solely on non-
20 coincident peak demand ("NCP");
- 21 ○ Primary distribution conductors should be classified purely as demand-
22 related;
- 23 ○ The minimum system definitions used for secondary distribution plant
24 should be modified to reflect true minimum loads;
- 25 ○ The AMI-related revenue requirement should be allocated based on
26 energy in this rate plan;

- 1 ○ The Commission should instruct Con Edison to analyze cost causation
2 and class beneficiaries regarding AMI and Reforming Energy Vision
3 ("REV") for the next rate proceeding; and
4 ○ Customer fixed costs should be reduced according to our recommended
5 ECOS approach.
6

7 **II. CON EDISON'S EMBEDDED COST OF SERVICE METHODOLOGY**

8 Q. Please briefly summarize the JP's proposals regarding cost allocation.

9 A. The underlying foundation for the JP's proposed rate design and revenue
10 distribution was the Company's ECOS study (JP at 55.) The Company's ECOS
11 study was developed using a three-step process. The first step involved
12 functionalization and classification of costs to various operating functions (e.g.,
13 transmission, distribution, customer accounting, and customer service) "with
14 further division into sub-functions, such as distribution demand, distribution
15 customer, services, overhead and underground." (Demand Analysis and Cost of
16 Service Panel pre-filed Direct Testimony ("DAC Panel"), p. 30.) The second step
17 was the classification of those functionalized costs. Third, the functionalized and
18 classified costs were allocated to specific service classes and utility services
19 using various allocation factors. These three steps serve to organize utility costs
20 into categories to assist in allocating them. Allocation factors should reflect the
21 factors that cause the Company to incur the various cost buckets.
22

23 Q. How does Con Edison summarize the results of its electric ECOS study?

24 A. Con Edison presents its electric ECOS results in prefiled Exhibit___ (DAC-2),
25 Table 1A. Table 1A shows an overall system rate of return of 6.21%. It computes

1 rates of return for individual customer classes, including the Residential and
2 Religious service class ("SC1"), which under the Company's ECOS results has a
3 rate of return of 5.12%. The rate of return indicates the relationship between
4 revenues and costs; a rate of return lower than average suggests that the class
5 is paying less in revenues than the costs that are allocated to it.

6
7 Q. Please provide a brief description of fully allocated electric ECOS, and explain
8 what they measure.

9 A. ECOS studies are used to apportion utility rate base and operating expenses
10 among the various customer classes on the basis of factors that should reflect
11 cost causation. Test-year revenues, normalized for current rates and other
12 factors, can then be compared to such allocated costs to calculate the rate of
13 return earned from each class and the difference between costs and revenues
14 (deficiencies or surpluses). Most costs are not directly attributable to any one
15 customer class; therefore, they must be allocated according to a formula. The
16 classification step is relevant because when costs are classified as a certain
17 type, they are normally allocated on the basis of a characteristic which is related
18 to that type; for instance, energy costs are allocated on the basis of energy.
19 There are a number of generally accepted allocation methods, but there are
20 some differences of opinion in the industry about allocation (and classification) as
21 well.

22

1 **III. ANALYSIS OF CON EDISON'S ALLOCATION APPROACH IN ITS ELECTRIC**
2 **ECOS MODEL**

3 Q. Have you found any fundamental problems with JP's approach to ECOS
4 allocation?

5 A. Yes. We believe the purpose of the ECOS study is to reflect the decisions that
6 underlie each of the costs the Company incurs. This is the fundamental cost
7 causation principle that should govern an allocated ECOS study. For example, if
8 the Company installs a particular type of equipment in order to meet its expected
9 peak loads, the appropriate allocator for that plant item should be peak loads. As
10 we will describe below, the JP's electric ECOS approach violates this principle in
11 a number of specific allocation choices that would allocate too many costs on the
12 basis of customer allocators, and, correspondingly, would underallocate costs
13 associated with demand. This misallocation will generally result in overstating
14 the costs associated with service to small customers and understating the costs
15 associated with service to large customers.

16
17 Q. Would you summarize the allocation choices which you feel contribute to this
18 overallocation on the basis of the number of customers?

19 A. Yes. These choices are as follows:

- 20 ○ The JP's proposed demand allocator for secondary distribution plant
21 reflects not only NCP demands, but also the sum of the individual customer
22 maximum demands ("ICMD"), which is simply the sum of the demands that
23 load data indicates individual customers put on the system at different times,
24 and which is not appropriate for inclusion in the demand allocator.

1 ○ The JP would inappropriately classify primary distribution conductors as
2 partly customer-related, which would allocate them partially on the customer
3 allocator.

4 ○ The JP would classify secondary distribution plant as partly customer
5 related, which we believe does not reflect cost causation.

6 ○ The JP's implicit proposed allocation of AMI costs is inappropriate.

7
8 Q. The first issue you raise concerns with is the JP's main distribution system
9 demand allocator. Please discuss this issue.

10 A. This issue relates to the delivery system portion of distribution costs.
11 Fundamentally, the entire delivery system is designed to accommodate the peak
12 demands (loads) on the various parts of the distribution system. Peak demands
13 on different parts of the system differ.

14 This important point about the electric delivery system can be illustrated
15 by an analogy to the road transportation system. The major highways should be
16 planned to handle highest traffic periods of the whole region. The local roads
17 must handle peak neighborhood traffic – in residential neighborhoods, probably
18 “rush hour” traffic associated with work and school commutes; in industrial areas
19 and commercial areas, the peak load times will be somewhat different. The local
20 road peak loads are equivalent to electric class non-coincident peak loads.
21 Likewise, in an urban setting, the entrance to parking for multifamily facilities
22 should be able to handle the residential non-coincident peak loads. Roads are
23 accordingly sized to meet actual anticipated peak load – they do not need to be
24 large enough to accommodate every car in the neighborhood at once (i.e. the
25 ICMD, which we discuss in more detail later in our testimony).

1 Returning to the electric distribution system, some parts of the distribution
2 system are equivalent to the major highway system in that they are designed to
3 serve load at the time of the system peak, whereas other parts (such as the local
4 distribution-level poles, conductors, conduit and transformers) are designed to
5 meet the peak local areas of the distribution system. The peak load of a
6 residential area (or apartment building) will be driven by residential customer
7 behavior, and the total system load will depend on the combined behavior of all
8 classes. Again, the combined peak load of classes is labeled the NCP load.

9 It is generally accepted that most distribution costs are incurred in order to
10 meet peak demands. It is also generally accepted that the relevant loads are the
11 NCP loads of the various customer classes. Later in this testimony we will
12 discuss the JP's position that distribution costs are partly caused by the number
13 of customers.

14 The JP applies a unique – and, in our opinion, inappropriate – alternative
15 demand allocator to the demand portion of local distribution plant. The
16 Company's prefiled direct testimony does not make clear that this allocator,
17 designated D08, reflects factors beyond NCP demand. However, the ECOS
18 Explanatory Notes in DAC Panel Exhibits and the Workpapers for Exhibit DAC-1
19 reveal that the allocator D08 is a weighted average of NCP and ICMD. For SC1
20 the NCP weight is 75%; for other classes, it is 50%. Neither the prefiled direct
21 DAC Panel testimony nor the ECOS Explanatory Notes mentioned above
22 explain the basis for the weights. We recognize that on pre-filed rebuttal
23 testimony the DAC Panel provided some information regarding its suggested
24 use of ICMD.

25
26 Q. What is ICMD?

1 A. ICMD is a hypothetical demand metric estimated by summing the peak demands
2 of each individual customer in a given customer class. The ICMD imagines the
3 total demand of a customer class if every individual customer in that class were
4 to reach its maximum demand at the same moment. (In the transportation
5 system analogy, ICMD would be the total of all vehicles driving on the road at
6 once.)

7 Distribution systems do not actually experience ICMD. This is particularly
8 the case for those customer classes with diverse individual customer loads (i.e.,
9 where different individual customers tend not to reach peak demand at the same
10 time) such as residential customers. The Company suggests that its proposal to
11 apply a 25% weight to ICMD for SC1, instead of 50% as for other classes, is in
12 recognition of SC1's load diversity (its notes refer to an "adjustment... to allow for
13 the diversity of individual customer loads in multiple dwellings.") (prefiled direct
14 Exhibit (DAC-2) Schedule 2 p.10.)

15

16 Q. Does the evidence support this inclusion of the ICMD in the demand allocator?

17 A. No, it does not. To the contrary, the Company's responses to discovery requests
18 concerning distribution planning criteria support allocation solely on the basis of
19 NCP demands. For example, UIU Information Request No. 152
20 Exhibit____(UERP-JP-6) asked the Company to "Please describe with specificity
21 why any portion of overhead lines, or underground lines, are sized to meet the
22 sum of customer maximum demands [i.e., ICMD]." The Company responded:

23 Similar to the Company's process for transformers, we do
24 not "size" overhead and underground lines to meet the sum
25 of customer demands. Each cable has a rated capacity, and
26 the Company matches the cable capacity to the demand in a
27 load area.

1
2 The Company thus admits and hence the JP reflects that the Company plans its
3 delivery system to meet NCP demand, not ICMD. (Indeed, the Company's
4 explanation makes no reference to the sum of customer demands.)

5 When asked directly to explain its rationale for including the ICMD in the
6 D08 allocator, the Company replied:

7 The closer the grid equipment is to the customer, the greater the
8 importance of the individual customer maximum demands ("ICMD")
9 and the further the grid equipment is from the customer, the greater
10 the importance of class diversified peak demand (non-coincident
11 peak or "NCP" in the ECOS study).

12
13 (Exhibit___(UERP-JP-6) Company response to UIU Information
14 Request 147.)
15

16 This response does not explain why the Company included ICMD in the
17 D08 allocator. First, sections of secondary conductor or conduit or poles are not
18 generally planned on the basis of individual customer demands. There may be
19 large commercial or industrial facilities which require that their individual
20 demands be taken into account with regard to plant that is close to their facilities,
21 but this does not apply to residential customers. The fact that many residential
22 customers live in multifamily buildings does not change the relevance of the class
23 NCP load to utility planning. An apartment building's load is the sum of a number
24 of residential customers, but the delivery system serving it is planned to meet its
25 total load - i.e., it reflects the diversity of load in the building – which is illustrated
26 by NCP.

27 The Company agrees that smaller customers should be treated differently
28 than larger customers, since the Company proposes weighting ICMD 25% for
29 residential customers and 50% for other customers. But the Company has

1 provided no justification for using any ICMD to allocate secondary distribution
2 costs to smaller customers.

3
4 Q. Did the Company use 100% NCP to allocate low-tension costs in previous cases
5 (as we are advocated in this case)?

6 A. Yes. Prior to 1996, the Company used 100% NCP.

7
8 Q. Did the Company explain why it chose to include a NCP/ICMD allocator split
9 starting in Case 96-E-0897?

10 A. Yes, evidence is found in the Company's 2009 Electric Rate Panel Rebuttal
11 Testimony in Case 09-E-0428. On page 11 of that testimony, the Company
12 admitted that it included a NCP/ICMD split as a "concession" for NYPA customers
13 (as NYPA advocated for 100% ICMD at least since the 1996 case). This
14 "concession" has been the Company's method for pushing more costs to
15 residential customers for about 20 years.

16
17 Q. Did the Company justify why it is using a NCP/ICMD allocator split in this case?

18 A. The Company did not justify this choice in its direct testimony filed in this case.
19 However, in Case 13-E-0300 the Company provided a Load Diversity Study and
20 proposed that the study formed the basis for the NCP/ICMD split in that case.

21
22 Q. Does the 2013 Load Diversity Study justify the use of a NCP/ICMD allocator split
23 in this case?

24 A. No. And as we noted in in our pre-filed direct testimony, sections of conductor,
25 conduit, and poles are not generally planned on the basis of ICMD. As such, we
26 do not recommend the use of this split in the ECOS study which ultimately is
27 adopted in the JP.

28
29 Q. Next, please describe the Primary Customer Component and why you disagree
30 with this proposed change in the JP's methodology.

1 A. The DAC Panel describes the development of Primary Customer Component as
2 a change to its previous cost allocation methodology. The primary distribution
3 system refers to the delivery infrastructure lying farther “upstream” from the end-
4 use customer. Previously, the primary distribution system was fully classified as
5 demand related. (Exhibit__(UERP-JP-6) Company Response to UIU
6 Information Request 2-65.) The Company now proposes to classify part of its
7 primary distribution system as customer-related, arguing that this approach
8 “parallels” its approach to the secondary distribution system and also “recognizes
9 increased emphasis on fixed cost recovery.” (DAC Panel p. 18.) In response to
10 Pace Energy and Climate Center (“Pace”) Information Request Nos. 6-3
11 Exhibit__(UERP-JP-6), the Company adds that this “increased emphasis is
12 simply part of an overall emphasis on better aligning delivery rates with the
13 underlying costs of delivery service.”

14 This reasoning is exactly backward. As we discuss later in our testimony,
15 the Company’s stated objective to “align delivery rates with the underlying costs
16 of service” is entirely at odds with any proposal to classify primary distribution
17 costs as customer-related, because primary distribution costs are not customer-
18 related.

19

20 Q. How should primary distribution costs be classified and allocated, and why?

21 A. Primary distribution costs should be classified purely as demand related and
22 should be allocated on the basis of the peak loads that they are designed to
23 meet. Classifying any portion of primary distribution as customer-related is
24 inappropriate because the number of customers has no bearing on how the
25 primary distribution system is planned or constructed – the primary system is
26 designed to meet the demands on it.

1 Primary systems exist because they are a more efficient way to carry
2 significant loads than are secondary systems. They reduce line losses. The
3 higher the demand on the system, the more primary systems become economic.
4 If a utility were actually to build the least expensive system needed to provide a
5 very minimal amount of electricity to customers (i.e., a “minimum system”), it
6 could simply install secondary lines.

7 Another way of identifying the underlying cost causation is to consider the
8 factors that necessitate incremental investment in the distribution system. A
9 significant increase in demand on a portion of the system – even without any
10 increase in the number of customers – would probably necessitate increasing the
11 capacity (and therefore cost) of primary distribution lines and transformers. On
12 the other hand, an increase in the numbers of customers with no increase in
13 demand (which can occur where, for example, energy efficiency reduces per-
14 customer demand), no new incremental investment would be required. In other
15 words: demand, not customers, drives the cost of the primary distribution system.
16

17 Q. Your third bullet indicated a criticism of JP’s calculation of the customer
18 component of secondary distribution equipment. Please discuss this issue.

19 A. While we agree that meters and service plant are partly customer related, the
20 secondary delivery system (poles, conductors, transformers) is primarily related
21 to customer demand. Electric utilities plan and build their delivery system based
22 primarily on the loads that they are expected to deliver. Contrary to the
23 assumption used in the JP, the number of customers has little, if any, impact on
24 the cost of the secondary distribution system (with the exception of plant such as
25 meters and services).

26

1 We also note that in 2000, the most recent year for which we have found a
2 reference, more than 30 states agreed with this approach and classified only
3 meters and services as customer related. (Exhibit____(UERP-JP-10) Charging for
4 Distribution Utility Services: Issues in Rate Design, p. 29.)¹

5
6 Q. What is the rationale behind classifying a portion of the secondary delivery
7 system as customer related in a minimum system concept?

8 A. The main rationale stems from electric utilities' obligation to serve even very
9 small customers. A utility generally may not deny service to a new customer
10 based on an expectation that the customer may consume little energy and
11 thereby generate little revenue. (However, a new customer can be required to
12 contribute toward the utility's extra interconnection costs where the customer
13 requires a larger than normal amount of distribution equipment.) On this basis,
14 one may argue that some part of Con Edison's distribution investment is incurred
15 simply to connect customers with minimal load, although it is clear that demand
16 is the primary cost causative factor.

17
18 Q. Does this rationale support the JP's proposed minimum system methodology?

19 A. No. Even accepting, arguendo, the theoretical basis of the minimum system
20 concept discussed above, the JP's approach is flawed because it applies a
21 hypothetical "minimum system" that consists of much-larger-than-minimum-sized
22 equipment. The Company's restatement of theory does not align with the
23 approach it proposes to actually implement. For example, in its notes on the
24 ECOS, the Company states "the customer component is the cost of the smallest
25 secondary system theoretically needed to physically connect all of the existing

¹ <http://pubs.naruc.org/pub/536F0210-2354-D714-51CF-037E9E00A724>.

1 service points if the system was not required to supply any load.” (prefiled DAC
2 Panel Exhibit __ (DAC-2) Schedule 2, p.5.) This sentence is a correct theoretical
3 description of a minimum system definition of customer related distribution plant.

4 The JP’s proposed approach would not implement this principle. The
5 Company’s minimum system analysis does not actually identify “the smallest
6 secondary system theoretically needed to physically connect all of the existing
7 service points.” Instead, the Company’s proposed “customer portion” is
8 calculated based on an amount of plant that is significantly larger than the
9 minimum amount needed to provide a connection. The JP thus based its
10 analysis on a “minimum system” that is not a minimum system at all.

11
12 Q. Please discuss the specific aspects of the JP’s minimum system calculations with
13 which you find fault.

14 A. The specific calculation of the minimum system for Overhead (“OH”) and
15 Underground (“UG”) conductor was agreed to in a Memorandum of
16 Understanding (“MOU”) signed by all parties in Case 04-E-0572. This MOU,
17 dated July 24, 2005, further determined that this minimum size will be calculated
18 using the weighted average unit cost of installed wire sizes from 1 to 10.
19 (Exhibit__(UERP-JP-6) Information Responses to City of New York Nos. 203
20 and 204). See also Exhibit__(UERP-JP-9) “Memorandum of Understanding on
21 Embedded Cost of Service Study”.) We are not aware of any evidence relied
22 upon at that time that demonstrated that this calculation actually reflects a
23 minimum size, and no such evidence has been presented in this proceeding.

24
25 Q. Please discuss the JP’s minimum system calculations for transformers.

1 A. The JP's proposed minimum system for OH transformers includes all
2 transformers up to 25Kva, although in reality it has much smaller transformers in
3 service. Its calculation for UG transformers not only goes up to 25Kva in size,
4 but also includes equipment called autotransformers, which are transmission
5 voltage (up to 480,000 Volts), and regenerators, neither of which are installed to
6 serve minimum load.

7

8 Q. Is inclusion of any portion of transformers appropriate in a minimum system
9 construct?

10 A. No. Transformers are installed to meet demand, and are not related to the
11 number of customers. In a typical system, the electricity is stepped down from
12 transmission voltage to primary voltage, using transformers located in a
13 substation designed for this purpose. The electricity is then sent at primary
14 voltage to another substation serving the neighborhood where the customer is
15 located. It is again stepped down in that substation -- this time from primary
16 voltage to secondary voltage. Next, it is sent through the neighborhood to the
17 customer at secondary voltage.

18 The Company's responses to discovery requests confirm that its
19 transformers are not related to the number of customers and thus should not
20 form part of a theoretical "minimum system." For example, in its response to
21 Exhibit__(UERP-JP-6) UIU 8-150, the Company states that it ". . . rates
22 transformers and matches the transformer capacity to the demand in a load
23 area." The Company's response to Exhibit__(UERP-JP-6) UIU 10-207
24 indicates that replacement transformer size is based on demand; specifically, the
25 "sum of current demand, load factor of that demand and any known new
26 additional load" Transformers are installed because most electricity is

1 delivered via primary systems, which are themselves installed because of the
2 need to provide significant capacity. Transformers are selected to meet current
3 and expected demand levels.

4
5 Q. Do you have any additional comments regarding the JP's "minimum system"
6 methodology?

7 A. Yes. The inconsistency between the Company's theoretical understanding of a
8 minimum system that is used in the JP, and its empirical so-called "minimum
9 system" proposal, demonstrates a fundamental shortcoming of the minimum
10 system methodology. In practice, utilities do not install minimum systems, as it
11 would make no sense to build a distribution system that provides a connection
12 but little or no actual energy delivery. Instead, for most types of plant, the
13 smallest-sized equipment that utilities actually install is significantly larger and
14 more expensive than a theoretical minimum, as such equipment is designed to
15 deliver service (i.e., to meet anticipated load) in addition to providing a mere
16 connection. Con Edison is no exception; most distribution plant on the
17 Company's books is larger than minimum. For instance, with regard to Overhead
18 Conductor, the minimum system is based on conductor sizes up to 10.0.
19 However, in response to UIU Information Request 10-205 Exhibit___(UERP-JP-
20 6), the Company states "The currently installed 4/0 Al is larger than the smallest
21 size cable in use." The same response indicates that the Company
22 "consolidated its sizes of cable used to minimize the number of conductors
23 carried and associated stock, and for capacity concerns to minimize the number
24 of times a section of cable is changed." In other words, it needs larger than
25 minimum cable to meet demands, and it now stocks and installs only large cable
26 to simplify its inventory.

1 Interestingly, the misallocation of costs resulting from the JP's proposed
2 approach based on the Company's methodology may actually worsen over time.
3 If peak demand increases over time, then new equipment the Company installs
4 will correspondingly be larger and more expensive. The Company's approach
5 would assign a portion of this larger capacity to its so-called "minimum system,"
6 and would in turn classify the associated higher costs as customer related. The
7 prospect for escalating cost misallocation underscores the need to move away
8 from the Company's flawed minimum system approach.

9
10 **IV. UIU CORRECTIONS TO THE ECOS**

11
12 Q. Have you attempted to correct some of the problems associated with the JP's
13 cost allocation approach?

14 A. Yes. We have developed a revised version of the JP's electric cost results,
15 presented in Exhibit___(UERP-JP-1), that corrects for each of the problems that
16 were discussed above. We will discuss each of these corrections in turn.

17
18 Q. How did you correct the D08 allocator?

19 A. We simply utilized the NCP loads alone. This approach is simple, reflects sound
20 engineering and planning principles, and is consistent with the methodology used
21 by most utilities.

22 Some very large distribution customers may require that portions of the
23 distribution system be planned to meet their individual demands. Thus some
24 classes will have less diversity than the classes with smaller customers. As an
25 alternative to utilizing only class NCPs in the D08 allocator, we could have
26 attached some weight to the ICMD of classes that may have less diversity. We

do not recommend this adjustment without further analysis of the potential ICMD weight and to which classes it should be applied, but we did calculate what the D08 allocator would have been if we had weighted some classes' ICMDs by 50%. The alternative D08 allocation percentages are shown in the table below:

Table 1: Corrected D08 Allocator Components

Service Class	Description	ICMD	NCP*	Con Edison D08	Revised** D08
SC01	Res & Religious	49.832%	35.729%	39.265%	33.883%
SC02	General Small	6.221%	4.768%	6.187%	4.522%
SC05 CONV	Electric Traction	0.001%	0.001%	0.001%	0.002%
SC05 TODL	Electric Traction	0.017%	0.021%	0.020%	0.023%
SC06	Street Light & Signal	0.010%	0.016%	0.013%	0.015%
SC08 CONV	Apt. House	2.513%	4.296%	3.495%	3.946%
SC08 TODL	Apt. House	0.166%	0.273%	0.226%	0.255%
SC09 CONV	General Large	25.275%	31.596%	30.269%	34.180%
SC09 TODL	General Large	8.280%	12.438%	10.792%	12.186%
SC12 CONV	Apt. House Heating	0.236%	0.344%	0.303%	0.342%
SC12 TODL	Apt. House Heating	0.304%	0.450%	0.393%	0.444%
SC13 TODL	Bulk Power	0.000%	0.000%	0.000%	0.000%
CON ED SUBTOTAL		92.855%	89.931%	90.966%	89.799%
NYP&A SUBTOTAL		7.145%	10.069%	9.034%	10.201%
TOTAL SYSTEM		100%	100%	100%	100%

*UIU Recommended Allocator

**Weights 50% NCP and 50% ICMD except for SC1 and SC2, which are 100% NCP

This analysis indicates that if it were appropriate to include ICMD in D08 allocator, it would likely result in lower costs allocated to SC1 and SC2.

Q. Have you attempted to correct the JP's allocations of secondary plant based on a minimum distribution system?

A. Yes. We made the following modifications:

First, with regard to the plant included in OH conductor, we can see on Exhibit___(UERP-JP-1), OH Con Min Sys, that the conductor sizes used in Con Edison's minimum calculation range from 0 to 1.0 to 10.0. According to the

1 response to UIU Information Request No. 205 Exhibit___(UERP-JP-6), a
2 conductor size of 0 means there is no size for those plant items specified on the
3 Company's books. (We assume that this lack of information is the reason that
4 this plant was not included in the computation specified in the MOU, and if so, we
5 agree with this exclusion.) We used size 1.0 as the minimum size for our
6 calculations. This resulted in a total customer portion of \$6,425,825, or 4.84% of
7 OH Conductor being treated as customer related, rather than the \$19,839,766 (or
8 14.94%) that Con Edison utilized.

9 For UG conductor, we also used only conductor up to size 1.0. The
10 resulting customer related percentage is 3.5%, much less than the 21.13% Con
11 Edison recommends.

12 Second, we treated both OH and UG transformers as entirely demand
13 related, and allocated them on our revised D08 allocator. From this corrected
14 minimum system calculation we have derived an updated classification and
15 allocation of delivery system costs.

16
17 Q. Have you developed any estimates of the impact of your recommendations
18 regarding the allocation of distribution plant?

19 A. Yes, we have. We developed estimates of the impact of applying our
20 recommended allocation approach, which are summarized in the table below for
21 residential and small commercial customers. The "UIU Recommended" case
22 includes all the changes described in this testimony. Exhibit___(UERP-JP-2),
23 Exhibit___(UERP-JP-3), Exhibit___(UERP-JP-4) and Exhibit___(UERP-JP-5)
24 are models that provide the calculations supporting these results.

25
26 **Table 2: Rate of Return Results under Corrected ECOS Model**

	SC 1 Residential		SC 2 Small Commercial	
	Rate of Return	Deficiency/Surplus*	Rate of Return	Deficiency/Surplus*
ConEd Proposal	5.12%	(\$37,333,708)	5.27%	(\$3,995,747)
Primary Lines 100% Demand	5.38%	(\$11,310,577)	5.78%	\$0
D08 is NCP Only for All Classes	5.53%	\$0	6.21%	\$0
All Changes to Secondary Minimum System**	5.69%	\$0	6.97%	\$4,221,597
UIU Recommended	6.58%	\$0	9.28%	\$37,560,747

* Deficiencies are negative** Secondary Minimum System Changes:

- OH Conductor: Min. size of 1; 4.8% Customer-Related
- UG Conductor: Min. size of 1; 3.5% Customer-Related
- OH Transformers: 0% Customer-Related
- UG Transformers: 0% Customer-Related

This model shows that neither SC1 nor SC2 actually have deficiencies, and SC2 has a surplus. This is not surprising, as each of the errors in the Company's ECOS we identified tend to overallocate costs to small customers.

V. REVENUE DISTRIBUTION

Q. What factors do you think should be considered in determining how the approved rate increase should be distributed across the various classes?

A. We propose utilizing the results of our recommended ECOS study. If the Commission found that changing rates by the full deficiency was high enough to be a problem for some particular classes, it could mitigate those increases by modifying class revenue requirements.

Q. How is the revenue increase distributed among various electric customer classes in the JP?

A. The revenue distribution set forth in the Joint Proposal is based on the Company's ECOS results, which are summarized in Table 1A from Appendix 19 Table 1A to the JP ("Table 1A"). The "Initial Surplus/Deficiency" shown is the amount of dollars needed to bring each class's rate of return within the 10%

1 tolerance band surrounding the system rate of return. Under the JP's revenue
2 requirement, this tolerance band is between 5.49% and 6.71%. The sum of the
3 initial surpluses and deficiencies is a net surplus of about \$36 million. The rate
4 classes with initial surpluses have their surpluses adjusted by a total of this
5 amount. The "Adjusted Surplus/Deficiency" of each rate class then sums to zero.

6 Due to the its proposed change to allocate more costs on a customer
7 basis, the realigned revenues are based on one third of the adjusted surplus or
8 deficiency amount in the first rate year and collect the remaining two thirds over
9 subsequent rate years. (JP at 55) Thus, the total "Re-aligned" revenues are equal
10 to the revenue at current rates plus one third the adjusted surplus or deficiency
11 from Table 1A, noted above. This is calculated separately for each rate class.
12 The JP's requested rate increase of approximately \$213 million is then allocated
13 to each class on the basis of these "Re-aligned" revenues. (Appendix 19 Table 2
14 Page 1 of 3, see also Electric Rate Panel, pp. 10:18-11:5; and Rate Design
15 Workpaper "Revenue Allocation.Multiple Years.xls".)

16
17 Q. Can you please briefly elaborate on the "tolerance bands" mentioned above?

18 A. Yes. The tolerance bands refer to a $\pm 10\%$ tolerance band around the total
19 system rate of return shown in the ECOS. In other words, a class whose ECOS
20 rate of return fell within this tolerance band (i.e., 5.49% to 6.71%) was not
21 considered to have a "surplus" or "deficiency." Classes that fall outside this range
22 were considered to be surplus or deficient by the revenue amount necessary to
23 bring the realized return to the upper or lower level of the tolerance band.

24
25 Q. Have you calculated what class increases would result from your recommended
26 cost allocation and the revenue set forth in the JP?

1 A. Yes. The results shown in Table 2 above indicate that the SC1 class is well
2 within the tolerance bands, while the SC2 class is above the upper tolerance
3 band. Should AMI costs be allocated on the basis of energy, as we recommend
4 in the following section, there will be a further shift of costs from small energy
5 users to large energy users.

6

7 **VI. REVENUE REQUIREMENTS AND ALLOCATION**

8 Q. Is your recommended revenue allocation and rate design based on the revenue
9 requirement set forth in the JP?

10 A. Yes. Using the revenue requirement set forth in the JP has informed our revenue
11 allocation and rate design recommendations presented herein.

12

13 Q. What does the JP include for an electric revenue requirement increase?

14 A. The JP includes an electric revenue requirement increase of \$194 million during
15 for each Rate Year, excluding Gross Receipts Tax. This results in a 4.3%
16 increase in delivery revenues. (See JP Workpapers "Revenue Allocation.Multiple
17 Years.xls," "Revenue Allocation.Multiple Years = Yr 2.xls," "Revenue
18 Allocation.Multiple Years = Yr3.xls".)

19

20 Q. Have you reflected the JP electric revenue requirement in the revenue allocation
21 and rate design calculations presented in this testimony?

22 A. Yes.

23

1 Q. Please describe the steps involved that you used to take the electric ECOS
2 model output and create the proposed surplus and deficiency used during the
3 revenue allocation process.

4 A. We used Con Edison's electric ECOS model and made changes to the inputs
5 and allocators in that model to reflect the recommendations we made in our pre-
6 filed Direct Testimony. We then followed the same methodology used by Staff
7 and Con Edison to develop the proposed surplus and deficiency for each class.

8 Exhibit ____ (UERP-JP-7) Schedule 1 shows the steps used to take the
9 electric ECOS model output and create the proposed surplus and deficiency
10 used during the revenue allocation process. First, the rate of return for each
11 class (Schedule 1 column A) is compared to the system rate of return of 6.10%,
12 based on 2013 costs and estimated revenues based on historical 2013 sales at
13 current rates. For those classes that have rates of return outside the range of the
14 10% tolerance band surrounding the system rate of return (5.49% to 6.71%), the
15 model calculates the amount of dollars needed to bring each class to the upper
16 or lower bound of the tolerance band (with the exception of SC13). This is
17 termed the "initial surplus or deficiency" and shown in Column B in Schedule 1.

18 The sum of these initial surpluses and deficiencies for all classes is a net
19 deficiency of about \$50 million. This deficiency is then allocated to the rate
20 classes on the basis of sales revenues, as shown in column C of Schedule 1.
21 Note that a straight allocation on revenues would result in changing SC 5 from a
22 net deficiency to a net surplus. Therefore, column C includes a small additional
23 adjustment such that this rate class has a zero deficiency. The dollars are only
24 allocated to classes with an initial deficiency. In other words, classes that have
25 surpluses (i.e., those classes that are overpaying), do not receive decreases; this
26 treatment reduces the increases that are allocated to the deficient classes.

1 The resulting adjusted surplus and deficiency in Schedule 1, column D is
2 multiplied by one third to create the surpluses and deficiencies in column E,
3 which are used in the calculation of re-aligned revenues for each Rate Year.
4

5 Q. Con Edison's calculation of class revenue requirements reflected both a
6 tolerance band and a mitigation of class revenue changes by reducing the
7 resulting surpluses and deficiencies by two-thirds – which is the same method
8 set forth in the JP. Have you utilized the model that reflects this same approach
9 in the above calculations?

10 A. Yes.

11
12 Q. You have utilized the Company's proposed +/-10% tolerance bands as set forth in
13 the JP. What is your position regarding the tolerance bands?

14 A. We have accepted these tolerance bands as a means of moderating rate
15 changes. In addition, tolerance bands are a way of recognizing that cost
16 allocation results are never perfect and may change significantly from one rate
17 case to the next.
18

19 Q. What is your position regarding the spread of class revenue changes (increases)
20 over three years as set forth in the JP?

21 A. Spreading a revenue increase over multiple years is a technique that mitigates
22 rate impacts. The amount of mitigation that is appropriate is related to the size of
23 the overall increase that is awarded and to the amount of divergence between
24 class rates of return. We believe that in this case, it may be appropriate to
25 spread out revenue increases over three years.
26

1 Q. How do you propose to allocate the revenue requirement set forth in the JP to
2 the electric service classes?

3 A. In our pre-filed Direct Testimony we proposed allocating the portion of the electric
4 revenue requirement impact not related to AMI on the basis of realigned
5 revenues from UIU's recommended ECOS methodology. We continue to
6 recommend and utilize this allocation. We also recommended that AMI costs
7 should be allocated on the basis of energy in this proceeding. To reflect this in
8 our calculations, we used an estimate of the 2017 electric revenue requirement
9 impact of AMI that Con Edison provided in response to discovery in another case
10 (Response to DPS-7 in Cases 15-E-0050 and 13-E-0030, Attachment 1)
11 Exhibit____(UERP-JP-6) DPS-7 Con Edison AMI IR Answer. The AMI electric
12 revenue requirement for Rate Year 1 is approximately \$29 million. We are not
13 advocating Con Edison's projection of AMI costs, but are utilizing this projection
14 as a proxy for AMI costs that have been included in this revenue request set forth
15 in the JP. We allocated this amount to the classes based on the projected rate
16 year total kilowatt-hour ("kWh") for each class used in the JP. The issue of AMI
17 allocation will be discussed further in Section IV of this testimony, including a
18 rebuttal to Staff's recommended allocation of AMI costs.

19 The remaining portions of the \$194 million were allocated to the classes
20 using the same methodology set forth in the JP, although we relied on UIU
21 realigned revenues.

22

23 Q. What are realigned revenues?

24 A. Realigned revenues refer to the sum of projected delivery revenues at current
25 rates and sales level shown in the JP and the proposed surplus or deficiency
26 from UIU's electric ECOS model. This amount is calculated for each rate class.

1 Schedule 2 of Exhibit ____ (UERP-JP-7) shows the UIU recommended realigned
2 revenues.

3

4 Q. In your pre-filed Direct Testimony you recommended using total kWhs and not
5 realigned revenues to allocate AMI costs to the classes. How does using kWhs
6 impact each rate class?

7 A. Allocator percentages based on realigned revenues and kWhs are also shown in
8 Schedule 2 of Exhibit__ (UERP-JP-7). The difference between the realigned
9 revenue percentages and the energy percentages indicate how using kWhs will
10 affect each class. The kWhs that form the basis for the percentages in the table
11 reflect the forecast used in the JP. As the table shows, the energy allocator
12 allocates significantly less AMI costs to residential and small commercial classes
13 compared to an allocation on realigned revenues.

14

15 Q. How are final delivery revenues calculated?

16 A. After the revenue requirement increase of \$194 million is allocated, the resulting
17 allocated increase is added to the proposed surplus or deficiency from UIU's
18 ECOS results to estimate the total increase or decrease in delivery revenue for
19 each class. Exhibit ____ (UERP-JP-7) Schedule 3 shows the final class delivery
20 revenues using UIU electric ECOS results and AMI allocation.

21

22 Q. Please describe in more detail how you allocate the revenue requirement
23 increase of \$194 million to customers using your recommended electric ECOS
24 results.

25 A. The allocation is done in seven parts. Each part is listed below, and the letters
26 correspond to the columns in Exhibit ____ (UERP-JP-7) Schedule 4:

- 1 A. Electric AMI costs are allocated on rate year total kWh;
- 2 B. Transmission Congestion Contract (“TCC”) revenue imputation is
- 3 allocated on realigned revenues, except for NYPA;
- 4 C. Rate year monthly adjustment clause (“MAC”) increase is allocated on
- 5 rate year total kWh, except for NYPA;
- 6 D. Rate year purchased power working capital (“PPWC”) change is
- 7 allocated on rate year full service kWh, except for NYPA;
- 8 E. Low income program impact is assigned to the residential class;
- 9 F. New Program Costs are allocated on realigned revenues (except for
- 10 NYPA for which \$138,818 is assigned); and
- 11 G. Remaining dollars are allocated on realigned revenues.

12 The total revenue requirement increase for each class is the sum of the allocated

13 dollars in A-G listed above. Schedule 4 shows the result of the UIU proposal in

14 column H. This column H is the same as column B shown in Schedule 3 of the

15 same exhibit.

16

17 Q. Have you reviewed the May 19, 2016 Commission Order in Case 14-M-0101,

18 *Proceeding on Motion of the Commission in Regard to Reforming the Energy*

19 *Vision* (“REV Ratemaking Order”), (“REV Ratemaking Order”) and do you find it

20 to be relevant to cost allocation and rate design in this proceeding?

21 A. Yes. This Order is aimed in part at establishing ratemaking changes that reflect

22 the current and future utility environment, and that will “enable the growth of a

23 retail market and a modernized power system.” (REV Ratemaking Order p. 5.)

24 The Order states clearly that “Fixed charges should recover only costs that are

25 invariable with usage.” (*Id.* p.119.)

26

1 Q. How does the REV Ratemaking Order relate to the classification of distribution
2 plant in this electric proceeding?

3 A. Customer charges (i.e. fixed charges) are normally justified by relating them to
4 costs that cost of service studies treat as customer related. Therefore, the
5 Commission's position on rate design as expressed in the REV Ratemaking
6 Order appears to support UIU's position that much of the distribution plant that
7 Con Edison classifies as customer-related should be considered demand-related,
8 because it varies with usage. The Company, Staff, and the City recommended,
9 in prefiled testimony and ultimately applied in the JP, splitting distribution delivery
10 plant into customer-related and demand-related components based on the
11 assumption that some portion of these costs were caused by the number of
12 customers on the system. It does not follow that even if some portion of costs is
13 identified as a minimum system that these costs will vary with the numbers of
14 customers. Investment in poles, conductors, conduit, and transformers is
15 basically invariant with regard to the number of customers, but is variant with
16 regard to the demand of those customers.

17

18 Q. Are there other positions taken in the REV Ratemaking Order that are relevant to
19 cost allocation and rate design?

20 A. Yes. The Order states: "The correct characterization of different types of system
21 costs has long been a fixture of rate design debates. We will continue to observe
22 the principle of cost causation as REV progresses, but the characterization of
23 costs will evolve." (*Id.* p.122.) The characterization (classification) of distribution
24 costs has been the subject of debate in this electric proceeding. The REV Order
25 encourages rates that will impact customer behavior (i.e. energy and demand
26 charges, not customer charges), which militates against classifying costs as

1 customer-related, and which is relevant to the discussion below of other parties'
2 comments in this proceeding.

3

4 **VII. ADVANCED METERING INFRASTRUCTURE**

5 Q. Please provide an overview of the Company's AMI program.

6 A. Through this program, the Company will replace or upgrade all existing meters
7 across its service territory with approximately 3.6 million advanced electric
8 meters and 1.2 million advanced gas meters across its service territory. (pre-filed
9 direct AMI Panel, p. 6.) In addition to the AMI meters, the Company will install a
10 meter communication network and IT platform to manage two-way
11 communication with the meters. (Id., p. 14.) In its Order Approving Advanced
12 Metering Infrastructure Business Plan Subject to Conditions, issued March 17,
13 2016 in Cases 15-E-0050 et al, the Commission conditionally approved the
14 Company's implementation of AMI as described in its AMI Business Plan,
15 included in the Company's testimony in this case as Exhibit ____ (AMI-001). This
16 Order does not, however, prescribe any particular mechanism for recovering
17 costs associated with AMI, nor does it determine how those costs are to be
18 allocated among customer classes.

19

20 Q. What are the purported benefits of the AMI program?

21 A. The Company describes several customer and system benefits:

22 Con Edison believes that AMI will enhance the customer
23 experience, unlocking greater participation in demand
24 management programs, improving outage restoration and
25 operational performance, and facilitating the integration of
26 DER that will substantially increase the ability of customers
27 to engage in the management of their energy usage.

28

29 (AMI Panel, pp. 27-28.)

1 The advanced metering functionality allows greater access to near real-
2 time demand and pricing information, which allows for more control and
3 management by both customers and system operators. Customers will
4 theoretically also be able to more easily participate in distributed energy resource
5 ("DER") and demand response ("DR") programs. On the system level, the
6 Company claims that AMI meters provide several benefits, including improved
7 metering processes to eliminate the need for manual meter-reading, and improve
8 outage management by allowing more reliable information and reduced cost
9 impact of false outages. (Id., p. 27.) The Company states that the AMI program
10 will also yield environmental benefits derived from reduced GHG emissions due
11 to Conservation Voltage Optimization, reduced vehicle emissions from meter-
12 reading and outage response, and reduced energy usage (and GHG emissions)
13 from increased customer participation in DR programs. (Id., pp. 32-33.)

14
15 Q. Has the Company performed a Benefit Cost Analysis ("BCA") of the AMI
16 program?

17 A. Yes, it has. Prefiled Exhibit ____ (AMI-001), Con Edison's AMI Business Plan,
18 includes the latest BCA. The Company quantified total projected program costs
19 of \$1.6 billion and total benefits of \$2.7 billion (20 year net present value
20 ("NPV")), for an estimated net benefit of \$1.1 billion and a discounted payback
21 period of 10 years. (Id., pp. 40-41.)

22
23 Q. What costs associated with this program are included in this rate case?

24 A. For capital costs, the Company proposes to spend \$173.2 million in Rate Year 1,
25 \$194.9 million in Rate Year 2, and \$285 million in Rate Year 3. The Company
26 proposes to allocate 83% of the costs of the AMI program to electric customers

1 and 17% of the costs of the program to gas, reflecting the Company's current
2 allocation of common plant. (Id., p. 18; see also prefiled Exhibit ____ (AMI-002).)

3 The Company also expects to incur Operations and Maintenance ("O&M")
4 costs associated with developing the IT infrastructure and staffing the AMI
5 Operations Center. These costs are expected to be \$6.2 million in Rate Year 1,
6 \$14.6 million in Rate Year 2, and \$24.4 million in Rate Year 3. (prefiled AMI
7 Panel, pp. 21-22; see also prefiled Exhibit ____ (AMI-003).)

8 The Company anticipates customer O&M savings related to billing, call
9 center activity, field meter services, and meter reading. These savings are
10 expected to begin in Rate Year 2 with \$1.2 million, and \$9.3 million in Rate Year
11 3. (prefiled AMI Panel, pp. 24-25; see also prefiled Exhibit ____ (AMI-004).)

12 Lastly, the Company anticipates electric operations O&M savings related
13 to improved outage identification, reduced false outage response, and more
14 efficient service restoration. These savings are expected to begin in Rate Year 2
15 with \$0.4 million, and \$1.3 million in Rate Year 3. (pre-filed AMI Panel, pp. 26-27;
16 see also pre-filed Exhibit ____ (AMI-005).)

17 Q. Earlier, you mentioned the allocation of AMI costs as a shortcoming of the
18 Company's with the ECOS. How have AMI costs been reflected in this ECOS
19 study which has been used in the JP?

20 A. The Company's ECOS model is based on a 2013 test year. It does not include
21 any AMI costs.

22
23 Q. To which FERC accounts are AMI costs currently assigned?

24 A. All AMI costs booked to date have been included in FERC 1070, Construction
25 Work in Progress. (Exhibit____(UERP-JP-6) Company Response to UIU
26 Information Request 99.)

1

2 Q. To which FERC accounts will AMI costs be assigned once they are incorporated
3 into an ECOS model? How are these accounts allocated?

4 A. The Company has refused to identify the ultimate breakdown of AMI plant among
5 FERC accounts. It appears that the Company does not currently know how its
6 AMI costs will be booked. (Exhibit____(UERP-JP-6)Company Response to UIU
7 Information Request 93.) However, because the Company has not proposed any
8 special accounting treatment for these costs, we assume they will eventually be
9 booked and allocated in the same manner as other costs. For example, we
10 assume that AMI meters will be reflected in the meter account and will be
11 allocated on the number of meters weighted by the costs of the meters.
12 (Exhibit____(UERP-JP-6)Company Response to UIU Information Request 98.)

13

14 Q. Is there any evidence that Con Edison has considered relating customer benefits
15 of AMI with the allocation of AMI costs?

16 A. No. In fact, the opposite appears to be true. In discovery, UIU asked whether
17 the Company thought “it is appropriate to allocate AMI costs on the basis of
18 benefits received by different customer classes?” The Company’s response
19 noted that costs are not allocated on the basis of benefits, and did not indicate
20 whether it might be appropriate to do so. (Exhibit____(UERP-JP-6))_ Company
21 Response to UIU Information Request 194.) A further question,
22 Exhibit____(UERP-JP-6) UIU Information Request 197, asked the Company to
23 compare the benefits that might be received with its set of “trackers;” the
24 Company’s response referenced the general benefits of the trackers, but not how
25 or to what extent those benefits accrue to customers. UIU submitted additional
26 questions regarding the benefits AMI may provide customers in Case 15-E-0050.

1 (Exhibit ___(UERP-JP-6) Company Response to UIU Information Request 2-9.)

2 In questions 3-4 UIU asked the Company to describe how the benefits listed in
3 the AMI business plan will accrue to customers. The Company provided just
4 general information stating the benefit will result in a decrease in delivery rates,
5 supply charges, or both.

6 Q. Is the panel familiar with a report that discusses the unique cost recovery issues
7 presented by AMI?

8 A. Yes, the Regulatory Assistance Project released a report in July 2015 titled “Smart
9 Rate Design for a Smart Future” which discusses the cost recovery issues that
10 may arise with the installation of smart meters or AMI. (Exhibit ___(UERP-JP-
11 8).)

12 Q. Why are you addressing the allocation of AMI costs, given that the amounts
13 reflected in this proceeding are small?

14 A. The AMI costs as applied to this JP are apparently allocated across all classes
15 on the basis of other costs. In the future the costs will grow significantly. If they
16 continue to be allocated similarly to other costs in the same FERC accounts,
17 such allocation ignores the actual cost causation (or benefit) of AMI costs. This
18 issue needs to be carefully considered in this and future proceedings. In
19 addition, the JP does not provide the expected revenue requirement impact from
20 AMI.

21
22 Q. Why would the Company’s apparent proposed treatment as set forth in the JP
23 not be appropriate?

24 A. The Company’s proposed allocation fails to consider the purpose of the AMI
25 program and the basis of its associated costs. The Company’s entire justification
26 for installing AMI is not that the system is necessary (it isn’t) but rather that it

1 would yield net benefits. For example, consider AMI meters. AMI meters will
2 replace existing meters and will provide the same basic metering functions, but
3 will cost significantly more than basic existing meters, which the Company has
4 justified on the basis that the AMI meters (working in conjunction with the rest of
5 the AMI system) will yield cost savings and other benefits (referred to jointly as
6 “benefits”) that exceed their costs. (prefiled Company AMI Panel, p.40; Exhibit
7 ____ (AMI-001), Con Edison AMI Business Plan, p. 56.)

8 The Commission would likely not have approved the Company’s AMI
9 business plan if AMI’s projected costs had exceeded its expected benefits. (See
10 Case 14-M-0101, Order Establishing the Benefit Cost Analysis Framework
11 (issued January 21, 2016).) AMI’s projected benefits are therefore the reason
12 that the system is being installed – in other words, AMI’s expected benefits drive
13 its cost causation.

14
15 Q. What does this mean in terms of appropriate AMI cost allocation?

16 A. Cost allocation should follow cost causation. In the case of AMI, whose costs are
17 justified and caused entirely on the basis of the benefits they are expected to
18 yield, costs should be allocated to customers on the basis of the portion of
19 benefits that customers will receive. These benefits will not automatically accrue
20 to all customers in the same proportions as the costs of serving those customers;
21 nor are they likely to flow according to the number of meters in each class.

22 We note that this “value of service” principle, in addition to reflecting cost
23 causation, is consistent with and would advance the Commission’s objectives in
24 the REV proceeding. For example, in the REV Track Two Order, the Commission
25 observed that “[w]hile cost-of-service ratemaking has served reasonably well for
26 the last century, it was developed under several assumptions that may no longer

1 hold” (p. 3), and found that instead, “[utility] earnings must be connected to
2 increased customer value” (p. 5).

3
4 Q. What is the appropriate allocation of AMI costs in the JP?

5 A. We recommend that the Commission employ this “value of service” approach to
6 the allocation of AMI costs, which would allocate AMI costs according to its
7 benefits.

8
9 Q. How can this “value of service” principle be implemented in this rate proceeding?

10 A. It can be closely approximated in this proceeding. To date, the Company has
11 failed to determine the allocation of projected AMI benefits among customer
12 classes to date. But this does not justify a cost allocation that ignores cost
13 causation. Until benefit-allocation data are available, we recommend that the
14 Commission use energy as a proxy determinant of AMI benefit and cost
15 allocation.

16 We recommend energy because the amount of benefits a customer
17 receives from AMI will likely be highly correlated to the customer’s size and level
18 of sophistication. AMI will provide customers with a rich set of usage data that
19 will be much more useful to those larger customers that have more opportunity to
20 understand and modify their consumption accordingly. Furthermore, larger
21 customers will benefit more as reduced outages yield lower energy costs. We
22 therefore recommend that AMI costs be allocated on the basis of energy unless
23 and until the Company provides analyses that justify an alternative approach.

24

1 **VIII. RATE DESIGN**

2 Q. How are customer charges for service classes SC1, SC2, and SC6 reflected in
3 the JP?

4 A. With the exception of a reduction for some SC2 customers, customer charges
5 remain the same. This mostly reflects the Company's initial proposal not to
6 increase customer charges. We note that the JP proposes to reduce the existing
7 monthly customer charge for SC 2 customers with unmetered service by \$4.41 to
8 reflect the removal of SC2's allocation portion of metering costs in the 2013
9 ECOS study. JP further notes that usage charges for all SC2 customers will be
10 increased to offset the resulting revenue shortfall. (See JP at 56.)
11

12 Q. According to the JP, what are the delivery volumetric rates for Rate I customers in
13 residential rate class SC1 for Rate Year 1?

14 A. The JP continues to apply the Company's rate structure to keep the current
15 inclining block rate structure for summer and flat rates for winter. The winter flat
16 rate is equal to the first block of the summer rate. The volumetric delivery rates
17 increase approximately 8.16% in order to recover the target revenues set forth in
18 the JP.
19

20 Q. Similarly, what are the general small commercial SC2 Rate I volumetric delivery
21 charges set forth in the JP?

22 A. The SC2 volumetric delivery charges increase by approximately 9.23% (summer)
23 and 9.21% (winter).
24

1 Q. Please summarize the current and proposed rates for Rate I customers in rate
2 classes SC1 and SC2.

3 A. The table below summarizes the rates.

4

5 **Table 3: JP Proposed Rate Changes to SC1 and SC2 in Rate Year 1**

		SC 1		SC 2	
		Current (1/1/2016)	Proposed	Current (1/1/2016)	Proposed
	Customer Charge	\$15.76	\$15.76	\$26.01	\$26.01
Summer Volumetric Delivery Rates	SC 1: 0-250 kWh SC 2: 0-2000 kWh	\$0.08901	\$0.09627	\$0.1073	\$0.1172
	SC 1: >250 kWh SC 2: >2000 kWh	\$0.10232	\$0.11067	\$0.1073	\$0.1172
Winter Volumetric Delivery Rates	SC 1: 0-250 kWh SC 2: 0-2000 kWh	\$0.08901	\$0.09627	\$0.0901	\$0.0984
	SC 1: >250 kWh SC 2: >2000 kWh	\$0.08901	\$0.09672	\$0.0901	\$0.0984

6

7 Q. Do you agree with the rate design methodology for SC1 and SC2 electric
8 customers applied in the JP?

9 A. Yes; however, the delivery volumetric rates for SC1 and SC2 would be lower if
10 the Commission adopts our recommendations with respect to the ECOS model.

11

12 Q. Please provide your comments on the customer charge set forth in the JP.

13 A. First, we believe that customer charges set at computed customer costs do not
14 necessarily provide appropriate price signals. It is much more important that

1 volumetric charges be set at appropriate levels. Volumetric charges will influence
2 customer behavior; it is unlikely that higher or lower customer charges will affect
3 customer behavior.

4 The Company provides estimates of unit customer costs for each rate
5 class as part of its ECOS model – the Company’s ECOS model which has been
6 ultimately used in the JP. However, its estimates incorporate significant
7 allocation of high tension and low tension system plant on a customer basis. As
8 described earlier in this testimony, we recommend a much lower allocation on a
9 customer basis for these costs. The table below shows a comparison of these
10 unit costs and current customer charges for SC1 and SC2. The unit costs from
11 the “UIU Recommended” ECOS model are below the current monthly customer
12 charges.

13
14 **Table 4: SC1 and SC2 Customer Charges Under Company Proposed and UIU**
15 **Recommended Models**
16

	SC 1 Monthly Customer Cost (\$/customer)	SC 2 Monthly Customer Cost (\$/customer)
Per JP Electric ECOS	\$22.14	\$38.11
Per UIU Recommended ECOS	\$14.00	\$21.96
Current Customer Charge	\$15.76	\$26.01

17
18 Our estimated customer costs are lower than the Company’s estimate, but more
19 important, are lower than the current as well as JP customer charges for SC1
20 and SC2. We recommend reducing the current customer charges for SC1 and
21 SC2 accordingly.

22 The reduced customer charges will also result in higher volumetric energy
23 charges. We believe it is much more important to consider the price signals

1 provided by energy charges, and higher energy charges will be an incentive for
2 customers to limit energy use. This is also consistent with the Commission's
3 objectives in REV to give customers more control over their energy bills.
4

5 Q. In your pre-filed Direct Testimony, you recommended that electric customer
6 charges for SC1 (residential heating and non-heating) and SC2 (general small
7 commercial) should be reduced. Do any of the testimonies and orders to which
8 you have responded affect that recommendation?

9 A. Yes. Other testimonies presented in these cases and the REV Ratemaking
10 Order provide strong support to that recommendation. For instance, p. 119 of the
11 REV Ratemaking Order states that "Rate design should encourage economic
12 DER and conservation." The revenue requirement recommended by Staff will
13 result in a very small average increase to electric rates. One result of this is that
14 if the existing customer charges are maintained, the increase to energy charges
15 will also be very small. This is inconsistent with the emphasis in the REV
16 Ratemaking Order on rates that will encourage efficient consumption.

17 The REV Ratemaking Order also noted that "...Staff analyzed rate design
18 in the context of REV and found that, much like the utility revenue model, current
19 rate design practices fail to provide adequate incentives and price signals that
20 are suitable for a modern electric system." (p.109.) We note that there is no
21 evidence that existing customer charges contribute to adequate incentives and
22 price signals. While this Order may be primarily setting the groundwork for future
23 ratemaking changes, it is reasonable to reflect these goals in the current Con
24 Edison electric case to the extent possible.
25

1 Q. Did the revenue requirement set forth in the JP result in you changing your
2 recommendation regarding the customer charge?

3 A. No, it did not. The revenue requirement and the allocation of AMI do not change
4 the numbers presented in Table 4.

5

6 Q. Do you have any other comments on rate design set forth in the JP?

7 A. Yes. Since the JP does not consider whether the existing seasonal differential
8 and volumetric block rate difference reflect costs differences and provide
9 appropriate price signals to customers, we recommend that the Commission
10 require the Company to provide this analysis in the next rate proceeding.

11

12 Q. Please provide your comments on marginal costs.

13 A. As a marginal cost study has not been used to inform decisions on residential
14 rate design in this proceeding and is not reflected in the JP. We recommend the
15 Company perform an analysis of using marginal cost to develop its tail block
16 summer rate for SC1 customers as part of its next rate case proposal.

17

18 Q. Does this conclude your direct testimony on the JP?

19 A. Yes, it does.

1
2 (The following is the continued
3 continued in the captioned matter in this
4 evidentiary hearing.)

5
6 ALJ LECAKES: Proceed, Mr. Zimmerman.

7 MR. ZIMMERMAN: Thank you, your
8 Honor.

9 The panel is available for
10 cross-examination.

11 ALJ LECAKES: Go ahead, Mr. Lang.

12 MR. LANG: Before we move to
13 cross-examination, may I inquire how we're
14 going to treat the UIU statements? Yesterday
15 with Con Edison we had, your Honors, the panel
16 swear to the statements. Is that going to
17 happen today with UIU?

18 ALJ LECAKES: Well, that actually
19 overlaps with a point that I was going to bring
20 up. Before we turn them over, I just want to
21 mention for the record that, as with the other
22 panels, prior to the hearing I requested that
23 different groups submit to me their exhibit
24 list in this case, and for UIU we have
25 premarked their prefiled litigated case as

1
2 Exhibits 145 through 162. In addition, the
3 exhibits that were submitted with the testimony
4 toward the joint proposal have been -- well, we
5 included the testimony as Exhibit 164, and then
6 the exhibits that were attached as 165 through
7 174.

8 Mr. Zimmerman, is it the intent of
9 UIU to have the panel not just adopt its
10 testimony in this proceeding but to adopt the
11 factual statements that were made in the
12 statement in opposition to the Con Edison joint
13 proposal?

14 MR. ZIMMERMAN: Thank you, your
15 Honor, for lining it up to clarify. We do
16 intend to enter the exhibits into the record.
17 I apologize for not doing that earlier.
18 However, the panel's testimony is the panel's
19 testimony. The statement of the joint proposal
20 is not their testimony.

21 ALJ LECAKES: I understand and that's
22 fine.

23 MR. ZIMMERMAN: So to that end,
24 panel, did you prepare ten exhibits labeled
25 UERP-JP-1 through UERP-JP-10 for submission in

1
2 this case?

3 MS. SMITH: Yes.

4 MR. ZIMMERMAN: Are the statements
5 made in those exhibits still true to the best
6 of your knowledge?

7 MS. SMITH: Yes.

8 MR. ZIMMERMAN: I'd like to move to
9 have those exhibits entered into the record as
10 exhibits to panel's testimony.

11 ALJ LECAKES: They're in the record
12 right now as marked exhibits. We will move
13 everything into the evidentiary record at the
14 end, as far as exhibits are concerned. But, to
15 address Mr. Lang's point, I would note that
16 although the panel has not adopted the factual
17 statement, as is their right, as any other
18 sworn testimony -- they do have testimony that
19 was submitted. However, the statement, the
20 initial statement, in opposition to the joint
21 proposal is Exhibit 163. The reply statement
22 is listed as Exhibit 187. Therefore, since
23 they are exhibits in this case, they can be
24 cross-examined on the statements in those
25 exhibits with the understanding that it is not

1
2 sworn testimony that you're crossing on.

3 MR. ZIMMERMAN: I'd appreciate some
4 clarification. Are the statements in support
5 of the joint proposal, are the proponents of
6 the joint proposal included here as exhibits?

7 ALJ LECAKES: Yes, they are, and in
8 addition to them being entered as exhibits,
9 some of the panels yesterday and the panel this
10 morning did adopt the factual statements also
11 as sworn testimony, so they serve the purpose
12 of both sworn testimony for the factual
13 representations made within those statements
14 and as an exhibit for the legal arguments and
15 the other arguments that are made in those
16 statements.

17 So as an exhibit is entered into the
18 hearing record here, it is fair game for
19 cross-examination on that, but again, with the
20 clarification caveat that if it hasn't been
21 adopted as sworn testimony, it isn't held to
22 the same standard as the direct testimony in
23 this case is being held by this panel.

24 MR. ZIMMERMAN: Understood, your
25 Honor. I would like to note that it was

1
2 Mr. Lang who asked the question and the City
3 did file statements on the joint proposal but
4 has not provided any witness to answer
5 questions on that statement.

6 ALJ LECAKES: Right, and those have
7 just been entered into the hearing record as
8 exhibits only and they were not required since
9 there was no testimony put forward by that
10 party to produce anyone for cross-examination
11 purposes, and when that happens, we take into
12 consideration the fact that there was no direct
13 sponsoring parties subject to cross-examination
14 on those exhibits. So it goes to the weight of
15 the exhibits and not the relevance.

16 MR. LANG: Your Honor, I would just
17 note that prior to this hearing the City
18 circulated an e-mail to all parties indicating
19 that if people wanted to cross-examine the
20 City's statement, the City would provide a
21 witness. Not a single party indicated in
22 response to that e-mail that they had interest
23 in cross-examining the City's statement; that
24 is the reason we did not provide a witness.

25 ALJ LECAKES: I do recall that.

1
2 MR. ZIMMERMAN: Are you referring to
3 your e-mail dated September 23rd?

4 MR. LANG: I don't have that in front
5 of me.

6 MR. FAVREAU: It doesn't make a
7 difference.

8 MR. ZIMMERMAN: Well, I'd just like
9 to point out, that e-mail invites your Honors
10 to ask the City to submit a panel, not any
11 parties, and the administrative law judges did
12 not indicate a desire to cross-examine the
13 City's panel.

14 MR. LANG: Mr. Zimmerman, you had
15 every opportunity.

16 ALJ LECAKES: We don't need to beat a
17 dead horse, we understand. There might have
18 been some misunderstanding or miscommunication,
19 but we're not going to add a witness at this
20 point.

21 So, Mr. Zimmerman, is the panel
22 available for cross-examination now?

23 MR. ZIMMERMAN: I would just like to
24 note one more item for the record.

25 ALJ LECAKES: Absolutely.

1
2 MR. ZIMMERMAN: That e-mail from
3 Mr. Lang, on September 23rd, includes in part:
4 "The City was not intending to submit any of
5 its witnesses to testify at the hearing of the
6 joint proposal."

7 It and goes on to say, "To a large
8 extent, their testimony have been resolved by
9 the provisions of the joint proposal and they
10 would not necessarily continue to support their
11 pre-filed testimony if called to testify now."

12 MR. LANG: And, your Honor, that has
13 nothing to do with a witnesses on the joint
14 proposal and on the City's statement in support
15 of the joint proposal.

16 ALJ LECAKES: I agree.

17 MR. LANG: Mr. Zimmerman is confusing
18 concepts.

19 ALJ LECAKES: I understand.

20 MR. ZIMMERMAN: Thank you, your
21 Honor, the panel is available.

22 ALJ LECAKES: Company?

23 MS. KRAYESKE: The company would
24 request that we wait until the end and see if
25 there's any areas that we still feel need to be

1
2 addressed.

3 ALJ LECAKES: As long as every party
4 doesn't defer on the same matter, I have no
5 problem with that.

6 Staff?

7 MR. FAVREAU: Staff also defers on
8 the panel.

9 ALJ LECAKES: Who would like to go
10 first? Mr. Diamantopoulos?

11 MR. DIAMANTOPOULOS: Your Honor, that
12 would be me.

13 ALJ LECAKES: Proceed.

14 MR. DIAMANTOPOULOS: Good morning,
15 panel.

16 PANEL MEMBERS: Good morning.

17 MR. DIAMANTOPOULOS: Ms. Neal, you
18 are a senior consultant at Daymark, correct?

19 MS. NEAL: Correct.

20 MR. DIAMANTOPOULOS: Where is the
21 senior consultant in the employee hierarchy at
22 Daymark.

23 MS. NEAL: It is above consultant and
24 below managing consultant.

25 MR. DIAMANTOPOULOS: What's the

1
2 difference between the managing consultant and
3 the senior consultant at Daymark?

4 MS. NEAL: That's an excellent
5 question for the Daymark management, but I
6 really cannot answer that.

7 MR. DIAMANTOPOULOS: Are you not part
8 of management?

9 MS. NEAL: I am not part of the
10 management team at Daymark.

11 MR. DIAMANTOPOULOS: Ms. Smith, good
12 morning.

13 MS. SMITH: Good morning.

14 MR. DIAMANTOPOULOS: You are an
15 independent consultant working exclusively for
16 Daymark; is that right?

17 MS. SMITH: That's correct.

18 MR. DIAMANTOPOULOS: Why do you work
19 exclusively for Daymark?

20 MS. SMITH: I guess, basically, when
21 I retired this was sort of a non-compete
22 clause. I committed that I would work short
23 numbers of hours for them since they needed my
24 services.

25 MR. DIAMANTOPOULOS: Thank you. Are

1

2 you part of management at Daymark?

2

3

MS. SMITH: No longer.

4

MR. DIAMANTOPOULOS: But you used to
5 be?

5

6

MS. SMITH: Yes.

7

MR. DIAMANTOPOULOS: When did you
8 retire from Daymark?

8

9

MS. SMITH: 2013.

10

MR. DIAMANTOPOULOS: 2013. Thank
11 you.

11

12

Ms. Neal -- okay, never mind.

13

Ms. Smith, do you have any ownership
14 interests in Daymark?

14

15

MS. SMITH: No, I do not.

16

MR. DIAMANTOPOULOS: Ms. Neal, how
17 are you being compensated by Daymark for your
18 participation in this case?

18

19

MR. ZIMMERMAN: Objection. This is
20 outside of scope.

20

21

ALJ LECAKES: Mr. Diamantopoulos, the
22 purpose of the question?

22

23

MR. DIAMANTOPOULOS: I want to
24 ascertain -- well, actually, she already
25 answered whether or not she was part of

24

25

1
2 management, so I probably shouldn't ask it.

3 ALJ LECAKES: Okay, proceed.

4 MR. DIAMANTOPOULOS: How is Daymark
5 being compensated by UIU for its participation
6 in this case?

7 MR. ZIMMERMAN: Objection. Both
8 witnesses said they are not part of management,
9 and also, there is out of scope. This is not
10 relevant to their testimony.

11 ALJ LECAKES: It's relevant to
12 impeaching the witnesses, potentially.

13 MR. DIAMANTOPOULOS: We'll come back
14 to this one.

15 ALJ LECAKES: You can ask it.

16 MR. DIAMANTOPOULOS: They can answer
17 it?

18 ALJ LECAKES: Yes, if they know.

19 MS. NEAL: I do not know the details.
20 I know we have some kind of contractual
21 arrangement with UIU. I do not know the
22 details of that arrangement.

23 MR. DIAMANTOPOULOS: Ms. Panko,
24 you're a UIU employee, correct?

25 MS. PANKO: Yes.

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2 MR. DIAMANTOPOULOS: Can you answer
3 that question?

4 MS. PANKO: Can you repeat the
5 question?

6 MR. DIAMANTOPOULOS: Sure. How is
7 Daymark being compensated by UIU for its
8 participation in this case?

9 MR. ZIMMERMAN: I would just like to
10 point out that the details, the amount of
11 compensation --

12 ALJ LECAKES: Is there an objection?

13 MR. ZIMMERMAN: Yes, objection. To
14 the extent that it asks UIU to disclose trade
15 secret or otherwise confidential information
16 about the amount of compensation being provided
17 to Daymark.

18 MR. DIAMANTOPOULOS: I haven't asked
19 that question. I said how. The question is
20 how.

21 MS. PANKO: You're asking how they
22 became members of this panel?

23 MR. DIAMANTOPOULOS: No. How is
24 Daymark being compensated by UIU for its
25 participation in this case?

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2 MS. PANKO: I am not the fiscal
3 department, so I don't know how the money is
4 handled.

5 MR. DIAMANTOPOULOS: Ms. Panko, where
6 is the utility panelist in the employment
7 hierarchy of UIU?

8 MS. PANKO: I only could speak on
9 behalf of myself, and I am underneath the
10 director of the utility intervention unit.

11 MR. DIAMANTOPOULOS: How many
12 employees does UIU employ?

13 MS. PANKO: Under the utility
14 intervention team, three. I cannot speak for a
15 global division, consumer protection.

16 MR. DIAMANTOPOULOS: That would be
17 yourself, the director and would that mean
18 Mr. Zimmerman as well?

19 MS. PANKO: Mr. Collar.

20 ALJ LECAKES: Mr. Collar, who
21 submitted initial testimony in the litigated
22 case. It's C-O-L-L-A-R.

23 MR. DIAMANTOPOULOS: Ms. Panko, am I
24 correct that UIU employees lack the expertise
25 in house to assemble rate panels in these rate

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2 cases in furtherance of UIU's objective in
3 these rate cases and that is why UIU retained
4 consultants for its electric and gas panels in
5 these rate cases?

6 MR. ZIMMERMAN: Objection, that's a
7 compound question. Maybe you can break it up
8 into two.

9 MR. DIAMANTOPOULOS: Do you
10 understand the question, Ms. Panko?

11 MS. PANKO: Can you repeat the
12 question?

13 MR. DIAMANTOPOULOS: Am I correct
14 that UIU lacked the expertise in house to
15 assemble rate panels in these rate cases in
16 furtherance of UIU's objectives in these rate
17 cases and that is why UIU retained consultants
18 for its electric and gas rate panels in these
19 rate cases?

20 MS. PANKO: We did seek additional
21 help, yes.

22 MR. DIAMANTOPOULOS: But did you seek
23 the help because you didn't have the expertise
24 in house and that's why you retained outside
25 experts?

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MS. MILLER: On certain topics, yes.

MR. DIAMANTOPOULOS: I'm specifically asking you about the panel you're currently on and also on the other panel that you're on.

MS. PANKO: Yes, that's why they're here.

MR. DIAMANTOPOULOS: So is it correct that UIU lacked the expertise to put in testimony on its own without the assistance of consultants in these cases?

MS. PANKO: Not on all the issues.

MR. DIAMANTOPOULOS: Not on all issues?

MS. MILLER: That we had testified.

MR. DIAMANTOPOULOS: That you addressed as a panel?

MS. MILLER: Repeat the question again.

MR. DIAMANTOPOULOS: Which issues are you -- which issues did you not need help on?

MS. PANKO: Rate design.

MR. DIAMANTOPOULOS: So the entire rate design testimony was done in house by UIU?

MS. PANKO: No, we sought help for

1
2 everything. It was a collaborative process;
3 that's why it's called a panel. I also would
4 say revenue allocation, as well, can be done
5 internally.

6 MR. DIAMANTOPOULOS: I'm sorry, I'm a
7 little confused.

8 ALJ LECAKES: I'll just note for the
9 record that the judges don't find it unusual
10 that a party to the proceeding has had to hire
11 outside experts, and I understand that there's
12 some questions about the ability in house to
13 handle everything that comes up in a rate case.
14 But I understand the point that's being made
15 and I don't know that we need to belabor it too
16 much longer.

17 MR. DIAMANTOPOULOS: I'll move on.

18 Ms. Neal and Smith, am I correct that
19 Daymark was retained by UIU in furtherance of
20 its foremost objective to ensure the protection
21 of New York's residential and small commercial
22 consumers' interests?

23 MS. SMITH: I don't think we view it
24 that way. We were engaged by UIU to provide
25 testimony to the best of our ability on cost

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2 allocation and rate design issues.

3 Could I add to that? I don't believe
4 came Daymark has ever signed a contract where
5 it said our purpose was to support one
6 particular party in a proceeding. We have
7 always come in as technical experts.

8 MR. DIAMANTOPOULOS: Am I correct
9 that as part of Daymark's retention it was
10 expected to focus on specific cost of service
11 methodologies that carry the highest potential
12 impact on customer class-specific revenue
13 distribution and customer charges with the
14 primary focus on impact to residential
15 consumers and small commercial consumers?

16 MS. SMITH: That question is partly
17 correct. We did not -- I don't think our
18 contract said this, but it was never our intent
19 to examine every line and cost of service study
20 and go over every single detail. We were going
21 to look at the major allocations that had major
22 impacts on all customers and they were not
23 designed to impact any particular group of
24 customers.

25 MR. DIAMANTOPOULOS: Am I correct

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2 that Daymark was expected to consider other
3 parties' interests and develop responsive
4 strategies to counter other parties' positions
5 concerning cost of service and other relevant
6 issues that are inconsistent with UIU's goals?

7 MS. SORRENTINO: Could you re-read
8 that question, please.

9 MR. DIAMANTOPOULOS: Sure, I'd be
10 happy to.

11 Am I correct that Daymark was
12 expected to consider other parties' interests
13 and develop responsive strategies to counter
14 other parties' positions concerning cost of
15 service and other relevant issues that are
16 inconsistent with UIU's goals?

17 MS. SORRENTINO: No. It was our
18 charge to present testimony that we felt was
19 most correct regarding cost allocation and rate
20 design and to defend our positions.

21 MR. DIAMANTOPOULOS: Am I correct
22 that UIU sees the public interest in UIU's
23 goals in favor of protecting New York's
24 residential and small commercial consumers'
25 interests and against the other service classes

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2 as one in the same?

3 MS. SMITH: We have been told --
4 maybe Ms. Panko can answer to this also -- that
5 UIU is intending to represent the interest of
6 all customers.

7 MR. DIAMANTOPOULOS: I show you --
8 are we going to mark this for identification,
9 Judge?

10 ALJ LECAKES: Please proceed with
11 foundation questions first.

12 MR. DIAMANTOPOULOS: Sure.

13 Ms. Panko and the panel, generally
14 can you identify this document?

15 MS. PANKO: This is the request for
16 information labeled 16-UIU-08, as per top of
17 the page.

18 MR. DIAMANTOPOULOS: Is this a
19 UIU-issued document?

20 MS. PANKO: Yes.

21 MR. DIAMANTOPOULOS: What is the
22 purpose of this document?

23 MR. ZIMMERMAN: Objection. The panel
24 has already indicated that they're not part of
25 management.

1
2 ALJ LECAKES: Right, but this goes to
3 the -- I understand that, but at the same time,
4 Ms. Panko was able to identify the document.
5 Let me try one.

6 Ms. Panko, do you know if this
7 document is issued in the regular course of
8 business by the Utility Intervention Unit?

9 MS. PANKO: I'm not sure if it's a
10 regular course of business, but it's as needed.

11 ALJ LECAKES: And it's issued by
12 Ms. Erin, E-R-I-N, Hogan, H-O-G-A-N, who is the
13 director of the Utility Intervention Unit; is
14 that correct?

15 MS. PANKO: Yes.

16 ALJ LECAKES: We'll mark it as
17 Exhibit 315.

18 (Whereupon, Exhibit 315, request for
19 information labeled 16-UIU-08, is marked
20 for identification, as of this date.)

21 ALJ LECAKES: Proceed,
22 Mr. Diamantopoulos, when you're ready.

23 MR. DIAMANTOPOULOS: Thank you,
24 Judge.

25 So directing your attention to

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2 paragraph one, sixth or seventh line down, the
3 sentence beginning, "The UIU's foremost
4 objective in this case is ensuring the
5 protection of New York residential and small
6 commercial consumers' interests," do you see
7 that?

8 MS. SMITH: Yes.

9 MR. DIAMANTOPOULOS: Was Daymark the
10 recipient of the assignment for this request
11 for quotation?

12 MR. ZIMMERMAN: Objection. Your
13 Honor, the witnesses haven't established that
14 they've seen this document before.

15 ALJ LECAKES: The document seeks
16 proposal quotes to provide expert assistance in
17 specifically case 16-E-0060. Daymark is
18 performing at a function here, so I don't think
19 it's beyond the scope of believability that the
20 witnesses may be familiar with this document.
21 So I'll allow the question. However, the
22 answer may be that they don't know this
23 document, they've never seen it.

24 MS. SMITH: Is that a question?

25 ALJ LECAKES: So the question, if

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2 Mr. Diamantopoulos wants to repeat the
3 question.

4 MR. DIAMANTOPOULOS: Sure, your
5 Honor.

6 Did Daymark submit information to UIU
7 to be retained in this case?

8 MS. SMITH: Daymark submitted a
9 proposal, yes.

10 MR. DIAMANTOPOULOS: Would that
11 proposal have been in response to a request for
12 quotation from UIU?

13 MS. SMITH: Yes.

14 MR. DIAMANTOPOULOS: Does it indicate
15 in paragraph one of this document, in this
16 request from UIU, that UIU's foremost objective
17 in this case is ensuring the protection of New
18 York residential and small commercial
19 consumers' interests?

20 MS. SMITH: Neither Mary nor I have
21 seen this document before, but I can read the
22 sentence in the first paragraph that says that
23 UIU's foremost objective is protection of
24 residential and small commercial customers. It
25 does not say that's their only objective.

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2 MR. DIAMANTOPOULOS: But it does say
3 it's its foremost objective, correct?

4 MS. SMITH: Yes.

5 MR. DIAMANTOPOULOS: So am I correct
6 that Daymark was retained by UIU in furtherance
7 of this foremost objective?

8 MS. SMITH: Mary and I cannot answer
9 that question. I don't know if Danielle can.

10 MR. DIAMANTOPOULOS: Ms. Panko, you
11 can answer this question.

12 MS. PANKO: They are on 24 panel,
13 yes.

14 MR. DIAMANTOPOULOS: No. My question
15 is: Was Daymark retained by UIU in furtherance
16 of this foremost objective?

17 MS. PANKO: Yes.

18 MR. DIAMANTOPOULOS: Now, Ms. Neal,
19 you testified in your direct testimony that you
20 submitted Wisconsin testimonies on behalf of
21 the Citizens Utility Board of Wisconsin; is
22 that correct?

23 MS. NEAL: That's correct.

24 MR. DIAMANTOPOULOS: Whose interests
25 does the Citizens Utility Board of Wisconsin

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represent?

MS. NEAL: I don't really know, it does include small customers.

MR. DIAMANTOPOULOS: It includes small customers.

Do you typically testify in rate cases on behalf of small customers?

MS. SMITH: Are you directing that question to Daymark or to Mary?

MR. DIAMANTOPOULOS: To Mary.

MS. NEAL: This is my first testimony on cost of service issues, cost allocation. I can't say what's typical, but I have testified on behalf of Citizens Utility Board in Wisconsin, as you said, as well as on behalf of business interests in Nova Scotia.

MR. DIAMANTOPOULOS: And I'd like to direct your attention to page one, lines 10 through 11 of the revised testimony of UIU's Electric Rate Panel in which you indicated --

MR. ZIMMERMAN: I'm sorry, are you referring to the testimony in the joint proposal?

MR. DIAMANTOPOULOS: No. This is the

1
2 revised direct testimony of the UIU's Electric
3 Rate Panel. But you may not even have to
4 reference it. You had indicated that you were
5 the lead consultant in creating a cost
6 allocation model for Stowe Electric Department
7 in Vermont, is that right?

8 MS. NEAL: That's right.

9 MR. DIAMANTOPOULOS: Did you create a
10 cost allocation model in that rate case?

11 MS. NEAL: I did.

12 MR. DIAMANTOPOULOS: When did you
13 prepare that approximately?

14 MS. NEAL: I think it was at the end
15 of 2015.

16 MR. DIAMANTOPOULOS: How much time
17 did it take you to complete the cost allocation
18 model?

19 MS. NEAL: It was not one continuous
20 effort. There's some modeling that goes on
21 initially and then there would be updates to
22 that in time, so it takes time, a period of
23 time.

24 MR. DIAMANTOPOULOS: But start to
25 finish, how much time did it take you to do it.

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2 MS. NEAL: You mean in number of
3 hours? I don't know.

4 MR. DIAMANTOPOULOS: Hours, days,
5 whatever measurement you want to give us.

6 MS. NEAL: The case itself lasted
7 several months.

8 MR. DIAMANTOPOULOS: How long did it
9 take you to do the cost allocation model?

10 MS. NEAL: If you total up all the
11 hours, it would have been to be days.

12 MR. DIAMANTOPOULOS: I'm sorry?

13 MS. NEAL: If you totaled up all the
14 hours, it would have to be in the days or the
15 weeks. I don't have it all in my head at this
16 time.

17 MR. DIAMANTOPOULOS: Approximately
18 how many days or weeks did it take you to do
19 the model?

20 MS. NEAL: I just don't recall.

21 MR. DIAMANTOPOULOS: Did you do the
22 cost allocation modeling?

23 MR. ZIMMERMAN: Asked and answered.

24 ALJ LECAKES: Agreed.

25 MR. DIAMANTOPOULOS: Am I correct

1
2 that the combined number of commercial and
3 residential customers for Stowe Electric
4 Department in Vermont is about 4,000 customers?

5 MS. NEAL: I think that's about
6 right, but I don't have the number off the top
7 of my head.

8 MR. DIAMANTOPOULOS: You also
9 testified in the direct testimony that you
10 built a revenue requirement and rate design
11 for -- I may be mispronouncing this -- Kaua'i
12 Island Utility Cooperative ULED street light
13 rates; is that right?

14 MS. NEAL: That's correct.

15 MR. DIAMANTOPOULOS: Am I correct
16 that this cooperative that you did work for is
17 a not-for-profit generation transmission and
18 distribution cooperative owned by the members
19 it serves?

20 MS. NEAL: That's correct.

21 MR. DIAMANTOPOULOS: Am I correct
22 that the cooperative serves about 33,000
23 electric accounts on that island?

24 MS. NEAL: I believe that's right.

25 MR. DIAMANTOPOULOS: Would you agree

1
2 that doing a cost allocation -- do you know how
3 long it took you to do that, that revenue
4 requirement and rate design model?

5 MS. NEAL: Just for the street lights
6 it was about one day.

7 MR. DIAMANTOPOULOS: One day.

8 Would you agree that doing a cost
9 allocation for a cooperative of about 33,000
10 members is not comparable to doing a cost
11 allocation model for a larger utility, like Con
12 Edison, which serves New York City and
13 Westchester County with millions of customers?

14 MS. NEAL: It is different, but I did
15 not build the model in this case, I reviewed
16 it, and I review many models found in utilities
17 that are much larger than Kaua'i Island Utility
18 Cooperative or Stowe.

19 MR. DIAMANTOPOULOS: Okay. I
20 understand your answer.

21 Ms. Panko, you're a former Con Edison
22 employee, correct?

23 MS. PANKO: Yes.

24 MR. DIAMANTOPOULOS: Did you work in
25 there exclusive for their gas department or did

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you also work in electric?

MS. PANKO: I worked under finance in the rate engineering department on the gas.

MR. DIAMANTOPOULOS: Did you work on the electric side of Con Edison at all?

MS. PANKO: My main focus was gas. I was under the gas management.

MR. DIAMANTOPOULOS: Did you ever work on the embedded cost of service studies while you were at Con Edison?

MS. PANKO: No, I did not.

MR. DIAMANTOPOULOS: Do you know how much time it takes for Con Edison to do an embedded cost of service study?

MS. PANKO: I believe it's contracted out, so it's not done internally.

MR. DIAMANTOPOULOS: I know, but do you know how long it takes?

MS. PANKO: I don't know; I'm not their consultant.

MR. DIAMANTOPOULOS: Am I correct that UIU is exclusively representing residential and small commercial utility customers in this case, in these two rate

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cases?

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MS. PANKO: Not exclusively, no.

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MR. DIAMANTOPOULOS: Who else do you

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represent?

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MR. ZIMMERMAN: Objection. The

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question of representation is not what these

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panels are here to testify on. Who UIU

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represents is a legal question and for the

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answer to that I request refer you to our

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organic statute.

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ALJ LECAKES: Which is contained in

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the statements, but I do agree with

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Mr. Zimmerman.

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The other concern I have is I

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understand where we've gone now with the

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impeachment of the panels and everything, so I

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think we are belaboring a bit much on this one.

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MR. DIAMANTOPOULOS: Am I correct

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that UIU does not represent the interests of

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residential and small commercial consumers in

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this rate case?

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MR. ZIMMERMAN: Again, same

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objection.

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ALJ LECAKES: Mr. Zimmerman and the

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2 statement have indicated that UIU's mandate
3 legally is to represent the interest of all
4 customers. However, they have absolutely
5 conceded in those statements that they are
6 seeing a focus on residential and small
7 commercial customers in this case because of
8 their opinion, whether warranted or not, that
9 those customers are being less or not
10 represented by other parties.

11 MR. DIAMANTOPOULOS: Thank you, your
12 Honor.

13 Panel, am I correct that cost of
14 service studies are not simply arithmetic
15 exercises and they require the exercise of
16 judgment by the analysts performing them?

17 MS. SMITH: There is -- yes, there's
18 definitely judgment involved in a couple of
19 aspects. One of the more difficult ones, for
20 instance, is finding appropriate basic data.
21 In some of the utilities, for instance, the
22 small utility Mary was talking about was
23 finding low data as a challenge. In other
24 cases, there are slightly different reporting
25 mechanisms and choices for low data. There are

1
2 also choices about what allocators to use in
3 those cases.

4 Aside from those choices, things get
5 put in this kind of -- it's like a machine. We
6 use Con Edison's model. Once we put in certain
7 different allocators, you chug around and the
8 machine produces results.

9 MR. DIAMANTOPOULOS: Okay. But you
10 would agree the cost of service studies require
11 the exercise of judgment by the analysis who
12 are performing them, correct?

13 MS. SMITH: Yes.

14 MR. DIAMANTOPOULOS: Am I correct
15 that the entire revenue requirement is not
16 allocable to all Con Edison customers?

17 MS. NEAL: Sorry, could you repeat
18 the question?

19 MR. DIAMANTOPOULOS: Am I correct the
20 entire revenue requirement is not allocable to
21 all Con Edison customers?

22 MS. NEAL: Well, not all the revenue
23 requirement is allocated, some of it is
24 assigned. So that question is a little
25 difficult for me to answer.

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2 MR. DIAMANTOPOULOS: Does the panel
3 know which elements of the revenue requirement
4 are not allocable to customers, to all
5 customers?

6 MS. SMITH: We would have to have the
7 model in front of us to review that. At one
8 point we knew that, but it's not the kind of
9 thing we keep at our fingertips.

10 MR. DIAMANTOPOULOS: Does the panel
11 know whether the increase -- to which customers
12 the increase in T and D delivery revenues was
13 allocated?

14 MS. SMITH: It's allocated to
15 customers who are taking delivery service from
16 Con Edison.

17 MR. DIAMANTOPOULOS: Does the panel
18 know to which customers the decrease in
19 retained generation component of a MAC goes to,
20 is allocated to?

21 MR. ZIMMERMAN: Could you please
22 define MAC for the panel.

23 MR. DIAMANTOPOULOS: You know, I
24 can't recall the acronym.

25 ALJ LECAKES: It's the monthly

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2 adjustment charge, monthly adjustment claws,
3 yes.

4 MS. SMITH: Could you repeat the
5 question?

6 MR. DIAMANTOPOULOS: Yes, of course.
7 Does the panel know to which customers are
8 allocated the decrease in retained generation
9 component of the MAC?

10 MS. NEAL: We do not know that. That
11 is not part of our testimony.

12 MR. DIAMANTOPOULOS: Does the panel
13 know to which customers the decrease in
14 purchase power working capital is allocated?

15 MS. SMITH: I believe you are
16 referring to the differences between customers
17 who are taking supply services from someone
18 other than Con Edison, and I don't recall the
19 details of those divisions of revenues to
20 non-full-service customers.

21 MR. DIAMANTOPOULOS: Does the panel
22 know to which customers any increases
23 associated with a decrease in the imputation of
24 revenues from the sale of Con Edison's
25 transmission congestion contracts goes to?

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2 MS. NEAL: I think the extent of our
3 knowledge is presented in our testimony on page
4 30. There's a listing starting on line 11 that
5 talks about different components and how
6 they're allocated based on the work paper
7 provided by Con Ed. Our focus was not on these
8 particular components except the only
9 adjustment we were making was to separately
10 allocate the AMI cost.

11 MR. DIAMANTOPOULOS: Am I correct
12 that, for purposes of an embedded cost of
13 service study, that a service class revenue
14 surplus means that a service class is paying
15 more as a service class in total system revenue
16 than it should be?

17 MS. SMITH: That's kind of a loaded
18 question. It means it's paying more than the
19 cost the that have been allocated to it. I
20 don't like the word should be. Whether classes
21 should pay exactly the cost allocated to them
22 is basically a policy decision for the
23 Commission.

24 MR. DIAMANTOPOULOS: Actually, the
25 question is just a general question as to how

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2 embedded cost of service studies work. So if
3 there is a service class, or service classes,
4 that are operating with a service class revenue
5 surplus, doesn't that, generally speaking, mean
6 that they are paying more than they should be?

7 MS. SMITH: You're using the word
8 should be again. You said a model --

9 MR. DIAMANTOPOULOS: I am, because
10 it's the appropriate word.

11 MS. SMITH: We're talking about a
12 mathematical model that allocates cost assigned
13 to different groups and the model also looks at
14 the revenue by those groups and compares the
15 two, and it may say that the revenue paid by
16 class is more or less than the costs that have
17 been allocated to it. I don't think the word
18 should belongs in that question.

19 MR. DIAMANTOPOULOS: Is the panel
20 familiar with the REV proceeding in New York?

21 MS. SMITH: We have some familiarity.
22 We have not been intimately involved.

23 MR. DIAMANTOPOULOS: But Ms. Panko,
24 you certainly have familiarity, do you not?

25 MS. PANKO: Yes, I'm familiar with

1
2 it. I would say not every aspect, but, yes,
3 I'm familiar with it.

4 MR. DIAMANTOPOULOS: Is REV intended
5 to reduce costs for all customers or just for
6 the residential and small commercial service
7 classes?

8 MR. ZIMMERMAN: Objection, statement
9 and policy.

10 ALJ LECAKES: I can I hear the
11 question again, please.?

12 MR. DIAMANTOPOULOS: Is REV intended
13 to reduce cost for all customers or just for
14 the residential and small commercial service
15 classes?

16 ALJ LECAKES: Agreed with the
17 objection, sustained as phrased.

18 MR. DIAMANTOPOULOS: I have no more
19 questions, your Honor. Thank you.

20 Thank you, panel.

21 PANEL MEMBERS: Thank you.

22 ALJ LECAKES: Mr. Laniado?

23 MR. LANIADO: Thank you, your Honor.
24 Good morning, panel.

25 PANEL MEMBERS: Good morning.

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2 MR. LANIADO: Ms. Panko, can we go to
3 page 2 of the direct testimony of the panel on
4 the joint proposal, line 18.

5 MS. PANKO: Go ahead.

6 MR. LANIADO: You talk about your
7 primary responsibilities since 2012, when you
8 joined UIU, was to assist with UIU's
9 participation commission proceeding; is that
10 correct?

11 MS. PANKO: Yes.

12 MR. LANIADO: Then you go on, on line
13 22, on the recent electric rate cases that
14 you've worked on and there are a number there
15 that are listed, correct?

16 MS. PANKO: The proceedings?

17 MR. LANIADO: Yes.

18 MS. PANKO: Yes.

19 MR. LANIADO: Isn't it true in those
20 cases that UIU issued quotations for
21 consultants similar to Exhibit 315 that was
22 marked earlier that Mr. Diamantopoulos talked
23 to you about?

24 MS. PANKO: I would have to
25 double-check all of them, but I believe most of

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the them, yes.

MR. LANIADO: And they're listed on the UIU website?

MS. PANKO: I believe they are. I don't know when they get taken off, but I believe they are.

MR. LANIADO: And I think they all contain similar language, maybe not exactly the same, but similar language as to the type of consultant you're looking for and what the primary focus should be for the task at hand.

MR. ZIMMERMAN: Is that a question?

MR. LANIADO: Yes.

MR. ZIMMERMAN: I believe I heard a statement.

MR. LANIADO: Is that correct?

MS. PANKO: I would have to go back and check every one. I believe so.

MR. LANIADO: Let me see if I could help.

ALJ LECAKES: I'm not sure we need to. Again, I understand that UIU has both represented its legal mandate in this case as representing all customers but has conceded

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2 consistently in this case that it is
3 representing the residential and small
4 commercial customers, and I believe that we can
5 make the assumption that in all these other
6 cases, at least for the present and recent
7 past, that it's seen its mandate in that same
8 manner. Where do you plan to go beyond that?

9 MR. LANIADO: Your Honor, it's my
10 intent just to establish that the RFQs that
11 were issued in the last two years in six other
12 cases contain provisions that are -- how do I
13 say politely -- that their primary focus and
14 the focus that they're asking of their
15 consultant that they retained was to focus
16 specifically on residential and small
17 customers. And that's -- I'm only going to the
18 fact that this is a -- it's amounted to an
19 institutional bias, in my opinion.

20 ALJ LECAKES: I appreciate where the
21 argument goes to. Beyond that, I will take
22 your representations as to what the RFQ says as
23 includable on the hearing transcript, you
24 having looked at those transcripts and the RFQs
25 online and the panelists submitting that those

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2 RFQs are probably all on the website.

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MR. LANIADO: I have copies. I was
4 hoping to mark them as exhibits, plus I've
5 created a matrix to show, in all six RFQs, how
6 the provisions are exactly or similar.

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ALJ LECAKES: I'm willing to mark the
8 RFQs as hearing exhibits. The major -- because
9 it's stuff that you put together, I don't see
10 that it adds any additional benefits, so we
11 don't need to mark that. But, we will put the
12 hearing exhibits into the record, or the RFQs
13 as hearing exhibits into the record.

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MR. LANIADO: Thank you.

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MR. ZIMMERMAN: I would also just
like to add, we happily, gladly concede the
point.

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ALJ LECAKES: I'm well aware of that.

19

MR. ZIMMERMAN: Okay.

20

MR. LANIADO: Your Honor, I think
21 it's important that there are provisions in the
22 RFQs that might be helpful for the Commission
23 and yourselves to reach recommendations.

21

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ALJ LECAKES: I appreciate that and
25 that's why I'm willing to mark them as hearing

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2 exhibits. I don't think we need to ask any
3 further questions once they're marked on this
4 particular topic.

5 MR. LANIADO: Your Honor, these
6 disks, though, contain the website page, as
7 well as the matrix.

8 ALJ LECAKES: While Mr. Laniado is
9 passing out the rest of the them, I'll just
10 mark the exhibits here.

11 MR. LANIADO: There are six of them,
12 your Honor. I don't know if you want to mark
13 them all at once or as six.

14 ALJ LECAKES: I will mark them as a
15 single exhibit. Although, the package that I
16 was handed has, actually, seven.

17 MR. LANIADO: Seven?

18 ALJ LECAKES: I don't know if there's
19 a duplicate in here. I have 15-UIU-01,
20 15-UIU-02, 15-UIU-14, 15-UIU-15, 16-UIU-04,
21 16-UIU-07, 16-UIU-08.

22 MR. LANG: Your Honor, that one's a
23 duplicate.

24 ALJ LECAKES: So we'll take that one
25 out and we'll just include 16-UIU-09. So

1
2 16-UIU, I assume, is for this case, the Con
3 Edison electric case, 16-E-0060, yes, it is.
4 So we'll remove that one and we'll take a
5 package of six requests for quotations issued
6 by Director Hogan, H-O-G-A-N, from the UIU, for
7 various rate proceedings at the Public Service
8 Commission, and we will mark the entire
9 package, all six, as Exhibit 316.

10 (Whereupon, Exhibit 316, package of
11 six requests for quotations issued by UIU
12 Director Hogan, is marked for
13 identification, as of this date.)

14 MR. ZIMMERMAN: Your Honor, can we
15 also mark that there appear to be modifications
16 to those documents?

17 ALJ LECAKES: I will note for the
18 record that, in addition to the printout, which
19 looks like it came directly from the website,
20 there have been highlight marks made on every
21 page, as well as boxes that are numbered one,
22 two, three, four, six, seven on this one in
23 particular. So here's five on the back. So
24 there have been highlight markings made, as
25 well as corresponding numbers added to where

1
2 the highlights are, I assume for ease of
3 reference on the part of Mr. Laniado, but I
4 understand that UIU issues this as a single
5 whole document without those highlights there
6 and you probably and possibly disagree with any
7 insinuation of what the highlights are meant to
8 represent by Mr. Laniado.

9 MR. LANIADO: Your Honor, just for
10 clarification, the highlights and the numbers
11 were key to the matrix that I had hoped to mark
12 as an exhibit.

13 ALJ LECAKES: I think the language
14 speaks for itself in the documents.

15 MR. LANIADO: Sure.

16 ALJ LECAKES: Thank you.

17 MR. LANIADO: With that, your Honor,
18 I have no further questions.

19 ALJ LECAKES: Is there any other
20 panel?

21 MR. LEVENSON: Your Honor, NYPA would
22 like to ask a few questions. I agree with the
23 City, I'll go first ahead of Mr. Lang.

24 ALJ LECAKES: Okay. Go ahead,
25 Mr. Levinson.

1
2 MR. LEVENSON: Thank you. Good
3 morning, panel. I'm Gary Levinson with the New
4 York Power Authority.

5 PANEL MEMBERS: Morning.

6 MR. LEVENSON: In the UIU's statement
7 in opposition of the JP, you're familiar with
8 the discussion that the company's ECOS, which
9 has been accepted in the JP, you're familiar
10 with the argument there in that statement that
11 favors large customers over small customers,
12 right?

13 MR. ZIMMERMAN: Objection. Again,
14 your Honor, this isn't the panel's testimony.

15 MR. LEVENSON: I'm asking whether
16 they're familiar with that argument. It's an
17 exhibit that is in the record.

18 ALJ LECAKES: Right, and that's the
19 way I understood the question and I think the
20 question is proper as phrased.

21 MS. PANKO: Can you point to the page
22 that we could just verify.

23 MR. LEVENSON: Certainly. There are
24 references on page 24, the statement of the UIU
25 on joint proposal.

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MS. SMITH: Dated October 13th?

MR. LEVENSON: Yes, exactly.

MS. SMITH: What page were you on?

MR. LEVENSON: Well, there's references on the bottom of the text on page 24, the paragraph that starts new on page 24 carrying through to page 25, there's a heading that mentions the ECOS study underlying the JP, et cetera, et cetera, which tends to favor larger customers. Do you see that on 25?

MS. SMITH: I'm still not finding what you're referring to. Page 24, there's one short photograph and then lots of footnotes.

MR. LEVENSON: That's correct. The paragraph that starts anew on that page .

MS. SMITH: To some extent, yes.

MR. LEVENSON: If you look at that paragraph, the theme of it is that the ECOS study, the very first sentence harms smaller customers and to the advantage of larger customers.

MR. ZIMMERMAN: Objection. Is that a question or is that your description of a theme?

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2 MR. LEVENSON: She wants to know
3 where this material is. I'm trying to locate
4 it for her, that's all.

5 MR. ZIMMERMAN: Again, what's the
6 question?

7 MR. LEVENSON: I'm asking if she's
8 familiar with these arguments, these
9 statements. I'm just trying to establish a
10 foundation so she can, or the panel members,
11 can see where these arguments are in order for
12 me to ask other questions.

13 MS. SMITH: I think it would be more
14 accurate to say, from our standpoint, the
15 technical people who did the study, that the
16 ECOS study, the Con Ed ECOS study, is
17 over-allocated cost to smaller customers. The
18 word harm is sort of a judgment that I wouldn't
19 use.

20 MR. LEVENSON: Okay, that's fine.
21 So you're familiar with the argument
22 on page 24, carrying through to page 25 of this
23 document.

24 MR. ZIMMERMAN: Again, to what
25 argument do you refer?

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2 MR. LEVENSON: The topic heading on
3 page 25, the ECOS study underlying JP is based
4 on a subjective choice of minimum system of
5 methodology which tends to favor larger
6 customers. So I'm asking panel if they're
7 familiar with the argument that follows under
8 that heading.

9 ALJ LECAKES: Again, I just
10 understand the question as to trying to gauge
11 the familiarity of the panel members with the
12 statement in opposition at this point. I
13 anticipate there will be follow-up questions.

14 MR. LEVENSON: Correct.

15 MS. SORRENTINO: Could you repeat the
16 question? I'm not seeing the reference.

17 MR. LEVENSON: Okay. Well, in the
18 UIU statement, the section on the ECOS study
19 that actually starts on the bottom of 23,
20 carries forward to 24, carries forward to 25,
21 I'm simply asking the panel whether they're
22 familiar with this argument that the ECOS
23 favors larger customers over smaller customers.

24 MR. ZIMMERMAN: Asked and answered.

25 ALJ LECAKES: It hasn't been

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2 answered. Mr. Levinson is recognizing that the
3 document that's before you has been written by
4 counsel for UIU, so he's just trying to gauge
5 whether the panel members are familiar with the
6 arguments that counsel made in that statement.

7 MS. SMITH: We are certainly familiar
8 with the argument that the company's ECOS is
9 over-allocated costs to residential and small
10 commercial customers.

11 ALJ LECAKES: And I understand from
12 your answer that the characterizations that
13 Mr. Zimmerman or counsel for UIU made may
14 represent UIU's positions and not necessarily
15 your testimony in terms of characterizing
16 things as harm or harmful?

17 MS. SMITH: That's correct.

18 MR. LEVENSON: Okay. Would the panel
19 view the NYPA class as a large customer to
20 which costs are under-allocated?

21 MS. NEAL: So, according to our model
22 results, it's fair to say that NYPA was
23 under-allocated costs.

24 MR. LEVENSON: Does the panel
25 agree -- does the panel recognize that the NYPA

1
2 class includes governmental entities, such as
3 the City, the Metropolitan Transportation
4 Authority, the New York City Housing Authority,
5 the Port Authority of New York and New Jersey?

6 MS. SMITH: Yes.

7 MR. LEVENSON: And the panel would
8 agree that the City's provision of electric
9 commodity by NYPA, delivered by Con Edison,
10 assists everyday people in getting their police
11 services, their emergency services, sanitation
12 services, schools, the panel would agree,
13 correct?

14 MS. SMITH: Please repeat the
15 question.

16 MR. LEVENSON: Can the reporter read
17 the question back.

18 (Whereupon, the previous question was
19 read back by the reporter.)

20 MS. SMITH: The provision of
21 electricity, all customers provides all kinds
22 of benefits including the ones you've just
23 listed.

24 MR. LEVENSON: Right, I could go on.
25 The City buys electric commodity from NYPA to

1
2 assist in environment protection, Parks and
3 Recreation. I was just taking a few examples.
4 And you would agree with that, right?

5 MS. SMITH: Yes.

6 MR. ZIMMERMAN: Objection. The panel
7 didn't testify what the City does or doesn't
8 do.

9 ALJ LECAKES: Right, but, again, he's
10 testing the foundational knowledge of the panel
11 members with regard to the entities that make
12 up the NYPA class, as well as the functions
13 that they perform, and question has been
14 answered so you may proceed, Mr. Levinson.

15 MR. LEVENSON: And you recognize,
16 also, that NYPA serves Westchester County
17 communities, correct?

18 MS. SMITH: Yes.

19 MR. LEVENSON: And does the panel
20 accept that there are over a hundred
21 Westchester public entities, fire districts,
22 school districts, villages in Westchester
23 County that NYPA serves with its commodity
24 delivered by Con Edison?

25 MS. SMITH: I would have to take

1
2 anything like that subject to check. But I
3 would just like to say, we have not focused on
4 who NYPA is serving, we focused on the
5 characteristics of NYPA that go into the cost
6 of service model.

7 MR. LEVENSON: Okay. And you also
8 recognize that -- a moment ago, you agreed with
9 me that NYCHA, the New York City Housing
10 Authority, is one of the recipients of NYPA
11 power in the NYPA class, right?

12 MS. SMITH: Yes.

13 MR. LEVENSON: And you would accept,
14 subject to check, that NYCHA manages 177,000
15 residential units in New York City?

16 MS. SMITH: Subject to check, yes.

17 MR. LEVENSON: And that residential
18 programs and subsidy programs of NYCHA serve
19 nearly 600,000 New Yorkers? Would you accept
20 that, subject to check?g

21 MS. SMITH: Yes.

22 MR. LEVENSON: Are you also familiar
23 with the UIU statement that we were going
24 through just a little while ago, that its
25 discussion on the affordability crisis amongst

1
2 residential customers?

3 MS. SMITH: Yes.

4 MR. LEVENSON: Now, let's accept that
5 there is an affordability crisis among the
6 residential customers of a company. Would you
7 have any reason to believe -- you would have no
8 reason to believe that it this unaffordability
9 crisis does not apply equally to residents of
10 NYCHA units?

11 MR. ZIMMERMAN: Objection, calls for
12 speculation.

13 ALJ LECAKES: I'll allow the
14 question.

15 MS. SMITH: We have not focused on
16 this issue, obviously, and I'm a little
17 hesitant to answer this question because I
18 don't know what kind of rate design that NYPA
19 adds to Con Edison costs. I don't know if the
20 customers served by the entity you're
21 describing may be paying more or less than
22 other Con Edison customers, whether they have
23 been more or less affordability crisis, I have
24 no idea.

25 MR. LEVENSON: Okay. I'll ask a

1
2 couple of related questions. The affordability
3 crisis which you say you agree with, that was
4 brought forth in the testimony of Mr. William
5 Yates of PULP, right?

6 MR. ZIMMERMAN: Objection. This
7 panel never said anything about an
8 affordability crisis.

9 ALJ LECAKES: Actually, I think it
10 does appear in the testimony that they
11 acknowledged that Mr. Yates discussed an
12 affordability crisis. If I recall correctly,
13 UIU's panelists did mention that; is that
14 correct, Mr. Levinson? Do you have a
15 reference?

16 MR. LEVENSON: I actually don't know
17 that the panel said it or not, I'm happy to be
18 corrected. I was simply -- I asked them if
19 they agreed that there's an unaffordability
20 crisis, they said they did, and then I wanted
21 to follow up --

22 ALJ LECAKES: I'll take it from here
23 for a second.

24 Where did your understanding of the
25 term affordability crisis, or the concept of

1
2 affordability crisis, come from in this
3 proceeding?

4 MS. SMITH: It definitely was
5 testimony that I read. I don't recall what
6 testimony, but I read testimony.

7 ALJ LECAKES: The witness has
8 acknowledged that she is familiar with other
9 testimony that refers to it. I don't think we
10 need to establish that it was Mr. Yates's
11 testimony for your purposes, so you can
12 proceed.

13 MR. LEVENSON: That's fine.

14 And if Mr. Yates's testimony stated
15 that there's an affordability crisis in the Con
16 Edison service territory, which is a statement
17 that Mr. Zimmerman's pleading has, you would
18 have no reason to believe that that crisis
19 wouldn't also affect NYCHA customers?

20 MR. ZIMMERMAN: Is that a question?

21 MR. LEVENSON: That's a question,
22 yes.

23 You have no reason, would you, to
24 also believe that crisis affects NYCHA
25 customers, NYCHA residents?

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2 MS. SMITH: We don't know how NYPA
3 charges its customers who are taking power from
4 it, residential customers, and we don't know if
5 NYPA paid more in total to Con Edison, we don't
6 know if it would pass it on to its residential
7 customers or not.

8 MR. LEVENSON: But you don't disagree
9 that NYCHA residents are essentially on a level
10 of public assistance, correct?

11 MR. ZIMMERMAN: Objection. This is
12 out of scope of the panel's testimony.

13 ALJ LECAKES: Are you familiar with
14 the economic characteristics of the residents
15 of New York City Housing Authority owned or
16 operated building?

17 MS. SMITH: No.

18 ALJ LECAKES: Okay.

19 MR. LEVENSON: Panel, your testimony,
20 as well as the statement in opposition that we
21 were talking about, but we could just focus on
22 your testimony for this purpose, you attacked
23 the company's ECOS study, correct?

24 MS. SMITH: We criticized the
25 company's ECOS study.

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2 MR. LEVENSON: And you've leveled a
3 multi-prompt attack, would that be fair to say,
4 criticism?

5 MS. SMITH: Yes.

6 MR. LEVENSON: In your testimony, the
7 demand allocator for certain distribution plan
8 low tension should reflect only Non-Coincident
9 Peak, or NCP, demands and not individual
10 customer maximum demands, ICMD?

11 MS. SMITH: That's correct.

12 MR. LEVENSON: Your testimony also
13 says that the primary distribution costs are
14 entirely demand-related and it's not
15 appropriate to classify these as
16 customer-related, correct?

17 MS. SMITH: Yes.

18 MR. LEVENSON: And then you continue
19 your testimony by saying that on the secondary
20 delivery system there should not be a customer
21 component and that these costs all
22 demand-related, correct?

23 MS. SMITH: Could you read that? I
24 don't think that's true.

25 MR. ZIMMERMAN: Are you reading a

1
2 quote?

3 MR. LEVENSON: No, I'm paraphrasing.
4 I'll repeat it a little slower. On the
5 secondary delivery system, your testimony is
6 that there should not be a customer component
7 and that these costs are all demand-related.

8 MS. SMITH: Could you please point to
9 where in our testimony you are referring.

10 MR. LEVENSON: Yes. Page 16, line 20
11 through the question that starts right there.

12 MS. SMITH: The last Q and A?

13 MR. LEVENSON: Yes, and carrying over
14 through page 18.

15 MR. ZIMMERMAN: I'm sorry, that's two
16 pages worth of text; you have to be a little
17 bit more specific.

18 MR. LEVENSON: The discussion that
19 starts on page 16, line 20, does that testimony
20 state, as it carries forward from that point,
21 that on the secondary delivery system there
22 should not be a customer component and that
23 those costs are all demand-related?

24 MS. SMITH: No, it does not. In
25 fact, this paragraph says the opposite. It

1
2 explains the circumstances in which one can
3 justify some customer component, which is what
4 our testimony does.

5 MR. LEVENSON: But you don't testify
6 that there shouldn't be -- that this element of
7 Con Edison's system should be all
8 demand-related?

9 MS. SMITH: I'm not clear where
10 you're getting this from. We have in this
11 testimony put forth what we think is a better
12 calculation of a minimum customer cost, a
13 customer cost based on minimum system, which
14 refers to secondary distribution lines and
15 underground and overhead conductors.

16 MR. LEVENSON: I'd like to approach
17 the witness.

18 ALJ LECAKES: Absolutely.

19 MR. LEVENSON: Your Honors, I'm
20 passing out an excerpt of the JP, so I think
21 almost every participant has it. I'll give it
22 to the panel members. This is Appendix 19,
23 Table 2.

24 I just handed out to the UI panel the
25 one page, I think it's Appendix 19. It says

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2 Table 2, page one of three, and a moment ago we
3 went through some of the things that you
4 claimed were some flaws in the company's ECOS
5 study, which is part of the JP. It's fair to
6 say that the manifestation of those flaws can
7 be shown in column two, which says, "Rate Year
8 Deficiencies/Surplus," and where it shows --
9 and this is in the rate year one of the JP,
10 where it shows that there's a \$12 million
11 deficiency for the SC-1 class, right?

12 MS. SMITH: The question is -- this
13 shows a \$12 million deficiency, but I think
14 your question was broader than that.

15 MR. LEVENSON: Well, the various
16 things that -- you and I had a dialogue about
17 things that were wrong with the company's ECOS,
18 and the results of all those things that you
19 claim are wrong with the ECOS, produces a
20 revenue allocation that establishes surpluses
21 and deficiencies, and for the rate year one of
22 that reallocation the result is what's shown in
23 column two. Is that true?

24 MS. NEAL: So column two, I believe,
25 provides the output of the Con Edison's Table

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2 1A.

3 MR. LEVENSON: Right, and it includes
4 all those allocation of demand allocator costs
5 that you've criticized, it includes all the
6 aspects of the minimum system that you
7 criticize to establish those deficiency,
8 correct?

9 MS. NEAL: Well, certainly the model
10 itself has all of those as part of the
11 algorithm and we've made adjustments to that
12 which would follow through to the numbers
13 presented in column two.

14 MR. LEVENSON: I'm not asking about
15 your adjustments, I'm just asking about the
16 company's ECOS.

17 MS. NEAL: Sure.

18 MR. LEVENSON: And that's before the
19 application of any rate increase based on the
20 updated cost of service of the company, is that
21 true?

22 MS. NEAL: Right, so the ECOS is
23 based on 2013 costs.

24 MR. LEVENSON: Well, it's also
25 applied to 2016 rates?

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MS. NEAL: Yes.

MR. LEVENSON: So you'll agree with me that the \$12.4 million deficiency for -- is listed there for SC-1.

MR. ZIMMERMAN: Again, I have to ask that the Counsel please address questions to the panel, not statements.

MR. LEVENSON: They would agree, correct, that the deficiency is 12.44 million for SC-1 for rate year one.

MS. NEAL: That's what the statement says.

MR. LEVENSON: And you would agree that the rate revenues for that class in rate year one is 1.937 billion.

MS. NEAL: The number on column one is 1.9 million.

MR. LEVENSON: And then for SC-2, you would agree that the deficiency shown is 1.33 million?

MR. ZIMMERMAN: Objection. The document --

ALJ LECAKES: I've been waiting. The document does speak for itself. It's actually

1
2 attached to the JP, it's an exhibit. The
3 appendices, I believe, are Exhibit 3 for the
4 area exhibit. I agree with Mr. Zimmerman.

5 So if you have questions about
6 whether they agreed with those numbers or not
7 or get to the disagreement, we can go on there,
8 but we don't need to confirm that the document
9 says what it says.

10 MR. LEVENSON: Okay.

11 You would agree that those are the
12 true outputs of the ECOS in this case, right?

13 MS. SMITH: And the process.

14 MS. NEAL: This is the output of the
15 ECOS from Con Edison.

16 MR. LEVENSON: Right.

17 I don't have any additional
18 questions, your Honor.

19 ALJ LECAKES: Let's go off the record
20 for a second.

21 (Whereupon, a discussion was held off
22 the record.)

23 ALJ LECAKES: Off the record, we held
24 a discussion about taking a break. We're going
25 to adjourn for lunch right now and we'll be

1
2 back on the record before 12:35. Thank you.

3 Off the record.

4 (Whereupon, a lunch break was taken
5 at this time.)

6 ALJ LECAKES: It's now just after
7 12:35 and we're going to pick up where we left
8 off, with the attorney for the City of New
9 York, Mr. Kevin Lang, cross-examining the
10 panel.

11 You may proceed, Mr. Lang.

12 MR. LANG: Thank you. Good
13 afternoon, panel. Just a couple very
14 preliminary things. First off, this morning
15 when you were introduced, you said there was a
16 correction to testimony on page 22. I just
17 have a general question. Is the panel aware
18 that wire with a gauge of 1.0 is larger than
19 wire with a gauge of 2.0?

20 MS. NEAL: A wire with gauge 1.0 AWG
21 is larger than 2.0 AWG, but 1 ott AWG is
22 different and so is 2 ott AWG, and it hasn't
23 been clear from the company's response to
24 discovery and their testimony as to what
25 exactly the wires they have used in their

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2 system.

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MR. LANG: Panel, that wasn't the
4 question I was asking. Do you agree that wire
5 with a gauge of 1.0 is larger than 2.0?

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MS. SMITH: It's not the gauge, it's
7 the designation. It's designated size 1.

7

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MR. LANG: And designated size 1 is
9 larger than size 2, correct?

9

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MS. NEAL: As long as you're talking
11 about 1 and 2, not 1 ott or 2 ott.

11

12

MR. LANG: One and two.

13

MS. NEAL: That's correct.

14

MR. LANG: Does the panel agree that
15 there is a difference between a marginal cost
16 study and an inventive cost of service study?

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MS. SMITH: Absolutely.

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MR. LANG: And there's two different
19 methodologies used for those two types of
20 studies?

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MS. SMITH: Yes.

22

MR. LANG: Does the panel also agree
23 that under the principle of cost causation, a
24 person or entity should cover the cost that he,
25 she, or it causes?

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24

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2 MS. SMITH: Again, you're using kind
3 of a normative word. The principle cost
4 causation suggests that you should estimate
5 what costs are caused by what groups and
6 determine what those costs are.

7 MR. LANG: Do you agree or disagree
8 that the person that causes the cost should
9 cover those costs?

10 MS. SMITH: For the most part. There
11 are circumstances in which there are policy
12 objectives of a commission that might override
13 some of that.

14 MR. LANG: I'm not asking for policy
15 objectives of the Commission, I'm asking for
16 the panel's position.

17 MS. SMITH: But it's our position
18 that the commissions have certain authorities.
19 We would say if it rises that customers pay the
20 costs of serving, but there are other factors
21 involved.

22 MS. NEAL: And may I add, we're here
23 to recommend specific methodologies to the cost
24 study and we have provided evidence as to what
25 impact our recommendations have. That is very

1
2 different than recommending final rate in a
3 rate proceeding.

4 ALJ LECAKES: I appreciate that, but
5 I do understand that Counsel has a right to ask
6 about the panel's position in general on that
7 basic principle, whether a rate payer or a
8 consumer or even a service class is responsible
9 to pay for the costs that cause in the system.

10 MR. LANG: That's all I'm asking.

11 MS. SMITH: I think I can speak for
12 La Capra, and I think we have always advocated
13 that it is desirable that customer groups pay
14 for the cost incurred in serving them unless
15 there is some policy objective that causes the
16 modification of that principle.

17 ALJ LECAKES: I think that's a very
18 acceptable answer.

19 MR. LANG: Is it also true that the
20 cost of meters do not vary with the usage or
21 the peak demand of the customer?

22 In other words, whether a customer
23 uses 5 kilowatt hours or 100 kilowatt hours,
24 the meter cost for that customer is not going
25 to vary, is it? Not different meters. If we

1
2 have a residential customer meter, is the cost
3 of that meter going to be different based on
4 their usage?

5 MS. SMITH: No.

6 MR. LANG: Is it going to be
7 different based on what their peak demands is?

8 MS. NEAL: The cost of the meter is
9 the cost of the meter, it's cost of the plant
10 installed. It does not variant in usage after
11 that.

12 MR. LANG: Or in peak demand,
13 correct?

14 MS. SMITH: Well, the meter that's
15 selected for the customer is sensitive to peak
16 demand. There are residential customers that
17 require larger meters because the demand is
18 very high.

19 MR. LANG: So once you've selected
20 the meter, the meter cost is not changing, is
21 it?

22 MS. SMITH: That's right.

23 MR. LANG: Would you agree that, in
24 looking at rate design, one the goals of rate
25 design is fairness?

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MS. SMITH: Yes.

MR. LANG: Do you agree that another one is rate stability?

MS. SMITH: Yes.

MR. LANG: How about revenue stability?

MS. SMITH: That is one of the, I think, five goals of rate design listed in Bonbright's principles, which I would not agree with.

MR. LANG: Do you agree that the charges imposed on customers should relate to the costs incurred to serve those customers.

MS. SMITH: That sounds to me like the same question that you asked earlier, in which case my answer would be the same.

MR. LANG: I'm not looking at it in a cost causation, just in a general sense. The charges that are imposed on each particular customer, should those charges relate to the costs that are incurred to serve those customers?

MR. ZIMMERMAN: Objection. I'm not sure what Counsel means by "in a general

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2 sense." I mean, if it's what you mean by cost
3 causation, the question that's asked and
4 answered; if not, then it's speculative and
5 vague.

6 ALJ LECAKES: It's not, though. It's
7 a slightly different take on the questions. So
8 the question before went to whether a service
9 class should be allocated the cost that is
10 caused. Here Mr. Lang is talking about the
11 charges that are directed at the customer and
12 whether they should be -- actually, I'm not
13 exactly sure how you phrased the question.

14 MR. LANG: Exactly, your Honor. It's
15 whether the charges to get imposed, and we take
16 revenue requirement and we allocated most to
17 the customer classes.

18 Do you agree that the charges imposed
19 on customers should bear a relationship to the
20 costs that was incurred to serve those
21 customers?

22 MS. SMITH: Again, I think it's the
23 same question. We agree that, in general,
24 customers should pay the cost to serve them.

25 MR. LANG: Okay, thank you.

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2 To you agree that in setting rate
3 design, one of the considerations should be the
4 impact on customers of different classes?

5 MS. SMITH: I'm not sure. Could you
6 be a little more specific?

7 MR. LANG: Sure. You agree that
8 there are multiple customer classes, correct?

9 MS. SMITH: Yes.

10 MR. LANG: And when you set a rate
11 design, you're designing the rates applicable
12 to each class, correct?

13 MS. SMITH: I think that maybe you
14 are talking about revenue allocation classes.

15 MR. LANG: No, I'm talking about rate
16 design.

17 MS. SMITH: Rate design is saying if
18 you are going to charge \$12 million to this
19 customer class, how are we going to collect
20 those dollars.

21 MR. LANG: That's correct.

22 MS. SMITH: So each class, there are
23 different decisions to be made about, once the
24 cost -- the revenue is allocated, how you
25 spread that revenue between rate components.

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2 MR. LANG: Right. There's a fixed
3 charge, there's volumetric charges, correct?

4 MS. SMITH: Yes. Yet.

5 MR. LANG: That's rate design,
6 correct?

7 MS. SMITH: Yes.

8 MR. LANG: Should customer impact be
9 taken into account when you are designing
10 rates?

11 MS. SMITH: It is normal because of
12 the -- one of the considerations being rate
13 stability, that one consider bill impacts in
14 designing rates.

15 MR. LANG: And when you're doing the
16 revenue allocation, should you also look at
17 customer impact?

18 MS. SMITH: That would be very much a
19 policy decision. In our experience, if there
20 are very large increases sometimes there may be
21 moderation to revenues where they deviate from
22 costs and that's -- a policy decision usually
23 would be made by a commission or guided by
24 them.

25 MR. LANG: Again, I'm not asking you

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2 what commissions do. You're a panel that is
3 being offered as expert witnesses on use of
4 revenue allocation and rate design. I'm trying
5 to understand this panel's position
6 subsequently on the issues in this case. And
7 is it this panel's position that customer
8 impact should be taken into account in looking
9 at revenue allocation?

10 MS. SMITH: So I think you are
11 talking about the percentage increases that
12 might impact difficult classes. Is that where
13 we're going?

14 MR. LANG: When you allocate
15 utilities revenues amongst the classes, each
16 class gets a share of the revenue, correct?

17 MS. SMITH: We don't allocate
18 revenues, we allocate costs.

19 MR. LANG: Excuse me. When you
20 allocate costs amongst each class, each class
21 gets a portion of the cost, correct?

22 MS. SMITH: Yes.

23 MR. LANG: In looking at performing
24 that allocation, let me step back and take this
25 incrementally. You have a base set of costs of

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2 the rates as they presently exist, and then in
3 this particular case -- and I'll go to this
4 case, we're looking at a cost increase in the
5 revenue requirement due to increased cost,
6 right?

7 MS. SMITH: Yes.

8 MR. LANG: In doing that allocation,
9 should you look at the impact on consumers of
10 your cost allocation?

11 MS. SMITH: No, we should not.

12 MR. LANG: Do you agree that the
13 factors of fairness and rate stability apply to
14 all customers and not -- strike that. Let me
15 restate it.

16 Do you agree that the concept of
17 fairness should apply to all customers and not
18 just residential customers?

19 MS. SMITH: Yes.

20 MR. LANG: Do you agree that you must
21 balance the competing interests of not only
22 different customer classes but customers and
23 shareholders in both performing of revenue
24 allocation and in rate design?

25 MR. ZIMMERMAN: Objection. This is

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2 asking for a statement of policy and it's
3 something the Commission --

4 MR. LANG: No, I'm asking for their
5 position.

6 ALJ LECAKES: Again, yes, I agree
7 with Mr. Lang. It's asking for the panel's
8 position. They testified as experts here.

9 MS. SMITH: Could you repeat the
10 question, please?

11 MR. LANG: Sure. Do you agree that
12 you must balance competing interests in doing
13 revenue allocation and rate design?

14 MS. NEAL: We have put forth
15 testimony on revenue allocation and rate
16 design. We've made specific recommendations to
17 methodology used. We haven't put forth a
18 specific recommendation as to what a rate of a
19 particular class should be, but should
20 considered potentially more than just our
21 methodology.

22 ALJ LECAKES: Mr. Lang, I understand
23 the panel's position on this to be that they
24 were hired to provide expert testimony as to
25 the specific circumstance of this case and, at

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2 this point, you know, I understand that they
3 performed that task and that it's separate and
4 apart, potentially, from what their general
5 positions may be on these other issues.

6 MR. LANG: I'm move on, your Honor.

7 ALJ LECAKES: Yes, thank you.

8 MR. LANG: Panel, do you believe that
9 what you have proposed is correct?

10 MS. SMITH: Cost allocation is always
11 an imprecise science, if it's a science at all.
12 We believe that it is -- our recommendations
13 are fairly correct and are much closer to cost
14 causation principles than are that the cost of
15 the company.

16 MR. LANG: Do you believe that the
17 company's approach is therefore incorrect?

18 MS. SMITH: In certain aspects, yes.
19 I mean, there are many aspects in which their
20 model is a good model and there are aspects in
21 which allocation on things that we would agree
22 with, but we think there are considerable
23 aspects of their allocation choices that are
24 not correct, that they do not reflect cost
25 causation.

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2 MR. LANG: Panel, you submitted a
3 series of exhibits with your prequalified
4 testimony. Are you aware of those exhibits?

5 MS. SMITH: Yes.

6 MR. LANG: And one of those, which
7 you marked as JP-8, which I show as being
8 marked, your Honor, as Exhibit 183.

9 ALJ LECAKES: Yes, I have that on my
10 exhibit chart as 183.

11 MR. LANG: Dose the panel have a copy
12 of what you had marked as -- can I use the
13 JP-8?

14 ALJ LECAKES: We'll assume for
15 purposes of the record that JP-8 is equivalent
16 to Exhibit 183.

17 MR. LANG: Does the panel have a copy
18 much that Exhibit?

19 MS. SORRENTINO: Yes.

20 MR. LANG: Could you please turn to
21 page 36 of that document. Do you have it?

22 MS. SMITH: Yes.

23 MR. LANG: In the first paragraph on
24 the left column there is a sentence five lines
25 up from the end of the first paragraph. Do you

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2 see that sentence starts "Given?"

3 MS. SMITH: Yes.

4 MR. LANG: Could you please just read
5 that sentence to provide the context for my
6 next question. Read out loud, please.

7 MS. SMITH: "Given the judgment
8 involved, no single approach can be said to be
9 correct. Rate making is partly science and
10 partly art."

11 MR. LANG: Do you disagree with the
12 Regulatory Assistance Project?

13 MS. SMITH: No.

14 MR. LANG: So when you just stated
15 that you are partially correct and the company
16 was incorrect and RAP says there is no correct
17 answer and you don't disagree with RAP, would
18 you like to change your prior answer?

19 MS. NEAL: I think that the word
20 correct is somewhat vague. I think what we've
21 said is our opinions on what appropriately
22 reflects cost causation.

23 MR. LANG: Ms. Neal, you weren't the
24 one that actually answered the question,
25 Ms. Smith was, and she didn't say that she had

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2 any confusion as to the word correct, but I
3 will move on.

4 Does the panel agree that the use of
5 the minimum size method is a long-recognized
6 method of doing cost allocation?

7 MS. SMITH: Yes, it is. We can go
8 back to the 1972 manual, which described it and
9 been used certainly since that time.

10 MR. LANG: Does the panel agree that,
11 again, I'm not talking about a specific -- no,
12 actually, strike that.

13 Does the panel agree that there is
14 not perfection in any particular approach to
15 classifying costs?

16 MS. SMITH: Yes.

17 MR. LANG: Is the panel familiar with
18 a report prepared by Christensen and Associates
19 in 2011, which is one of the exhibits, it was
20 actually a discovery response -- that's why I'm
21 not sure if you're familiar with it -- in JP-6,
22 which is Exhibit 181?

23 MR. ZIMMERMAN: Do you have a copy of
24 that?

25 MR. LANG: The question -- let me

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2 just give the heading. The interrogatory
3 response is UIU Set 18, Question 257, which
4 starts on page 51, and the survey itself starts
5 on page 52 of 84 of Exhibit JP-6.

6 MS. SMITH: Yes, we're familiar with
7 that.

8 MR. LANG: Isn't it true that the
9 survey shows there are multiple potential
10 classifications and all of them are consistent
11 with NARUC guidelines and principles?

12 MS. NEAL: Sorry, where are you
13 referring to?

14 MR. LANG: At the top of the page.
15 It's marked page 55 of 84. At the bottom of
16 the page from the survey it's marked page 2 and
17 I'm looking at the last bullet on that page.
18 It carries over onto page 56 of 84.

19 ALJ LECAKES: Again, the heading on
20 that page where the bullet points appear is
21 called, "Survey Results."

22 MR. LANG: Yes, your Honor.

23 MS. SMITH: I think your question was
24 a little broader, but this last bullet says
25 that, "Cost of service allocators follow NARUC

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2 guidelines, some allocate according to demand
3 only, others split distribution and demand in
4 the customer portion."

5 MR. LANG: So, in other words, there
6 are multiple ways of doing the cost allocation,
7 correct?

8 MS. SMITH: Yes.

9 MR. LANG: And each of them can be
10 considered -- well, let me be more specific.
11 The basic customer method, the minimum system
12 in a zero intercept, all find support within
13 the NARUC principles, correct?

14 MS. SMITH: They are all discussed in
15 the NARUC manual. I'm not sure what you mean
16 by "find support."

17 MR. LANG: In other words, the NARUC
18 manual identifies that these are acceptable
19 ways of doing cost allocation?

20 MS. NEAL: Can you give us a
21 reference in the NARUC manual?

22 MR. LANG: Sure. That has been
23 marked, your Honor, as Exhibit 140. I believe
24 it's just portions, but that's all we need; 140
25 was a staff exhibit.

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2 ALJ LECAKES: Right, I do recall
3 that. Staff had provided Exhibit 140 and had
4 identified that it was portions of the NARUC
5 manual. No one has asked that the entire
6 manual be put into the record at this point.

7 MR. LANG: And I can use the same
8 pages, your Honor. Specifically, it's page 90
9 of the manual, which was part of Exhibit 140.

10 ALJ LECAKES: Great.

11 MR. ZIMMERMAN: Does the panel have a
12 copy of that?

13 MS. SMITH: Are you referring to a
14 specific page?

15 MR. LANG: Yes, page 90.

16 MR. ZIMMERMAN: Does the panel have a
17 copy of that document?

18 MS. SMITH: Yes, we do.

19 MR. LANG: Does the panel have that?

20 MS. SMITH: Yes.

21 MR. LANG: Isn't it true that the
22 minimum size method is identified on page 90 as
23 one of the methods for classifying plan
24 accounts?

25 MS. SMITH: Yes, it is.

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2 MR. LANG: In your testimony, you
3 cite a number of places to a report charging
4 for distribution utility services, issues in
5 rate design, dated December 2000, you have
6 attached it as an Exhibit, JP-10, which I
7 believe has been marked as Exhibit 185.

8 ALJ LECAKES: Yes.

9 MR. LANG: Do you have that exhibit?

10 MS. SMITH: You said marked as
11 Exhibit 10?

12 MR. LANG: JP-10 is what I show on
13 the top of it.

14 MS. SMITH: Oh, yes. I have that.

15 MR. LANG: Isn't it true that the
16 opinions expressed in this document are solely
17 the opinions of the authors of the document?

18 MR. ZIMMERMAN: Objection. Are you
19 pointing to a particular portion of the
20 document?

21 MR. LANG: I'm asking if they know.

22 MS. SMITH: This report was prepared
23 for NARUC and I do not know how much
24 consultation there was between the NARUC entity
25 that commissioned this report and the authors

1
2 of this report.

3 MR. LANG: Could you turn to page
4 three of that document. Do you see the very
5 last sentence, the sentence above, "Thanks to
6 all?"

7 MS. SMITH: Yes.

8 MR. LANG: So based on reviewing
9 that, do you agree that these are just the
10 opinions of the authors of the report?

11 MS. SMITH: The sentence says the
12 opinions are strictly the opinions of the
13 authors.

14 MR. LANG: Thank you.

15 Was this report adopted by NARUC, to
16 your knowledge?

17 MS. SMITH: It was not.

18 MR. LANG: To your knowledge, has
19 this report been adopted by the New York Public
20 Service Commission?

21 MS. SMITH: I don't know that.

22 MR. LANG: Now, this report, as long
23 as we're on it, on page 33, am I correctly
24 reading this report -- and I'm in the very
25 first paragraph, so you know where I am.

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2 Starting five lines from the top, this report
3 indicates that you can use both NCP and ICNB
4 for allocating such costs. Do you agree with
5 this report that both NCP and ICNB can be used
6 for allocating the costs of secondary
7 distribution plan?

8 MS. SMITH: There can be such
9 differentiation based on the characteristics of
10 the utility, Mr. Lang. For instance, I've done
11 a lot of work in Utah and they have very long
12 lines of customers who are spread at great
13 distances, and therefore, individual customer
14 demands sometimes are quite relevant.

15 MR. LANG: Is it this panel's
16 position that the secondary distribution plan
17 costs should be allocated based only on demand?

18 MS. SMITH: That's not the position
19 that we have taken.

20 MR. LANG: What is the position the
21 panel has taken on the allocation of secondary
22 distribution plans?

23 MS. SMITH: We have suggested that
24 the allocation distribution plan -- the
25 classification of distribution plan be devised

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2 by looking at the minimum system that might be
3 necessary get power, get a minimal or zero
4 amount of the power, to individual customers.

5 MR. LANG: Do you agree that there
6 should be allocations based on both customer
7 and demand or just demand?

8 MS. SMITH: Once you clarify costs as
9 demands per customer, you are determining that
10 they would be allocated on the basis of a
11 customer-related allocator or demand-related
12 allocator.

13 MR. LANG: So I will clarify my
14 question. Do you believe that the costs of the
15 secondary distribution system should be
16 classified in part as customer and part as
17 demand?

18 MS. SMITH: I assume that you are
19 talking about the delivery system.

20 MR. LANG: The secondary distribution
21 system.

22 MS. SMITH: Yes, okay. We have
23 supported, in this case, the statement made by
24 the company in the notes on cost of service
25 study, which says there is a customer

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2 components, which is the cost of the smallest
3 secondary system theoretically needed to
4 specifically connect all existing service
5 points if the system was not designed to serve
6 any lower. We agree with that in our
7 calculations, our allocators have been designed
8 to follow that principle.

9 MR. LANG: So forgive me, because I
10 am not an expert, as you are or as you claim to
11 be on this topic, but are you saying with
12 respect to the secondary distribution system
13 that a portion of it should be classified as
14 customer-related and a portion should be
15 classified as demand-related or that it should
16 entirely be classified as demand-related?

17 MS. SMITH: We have been pretty
18 specific in stating that the overhead and
19 underground conductors should be classified
20 partly as customer-related and partly as
21 demand-related.

22 MR. LANG: Moving on, I would like to
23 turn your attention to page 24 of the UIU
24 statement.

25 MS. SMITH: Statement?

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MR. LANG: Yes, the statement.

Ms. Panko, I believe all these questions will be directed to you, because you worked for UIU, whereas it was established this morning that your colleagues on the panel have just been consultants hired for specific reasons.

MR. ZIMMERMAN: There hasn't been a question yet, but I would just say that the panel's sworn testimony is the panel's sworn testimony, the document to which you're referring to is not the panel's testimony. So to the extent that Counsel intends to direct questions to the panel about their testimony, those questions would go to the panel.

ALJ LECAKES: But, as we have established this morning, the statement in opposition in this case that was filed on 10/13 has been marked as Exhibit 163 in this proceeding and the panel is open to be questioned on exhibits in this proceeding. However, I do understand that it's not necessarily sworn testimony, so to the extent that contradictions or something come up, I

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2 will understand that it's the characterization
3 of the attorney that submitted the document and
4 not necessarily that of the panel members.

5 You can proceed, Mr. Lang.

6 MR. ZIMMERMAN: It's also my
7 understanding, your Honor, please correct me if
8 I'm mistaken, but when the panel testifies,
9 they testify together. I understand Counsel
10 made direct questions to specific witnesses,
11 but that any members of the panel can answer
12 those questions.

13 ALJ LECAKES: Right, I agrees with
14 you completely. I think Mr. Lang was just
15 trying to flag to the panel that his questions
16 might be more appropriate for Ms. Panko, but
17 they do certainly retain the right to have
18 anyone on the panel answer the question.

19 MR. LANG: That's all I was trying to
20 do, Judge.

21 Ms. Panko, it's correct that you have
22 been participating on behalf of UIU in this
23 proceeding, correct?

24 MS. PANKO: Yes.

25 MR. LANG: On page 24 of the UIU

2 statement is a sentence three lines down in the
3 first full paragraph: "PULP and UIU are the
4 only parties that focus on the interest of
5 residential customers."

6 Do you see that?

7 MS. PANKO: Yes.

8 MR. LANG: In this proceeding, to
9 your knowledge, did the Utility Intervention
10 Unit seek larger discounts for low income
11 customers?

12 MS. PANKO: That would be the
13 testimony of Greg Collar. I can't speak on his
14 behalf.

15 MR. LANG: Would it surprise you to
16 learn that the Utility Intervention Unit did
17 not seek larger discounts?

18 ALJ WILES: I think your question is
19 requiring the witness to disclose by
20 implication what went on in the settlement
21 negotiations.

22 MR. LANG: Not at all, your Honor.

23 MR. ZIMMERMAN: It also presupposes
24 both what's in Greg Collar's testimony and it
25 absolutely presupposes what UIU did or did not

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2 advocator for in confidential settlement
3 negotiations. And if Mr. Lang has any problems
4 remembering that, I'm happy to discuss it
5 outside of the hearing.

6 MR. LANG: If people would stop
7 making assumptions, the Utility Intervention
8 Unit filed testimony in this case. I am fully
9 aware of the requirements of the Commission's
10 rules about confidential settlement
11 negotiations and I have absolutely no intention
12 of exploring. I am going to what UIU has put
13 on the record in this proceeding that has been
14 marked as exhibits, which is the prefiled
15 testimony of the UIU witnesses. It is
16 established this morning that there are exactly
17 three people in the Utility Intervention Unit.
18 With such a small unit, it's very reasonable to
19 believe that when three people are all working
20 on a case together, they talk to each other.

21 ALJ LECAKES: It's also reasonable
22 for Ms. Panko to not recall testimony that was
23 filed several months ago by a colleague that
24 she did not testify to, but if she does know
25 the answer, she's certainly free to answer it

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2 based the on the testimony, not based on
3 settlement negotiations.

4 MR. ZIMMERMAN: That's the point I
5 was going to make.

6 MR. LANG: Ms. Panko, or panel --
7 excuse me -- would it surprise you to learn
8 that the City of New York advocated for larger
9 discounts to low-income in this proceeding in
10 its testimony?

11 ALJ WILES: In the City's testimony?

12 MR. LANG: In the City's testimony.

13 MS. SMITH: Doesn't surprise me, but
14 if the City of New York had advocated for lower
15 residential rates, this would also have
16 benefited low-income customers.

17 MR. LANG: I would ask if you please
18 limit yourself to the questions I'm asking.

19 ALJ LECAKES: The witness has the
20 right to supplement her response if she
21 believes it needs clarification.

22 MR. LANG: Did the panel in its
23 testimony in this case or any other public
24 filing oppose the level of shareholder
25 incentives that were contemplated by Con

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Edison?

MS. SMITH: We were not contracted to review revenue requirements.

MR. LANG: Well, I'm not asking the consultants because we've already established on this record that you've had a very limited focus. I'm asking what the UIU did, and we do have a member of this panel who is a member of UIU you, one of three members of UIU.

MS. PANKO: Can you repeat the question again?

MR. LANG: Certainly. Did the Utility Intervention Unit in its public testimony or in any other public filing oppose the level of shareholder incentives that were sought by Con Edison?

MS. PANKO: I don't recall.

MR. LANG: Do you know whether the UIU advocated for provisions of Con Edison's rate plan to protect the health of at-risk populations of New York City?

MR. ZIMMERMAN: Objection. Again, goes to confidential settlement provisions.

MR. LANG: No, it doesn't.

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MR. ZIMMERMAN: Advocated for?

MR. LANG: Yes. You filed testimony. You filed the statement and you filed prefile testimony.

ALJ LECAKES: We're assuming that when Mr. Lang is asking questions here and the advocacy that the advocacy is directed toward the initial litigation filing, which, again, has not been sworn or adopted in this testimony, but it does set out positions that would presumably been pursued had this case gone a litigated route rather than a settlement JP route.

MR. LANG: Your Honor, not only was there that prefiled testimony, but there is also the testimony that they have sworn to here.

ALJ LECAKES: Right, that's correct as well.

MR. LANG: So I am asking whether the UIU has advocated on their public documents -- I am not going into settlement negotiations -- for provisions to protect the health of at-risk populations in New York City.

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2 MS. PANKO: That is not part of our
3 testimony.

4 MR. LANG: Did the UIU, again, in
5 public documents, submit any proposals related
6 to resiliency which protects the health and
7 general welfare of New York City residents?

8 MS. PANKO: Again, that's not part of
9 our testimony and I don't recall at this
10 moment.

11 MR. LANG: Are you aware that the
12 City did submit such testimony?

13 MS. PANKO: Not off the top of my
14 head.

15 MR. LANG: Are you aware that the
16 City also submitted testimony expressing
17 concerns about the level of shareholder
18 incentives sought by Con Edison?

19 MS. PANKO: No.

20 MR. LANG: Did the Utility
21 Intervention Unit submit, again, in public
22 documents, anything at all about programs to
23 reduce the use of No. 6 fuel oil within New
24 York City?

25 MS. PANKO: Again, that topic is not

1
2 part of our testimony. Do I recall? Yes. I
3 can't point to a specific document.

4 MR. LANG: Are you aware that the
5 City of New York submitted testimony to
6 reduce -- for programs to reduce the use of
7 No. 6 fuel oil in residential buildings to
8 improve air quality?

9 MS. PANKO: Again, I can't recall.
10 That's not part of our testimony.

11 MR. LANG: More generally, which does
12 relate to this case, to your knowledge, has the
13 Utility Intervention Unit expressed any
14 concerns about the cost of the clean energy
15 standard on consumers, particularly residential
16 consumers?

17 MR. ZIMMERMAN: Objection.

18 ALJ LECAKES: On what grounds?

19 MR. ZIMMERMAN: It's not relevant to
20 the scope of this proceeding.

21 MR. LANG: It is your Honor. They
22 have made a very general statement that only
23 they represent the interest of residential
24 customers.

25 MR. ZIMMERMAN: That's a

1
2 misrepresentation of the statement, and I'd
3 like to explain why on at least two grounds.
4 First of all, that sentence you're referring to
5 starts of the parties to the instant
6 proceedings. We're talking about just these
7 proceedings.

8 Additionally, you characterized that
9 UIU statement is saying UIU only represents the
10 interests of residential customers. That's
11 simply not the case. That sentence says PULP
12 and UIU are the other parties that focus on the
13 interests of residential customers. Now, there
14 are many parties here who care about the
15 interest of residential customers, including
16 the City, the County of Westchester staff, the
17 company, several. All right? And many of them
18 do fantastic work on behalf of residential
19 customers. We do not begrudge and we are
20 endlessly grateful.

21 Staff, for example, does fantastic
22 work for residential customers and are
23 frontline defenders on behalf of all customers,
24 right. But, as Counsel to the Commission,
25 their job is to represent the State. They have

1
2 to represent not just the interests of
3 customers, they have to worry about utilities,
4 they have do worry about ESCOs, they have all
5 the environmental and other policy objects of
6 this Commission. Focus is not necessarily a
7 luxury they can afford.

8 And so, I ask, when you're making
9 characterizations about the text of that
10 sentence, please stick to the words that are
11 there.

12 MR. LANG: Mr. Zimmerman, it's
13 incredible that you're sitting there --

14 ALJ LECAKES: Mr. Lang, I appreciate
15 the clarification that Mr. Zimmerman gave on
16 that point and I understand the distinctions
17 that he's making, they are fairly subtle in
18 some ways. However, I understand where the
19 City has gone with its cross-examination so far
20 on this point and I think the point has
21 actually been made. I was going to ask you
22 before this line of questioning chamber came up
23 to how many more questions the City wanted to
24 pursue on this point, because I do believe that
25 the point has been made that there is a strong

1
2 City interest, as well as other statements in
3 support that were made by staff, in particular
4 other parties, that they do represent interests
5 and have concerns of low-income as well as
6 residential customers at heart when they supply
7 testimony in this proceeding.

8 MR. LANG: Your Honor, with all due
9 respect, this is not a limit focus statement.
10 It's a very general statement that the UIU has
11 made. The City takes extreme, tremendous
12 offense to this statement because the City has
13 advocated far greater in this proceeding for
14 residential customers than has the UIU. If it
15 is the UIU's point to withdraw the statement,
16 that would be fine, but as long as it's in the
17 record...

18 ALJ LECAKES: Mr. Lang, the statement
19 is in the record, but the point you just made
20 was just made through your cross-examination
21 and quite clearly it was also made directly by
22 staff with the word offended attached to it in
23 its reply statement in support.

24 I understand the point that the other
25 parties have made on this and that they

1
2 believed that the UIU statement was quite
3 incorrect on that point, shall we say.

4 MR. LANG: That's fine, your Honor.
5 I'll move on.

6 ALJ LECAKES: Thank you.

7 MR. LANG: Panel, with respect to
8 AMI -- do we know what AMI stands for or should
9 we make sure we're all talking about the same
10 thing?

11 Do you understand AMI to mean
12 advanced metering infrastructure?

13 MS. SMITH: Yes.

14 MR. LANG: Is it your understanding
15 that the purpose of AMI is to provide
16 opportunities to all customers?

17 MS. NEAL: Define "opportunities."

18 MR. LANG: Opportunities to manage
19 their electric load, to potentially reduce
20 their electric load, to take advantage of cost
21 savings from using at off-peak periods. I
22 could go on, but that's three examples of
23 opportunities.

24 MS. SMITH: That's not the only
25 purpose of AMI.

1
2 MR. LANG: I didn't say the only
3 purpose. Is that a purpose of AMI?

4 MS. SMITH: Yes.

5 MR. LANG: Isn't it true that AMI
6 would allow for integration of smart appliances
7 into a residential customer's premises?

8 MS. SMITH: Yes.

9 MR. LANG: Isn't it true that AMI
10 will allow residential consumers to know how
11 much power they are using at any point in time?

12 MS. SMITH: Yes.

13 MR. LANG: Isn't it true that AMI
14 would allow residential customers to take
15 affirmative actions to reduce their usage or to
16 switch it to off-peak periods.

17 MS. SMITH: If the residential
18 customers have appliances that would allow that
19 to happen. If you've got residential customers
20 that only have a refrigerator, light bulbs and
21 a TV, they probably really can't do that.

22 MR. LANG: Does the panel dispute Con
23 Edison estimate that the total benefits from
24 AMI will be approximately \$2.7 billion.

25 MS. SMITH: We have not opined on

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that.

MR. LANG: Have you reviewed the business plan?

MS. SMITH: Yes.

MR. LANG: Are you ware that the business plan provides savings of \$2.7 billion?

MS. SMITH: It projects that there will be savings of that amount.

MR. LANG: Do you dispute that projection?

MS. SMITH: No.

MR. LANG: Do you agree that AMI will contribute to peak flow reduction?

MS. SMITH: To some extent.

MR. LANG: Do you agree that it will contribute to energy efficiency?

MR. ZIMMERMAN: Objection. This is calling for speculation.

ALJ LECAKES: No, it's not. Not at all.

MR. ZIMMERMAN: The rule of will implies certainty in the outcome.

MR. LANG: I said: Do you believe that it will contribute to energy efficiency?

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2 ALJ LECAKES: Yes, and I don't see
3 that as speculation. It's more of a question
4 of the expectation of the witness panel.

5 MS. SMITH: We believe it has the
6 potential to do so.

7 MR. LANG: Do you believe it has the
8 potential to allow for more creative rate
9 structures?

10 MS. SMITH: Yes.

11 MR. LANG: Do you believe that it has
12 the potential to assist with outage management
13 when there has been an outage on the electrical
14 system?

15 MS. SMITH: Yes.

16 MR. LANG: Aren't all of these things
17 I just mentioned, peak load reduction, energy
18 efficiency, creative rate structures, outage
19 management all benefits, potentially, to
20 residential customers?

21 MS. SMITH: Could you repeat the
22 question again?

23 MR. LANG: Panel, do you agree that
24 peak load reduction, energy efficiency, more
25 creative rate structures and better outage

1
2 management are all attributes that will have
3 the potential to benefit residential customers?

4 MS. SMITH: It they have the
5 potential to benefit larger residential
6 customers.

7 MR. LANG: Did they have the
8 potential to benefit all customers, all
9 residential customers?

10 MS. SMITH: I believe that the
11 components that are producing reductions in
12 supply costs will benefit all customers. The
13 other components, I'm not at all certain that
14 they provide benefits.

15 MR. LANG: So if Con Ed has an outage
16 on its system in a neighborhood, that's going
17 to affect all of the customers in that,
18 neighborhood, correct?

19 MS. SMITH: Yes.

20 MR. LANG: So does it matters if the
21 customer is a large residential customer or a
22 small residential commercial if they're both
23 out of power?

24 MS. SMITH: The harm to them changes
25 immeasurably. The small customer has some

1
2 light bulbs and the refrigerator shuts down for
3 an hour and they're at work, it has no impact.
4 If it's a large customer that has computers
5 working, all kinds of things, maybe it damages
6 some of their appliances, it has a big impact.

7 MR. LANG: So if that small customer
8 is an elderly customer, and let's say it's the
9 middle of the summer and they have air
10 conditioning to help them stay safe and
11 healthy, is it your system then that if it's
12 only a few hours that there's no impact if they
13 lose that air conditioning?

14 MS. SMITH: If they have air
15 conditioning, they've already moved into a
16 slightly larger customer than I've just
17 identified.

18 Secondly, I'm not familiar with the
19 service quality indices out of Con Edison, but
20 I don't know that they currently experience
21 outages that could be corrected by this that
22 are long enough to interfere with air
23 conditions.

24 MR. LANG: So is it your view then
25 that the Public Service Commission was wrong

1
2 when it found that AMI will contribute to
3 outage management benefits for all customers?

4 MS. SMITH: I'm the not saying
5 they're wrong. I'm saying the way we are
6 looking at this is that those benefits have
7 very differential impacts on customers and I
8 believe that the Commission's statement that
9 all customers does not address that.

10 MR. LANG: Did you do any analysis to
11 determine the impact of AMI on any particular
12 customer?

13 MS. SMITH: No.

14 MR. LANG: Do you know, panel, how
15 many residential customers there are within Con
16 Ed's system, Con Ed electric system?

17 I don't need an exact number, an
18 approximation is fine.

19 ALJ LECAKES: Mr. Lang, while they're
20 looking that answer up, where are you in your
21 cross-examination?

22 MR. LANG: Ten, fifteen minutes.

23 ALJ LECAKES: Okay.

24 While they're looking that up,
25 Mr. Favreau, Mr. Richter, Ms. Krayske, have

1
2 you made any decisions yet as to whether the
3 company or staff plans to pursue
4 cross-examination of this panel?

5 MR. FAVREAU: I don't believe we're
6 going to have any cross.

7 MS. KRAYESKE: The company doesn't
8 have any cross.

9 MR. LANG: Panel, would you settle
10 for a rough number, approximately 2.9 million?

11 MS. SMITH: Yes.

12 MR. LANG: Again, I'm not trying to
13 hold you firmly, but it's the vast majority of
14 the customers are residential customers, is
15 that fair?

16 MS. SMITH: No. My recollection was
17 more it's over 70 percent of the total.

18 MR. LANG: Over 70 percent.
19 That's still a large majority,
20 correct?

21 MS. SMITH: Yes.

22 MR. LANG: One of the benefits of AMI
23 are billing improvements. Given that
24 residential customers comprise more than 70
25 percent of the customer base, isn't it true

1
2 that Con Edison likely spends more time on
3 billing for residential customers than for
4 larger customers?

5 MS. SMITH: Yes.

6 MR. LANG: In other words, the volume
7 is larger?

8 MS. SMITH: Yeah. Actually, given
9 how automated billing is today, I'm not quite
10 certain of that, because dealing with bills for
11 large customers, time of use meter -- we
12 currently have, time of use meters, I would not
13 be confident to say yes.

14 MR. LANG: But if a large customer
15 already has a time of use meter, it's unlikely
16 they're going to go to AMI, correct?

17 MS. SMITH: Well, some of them they
18 probably replaced newer meters that would
19 communicate with the system, others may not
20 need a change.

21 MR. LANG: But the AMI program that's
22 contemplated is to roll out meters where there
23 is no interval meter and no connectivity
24 already, correct?

25 MS. SMITH: Yes.

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2 MR. LANG: Now, call center, isn't it
3 correct that the call center is more likely to
4 generate calls from residential customers than
5 large industrial and commercial customers?

6 MS. SORRENTINO: Yes, it is.

7 MR. LANG: In terms of meter reading,
8 isn't it true that most large customers that
9 already have interval metering can be remotely
10 read by the company through communications
11 lines that the company requires?

12 MS. SMITH: Yes, but that does not
13 necessarily mean that they are a meter reading
14 system. The whole process is simple, one that
15 requires a lot less effort than residential
16 customers.

17 MR. LANG: I'm not talking about
18 entire system, just the action of meter
19 reading. Isn't it correct that most meter
20 reading right now is done for residential
21 customers and meters that have no ability to
22 communicate directly with the company?

23 MS. SMITH: But meter reading is also
24 going to entail customer possible complaints
25 about meters and disputes about supplies, so

1
2 it's not that simple.

3 MR. LANG: Well, but that's call
4 center activity when you're dealing with
5 complaints, correct?

6 MS. SMITH: Probably not for the
7 biggest customers. There probably are separate
8 businesses units in the market -- maybe even
9 under marketing to deal with customers taking
10 alternative suppliers and deal with these
11 customers.

12 MR. LANG: Are you aware that Con
13 Edison has projected savings of \$369 million
14 just related to meter reading?

15 MS. SMITH: Yes.

16 MR. LANG: Are you aware that Con
17 Edison has estimated \$39 million for
18 efficiencies, reductions in call center
19 activity because of AMI?

20 MS. SMITH: I don't remember the
21 exact number, but I know there's a projection
22 of savings in that area.

23 MR. LANG: Now, with respect to
24 conservation voltage optimization, there was
25 some discussion of this with the staff panel.

1

2 Were you in the room this morning?

2

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MS. SMITH: Yes.

4

MR. LANG: Do you know what
5 conservation voltage optimization is?

5

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MS. SMITH: Yes.

7

MR. LANG: If Con Edison is going to
8 engage in CVO in an area, that would affect all
9 customers, correct?

9

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MS. SMITH: Yes.

11

MR. LANG: And in terms of those
12 supply savings, that relates to the supply that
13 Con Edison is purchasing, correct? The
14 commodity savings.

12

13

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MS. SMITH: Well, the commodity
16 savings that are received by Con Edison would
17 only flow resulting from power that they
18 purchased, but customers on the system who are
19 purchasing from someone else would also benefit
20 from the conservation voltage optimization.

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MR. LANG: Have you done any study of
22 what that differential benefit would be between
23 the customers that get their supply from Con
24 Edison and customers who get their supply from
25 other sources?

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2 MS. SMITH: It's going to be directly
3 proportional to energy. If you're reducing the
4 losses, if you're improving voltage, that
5 affects all customers taking supply, doesn't
6 matter who they're buying the supply from.

7 MR. LANG: Have you done any studies
8 of what the cost impacts are on full-service
9 customers versus customers obtaining supply
10 from ESCOs?

11 MS. SMITH: I think I just stated
12 that I don't think there will be any
13 difference.

14 MR. LANG: So is it your testimony
15 then that their conservation voltage
16 optimization, the wholesale price of
17 electricity is going to drop?

18 MS. SMITH: No. Customers will be
19 purchasing less energy. The meter will read a
20 lower number.

21 MR. LANG: And residential customers
22 will benefit from that, correct?

23 MS. SMITH: Yes.

24 MR. LANG: Do you know to what extent
25 residential customers will benefit in any area?

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2 MR. ZIMMERMAN: Could you be more
3 specific when you say area, geographic area?

4 MR. LANG: In any Con Edison network.

5 MS. SMITH: You mean do I know
6 whether there will be different reductions in
7 different networks?

8 MR. LANG: I'll phrase it a different
9 way. If there's a network in which Con Edison
10 uses conservation voltage optimization and that
11 network is comprised of 95 percent residential
12 customers, is it fair to say that most of the
13 benefit of CVO in that network will be to
14 residential customers?

15 MS. SMITH: I'm not even certain that
16 the way they're going to go about the
17 installation of the AMI system is going modify
18 the system's network by network according to --
19 based on the CVO.

20 MR. LANG: I'm sorry, I don't
21 understand that answer at all. Con Edison is
22 putting AMI in their entire service territory,
23 correct?

24 MS. SMITH: Yes.

25 MR. LANG: And a benefit from AMI is

1
2 the ability to engage in conservation voltage
3 optimization, correct?

4 MS. SMITH: What do you mean by
5 engage in?

6 MR. LANG: Conservation voltage
7 optimization is how they manage the voltage
8 through the system, correct?

9 MS. SMITH: The system is managed by
10 Con Ed.

11 MR. LANG: Right, and Con Edison has
12 the ability to manage the system at a number of
13 different levels from the entirety of the
14 system to individual networks and perhaps
15 individual streets or neighborhoods, correct?

16 MS. SMITH: Are you suggesting that
17 they're going to be improving this neighborhood
18 by neighborhood or network by network rather
19 than systemwide?

20 MR. LANG: I'm not suggesting
21 anything. You've taken a position that certain
22 customers are going to benefit to a greater
23 extent than other customers and I'm trying to
24 explore your understanding of your testimony
25 and what your understanding is of conservation

1
2 voltage optimization. So instead of trying to
3 make assumptions as to what I'm asking, I'm
4 trying to understand what your understanding is
5 of how CVO will work.

6 MS. SMITH: My understanding is it's
7 going to reduce supply costs and that will
8 benefit larger customers, customers who use
9 more than small customers.

10 MR. LANG: It your understanding that
11 CVO will be applied in the entire service
12 territory at all times?

13 MS. SMITH: It is my understanding.

14 MR. LANG: Whats the basis of that
15 understanding?

16 MS. SMITH: Well, I've only done a
17 quick read of the AMI benefits plan, but I
18 certainly did not see anything in there that
19 suggested there was going to be differential
20 treatment of different areas, so I guess the
21 negative.

22 MR. LANG: Do you know whether
23 there's a need to do voltage optimization
24 throughout the entire system or only in certain
25 networks?

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2 MS. SMITH: I do not know for
3 certain.

4 MR. LANG: Now, previously we had
5 discussed the issue of cost causation. Isn't
6 it correct that one of the largest costs of AMI
7 is the actual installation of the meters
8 themselves?

9 MR. ZIMMERMAN: Is Counsel referring
10 to a particular document?

11 MR. LANG: No, I'm asking the
12 witnesses what their understanding is.

13 MS. SMITH: You asked if the majority
14 of the costs was installation of the meters?

15 MR. LANG: Isn't one of the largest
16 costs of AMI the cost associated with
17 installing the meters themselves?

18 MS. SMITH: One of the large costs is
19 the cost of the meters and the installation of
20 those meters.

21 MR. LANG: And those meters are
22 primarily being installed on premises of
23 residential and small commercial customers,
24 correct?

25 MS. SMITH: Yes.

1
2 MR. LANG: So under the principle of
3 cost causation, aren't those customers --
4 strike that.

5 Could you point me in the NARUC Cost
6 Allocation Manual where it states that cost
7 causation should be based on the result and
8 benefits of a project?

9 MS. SMITH: The manual, throughout
10 it, refers to cost being based on cost
11 causation and it is our position that the cost
12 causation of the AMI system is the benefits
13 that are expected to result from it and we
14 don't see any better way of measuring cost
15 causation than the benefits.

16 MR. LANG: And it's not your
17 position that -- strike that.

18 MS. SORRENTINO: If you install --

19 MR. LANG: There's no question before
20 you.

21 ALJ WILES: Well, the witness thinks
22 she needs to amend her --

23 MR. LANG: No, if she wanted to
24 amend, your Honor, I struck my question. She
25 already answered the prior question.

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2 ALJ WILES: I don't know what she was
3 going to say there.

4 ALJ LECAKES: You can proceed.

5 MR. LANG: On page 38 --

6 ALJ LECAKES: Hang on, Mr. Lang.

7 Did you have something else to add?

8 MS. SMITH: I'll leave it.

9 ALJ LECAKES: Okay.

10 Go ahead, Mr. Lang.

11 MR. LANG: Could you turn to page 38
12 of your direct testimony, please.

13 MR. ZIMMERMAN: You're referring to
14 the testimony in the JP?

15 MR. LANG: Yes.

16 Do you see, starting on lines 23 and
17 going to 26, where you make reference that the
18 benefits would be correlated to a customer's
19 size and level of sophistication?

20 MS. SMITH: Yes.

21 MR. LANG: Is the act of reading a
22 meter when a person goes out, a Con Edison
23 employee goes out and reads a meter, is it any
24 different to read that meter based on the size
25 of the customer?

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2 MS. SMITH: I'm a little confused
3 because we're talking AMI here, and when AMI
4 meters are installed, there won't be a meter
5 reader going to it.

6 MR. LANG: That's correct. I'm not
7 talking about the AMI. The meters that exist
8 today, when a meter reader goes out and they
9 read a meter, they go out and they record the
10 information on the meter, correct?

11 MS. SMITH: Yes.

12 MR. LANG: And is there any
13 difference whether, if that's what they're
14 doing, it's a residential customer or a
15 commercial customer when they're physically
16 going out and reading the meter?

17 MS. SMITH: It does vary somewhat.
18 It depends on the location of the meter and it
19 also depends on the type of meter. Demand
20 meters are more complicated. Demand meters,
21 which are usually most of the commercial and
22 industrial customers have.

23 MR. LANG: In fact, isn't it true
24 that demand meters also are connected directly
25 to the company and are not physically read by

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2 meter readers?

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MS. SMITH: I don't know that.

4

MR. LANG: Does the level of

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sophistication of a customer affect the action

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of reading a meter?

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MS. SMITH: No.

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MR. LANG: When the company engages

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in field services because a meter is not

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working properly, does the level of

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sophistication of the customer have an impact

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on that field service work?

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MS. SMITH: The phrase sophistication

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in there was not intended to be related to

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meter reading costs.

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MR. LANG: Well, that's one of the

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bests of AMI, though, and in fact, field

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services is \$238 million; that's a very

19

significant component of the AMI cost. So I'm

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trying to understand, this was your testimony,

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whether you're seeing that the level of

22

sophistication of the customer makes a

23

difference when Con Edison is performing that

24

field services work.

25

MS. SMITH: The phrase sophistication

1
2 was referring to how much it advantage the
3 customers may receive from the AMI system. A
4 customer who has the ability to understand
5 their meter has the ability to perhaps go out
6 and pick an ESCO, the customer has the ability
7 to integrate large amounts of their appliances,
8 are more sophisticated and have the ability to
9 receive more benefits. That's not related to
10 meter reading?

11 MR. LANG: Are you suggesting that
12 the small customers don't have the ability to
13 understand and do the exact same things?

14 MS. SMITH: I'm suggesting that many
15 of them do not and many of them do not have the
16 appliances that can be manipulated, do not have
17 the time. Poor customers who are working two
18 jobs do not have the time to monitor their
19 usage and modify their usage. Granted, there
20 will be people in upscale condos that are
21 pretty small that are pretty sophisticated, but
22 I think in general, the smaller customers have
23 less ability to take advantage of the AMI
24 system.

25 MR. LANG: Have you done any kind of

1
2 study to know that they have less ability to
3 take advantage of AMI?

4 MS. SMITH: Actually, I have
5 developed -- I have worked with utilities
6 attempting to develop time differentiated rates
7 and I have researched the experiments that have
8 been done in California and I believe in
9 Chicago, and in pretty much all of those cases
10 the bigger customers have much more ability to
11 make use of those rates in the more
12 sophisticated AMI systems.

13 MR. LANG: Are you familiar with the
14 Public Service Commission's REV proceeding?

15 MR. ZIMMERMAN: This question was
16 asked and answered.

17 ALJ LECAKES: It actually was a while
18 ago.

19 MR. LANG: Fine.

20 ALJ LECAKES: The answer was yes,
21 there's a familiarity.

22 MR. LANG: I don't remember that one
23 specifically so I'll move on.

24 Isn't it correct that one of the
25 tenets of the REV proceeding is to enable

1
2 customers to more proactively manage their
3 electric usage?

4 MS. SMITH: Yes.

5 MR. LANG: And that was for all
6 customers under the REV proceeding, correct?

7 In other words, one of the tenets of
8 the REV proceeding was to enable all customers,
9 not just large customers, to more proactively
10 manage their electric usage, correct?

11 MS. SMITH: That doesn't mean that
12 each customer can do so.

13 MR. LANG: Again, one of the basic
14 tenets is to proactively allow customers to
15 manage their electric usage, correct?

16 MS. SMITH: Yes.

17 ALJ LECAKES: That was asked and
18 answered.

19 MR. LANG: Isn't it true that AMI
20 will facilitate the ability of customers to do
21 that?

22 MS. SMITH: Yes.

23 MR. LANG: Now, on page 38 of your
24 testimony, you also indicate at line 25 that it
25 will provide customers with a rich set of usage

1
2 data, it's much more useful to large customers.
3 Do you see that, lines 25 and 26?

4 MS. SMITH: Yes.

5 MR. LANG: What is the quantification
6 in the business plan of the value of that rich
7 set of usage data?

8 MS. SMITH: My recollection is that
9 the business plan did not attempt to quantify
10 these potential future benefits.

11 MR. LANG: On page 39 of your
12 testimony, you indicate that larger customers
13 will benefit more as reduced outages yield
14 lower energy costs. If there is an outage,
15 isn't it correct that customers are not using
16 energy and thus bear no costs?

17 MS. SMITH: Yes. This sentence
18 actually may be erroneous.

19 MR. LANG: Would you like to correct
20 your testimony?

21 MS. SMITH: Actually, well,
22 particularly for customers without demand
23 meters, outages mean they are not using energy
24 during the period of time. Although, when the
25 power goes back on there are often power

1
2 surges, but in general you're going to pay for
3 fewer kilowatt hours if your power has been out
4 for an hour, so a shorter outage might actually
5 mean there are fewer periods where you are not
6 actually paying for energy.

7 MR. LANG: If you could turn to your
8 Exhibit JP-7, which I believe is Exhibit 182,
9 and I'm looking specifically at page 205. Do
10 you have that exhibit?

11 MS. SMITH: Yes.

12 MR. LANG: Could you please explain
13 what this page is showing.

14 MS. NEAL: So this page shows the
15 results of REV allocation using UIU
16 recommendations.

17 MR. LANG: So you're suggesting that
18 the revenues be shifted as you're showing in
19 the third and the fourth columns; is that
20 correct? I'm sorry, the shift from what was in
21 the third column to your recommendation in the
22 fourth column; is that correct?

23 MS. NEAL: What was the page again?

24 MR. LANG: Page 205.

25 MS. NEAL: So this is the realigned

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2 revenues, so it takes the results of ECOS, the
3 deficiencies and surpluses, and adds them to
4 the revenues at current rates and then you take
5 the percentages of these values and get the
6 allocator based on recommended realigned
7 revenues and this is comparing it to the one
8 based on energy.

9 MR. LANG: So this is how you would
10 determine how much of Con Edison's costs would
11 be allocated to each one of these classes,
12 correct?

13 MS. NEAL: The allocators would
14 allocate costs in accordance with percentages
15 shown.

16 MR. LANG: So for the NYPA class,
17 which is the bottom one, am I correctly
18 understanding that you're suggesting that it
19 should shift from 11.7 percent to 17.9 percent?
20 I just want to make sure I'm understanding what
21 your exhibit is.

22 MS. NEAL: It would shift that much
23 if you are using just energy, which was a
24 preliminary recommendation that we have, but
25 our ultimate recommendation is for AMI cost to

1
2 be allocated based in accordance with their
3 benefits.

4 MR. LANG: Well, this isn't just AMI
5 cost, this is all costs.

6 MS. NEAL: The recommendation for
7 allocation on energy for the parts of this deal
8 would be only for AMI costs.

9 MR. LANG: I'm sorry, this table is
10 only for AMI?

11 MS. SMITH: The allocator shown here
12 is only AMI. This is two columns showing
13 different allocators. Remember, we're going to
14 allocate revenues based on realigned revenues
15 column one.

16 MS. NEAL: That's the way the company
17 has proposed, right? It's proposed realigned
18 revenues as a basis for an allocation of
19 revenue increase and we're saying for the
20 portion of cost that is AMI, use energy
21 instead.

22 MS. SMITH: So to make it clear, we
23 are not suggesting that all costs should be
24 allocated on the basis of 17.9 percent.

25 MR. LANG: Turning to your reply

1
2 statement, at footnote six of the reply
3 statement on page two, to your knowledge, is it
4 the UIU's position that the increase for the
5 residential class should be no larger than the
6 CPI rate of inflation?

7 MS. SMITH: No. This is just a
8 reference.

9 MR. LANG: If that's not your
10 position, then what relevance does the
11 inflation make? Strike that.

12 Generally, in this rate case, and
13 again, just limited to what you have put in
14 prefiled testimony and your sworn testimony and
15 any statements, what costs has UIU challenged
16 in order to limit the extent of the revenue
17 requirement increase in this case?

18 MS. NEAL: I'm sorry, could you
19 repeat that?

20 MR. LANG: Sure. What costs has UIU
21 sought to challenge -- and, again, I'm not
22 talking about settlement negotiations -- to
23 limit the revenue requirement increase in this
24 case?

25 MS. SMITH: This panel did not

1
2 addresses the overall revenue requirement.

3 MR. LANG: And I didn't ask it. I
4 said to UIU, and Ms. Panko is a representative
5 of UIU.

6 MS. PANKO: Can you just repeat the
7 question again?

8 MR. LANG: Sure. What costs has the
9 Utility Intervention Unit challenged in this
10 rate case in its public filings to limit the
11 revenue requirement increase?

12 (No response.)

13 MR. LANG: Ms. Panko, I will ask the
14 question a different way to try to make it
15 easier. Isn't it correct that, in this case,
16 the UIU hasn't challenged any aspect of Con
17 Ed's revenue requirement requests?

18 MR. ZIMMERMAN: Again, objection to
19 the extent that it goes to confidential
20 settlement negotiations.

21 ALJ LECAKES: It's been classified
22 that it's not.

23 Ms. Panko, Mr. Collar's testimony in
24 the underlying litigated case was as to the
25 low-income program; is that right?

1

MS. PANKO: That's correct.

2

3

ALJ LECAKES: And your testimony on the panels went to the revenue allocation and rate design, correct?

4

5

6

MS. PANKO: That's correct.

7

ALJ LECAKES: And in the testimony that was submitted in opposition to the JP, both your panels went to the revenue allocation rate design of the amounts included in the joint proposal, right?

8

9

10

11

12

MS. PANKO: That was the basis of our...

13

14

ALJ LECAKES: And beyond that testimony, there was no specific increase in cost issues that UIU addressed; is that right?

15

16

17

MS. PANKO: Not within our testimony, no.

18

19

ALJ LECAKES: But in fairness, and on balance, isn't it also true that UIU relies on other parties, such as staff, to make arguments with regard to the amount of the revenue increase in the different utility rate cases?

20

21

22

23

24

MS. PANKO: Yes.

25

MR. LANG: By, your Honor, in

1
2 fairness, CPB --

3 ALJ LECAKES: I understand, Mr. Lang.

4 MR. LANG: -- has testified on
5 revenue requirement.

6 ALJ LECAKES: Yes, they have.

7 MR. ZIMMERMAN: For many years CPB
8 was twelve times the size --

9 MR. LANG: For many years, CPB was --

10 ALJ LECAKES: We can stop now. I
11 understand Mr. Zimmerman's point, I was there.
12 I understand your point.

13 MR. LANG: So, your Honor, the answer
14 then is yes, it is correct that UIU has not
15 testified to any revenue requirement
16 adjustments in this case?

17 ALJ LECAKES: That's how I understand
18 the answer.

19 MR. LANG: Well, the only reason I
20 ask, your Honor, is because she said in her
21 testimony the UIU has made other submissions
22 besides her testimony.

23 ALJ LECAKES: They have, but they
24 have not significantly or substantially
25 increased the breadth of the issues that

1

2 they've addressed in this case.

2

3

MR. LANG: And on that, I will rest,
4 your Honor.

4

5

ALJ LECAKES: Is there any other
6 party that wishes to cross-examine this panel?

6

7

(No response.)

8

ALJ LECAKES: Judge Wiles, do you
9 have any other questions?

9

10

ALJ WILES: No, I don't.

11

ALJ LECAKES: No, I don't myself
12 anymore. I did before they started, but
13 they've been addressed.

13

14

Why don't we take a ten or so minute
15 break while you, Mr. Zimmerman, consult with
16 the panel as to redirect and if you need a few
17 more minutes, for whatever, reason after your
18 consultation with the panel, you can take that.
19 We will be adjourned until at least five after
20 2:00 and maybe a little bit longer.

20

21

Thank you. Off the record.

22

(Whereupon, there is a recess taken.)

23

ALJ LECAKES: Mr. Zimmerman, do you
24 have any redirect?

24

25

MR. ZIMMERMAN: Yes, your Honor.

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ALJ LECAKES: You may proceed.

MR. ZIMMERMAN: Thank you.

Panel, a couple of witnesses asked you about the conductor size used in the electric embedded cost of service methodology, do you remember that?

MS. NEAL: Yes.

MR. ZIMMERMAN: As I recall, the panel made a correction with to its testimony with respect to wire size this morning. Can you please restate what that was?

MS. NEAL: We corrected our testimony to eliminate the phrase that size one wire was the minimum size.

MR. ZIMMERMAN: Why did you do that?

MS. NEAL: It's come to our attention that the company has been inconsistent in its representation of minimum wire size. In its initial prefile direct testimony, page 25, line 7, it indicated that 1 AWG is the minimum size, and this was repeated in the written testimony in the JP at page 32, line 7, that No. 1 is the minimum size, but yesterday the company panel testified that 10,

1
2 size 10 was the smallest size minimum in the
3 system.

4 MR. LANG: I'm going to object at
5 this time, your Honor, because no one
6 cross-examined them on the difference between
7 what they did and the company did, and now to
8 try and rehabilitate their testimony on this
9 issue is inappropriate.

10 ALJ LECAKES: There was
11 cross-examination on the size of the wires.

12 MR. LANG: The only question that was
13 asked was if they knew -- if they agreed that a
14 size 2.0 was, in fact, smaller than 1.0.
15 That's the only testimony. It had nothing to
16 do with comparison between what Con Ed did and
17 what they did.

18 MR. ZIMMERMAN: The panel's ability
19 to speak to the size of the wires is dependent
20 on the representations the company has made
21 with respect to the size of that wire.

22 MR. LANG: But this is redirect.
23 Redirect is limited to what was cross-examined,
24 not to rehabilitate based on what happened by
25 another panel that demonstrates flaws in what

1
2 they did. They don't have an opportunity to
3 rehabilitate or come back to it.

4 ALJ LECAKES: Mr. Lang, I do hear
5 what you're saying. As to the response as it
6 was made so far, I'm going to let it stand, but
7 I do agree that the response has been
8 sufficient to serve the purposes of redirect.

9 Mr. Zimmerman, do you have any
10 further questions?

11 MR. ZIMMERMAN: I don't believe the
12 response is entirely complete.

13 ALJ LECAKES: That's okay. I agree
14 with Mr. Lang to the extent that it's going
15 outside of the balance of proper redirect at
16 this point.

17 MR. ZIMMERMAN: Panel, Mr. Lang asked
18 you earlier if 1 AWG wire was larger than 2 AWG
19 wire. Do you recall that?

20 MS. NEAL: Yes.

21 MR. ZIMMERMAN: Based on the
22 information provided by the company as to wire
23 size, can the panel be confident as to answer
24 that question?

25 MS. KRAYESKE: Your Honor, the

1
2 company objects to the question in that they're
3 trying to characterize what the company's
4 testimony was. If they had a question about
5 wire size, they certainly could have asked the
6 company in any one of the 300 to 500 discovery
7 requests.

8 MS. NEAL: I have our discovery
9 requests right here that's responsive to that
10 question.

11 ALJ LECAKES: I don't need to see it.
12 Ms. Krayeske, I understand the company's point,
13 and so I will take the characterization made
14 with a grain of salt. However, it's not so
15 much the characterization that's at issue here,
16 it's what the panel understood, and so I'll let
17 the question stand. If you want to ask again,
18 if the panel needs to be refreshed on the
19 question or if the panel just wants to answer.

20 MS. NEAL: Could we hear the question
21 again?

22 MR. ZIMMERMAN: Based on the
23 information provided by the company, is the
24 panel confident on whether size 1 wire is
25 larger or smaller than size 2 wire?

1
2 MS. NEAL: We're not confident
3 because there is a standard that suggests that
4 1 is larger than 2. There's a discovery
5 response from the company and set 19, number
6 259, that says that the 1 AWG wire is smaller
7 in diameter than the 2 AWG wire.

8 ALJ LECAKES: And I will not take
9 that response, Ms. Kraveske, for the truth of
10 what's stated in the response. I will take it
11 as an indication of why there was some
12 confusion for the panel members as to producing
13 their own testimony.

14 MR. ZIMMERMAN: Panel, a number of
15 questions asked questions specifically to
16 Ms. Neal and Ms. Smith with respect to
17 Daymark's operations. Do you recall those?

18 MS. SMITH: Yes.

19 MR. ZIMMERMAN: Does Daymark
20 represent clients other than the Utility
21 Intervention Unit?

22 MS. SMITH: Yes. We represent a
23 number of commissions. We represent other
24 commission staffs. We have worked for
25 industrial customers. We have worked some for

1
2 small municipal utilities. We've worked for
3 IOU utilities.

4 MS. NEAL: Investor-owned utilities.

5 MR. ZIMMERMAN: Ms. Smith, as I
6 recall, you indicated that you had been part of
7 Daymark's, or its predecessor, La Capra's,
8 management team; is that correct?

9 MS. SMITH: I shouldn't have said
10 that. I was actually on the board for quite a
11 number of years.

12 MR. ZIMMERMAN: Okay.

13 In your experience, Ms. Smith, or
14 panel in general, if a client or potential
15 client of Daymark wished to advocate for a
16 position that Daymark deemed to be unsound, has
17 Daymark ever refused such an instruction from a
18 client or potential client?

19 MS. SMITH: If a client had asked us
20 to use an allocation methodology or taken
21 another position that we felt was incorrect,
22 technically wrong, we have refused to do so and
23 occasionally turned down clients on that basis,
24 but with existing clients we have said, No,
25 that's not the method that we've used.

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MR. ZIMMERMAN: Thank you.

And finally, Counsel for the City of New York asked a number of questions about advanced metering infrastructure. Do you recall those?

MS. SMITH: Yes.

MR. ZIMMERMAN: Now, did the panel recommend in your testimony or report elsewhere that residential customers should not pay any of the costs of advancing metering infrastructure?

MS. SMITH: No.

MR. ZIMMERMAN: Thanks. I have nothing further.

ALJ LECAKES: Mr. Lang, recross on the City's issue?

MR. LANG: No, your Honor.

ALJ LECAKES: Mr. Diamantopoulos, Mr. Laniado, any recross on the impeachment issues?

MR. LANIADO: None.

MR. DIAMANTOPOULOS: No, your Honor.

ALJ LECAKES: Mr. Neal, Ms. Smith, you're excused. I want to thank you for your

1
2 professionalism, especially in light of some of
3 the questions that attacked the credentials and
4 the bias of the panel. It's much appreciated
5 that you were here today. Thanks so much.

6 Ms. Panko, if you could stay there,
7 because you're a member of the next panel.

8 Mr. Johnson, if you could come forward now.

9 Dr. Johnson, I apologize.

10 And, Mr. Zimmerman, could you call
11 the next panel, please.

12 MR. ZIMMERMAN: Yes, your Honor.

13 UIU calls the UIU Gas Rate Panel.

14 ALJ LECAKES: Mr. Panko, you've
15 already given your name on the record.

16 Dr. Johnson, could you please identify yourself
17 by name, please.

18 DR. JOHNSON: Yes. My name is Ben
19 Johnson.

20 ALJ LECAKES: And it's J-O-H-N-S-O-N,
21 correct.

22 DR. JOHNSON: Correct.

23 WHEREUPON,

24 BEN JOHNSON,
25 having been first duly sworn by

1
2 ALJ Van Ort, is examined
3 and testifies as follows:

4 DR. JOHNSON: Yes, I do.

5 ALJ LECAKES: Mr. Zimmerman, their
6 testimony?

7 MR. ZIMMERMAN: Panel, did you
8 prepare testimony entitled Direct Testimony of
9 UIU Gas Rate Panel on the joint proposal dated
10 October 13, 2016?

11 DR. JOHNSON: Yes.

12 MR. ZIMMERMAN: Do you have any
13 corrections or modifications to make to that
14 testimony at this time?

15 DR. JOHNSON: No.

16 MR. ZIMMERMAN: If I were to ask you
17 questions in that testimony, would your answers
18 be the same as presented there?

19 DR. JOHNSON: Yes.

20 MR. ZIMMERMAN: Your Honors, move to
21 have this testimony moved into the record as if
22 given orally here.

23 ALJ LECAKES: I will grant that,
24 Mr. Zimmerman. I do have one quick question.
25 So the CD that Ms. O'Hare gave me has a file on

1
2 it listed "UIU Gas Rates Panel Testimony on Con
3 Ed JP-Clean," that does not indicate that there
4 were any corrections made to the testimony that
5 was produced?

6 MR. ZIMMERMAN: No, your Honor.
7 That's the Word file. We changed the name on
8 the PDF.

9 ALJ LECAKES: At this point in the
10 transcript, on the CD that I provided to the
11 court reporter before, there is a second Word
12 file titled UIU Gas Rates Panel Testimony on
13 Con Ed JP-Clean and Final. That should go into
14 the record now as if orally given here today.

15 (The following is prefiled testimony
16 submitted by the UIU Gas Rates Panel.)
17
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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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 16-E-0060

Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Gas Service.

Case 16-G-0061

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

Case 15-E-0050

Tariff filing by Consolidated Edison Company of New York, Inc. to revise General Rule 20 Standby Service contained in its electric tariff schedules, P.S.C. Nos. 10 and 12.

Case 16-E-0196

DIRECT TESTIMONY

OF

UIU GAS RATE PANEL ON THE JOINT PROPOSAL

Dated: October 13, 2016
Albany, New York

UTILITY INTERVENTION UNIT
DIVISION OF CONSUMER PROTECTION
NYS DEPARTMENT OF STATE
99 WASHINGTON AVENUE
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1 **I. INTRODUCTION AND OVERVIEW**

2

3 Q. Would the Panel please state their names and business addresses?

4 A. **(Johnson)** My name is Ben Johnson, and my business address is 5600 Pimlico
5 Drive, Tallahassee, FL 32309.

6 **(Panko)** My name is Danielle M. Panko, and my business address is 99
7 Washington Avenue, Suite 640, Albany, NY 12231.

8

9 Q. By whom are you employed, in what capacity, and what are your professional
10 backgrounds and qualifications?

11 A. **(Johnson)** I am employed as a consulting economist and president of Ben
12 Johnson Associates, Inc.®, an economic research firm specializing in public
13 utility regulation. I received a Bachelor of Arts degree in Economics from the
14 University of South Florida, and both a Master of Science in Economics and
15 Doctor of Philosophy in Economics from Florida State University.

16 Over the course of more than 40 years, I have been actively involved in
17 more than 400 regulatory dockets, involving electric, natural gas and other
18 utilities. I have presented expert testimony on more than 250 occasions, before
19 federal regulatory agencies, various state courts, and regulatory commissions in
20 40 states, two Canadian provinces and the District of Columbia.

21 The majority of this work has been performed on behalf of regulatory
22 commissions, consumer advocates, and other government agencies involved in
23 regulation, but our firm has worked for other types of clients as well, including

1 large industrial consumers and non-profit entities like the AARP and the North
2 Carolina Sustainable Energy Association.

3 **(Panko)** I currently hold the position of a Utility Analyst with the Utility
4 Intervention Unit (“UIU”) of the New York State Department of State’s Division of
5 Consumer Protection. I received a Bachelor of Science in Mathematics from the
6 State University of New York at New Paltz in 2001 and a Master of Science in
7 Electrical Engineering from the State University of New York at New Paltz in
8 2008.

9 From 2000 to 2001, I served as an intern with Central Hudson Gas and
10 Electric Corporation located in Poughkeepsie, New York, in the Accounts Service
11 Department and subsequently in the Electrical Engineering Department. From
12 2004 to 2007 I worked as an engineer for Philips Semiconductors. From 2007 to
13 2012, I worked for Consolidated Edison Company of New York, Inc. (“Con
14 Edison” or “the Company”) in the Rate Engineering Department as an Analyst,
15 and later a Senior Analyst, in the Gas Rate Design Section. I joined the UIU in
16 2012. My primary responsibilities include assisting with UIU's participation in
17 Public Service Commission (“PSC” or “Commission”) proceedings, researching
18 utility policy and regulatory related issues, and representing UIU during various
19 utility-related meetings and rate case negotiations. Recent gas cases that I have
20 worked on include Cases 16-G-0257, 16-G-0058, 16-G-0059, 15-G-0284, 15-G-
21 0286, 14-G-0319, and 13-G-0031; in addition to over a dozen other rate and
22 policy proceedings.

23

1 Q. Have you previously testified before the Commission?

2 A. **(Johnson)** Yes. I previously submitted testimony in Cases 13-E-0030 and 13-
3 G-0031 involving Con Edison, in Cases 14-E-0493 and 14-G-0494 involving
4 Orange and Rockland Utilities, in Cases 15-E-0283 and 15-G-0284 involving
5 New York State Electric & Gas Corporation, Cases 15-E-0285 and 15-G-0286
6 involving Rochester Gas and Electric Corporation and in Cases 16-G-0058 and
7 16-G-0059 involving Keyspan Gas East Corporation d/b/a National Grid
8 (“KEDLI”) and Brooklyn Union Gas Company d/b/a National Grid (“KEDNY”), and
9 Case 16-G-0257 involving National Fuel Gas. I also submitted prefiled direct and
10 rebuttal testimony as part of the UIU Gas Rate Panel in this proceeding, Cases
11 16-G-0060, *et. al*.

12 **(Panko)** Yes. I previously submitted testimony in Cases 13-E-0030, 13-G-0031,
13 14-E-0318, 14-G-0319, 14-E-0493, 14-G-0494, 15-E-0283, 15-G-0284, 15-E-
14 0285, 15-G-0286, 16-G-0257, 16-G-0058 and 16-G-0059. I also submitted
15 prefiled direct and rebuttal testimony as part of the UIU Gas Rate Panel in this
16 proceeding, Cases 16-G-0060, *et. al*.

17

18 Q. What is the nature of this testimony?

19 A. We will focus on some key aspects of the tariff changes contained in the Joint
20 Proposal filed in these proceedings on September 20, 2016 (“JP”). Although we
21 reserve the right to respond to testimony filed by other parties concerning other
22 topics, our direct testimony is primarily focused on those portions of the JP that
23 adopt the Company's gas embedded cost of service (“ECOS”) study, its gas

1 marginal cost of service (“MCOS”) study, and certain aspects of the Company’s
2 gas rate design that should be improved in order to better advance the
3 Commission’s policy goals. Consistent with this focus, we recommend various
4 changes to the Company’s current and proposed gas rates, particularly with
5 respect to the JP’s proposed allocation of an excessive share of the revenue
6 burden to small commercial and residential gas customers, the balance between
7 fixed monthly rate elements (gas customer charges) and delivery volumetric
8 rates, and the rates charged for non-firm gas customers.

9
10 Q. How is your testimony organized?

11 A. Our testimony has six sections. This first section is an introduction to the
12 forthcoming testimony. In the second section, we briefly summarize our
13 recommendations. In the third section, we briefly discuss the background of this
14 current set of proceedings; the Company’s previous gas rate case, which was
15 initiated in January 2013 and resolved by a Multi-Year Rate Plan in February
16 2014 (hereinafter “prior rate case”).

17 In the fourth section, we discuss ECOS and MCOS studies. We discuss
18 the context of these studies, including some key differences between embedded
19 and marginal costs, the treatment of various “fixed” or “joint” costs in the ECOS
20 and MCOS studies, and how the application of these cost analyses can support
21 or detract from efforts to advance various policy goals. We then discuss in detail
22 deficiencies in the Company’s gas cost of service studies’ methodologies and
23 application, and note the particularly significant impacts of those flaws on the

1 residential and small commercial customers whose interests UIU represents in
2 these proceedings. Finally, we recommend alternative cost of service
3 approaches that are more methodologically sound and would better advance
4 policies to encourage more efficient use of energy and empower customers by
5 giving them more control over their energy costs.

6 In the fifth section, we discuss the JP's proposed revenue allocation. In
7 the sixth section we discuss the Company's current rate design for gas
8 residential and small commercial customers, and we examine key aspects of the
9 Company's rate and tariff proposals in these proceedings as they affect these
10 customers. We explain certain problems with both the current and proposed
11 rates and provide recommendations for how the Commission could improve the
12 JP's proposed rate design to be more equitable and more consistent with the
13 Commission's stated policy goals, particularly with respect to the encouragement
14 of conservation and energy efficiency. Finally, in this section we also discuss the
15 rates charged for non-firm gas service.

- 16
- 17 Q. Have you prepared any exhibits to be filed with your testimony?
- 18 A. Yes, Exhibit __ (UGRP-JP-1) accompanied our original prefiled direct testimony;
19 it continues to be useful and relevant in the context of the proposed JP. In
20 addition, we prepared 9 exhibits to illustrate some of our concerns regarding the
21 JP.
- 22
- 23 Q. Would you please describe these Exhibits?

1 A. Yes. Exhibit __ (UGRP-JP-1) contains five schedules pertaining to Con Edison's
2 request to modify its rates for gas delivery service. Schedule 1 shows the
3 relative magnitudes of various allocation factors for residential, general service
4 and other customer classes. Schedule 2 summarizes the results of the gas
5 ECOS study submitted by Con Edison, as well as the analogous results using
6 two other approaches to the classification and allocation of certain fixed costs
7 that we will be discussing in detail (the "disputed costs"). Schedule 3 succinctly
8 compares the prices paid by different customer classes, based upon the
9 "effective rate per therm." Schedule 4 shows the current and proposed rate
10 design for various customer classes. Schedule 5 focuses on the current and
11 proposed customer charges (the monthly rate element that is the same
12 regardless of how much the customer uses) and compares them to an estimate
13 of the corresponding customer costs.

14 Exhibit __ (UGRP-JP-2), Exhibit __ (UGRP-JP-3), and Exhibit __
15 (UGRP-JP-4) compare the JP revenue allocation in Rate Years 1, 2 and 3,
16 respectively to a similar revenue allocation except it assumes Account 376 is
17 allocated using One Hour Peak NCP Demand and the portion of the revenue
18 requirement attributable to Advanced Metering Infrastructure (AMI) is allocated
19 using therms. In each of these 3 exhibits, Schedule 1 provides a summary
20 comparison of the revenue allocations and resulting percentage rate changes for
21 various customer classes. Schedule 2 illustrates the difference in revenue
22 allocation flowed through to rates if the provisions of the JP are adopted and our
23 revenue allocation and rate design recommendations are adopted by the

1 Commission. Finally, Schedules 3 – 5 provide similar comparisons in the context
2 of typical bills – showing the amount that would be paid each month by typical
3 customers – thereby providing further insight into the impact of the revenue
4 allocation and related rate design provisions of the JP in comparison with our
5 recommendations.

6 Exhibit ____ (UGRP-JP-5) through Exhibit ____ (UGRP-JP-7) are very
7 similar, including the same sequence of schedules, except that it uses an ECOS
8 study in which Design Day Peak demand is used to allocate Account 376.
9 Finally, Exhibit ____ (UGRP-JP-8) through Exhibit ____ (UGRP-JP-10) include a
10 similar set of schedules, which compares the JP revenue allocation to an Across
11 the Board approach to revenue allocations.

13 II. SUMMARY OF RECOMMENDATIONS

14 Q. Please briefly summarize your recommendations.

16 A. Our recommendations, presented in the order in which they are discussed in our
17 testimony, are as follows:

18 Gas Cost of Service

20 We recommend the Commission reject the JP's proposed method of allocating
21 the costs of gas distribution mains in its gas ECOS study. The method proposed
22 by the Company and adopted in the JP tends to allocate an excessive share of
23 certain disputed costs onto small usage customers in the commercial and
24 residential service classes. Instead of accepting the approach proposed by the

1 Company, the Commission should allocate all of these disputed distribution costs
2 based upon the demands placed on the distribution system by each customer
3 class. We offer two alternative ways of implementing this recommendation. Both
4 methodologies ensure that smaller usage customers are not burdened with an
5 excessive share of the fixed costs of the distribution system. Both alternatives
6 analyze the disputed costs by allocating distribution mains based upon demand,
7 which is an approach which has previously been accepted by the Commission
8 and Department of Public Service (“DPS”) Staff in other New York State
9 proceedings, and has been accepted in other states. The first alternative uses 1
10 Hour Non-Coincident Peak Demand, while the second uses Design Day
11 Demand.

12 13 **Gas Revenue Allocation**

14 There is no need to drastically adjust the existing revenue relationships
15 based on the Company’s gas ECOS results, as proposed in the JP, since the
16 differences in class returns are relatively modest, and are entirely dependent
17 upon aspects of the study which we believe are invalid and should be rejected.
18 However, our gas ECOS results show very substantial discrepancies in the
19 degree to which certain customer classes are contributing their fair share of the
20 system costs, and it is reasonable and appropriate to take that information into
21 account when setting rates. Exhibit ____ (UGRP-JP-2) through Exhibit ____
22 (UGRP-JP-7) illustrate the effect of using the JP’s approach revenue allocation
23 with the results our two ECOS studies. The JP signatories propose to shift more

1 of the revenue burden onto SC-1 (Residential & Religious Non-Heat), but this
2 class already has a rate of return that is significantly higher than the system
3 average under both of our ECOS studies.

4 While we firmly believe these ECOS studies are superior to the one used
5 in the JP, we recognize that an ECOS study is merely a tool that should
6 constitute only one part of the overall ratemaking process. Where the
7 discrepancies are small, or entirely dependent upon aspects of the ECOS
8 methodology which are unreliable or disputed (as with the Company's gas ECOS
9 results) it is reasonable to use more of an across-the-board approach to
10 distributing the revenue burden, giving reduced weight to the gas ECOS results.
11 Accordingly, for comparison purposes, in Exhibit ____ (UGRP-JP-8) through
12 Exhibit ____ (UGRP-JP-10) we illustrate an across-the-board approach that does
13 not adjust the revenue allocation for the surplus or deficiencies shown in the
14 ECOS results.

15 Given the magnitude of the revenue requirement and overall rate changes
16 reflected in the JP, we believe it is feasible to modify the allocation of revenues to
17 the various classes to move into closer alignment with our gas ECOS results
18 without placing an undue burden on any one group of customers. Needless to
19 say, the direction and extent of any such attempt at realigning rates will depend
20 heavily on the methodology used in developing the ECOS study, and how much
21 weight is given to the results. For illustrative purposes, all of our Exhibits use the
22 same approach adopted in the JP with respect to how the ECOS results are
23 reflected in the revenue requirement – we've adjusted the revenue requirement

1 to eliminate 100% of the surplus and deficiency in each class by the end of Rate
2 Year 3. To be clear, however, in our view there is no need to adjust the existing
3 revenue relationships this rapidly. A slower, more gradual approach would be
4 reasonable, if the Commission wants to give less weight to the ECOS results, or
5 if it wants to adjust the rate relationships more gradually. Finally, we want to
6 make clear that any such realignment process should not be based upon a gas
7 ECOS methodology that places an excessive and unwarranted burden on
8 residential and small commercial customers, like the one used in the JP.

9
10 **Gas Rate Design**

11
12 **Gas Customer Charges and Volumetric Rates**

13 We agree with the JP's proposal to hold constant customer charges for
14 gas Service Class ("SC") SC-2 General Service I (Non-Heat), SC-2 General
15 Service II (Heat), and SC-3 Residential and Religious – Heat customers.
16 However, we have concerns about the Company' proposals to increase customer
17 charges for SC-1 Residential and Religion (non-heating) gas customers. Instead,
18 we recommend that customer charges not be increased for that class, and
19 depending on the share of the final revenue requirement that is allocated to each
20 class, it may be appropriate to make a small downward adjustment to customer
21 charges in situations where the customer charges currently exceed customer
22 costs. This would improve fairness and send stronger price signals to encourage
23 energy efficiency and conservation. For certain classes that are currently using a
24 declining block rate design, we also propose flattening the block rate structure,

1 for much the same reason. Additionally, we recommend that the Company
2 implement a detailed study to better understand usage characteristics and
3 behavior which can be used to evaluate alternative gas rate design structures.
4

7 **Non-Firm Gas Rates**

8 We believe it is reasonable to continue to use value-of-service as the
9 primary basis for setting non-firm gas rates. We recommend these customers
10 continue to receive a reasonable discount relative to the rate they would pay if
11 they were to receive firm service. However, the Company has presented no
12 evidence that indicates the existing discounts are too small, or need to be
13 increased – either to ensure these customers are treated fairly, or to discourage
14 them from switching to an alternative fuel. To the contrary, there are indications
15 that some of the existing non-firm rates are rather low, compared to the rates
16 paid by firm customers.

17 Because two of the main criteria for setting non-firm rates are to ensure
18 that a reasonable discount is offered for non-firm service relative to the
19 analogous rates charged for firm service, and to ensure that a reasonable
20 contribution is provided by non-firm customers for the benefit of firm customers, it
21 would be logical and reasonable to increase the rates charged to non-firm
22 customers at the same time that rates are being increased for firm customers.
23 However, the JP signatories' decided to keep the rerates for SC12 Rate II far

1 below the level paid by the corresponding firm service classes, and far less than
2 the value of service those customers receive. While small commercial customers
3 receiving firm service are paying 40 to 70 cents per therm, these large non-firm
4 customers are paying less than 9 cents per therm. Instead of reducing this
5 enormous gap, the JP actual widens the discrepancy by largely sheltering these
6 non-firm customers from sharing in the burden of the proposed rate increase.
7 The SC12 Rate II customers would not experience any rate increase during Rate
8 Year 1, and in Rate Years 2 and 3, their rate will increase by fraction of a cent
9 per therm – far less than the increase required of firm customers.

10 The Company did not include non-firm customers in its gas ECOS study,
11 and we agree with this decision, since so few costs would be allocated to these
12 customers under standard allocation methodologies. Instead, we recommend
13 the Commission increase the non-firm rates based upon fairness and value-of-
14 service considerations, while maintaining a reasonable discount relative to firm
15 service. We recommend the Commission reject this portion of the JP, and
16 instead require the SC12 Rate II customers to bear a more reasonable share of
17 the revenue burden – one that is more consistent with the value of the service
18 these customers receive.

19
20 **III. BACKGROUND**

21
22 Q. Please briefly summarize the outcome of the Company's previous rate
23 proceedings, initiated in 2013.

1 A. In its Order Approving Electric, Gas and Steam Rate Plans in Accord with Joint
2 Proposal, issued and effective February 21, 2014 in Cases 13-E-0030 et. al., the
3 Commission decreased gas revenues for Con Edison during the initial year of a
4 three-year rate plan, then increased rates during each of the subsequent two
5 years, resulting in no change in Con Edison's rates on a levelized basis. The
6 Order thereby established a multi-year rate plan that ensured stable base
7 delivery rates for all major categories of customers for at least three years.

8

9 Q. Would you now provide some background information concerning the current
10 case as it relates to your testimony?

11 A. Yes. The JP would establish a three-year rate plan, authorizing Con Edison to
12 collect \$35.5, \$92.3, and \$89.5 in additional revenues from customers per
13 respective rate year. This corresponds to annual rate increase of 3.1%, 7.5%,
14 and 6.7%.

15 If approved, the requested rate changes will impact approximately 1.1
16 million Con Edison gas customers, of which approximately 666,000 (61%) are
17 residential accounts that use gas for purposes other than heating (SC-1), and
18 approximately 298,000 (27%) are residential accounts that use gas for heating
19 (SC-3). The majority of the remaining accounts are small commercial customers
20 in SC-2, although the Company also serves a variety of other customers,
21 including government accounts, larger commercial and industrial customers in
22 SC-2 and SC-12, and electric generators. Although relatively few in number,

1 these other customers collectively receive a large fraction of the total gas
2 volumes that are delivered over the Con Edison system.

3 The JP would raise non-firm rates considerably less than firm rates and it
4 would exacerbate existing rate disparities by shifting more of the revenue burden
5 onto small customers relative to large customers. Since the revenue allocation
6 and rate design proposals in the JP are at least partly driven by some key
7 decisions the Company made in developing its gas ECOS study (and, to a much
8 lesser extent, its gas MCOS study), we will discuss the costing issues first,
9 before turning to the remaining issues.

10

11 **IV. GAS COST OF SERVICE**

12 **A. Background**

13 1. Introduction

14 Q. Before going into depth on cost of service issues, would you provide a few brief
15 introductory comments concerning Con Edison's gas ECOS study, which the JP
16 adopts in full?

17 A. Yes. The Company's gas ECOS study provides the underlying foundation for the
18 JP's proposed gas revenue allocation (distributing the revenue requirements
19 among different customer classes) and some key aspects of its gas rate design
20 proposals. The gas ECOS study was developed using a three-step process.

21 In the first major step – called “functionalization” – costs are organized
22 based upon various operating functions (e.g., transmission, distribution, customer
23 accounting and customer service). In the second major step – called

1 “classification” – costs are grouped into three classifications: demand-related,
2 commodity-related, and customer-related.

3 The third major step – called “allocation” – is where specific data are
4 selected and used to allocate costs to specific groups of customers. This step
5 involves the development and application of various percentage factors to spread
6 costs to particular customer classes and rate schedules. The allocation factors
7 are derived from various data sources, and they tend to closely track the initial
8 decisions concerning how costs are functionalized and classified. For example,
9 the investment in compression equipment used to liquefy and store gas was
10 allocated to different classes based upon their respective levels of design day
11 usage.

12 Although the mechanics of this process are well-established and are not
13 controversial, the results of the process will vary widely depending upon specific
14 judgments that are made during the classification and allocation process –
15 judgments which have been the subject of much debate and controversy
16 throughout the last 40 years, if not longer.

17 The initial functionalization step tends to be the least controversial part of
18 the process. The second step, classification, is where much of the controversy is
19 often centered. The final step, allocation, also tends to be controversial, because
20 the impacts of disputed judgments made during the second step tend to show up
21 during the final step, and because a variety of different peak allocation factors
22 can be chosen to allocate demand-related costs.

23 For example, most analysts agree on the function of equipment used to
24 liquefy and compress gas – during the functionalization step this equipment is
25 placed into the functional category of “storage.” However, analysts may disagree
26 concerning how the cost of that equipment should be allocated. For example,

1 Con Edison proposes to allocate the cost based upon design day demand –
2 essentially, the demand placed on the system by each class during an extremely
3 cold winter day – while KEDNY allocates the analogous equipment based upon
4 winter throughput – essentially the demand placed on the system by each class
5 during an average winter day. Needless to say, this difference in allocation
6 method cannot be explained by differences in the function performed by this type
7 of equipment in their respective systems – or by differences in how cold it gets in
8 Brooklyn compared to the other boroughs.

9 One aspect of the classification and allocation process that is particularly
10 controversial in this case was the Company’s decision to classify certain costs as
11 “customer related” and to therefore assign these costs to customer classes
12 largely on the basis of the number of customers in each class. This has the
13 effect of burdening residential and small commercial customers relative to other,
14 larger customers.

15 The Company's approach is apparently founded on its understanding of
16 the concept of “customer-related” costs:

17 During the process of functionalization, all costs are
18 classified as demand-related, commodity-related, or
19 customer-related. Demand-related costs are fixed costs
20 created by the on-peak hourly loads placed on the various
21 components of the gas system. Commodity-related costs
22 are variable costs caused by the total quantities of gas
23 delivered during the year. Customer-related costs are
24 fixed costs caused by the presence of customers
25 connected to the system, regardless of any customer's
26 particular level of usage.
27

28
29 (Direct pre-filed Testimony of Con Edison Gas Rate
30 Panel, pp. 12-13.)
31

1 The Company's Gas Rate Panel asserts that it classified as customer-related
2 those fixed costs which are "caused by the presence of customers connected to
3 the system;" however, this category was not, in fact, limited to costs that are
4 caused by the presence of customers. To the contrary, the Company actually
5 took fixed costs which they decided not to classify as "demand-related" and
6 instead classified them as "customer-related." In other words, the Company did
7 not limit the "customer-related" classification to costs that are exclusively and
8 unambiguously caused by the presence or absence of specific customers.

9 In some aggregate sense, of course, the presence of customers is
10 critically important – very few costs would be incurred if there were no customers
11 present on a gas system, since there would be no revenues available to recover
12 the costs. Without at least one customer, the system would never be built in the
13 first place, and it would not remain in operation. From an economic perspective,
14 the distribution system has one primary purpose: delivering energy to customers.
15 To receive this energy, customers need to be connected to the system. But the
16 presence of any particular customer, or even an entire class of customers, will
17 have very little impact on the design or operation of the system, absent other
18 correlated factors, like the need to deliver gas to particular locations at particular
19 times.

20 A gas distribution system includes service lines that connect customers to
21 distribution mains. The distribution mains connect to transmission mains, which
22 in turn connect to a source of natural gas at the city gate. The entire system is
23 designed to efficiently move gas from its source to the location where it will be
24 burned, i.e., customers' premises. However, the presence or absence of any
25 given customer will have little or no impact on the design or operation of the
26 system.

1 One can certainly argue that some costs are customer-related to a greater
2 degree than other costs. For instance, certain components of the system are
3 physically located at, or in very close proximity to, the customer's premises. But
4 this does not mean that those components are purely customer-related, or that
5 other factors aren't involved in determining the magnitude of the costs incurred in
6 installing and operating those components. Consider first the extreme case of
7 gas meters that are located at the customers' premises. Needless to say, the
8 number of meters is very highly correlated with the number of customers, and no
9 one disputes that meter costs are customer-related, at least in part, or that it is
10 reasonable to recover the cost of reading meters on a per-customer basis. But in
11 a very fundamental sense, meter costs are also energy-related – indeed, meters
12 would not even be needed if every customer used the exact same amount of
13 energy. Furthermore, gas meters are also somewhat demand-related, as more
14 expensive meters are necessary for those customers that use large volumes of
15 gas during peak periods.

16 This sort of complexity applies to an even greater extent as we move
17 farther away from the customer toward the source of gas. Consider the example
18 of service lines that connect multi-tenant office buildings and apartment buildings
19 to the distribution main that goes along the street. In most cases, the service line
20 will be designed and installed based upon a projection of the maximum amount
21 of gas that is anticipated to be used by future occupants of the building (peak
22 demand for gas going into the building, taking into consideration diversity of the
23 various uses within the building). The calculations will consider the overall size
24 of the building, and (in the case of an apartment building) the mix of one-, two-
25 and three-bedroom apartments. However, variations in the number of individual
26 customers in the building will have little or no impact on the cost of the service

1 line that is needed to meet a given level of demand for gas in the building. In
2 fact, even if all the gas were sold to a single customer (e.g. the landlord), the cost
3 of the service line would be the same as if there were dozens or hundreds of
4 individual customers having the same aggregate demand for gas.

5 There is an inherent arbitrariness in trying to force costs into a simplistic
6 three-part classification schema (energy-, demand-, and customer-related) since
7 costs are actually incurred as part of a complex, multi-dimensional process that
8 involves more than just three causative factors. In this case we are particularly
9 troubled by the arbitrary results of Con Edison's approach to certain disputed
10 costs that it proposes to classify as "customer-related." While the dispute in this
11 case is focused on the arbitrary classification of certain costs as "customer-
12 related" the underlying problem is not unique to "customer-related" costs; it could
13 just as easily arise in another context. For example, consider what would
14 happen if the revenue allocation and rate design process were founded on a cost
15 study in which one of the key steps involved classifying all costs as either safety-
16 related, or not safety-related. Some costs (e.g. inspections) might
17 unambiguously be characterized as safety-related, but this would not mean that
18 all other costs are completely unrelated to safety, nor would it mean that the
19 costs classified as being safety-related (e.g. inspections to find leaks) would be
20 unrelated to, or have no benefits with respect to, any other purpose (e.g.
21 maintaining a clean environment). Nor would the classification of only certain
22 costs as safety-related change the fact that other costs are (in reality) also
23 influenced by safety requirements, even if the primary purpose lies elsewhere.

24 The Company chose to classify a large fraction of delivery costs as
25 "customer-related." It consequently proposes to allocate most of these costs to
26 classes with the largest number of customer accounts, and this led it to design

1 rates that place a greater burden on smaller customers relative to larger
2 customers. This approach effectively treats a large portion of the costs of the
3 distribution mains as “fixed” costs to be allocated and recovered on a relatively
4 uniform per-customer basis, and assumes that only the remaining, “variable”
5 portion of the cost of mains should be allocated and recovered on the basis of
6 energy deliveries or demand placed on the system. We disagree with this
7 approach both on theoretical grounds and because of its practical effects: it
8 places an unreasonably large share of the overall cost burden on residential and
9 small commercial customers, and it weakens the incentive for customers to
10 install more efficient appliances or take other actions to reduce their consumption
11 of energy.

12 We dispute the Company's treatment of these costs in its gas ECOS
13 study, and will be discussing our reasoning in depth further in our testimony. For
14 the moment, it is sufficient to note four issues pertaining to the treatment of so-
15 called “customer-related” costs. First, as a practical matter, this interpretation
16 has a significant impact on the rates paid by small customers relative to the rates
17 paid by larger customers. Second, as a theoretical matter, the extent to which
18 these costs are “fixed” or “variable” differs depending on one’s frame of reference
19 or the time frame under consideration. Third, just because costs are “fixed” does
20 not mean they ought to be allocated or recovered on a per-customer basis.
21 Fourth, most of the fixed costs in question do not directly vary with the number of
22 customers, and this is true regardless of time frame. In fact, these so-called
23 “customer-related” costs tend to vary with demand, peak usage, and energy
24 consumption over the long run. In other words, the concepts of “fixed” costs and
25 “customer” costs are not equivalent, and even where a cost is not variable, this

1 does not logically determine whether that cost should be allocated or recovered
2 on a per-customer basis.

3

4 Q. In wrapping up this initial introduction to the Company's cost study, would you
5 please briefly discuss Con Edison's MCOS study?

6 A. Yes. The Company submitted a MCOS study, which indicates that the long run
7 marginal cost of delivering gas is approximately 43 cents per therm. However,
8 the Company and the JP placed very limited reliance on the results of this study
9 – it was primarily used to decide on the discount offered to customers receiving
10 service under Rider D – Excelsior Jobs Program. Many of the key numbers uses
11 in the MCOS study were taken from ECOS study, and thus some of our concerns
12 regarding the ECOS study also apply to the MCOS study. However, given the
13 limited role the MCOS study plays in the Company's filing, our comments
14 concerning marginal costs will be brief, and primarily conceptual.

15

16 2. Embedded versus Marginal Costs

17 Q. Can you briefly explain the difference between embedded and marginal costs?

18 A. Yes. There are three fundamental differences between embedded and marginal
19 costs, which are respectively reflected in the ECOS and MCOS studies.

20 First, and most fundamentally, embedded costs are derived entirely from
21 the accounting records of the firm, and are heavily influenced by and dependent
22 upon the conventions adopted by the firm in books and records. In contrast,
23 marginal costs are derived from economic theory – they are based upon well-
24 understood concepts in the economic literature and can be estimated using data

1 from a variety of different sources including, but not limited to, accounting data
2 and various types of special studies.

3 Second, although marginal costs are particularly important, they are just
4 one part of a highly refined understanding of costs that has provided a
5 fundamental foundation for much of the progress that has been made in
6 microeconomic theory and empirical research over the past 100 years.

7 Third, a typical ECOS study is focused on allocating costs, whereas a
8 MCOS study does not (or at least should not) primarily focus on allocations.
9 Because an MCOS study is intended to estimate marginal costs, it attempts to
10 estimate the extent to which the total costs (of the firm or of society) vary in
11 response to changes in output.

12 3. Marginal, Variable, Fixed, and Total Costs

13 In economics, the most fundamental and important types of costs are fixed
14 cost, variable cost, total cost, average cost, marginal cost, incremental cost, and
15 stand-alone cost. Each of these are integral parts of economic theory – although
16 there are other, more specialized cost concepts that are also important in the
17 current context, including sunk cost, direct cost, joint cost, and common cost.

18 Fixed costs do not change with the level of production, during the planning
19 time period under consideration. Variable costs change directly (but not
20 necessarily proportionately) with the level of production. Together, these
21 constitute total cost, which is the sum of all costs incurred by the firm to produce
22 any given level of output. Dividing the total cost of producing a given quantity of
23 output by the total number of units produced, one can calculate average total
24 cost.

1 Long-run costs are those calculated under the assumption that most, if not
2 all, costs are variable; and few, if any, are fixed or sunk. In contrast, short-run
3 costs are those that arise in situations where most costs are fixed. The classic
4 long-run concept is sometimes known as a "scorched earth" approach - that is,
5 no pre-existing plant is considered in the analysis. Instead, the firm is free to
6 build precisely the size and type of plant that best fits the assumed output level.

7 Incremental cost is the change in total cost resulting from a specified
8 increase or decrease in output. In mathematical terms, incremental cost equals
9 total cost assuming the increment of output is produced, minus total cost
10 assuming the increment is not produced. Incremental cost is often stated on a
11 per-unit basis, and the change in cost divided by the change in output.
12 Incremental cost can vary widely, depending upon the increment of output under
13 consideration. If the entire increment from zero units to the total volume of output
14 is considered, incremental cost is identical to total cost. Similarly, where the
15 increment ranges from zero to total output, incremental cost per unit is identical
16 to average cost per unit. Because a wide variety of different increments can be
17 specified, a wide variety of different incremental costs can be calculated. Thus,
18 in considering any estimate of incremental cost, it is crucially important to
19 determine whether or not the specified increment is relevant to the issues at
20 hand.

21 Marginal cost is the same as incremental cost where the increment is
22 extremely small (e.g., one unit) and the cost function is smooth and continuous.
23 In mathematical terms, marginal cost is the first derivative of the total cost
24 function with respect to output -- that is, it is the rate of change in total cost as
25 output changes. Conceptually, marginal and incremental costs are very similar;
26 however, there is a wide array of incremental cost concepts, corresponding to the

1 wide array of possible increments that can potentially be analyzed. In contrast,
2 marginal cost corresponds to one small portion of this array -- where the
3 increment is narrowly defined and extremely small.

4 One aspect of MCOS studies that should always be carefully scrutinized is
5 the manner and extent to which particular costs are being treated as variable or
6 fixed – something which is often closely related to assumptions or judgments
7 related to the planning time period. In the context of gas storage, transmission
8 and distribution systems, most costs vary little over the short-run, so short-run
9 marginal cost tends to be low – sometimes approaching zero. In contrast, all
10 costs are classified as variable in the long-run, so long-run marginal costs tend to
11 be much higher than short-run marginal costs. In practice, decisions made by
12 the analyst concerning the appropriate time period and the extent to which
13 specific costs are interpreted as being variable or fixed will often strongly
14 influence – if not entirely determine – the results of an incremental or marginal
15 cost study.

16 It is also important to realize that costs do not necessarily vary along every
17 dimension of the cost function, nor do they necessarily vary on a proportional
18 basis. This important caveat has many interesting implications – including the
19 possibility that significant discrepancies can arise between costs per unit that are
20 developed on an average basis, and costs per unit that are developed on an
21 incremental or marginal basis. For instance, while the investment in a gas
22 distribution main would be considered “variable” in the long run, that does not
23 mean these costs would necessarily vary in proportion to changes in the volume

1 of gas carried (or expected to be carried) through the main, even in the context of
2 a long-run analysis. It may be the case that a larger main can be installed,
3 capable of handling double the volume of gas, at a cost that is nowhere near
4 double the cost of the smaller main.

5 Due to economies of scale and scope, the incremental investment
6 attributable to an incremental service or group of customers may be substantially
7 lower than the average investment required to serve other customers – assuming
8 those other customers are not being treated as “incremental” in a particular
9 context. This discrepancy tends to be particularly pronounced in incremental
10 cost studies in which some capital costs are interpreted as being fixed – in effect,
11 studying the short to medium-run. A somewhat similar phenomenon can
12 sometimes be observed in marginal cost studies. A particular portion of the firm's
13 overall output (e.g., service provided to certain customers, or a particular aspect
14 of the service provided to certain customers) might be treated differently than
15 other portions of the firm's output, resulting in corresponding discrepancies in the
16 resulting marginal cost estimates – depending upon the manner in which
17 economies of scale and scope are handled, or differences in the manner in which
18 variable and fixed (or sunk) costs are handled.

19 For example, in a long-run study, where capital investment is treated as
20 variable and technological improvements have not been sufficient to offset the
21 impact of inflation, a group or service that is viewed as “incremental” may appear
22 to have much higher costs than other customers or services. The reverse might
23 be true in a short- to medium-run study. In cases where a substantial portion of

1 the firm's capital investment is assumed to be "sunk" or fixed, whichever category
2 or group is treated as variable or "at the margin" may appear to have relatively
3 low costs, at least in comparison with the average cost of providing service to
4 other categories. What is sometimes not realized, however, is that this pattern is
5 often easily reversible by simply switching which service or customer group is
6 considered "incremental" or "marginal."

7
8 4. Fully Allocated Embedded Costs

9 Q. Please elaborate on the purpose of fully allocated ECOS studies, and explain
10 some of its limitations.

11 A. Fully allocated ECOS studies divide total test-year revenues, rate base, and
12 operating expenses among the various customer classes to estimate the rate of
13 return earned from each class. These types of studies have long been used by
14 this Commission and other regulators as a tool to assist with developing electric
15 and gas rates. As long as their limitations are recognized, and reasonable
16 allocation formulas are employed, fully allocated ECOS studies can be useful in
17 determining an appropriate distribution of the revenue requirement amongst the
18 various customer classes.

19 However, because delivery rates are based upon embedded costs, these
20 studies do not always report direct cause-and-effect relationships between the
21 consumption decisions of the class members and the costs incurred by the utility.
22 Thus a "cost" identified in the study is not necessarily the actual expense that a
23 particular group of customers causes or imposes on the system, or a measure of
24 the amount by which total costs would be reduced if that customer or group of

1 customers were to leave the system. Although people sometimes speak of
2 ECOS studies as reflecting “cost-causation,” this is only true to a limited degree.

3 The extent to which a study reflects cause-and-effect relationships varies
4 with the category of costs in question, and the allocation factors chosen by the
5 analyst. The relationship is most attenuated, and the degree of arbitrariness or
6 subjectivity is most serious, when dealing with the portion of the utility's revenue
7 requirement that reflects those fixed costs which economists would define as
8 “joint” or “common” costs. Joint and common costs (as economists define these
9 terms) cannot be directly traced to any one class. These costs are neither
10 caused by, nor are unambiguously attributable to, any specific customer class.
11 These costs must be allocated by a formula based upon subjective judgments
12 that largely control the final outcome. The final results depend on how joint and
13 common costs are initially classified, as well as the specific allocation formulas
14 chosen by the analyst (which generally follows from decisions made during the
15 classification process).

16
17 Q. Can subjective judgment and arbitrariness be entirely eliminated if the analyst is
18 completely unbiased and sufficient effort is applied to the task?

19 A. No. ECOS studies are simply a tool for evaluating the relative fractions of the
20 total revenue requirement that can reasonably be recovered from each class. At
21 best, these studies provide a helpful yardstick for judging whether or not each
22 customer class is paying a reasonable and appropriate share of the joint and
23 common costs. The real question is whether the yardstick is reasonably straight
24 and true, or whether it is bent to favor particular classes at the expense of others.

25 Widely differing results can be developed for the same set of customers
26 depending upon the particular year in which the costs are studied, the quality of

1 the load research data and other inputs used, and/or the particular allocation
2 approach used in preparing the study. When there is a dispute concerning the
3 results of an ECOS study (as there is in this case), the underlying source of the
4 dispute is rarely with the people performing the studies or with the amount of
5 effort and resources devoted to the analysis. Rather, it is inherent in the very
6 concept of allocating embedded costs, and the decisions that are made
7 concerning how to classify and allocate costs that are not readily traceable to
8 specific customers or customer classes.

9
10 **B. Disputed Category of Costs**

11
12 Q. Do you have any fundamental disagreement with the Company's ECOS study
13 and corresponding gas rate proposals included in the JP?

14 A. Yes. We strongly disagree with the manner in which certain allegedly “customer-
15 related” costs are being handled in the Company's gas ECOS study and in the
16 JP’s rate proposals. We believe these proposals do not follow sound principles
17 of cost-causation. As a result, too much of the joint and common cost burden
18 would be placed on small residential and commercial customers, the proposed
19 rates are not consistent with the manner in which these types of costs would
20 typically be recovered in competitive, unregulated markets, and the proposed
21 rates are not optimal from a policy perspective.

22
23 Q. Can you be more specific about the “disputed costs,” which you believe are not
24 being appropriately handled in the Company's gas ECOS study?

25 A. Yes. We disagree with the proposed treatment of Account 376: Distribution Gas
26 Mains. Con Edison proposes to classify approximately 54% of these costs as

1 “demand” related and approximately 46% as “customer” related. This leads it to
2 allocate 46% of this important category of costs largely in proportion to the
3 number of customers in each service classification. The classification and
4 allocation of FERC Account 376 determines the disposition of more than half the
5 Company's gas rate base (and related aspects of the JP's proposed revenue
6 allocation and rate design) so this treatment is highly significant.

7
8 Q. Has the Company explained why it proposes to classify and allocate these gas
9 costs in this manner?

10 A. Not in detail. As mentioned earlier, Con Edison's Gas Rate Panel apparently
11 believes a portion of the distribution gas mains are fixed costs caused by the
12 presence of customers connected to the system, regardless of any customer's
13 particular level of usage. The explanatory notes accompanying its ECOS study
14 explain the treatment of Account 376 as follows: “This account was functionalized
15 to the Distribution-Demand (“Demand Component”) and Distribution-Customer
16 (“Customer Component”) functions based on the development of the Minimum
17 System for Gas Mains.” (Exhibit ___ GRP-1, Schedule 1, page 19).

18 The share of Account 376 that was categorized as customer-related (46%)
19 was derived from an analysis of the embedded cost of steel, cast iron and plastic
20 mains of various sizes. For example, the Company selected 2.00 inch steel
21 mains as the smallest “predominant size” and compared the cost of these mains
22 to the cost of all steel mains (including smaller and larger ones). Similarly, it
23 selected 4.00 inch cast iron mains as the “predominant size” and compared their
24 cost to the cost of all cast iron mains. Finally, it selected 1.25 inch plastic mains
25 as the “predominant size” and compared their cost to the cost of all plastic mains.
26 While the Company's testimony doesn't include an explanation of the mechanics

1 of its calculations, or the underlying logic it used these calculations to estimate
2 the portion of Distribution Gas Mains in Account 376 it believes should be
3 allocated in proportion to the number of customers in each class, with the
4 remainder being allocated in proportion to 1 Hour Non Coincident Peak Demand.

5
6 Q. Is this a highly precise or scientific “minimum system” analysis?

7 A. No. Putting aside for a moment our fundamental disagreements with the
8 “minimum system” approach in the first place, it is worth noting that the
9 Company's calculations are highly arbitrary and its methodology is inherently
10 unreliable. The Company's approach is not in any way tied to an analysis of the
11 number of customers served by the system, nor is it based upon a “clean slate”
12 engineering analysis of what it would cost to build a “minimum size” system
13 under today's conditions.

14 The Company's methodology is tied to embedded cost data for different
15 size mains, but those data are influenced by many extraneous factors that are
16 not adequately “held constant” in the Company's analysis, including the location
17 where the gas main was installed and the difficulties that were encountered along
18 its installation route. These non-size related factors can be significant, which
19 may help explain some of the anomalies in the data used by the Company. For
20 instance, 1.5 inch and 2.5 inch steel mains both show lower costs per foot than
21 2.0 inch steel mains, which is the size used in the Company's minimum system
22 analysis. (Work papers for Exhibit ____ (GRP-1) Schedule 1 - Revised.xls, Tab
23 TRB, Rows 561-661). In some cases, these sorts of cost discrepancies might be
24 attributable to weak data, but not in all cases. For instance, the data set includes
25 cost information for more than a million feet of 2.00 inch plastic main, which cost
26 of \$107 per linear foot, installed (Id., Row 645). However, the Company chose to

1 instead focus on 1.25 inch plastic mains, which cost \$148 per linear foot. (Id.,
2 Row 643). By choosing the more costly size, the Company shifted more costs
3 into the “customer-related” category. To appreciate how sensitive the minimum
4 system analysis on distribution main costs is to the methodology used by the
5 Company, consider what would have happened if it had focused on 1.50 inch
6 steel mains and 2.00 inch plastic mains, rather than 2.00 inch steel mains and
7 1.25 inch plastic mains: with just these two minor changes, it could have
8 developed a “customer-related” share of 18%, rather than 46%.

9
10 Q. Putting aside the specific calculations, can you explain why you fundamentally
11 disagree with classifying these disputed costs as “customer-related” and why you
12 believe the distribution gas main costs in Account 376 should not be allocated or
13 recovered on a per-customer basis?

14 A. Yes. We will readily concede that most of the costs in Account 376 are fixed.
15 These costs do not vary in the short run, and even in the long run the cost of
16 distribution mains does not vary in exact proportion to gas handling capacity,
17 because of economies of scale. That does not mean, however, that these costs
18 should be recovered primarily from small customers. No matter how elaborate
19 and detailed the calculations, any analysis of the cost of a hypothetical “minimum
20 system” falls flat as a logical justification for putting more of the cost burden on
21 small customers, because there is no causal connection between the identified
22 costs and the number of customers served by the system. At best these
23 calculations help the analyst understand and quantify economies of scale, with
24 the “minimum system” representing an estimate of costs that are fixed with
25 respect to gas-carrying capacity, and the remainder of the costs representing the

1 portion of the cost of the distribution mains that varies as a function of the size of
2 the lines (i.e., the volume of gas they can accommodate).

3 The key point to realize is that “minimum system” calculations may help
4 identify fixed costs, but these costs do not vary as a function of the number of
5 customers – even in the long run. Rather, in the long run, the minimum cost of
6 the distribution system varies as a function of the number of miles of streets
7 served by the system, and the remaining cost (in excess of the minimum)
8 primarily varies with the anticipated peak load that each main is expected to
9 accommodate over its useful life (which can be 40 or more years).

10 Because these facilities are engineered on the basis of maximum peak
11 load, the costs in Account 376 are often allocated entirely on the basis of peak
12 load data for the various customer classes. This approach has been used by
13 utilities and regulators in other states, and even in New York this approach has
14 been used or endorsed by other utilities and the DPS Staff in some other cases.
15 For example, the DPS Staff classified Distribution Gas Mains (Account 376) as
16 100% demand-related, to be allocated using some version of peak usage data, in
17 the most recent Orange and Rockland gas rate case (14-G-0494) (and this was
18 subsequently accepted by the Commission), as well as in some past gas cases
19 involving KEDNY and KEDLI (06-M-0875, 06-G-1185, and 06-G-1186).
20 Similarly, New York State Electric and Gas (“NYSEG”) and Rochester Gas and
21 Electric (“RG&E”) classified 100% of Distribution Gas Mains in Account 376 as
22 demand-related in several different gas proceedings, including cases 09-G-0716,
23 09-G-0718, and 01-G-1668.

24 The costs in question do not vary in proportion to the number of gas
25 customers on the system, and there is no compelling economic reason to recover
26 these costs on a uniform per-customer basis. In our view, these costs should be

1 recovered in a manner that best achieves the Commission's policy objectives,
2 consistent with the economic principles applicable to joint cost recovery.

3

4 Q. How does this issue relate to your earlier discussion of joint and common costs?

5 A. The costs in these accounts can appropriately be viewed as joint or common
6 costs. More specifically, the "minimum system" portion (e.g. the cost of
7 trenching) can appropriately be seen as joint costs, while costs in excess of this
8 minimum (i.e., the cost of installing larger pipes that are capable of distributing
9 larger volumes of energy) are generally costs that are incurred in common to
10 serve multiple different customers or customer groups. These common costs will
11 vary in the long-run depending upon the volume of energy that will be consumed
12 by the utility's customers, and when that energy will be needed (since it is more
13 costly to deliver a given volume of gas during peak periods, when many different
14 customers all need a lot of energy).

15

16 Q. Regulators sometimes use the desirable results of effective competition as a
17 benchmark to help guide their regulatory decisions. How are joint and common
18 costs recovered from customers in competitive markets?

19 A. In competitive markets, to the extent common costs vary with output, they are
20 recovered in the same manner as direct costs: common costs directly affect the
21 marginal cost of producing each service, and thus directly influence prices. (In
22 competitive markets, prices tend to equilibrate towards marginal cost). Joint
23 costs, on the other hand, have no impact on marginal cost, and these costs do
24 not directly determine prices in unregulated, competitive markets. Instead, joint
25 costs are recovered through the prices charged for all of the different products or
26 services produced through the joint production process. The respective

1 proportions will vary depending upon supply and demand conditions generally,
2 the degree to which purchasers of different products benefit from the joint
3 production process, and the relative strength of demand for the various services
4 or products that benefit from the joint production process.

5 Stated another way, in competitive markets, each customer does not
6 contribute a uniform dollar amount toward the recovery of joint costs without
7 regard to how much of the product they purchase or how much they benefit from
8 the joint production process. Instead, cost recovery varies with larger customers
9 contributing more than smaller customers, and different types of customers
10 contributing different amounts based upon the strength of demand in different
11 markets or submarkets. In general, the stronger the demand – and in that sense,
12 the greater the benefit received from the joint production process – the greater
13 the share of joint costs that will be borne by the respective product, service, or
14 customer group.

15
16 Q. Since the disputed costs are joint costs, would you elaborate on how joint costs
17 are recovered in competitive markets?

18 A. Yes. Two classic examples of joint costs occur in the production of beef and
19 hides and cotton and cottonseed. The costs of raising and slaughtering cattle
20 are part of a joint production process that produces meat and hides. Similarly,
21 cotton and cottonseed oil are both part of a joint production process. In each of
22 these examples the recovery of joint costs takes into account the relative level of
23 benefits enjoyed by the users of the joint outputs. For example, if hamburger is
24 not highly valued, but leather is, then a larger fraction of the cost of cattle feed
25 will be borne by the purchasers of leather goods. Similarly, if the purchasers of
26 gloves are willing to pay more for leather gloves than for cloth gloves, they may

1 end up paying a relatively large share of the cost of cattle feed while the
2 purchasers of cotton gloves may pay a relatively small share of the cost of
3 growing cotton (and consumers of cottonseed oil may pay a larger share than
4 might otherwise be expected).

5 This well-established insight from the economic literature is intuitively
6 logical and fair. The purchasers of both leather gloves and hamburgers benefit
7 from the joint production process and the demand for both beef and leather
8 products is strong, so it intuitively makes sense that market forces would ensure
9 that both types of customers contribute toward the joint costs. But there is
10 nothing in this analysis to suggest any reason why someone buying a single pair
11 of gloves should contribute the same amount as someone buying a leather coat,
12 or that someone buying a single hamburger should contribute the same amount
13 as someone buying an entire standing rib roast.

14 This discussion is directly applicable to the issues in dispute in these
15 proceedings. It has long been understood (at least by economists) that different
16 groups of customers share the burden of joint costs in proportions that vary
17 based upon the demand side of the supply and demand equation. Customers do
18 not all pay the exact same amount, regardless of how much they benefit from the
19 joint production process. Instead, those who benefit more from the joint
20 production process (i.e., those whose demand is strong) pay more of the joint
21 costs than those who benefit just a little (i.e., those whose demand is weak).

22
23 Q. Are you arguing that the Commission must resolve the cost allocation dispute, or
24 set prices, in exactly the same manner as would occur in a competitive market?

25 A. No. We view the Commission's role as more flexible, and we believe there are
26 many different factors that merit consideration in setting regulated prices. While

1 the Commission does not need to precisely follow the example of how joint costs
2 are recovered in unregulated, competitive markets, we think the patterns
3 observed in these markets are both relevant and instructive.

4 There is no logical reason to recover most of the joint costs from small
5 customers merely because there are more of them, nor is there any logical
6 reason to recover a similar amount of joint costs from large customers as from
7 small ones. This would ignore the vast differences in benefits received by
8 customers of different sizes, which is contrary to the normal outcome in
9 competitive markets, where customers who value the product the most, or
10 purchase the largest quantity, typically pay a larger share of joint costs than
11 customers who buy less, or value the product less. As it happens, this normal
12 competitive outcome is consistent with other important policy goals, like the
13 encouragement of economic efficiency and energy conservation, and we see no
14 reason to deviate from this normal outcome by forcing small customers to pay an
15 inordinately large share of the joint cost burden. Our recommended approach,
16 discussed below, helps achieve the Commission's policy objectives, and it is
17 more consistent with the typical pricing practice in competitive markets.

18
19 **C. Cost Causation**

20
21 Q. It might be argued that the Company's "minimum system" approach better
22 conforms to the principle of cost causation. What is your response?

23 A. We strongly disagree. To begin with, we would note that the cost of a
24 hypothetical "minimum system" cannot readily be traced to the number of
25 customers on the system. In fact, to a large extent these costs cannot be traced
26 to any readily available data that are useful in developing an allocation study,

1 because a substantial fraction of the costs incurred in these accounts are fixed
2 costs that do not vary with usage, the number of customers, or any other
3 straightforward data set. Instead, they primarily vary with the number of miles of
4 streets and roads where gas service is provided. Yet road mileage is not a
5 useful statistic for apportioning costs to different customers or groups of
6 customers.

7 Were it more accurately developed, a “minimum system” approach would
8 essentially focus on the distinction between fixed and variable costs in the long
9 run (in the short run the investment in distribution mains is entirely fixed), as well
10 as the existence of economies of scale, to estimate the smallest level of fixed
11 cost that could potentially be incurred to serve a given geographic area, without
12 considering any of the costs that vary depending upon demand. However, in
13 understanding what “causes” these fixed costs to be incurred, the number of
14 customers is not the most important variable. In the long-run planning horizon,
15 the variable portion of the cost will mostly vary with the peak volume of energy
16 that is expected to flow through the facilities, and the fixed portion of the cost will
17 mostly vary with the number of miles of streets along which service will be
18 provided. The key point is that the investment in mains does not vary in
19 proportion to the number of customers along the streets where the gas mains are
20 (or will be) installed.

21 To the extent the costs in Account 376 vary in relation to something that is
22 easily measurable and can potentially be attributed to specific customer classes,
23 these costs vary with the peak volume of gas that is expected to flow through the
24 facilities. From an engineering perspective (how these costs are incurred), the
25 entire system of distribution mains and services – the pipes running down the
26 street and the pipes running from the street to the buildings – is designed to

1 accommodate peak demands. On that basis, the entire cost of distribution gas
2 mains is often allocated on the basis of demand (gas usage during peak
3 periods). The argument is straightforward: the system is designed to meet peak
4 demand, so peak demand is the simplest and best proxy for what “causes” these
5 costs to be incurred.

6 As discussed earlier in our testimony, this approach is used in other
7 states, and it has been accepted in several New York proceedings, and we
8 believe it provides a reasonable approach to handling the disputed costs.
9 However, we willingly concede it is not a perfect solution in terms of cost
10 causation. We point this out because a pure, unambiguous cause and effect
11 relationship cannot be drawn between the amount of costs incurred in these
12 accounts and peak demand. The problem is most easily seen in the case of
13 curtailable or interruptible customers. These customers are generally assumed
14 to be off-line during the system peak, and thus they are allocated little or none of
15 the disputed costs using a peak allocation approach, yet these customers benefit
16 greatly from using the system – and anticipated revenues from these customers
17 often contributes to the decision to build the distribution main (i.e., they help
18 “cause” the costs) in the first place.

19 Strictly speaking, from an economic perspective (why these costs are
20 incurred), the entire distribution system – including the portions running down the
21 street and the portions running from the street to the buildings – is driven by the
22 consumption of gas. In other words, in a supply and demand sense, that which
23 caused the system to be built is the demand for energy – demand which can
24 efficiently be met by obtaining natural gas at the wellhead, transferring it in bulk
25 to major population centers, then distributing it to various locations where the
26 energy will be consumed. Aspects of this process will vary depending upon the

1 locations where the demand for energy exists, and costs per unit will generally be
2 lower if a system can be configured and built that meets the energy needs of
3 many different types of customers on a combined basis.

4 Because demand is so important to the engineering and design of
5 distribution mains, it is widely accepted as the basis for allocating the associated
6 costs. However, this doesn't mean that interruptible and curtailable customers
7 should be exempt from making any contribution toward the cost of distribution
8 mains, merely because they don't contribute to peak demand. Consistent with
9 the general principles of joint cost recovery (mentioned above), interruptible and
10 curtailable customers should also defray some of these costs, based upon value-
11 of-service principles, market-based pricing, or the like. We will discuss this topic
12 again later in our testimony.

13
14 Q. Would you please elaborate on the concept of a “minimum system” and how it
15 relates to your recommendations?

16 A. The Company has relied on the concept of a hypothetical “minimum system,”
17 arguing that only the “extra” cost of building a larger-than-minimum-scale system
18 can be attributed to variations in peak demand, and that the portion of the cost of
19 the system that is attributable to the smallest “predominant size” main should be
20 classified and allocated on the basis of the number of customers in each class.

21 We concede there is some limited merit to this line of reasoning, to the
22 extent it focuses on the fact that there is some “minimum” level of costs that must
23 be incurred to provide energy along any given street. However, identifying the
24 existence of fixed costs associated with some hypothetical “minimum system”
25 does not solve the problem of how to recover these fixed costs, nor does it
26 provide any logical justification for recovering these costs on a per-customer

1 basis. The cost of installing a distribution main does not vary in proportion to the
2 number of customers along any given street, nor does the cost vary depending
3 upon the decisions of individual households and businesses to connect to the
4 system (except to the extent these decisions contribute to a changes in
5 anticipated peak demand, which influence the design of the main).

6 In truth, there is no straightforward way to attribute the fixed costs of a
7 distribution main (or the cost of a “minimum system”) to specific customers or
8 customer groups based on principles of cost causation, because these costs are
9 incurred on an aggregate basis based upon the characteristics of the area to be
10 served – and the these aggregate costs do not depend on the number of
11 customers connected to the main.

12 At the root of this dispute is a difference in philosophy concerning what
13 causes costs to be incurred, and what factors are most important in designing
14 regulated rates. On page 23 of its Smart Rate Design for a Smart Future paper
15 (issued July 2015), the Regulatory Assistance Project explained:

16 Most people who have ever tried their hands at designing
17 rates for regulated utilities invariably say that it is “more
18 art than science.” Because of the shared nature of the
19 system and the need to spread cost recovery fairly among
20 all customers, the idea that rates should be set based on
21 customer cost causation is a foundational concept in rate
22 design. Analysts who ask, in a causal sense, “why” costs
23 are incurred often reach different conclusions than those
24 who measure, in an engineering sense, “how” costs are
25 incurred.
26
27

28 We agree with these comments, and would further assert that the principle
29 of “cost causation” supports recovering these fixed costs based largely, if not
30 entirely, on the amount of demand placed on the system by different customers.

1 In general, the aggregate demand for energy (and the associated income
2 potential) is the primary factor that influences most decisions to install distribution
3 mains along a given route in the first place, and individual energy usage (and the
4 associated cost savings potential) is what motivates decisions by individual
5 households or businesses to connect to the mains if they are installed.

6 In contrast, the number of customers does not provide a good proxy for
7 the factors that explain “why” these costs are incurred, since this completely
8 ignores the volume of energy each customer is expected to use, and thus the
9 extent to which there is an economic basis for installing the distribution main in
10 the first place (“why” the gas main was constructed). Similarly, the number of
11 customers connected to the main completely ignores what size main will be
12 needed (“how” the main is engineered, and thus how much it will cost).

13 Stated another way, if the system planners anticipate that sufficient
14 economic demand exists for natural gas on the part of households and
15 businesses along a given street, and if that demand is strong enough to justify
16 the investment, the system will be built or expanded along that street. Consider
17 the cost of expanding a gas system into new neighborhoods, or along additional
18 roads where there is no governmental mandate to do so. It will make economic
19 sense to expand the gas system to serve a new area if the planners anticipate
20 that over time enough new buildings will be constructed and connected to the
21 system, and/or enough existing buildings will convert from propane or oil to
22 natural gas, and that these buildings use enough energy. The key question is
23 not simply whether buildings exist along a street (or how many buildings), but
24 whether the owners or tenants use enough energy – whether their demand for
25 natural gas will be strong enough to justify construction of the system. In
26 essence, the new or expanded system needs to generate enough revenue to

1 cover its costs, and this is directly related to the total demand for natural gas (the
2 volume of energy that will be delivered over the system if it is built).

3 If the system is built, each building owner or tenant will decide whether or
4 not to connect to the system based on his or her individual cost-benefit analysis,
5 which will heavily depend upon how much energy they use. A small user who
6 relies on propane may have little or no incentive to connect to the system,
7 whereas a large user will have a much greater incentive to do so, because of the
8 larger potential cost savings from the lower commodity costs associated with
9 natural gas, relative to propane or fuel oil.

10
11 Uniform Per-Customer Fixed Cost Recovery is Inequitable

12 Q. Are you saying that the JP will result in an inequitable allocation and recovery of
13 gas costs?

14 A. Yes. The JP gives far too much weight to the Company's flawed Minimum
15 System approach to the classification, allocation and recovery of the cost of
16 distribution gas mains. This methodology effectively causes a large fraction of
17 these costs to be recovered on a uniform per-customer basis. In turn, if this
18 aspect of the JP were accepted by the Commission, it would place an excessive
19 and undue burden on individual residential and small commercial customers.
20 This burden would be unjust and inequitable, as well as being inconsistent with
21 the manner in which these types of costs are typically recovered in most
22 unregulated markets (as discussed in our direct testimony). By comparison,
23 recovering the cost of distribution gas mains through volumetric rates is a

1 reasonable methodology that does not place an excessive share of the fixed
2 costs on any particular class or category of customers.

3
4 Q. Can you please explain why you believe a relatively uniform per-customer
5 approach is inequitable?

6 A. Yes. To understand the problem with the type of cost recovery that is proposed
7 in the JP, consider a simple hypothetical example, focusing on a small business
8 owner who operates a 1,000 square foot retail store. In this example, the small
9 retailer competes with several other retailers, including a 50,000 square foot
10 department store down the street. The larger store enjoys many advantages,
11 including a famous name brand and a large advertising budget. But the small
12 retailer also enjoys some competitive advantages, including a more personalized
13 service and a more interesting, less commonly seen selection of merchandise,
14 focused on its particular area of specialization.

15 In this example, the department store uses about 50 times more natural
16 gas to heat its store (compared to the small retailer), but its peak demand is only
17 40 times as large. This translates into a moderate cost advantage for the
18 department store, when comparisons are made on an apples-to-apples, per-
19 square foot basis – a pattern that applies to most of the items included in their
20 respective utility bills. This would also hold true for the cost of distribution gas
21 mains if they are allocated using the demand-based ECOS methodology – the
22 department store is allocated a larger share of the distribution gas mains, in

1 proportion to its larger peak demand, which works out to net 20% cost savings on
2 a per-square foot basis.

3 In contrast, under the uniform per-customer method proposed by Con
4 Edison and accepted by the Staff Gas Panel in this case, the department store
5 would be allocated the same dollar share of the fixed Minimum System costs as
6 its much small competitor, despite using 50 times more energy and having a
7 peak demand that is 40 times larger. If the uniform per-customer cost recovery
8 approach were to be accepted by the Commission and flowed through to bills,
9 both stores would end up contributing the same exact dollar amount per month
10 toward the Minimum System portion of the Company's gas costs. This would
11 clearly be inequitable, since one store is 50 times larger than the other, and it
12 receives 50 times as much natural gas from the system. The inequitable nature
13 of this cost allocation and recovery methodology becomes even clearer when
14 their respective shares of these fixed infrastructure costs are compared on an
15 apples-to-apples basis: the department store would pay 98% less per square foot
16 than its smaller competitor.

17 It is fundamentally inequitable to expect the smaller store to contribute the
18 same amount (in dollars) as its much larger competitor, merely because each
19 store represents a single customer account on the utility's gas system, while
20 ignoring the vast difference in size and the extent to which they use the system.
21 Considering that we are dealing with fixed overhead costs of the system that
22 cannot be directly attributed to, and are not caused by, either store, this extreme
23 disparity in cost burden is clearly inequitable.

1 To consider a similar analogy, it is hard to imagine anyone arguing that
2 the smaller store (or its landlord) should pay the same dollar amount of property
3 taxes as the department store. The fact that the smaller retailer would be
4 required to pay 50 times more per square foot than its larger competitor would
5 surely dissuade the taxing authorities from accepting the argument. In reality, of
6 course, the tax burden is spread much more equitably, because virtually all local,
7 state and federal taxes are calculated as a function of property value, sales
8 volume, income, or some other appropriate factor that varies with the size of the
9 taxpayer – thereby ensuring that the tax burden is equitably spread across small
10 and large firms.

11
12 Q. Does the same concern apply to residential gas customers?

13 A. Yes. If the JP is implemented as proposed, and the minimum system approach
14 is fully implemented over the course of the three year rate plan, the Company will
15 end up collecting approximately the same amount for its fixed (“minimum
16 system”) gas costs from a hypothetical 400 square foot studio apartment
17 constructed in Queens shortly after World War I as it would collect from a
18 hypothetical 3,500 square foot luxury apartment across the river in Manhattan –
19 notwithstanding the fact that the latter apartment uses more than five times as
20 much gas.

21 The anomalies and inequities associated with the minimum system
22 approach used in the JP do not stop there. Under the minimum system
23 approach, the amount of fixed costs recovered from a 10-unit apartment building

1 could end up being more than the amount recovered from a much larger 100-unit
2 apartment building down the street. This would occur where the landlord of the
3 larger building obtains gas for all of its tenants through a single meter so each
4 tenant counts as only 1/100th of a “customer,” while the owner of the smaller
5 building installs separate meters for each unit, so that each apartment in the
6 smaller building is billed as a separate individual customer. From these
7 examples, it is clear that equitable treatment cannot be achieved if the fixed costs
8 are allocated and recovered on an equal per-customer basis, without any
9 consideration of how large or how small different customers are, or how much or
10 how little they use the gas system.

11
12 The Number of Customers Is Not A Causative Factor for Gas Distribution Mains

13 Q. You have acknowledged that the cost of distribution mains varies with mileage –
14 the longer the main, the more costly it is. Does this fact change your opinion
15 concerning the inequities of uniform per-customer cost recovery, or suggest the
16 existence of a causal relationship between the number of customers and the cost
17 of distribution mains?

18 A. No. As was noted in the Massachusetts order we quote below, even if a
19 correlation is found between miles of distribution main and the number of
20 customers (which has not been demonstrated for New York City or Long Island),
21 that would not establish a cause and effect relationship between customers and
22 mileage. To explain why this is so, consider first the fact that decisions by
23 municipal authorities about the configuration and length of the streets in a

1 municipal area, and decisions by the utility to install gas mains along those
2 streets, both occur long before individual households and businesses decide
3 whether or not to become customers of the gas utility. We do not deny that some
4 of the planning decisions made by utilities might, under some circumstances, be
5 influenced by the number of customers they anticipate will sign up for service
6 after a main is installed. However, even where this is the case, the number of
7 customers is typically being used as a simplified “rule of thumb.” To the extent
8 this “rule of thumb” works, it is because no one becomes a customer unless they
9 want to use natural gas. In other words, the number of customers does not
10 actually cause the costs to be incurred, or drive the utility's decision to install the
11 main, but rather it is the anticipated demand for gas.

12 The primary cause and effect relationship is straightforward: the decision
13 to extend mains down specific streets is driven by expectations concerning future
14 income from adding the main, which is driven by the demand for gas. Customers
15 are only relevant to this causal relationship because it is customers that have
16 demand for gas. But one or two potential large customers might be sufficient to
17 cause a main to be installed down one street, while even a dozen potential small
18 residential customers might not be enough to justify installing a main on another
19 street – because the latter group doesn't use enough gas to justify making the
20 investment. Of course, other causal relationships also exist, complicating the
21 analysis – mains can sometimes be installed on streets with no customers, for
22 instance, to help maintain pressure, or to move gas from a source of supply in
23 one area, to serve a demand in another area.

1

2 Prior Commission Decisions Regarding This Issue

3 Q. When the Commission has a long-established and invariant way of handling a
4 particular issue, the DPS Staff will not necessarily comment on the issue. Is this
5 the situation with the classification and allocation of distribution gas mains?

6 A. No, that is not the situation here. The Commission has, on more than one
7 occasion, accepted proposals to classify distribution gas main costs partly as
8 demand-related and partly as customer-related. However, it has also accepted
9 proposals to classify distribution gas main costs as entirely demand-related, as
10 we recommend in this case, and the issue has been hotly disputed in multiple
11 recent cases in New York, in addition to the current rate proceedings. In fact,
12 putting the fixed portion of the cost of distribution gas mains into the customer
13 classification has been a controversial practice since at least the 1980's, and it
14 remains a controversial practice to this day, as we will discuss later in our
15 testimony. While we realize the Commission has sometimes accepted this
16 approach, we do not believe those past decisions should preclude consideration
17 of the many problems that exist with the minimum system approach, and we urge
18 the Commission to fully weigh the concerns we are raising here.

19

20 Q. Are you aware of any cases in New York where the Minimum System approach
21 was not accepted by Staff?

22 A. Yes. In Case 06-G-1185 and Case 06-G-1185, involving KEDNY and KEDLI,
23 DPS Staff recommended giving 100% weight to demand, despite the fact that the

1 utility had developed a Minimum System Analysis. DPS Staff's stated rationale
2 was to "more closely identify the minimum customer costs for each service
3 class". (Direct Testimony of Aric Rider, page 15.) More recently, in Case 14-G-
4 0494, a 2014 proceeding involving Orange and Rockland Utilities (which is
5 owned by Con Edison), the Staff Gas Rates Panel recommended "allocating the
6 costs of the distribution gas mains system on a 100% demand and 0% customer
7 basis" despite the fact that the utility took a different approach, developing and
8 relying on a Minimum System Analysis. (Staff Gas Rates Panel, p. 23) DPS
9 Staff's position in the Orange and Rockland gas case was ultimately adopted by
10 the Commission.

11 Similarly, in a 2008 Central Hudson rate proceeding (Cases 08-E-0887 et
12 al.), Staff proposed classifying and allocation gas distribution mains in essentially
13 the same way we are recommending here – based upon peak demand. In that
14 case, Staff's proposal was not accepted, but there was nothing in the
15 Commission's decision to suggest it intended to resolve the issue in a definitive
16 manner that would control all future cases. To the contrary, the controversy in
17 that case was largely resolved on the basis of the Commission's preference for
18 rate continuity and the desire to avoid potential customer impacts that might
19 result if it were to change allocation methods from what was historically the
20 practice of that utility. The Commission explained its reasoning as follows:

21 Staff proposed to reclassify gas distribution main costs for
22 purposes of the pro forma embedded cost of service study
23 by assigning them entirely to the demand component of
24 rates. [This] reclassification results in a very large shift in

1 cost responsibility from residential customers to large gas
2 users. The RD noted that both the existing and proposed
3 methodologies are deemed acceptable by NARUC with
4 no indication that one or the other is superior. It concluded
5 that such a large shift in cost responsibility should not be
6 adopted without compelling evidence that it is necessary
7 to rectify some serious inequity.

8
9 (Order Adopting Recommended Decision With
10 Modifications, pages 46-47.)

11
12 Q. Are you aware of any cases in New York where the utility allocated distribution
13 gas mains using 100% peak demand?

14 A. Yes. In two recent cases, Case 15-G-0286 and Case 15-G-0284, and in some
15 earlier cases, New York State Electric & Gas Corporation (“NYSEG”) and
16 Rochester Gas and Electric Corporation (“RG&E”) classified and allocated their
17 distribution gas mains using peak demand. In the 2015 cases, these utilities
18 advocated essentially the same approach we are recommending in this gas
19 case, although they gave weight to both customers and peak demand when
20 classifying and allocating the analogous components of the electric distribution
21 system. However, their decision to allocate the analogous electric costs based
22 upon the number of customers was not based upon a preference for that
23 treatment, or a substantive distinction between gas and electric distribution
24 systems. Instead, this inconsistency was the result of an agreement reached in a
25 Joint Proposal that resolved an earlier set of cases, Case 09-E-0715 *et. al.*,
26 where the utilities had proposed using 100% peak demand in both the electric
27 and gas cases.

1 In Cases 09-E-0715, *et al.*, the NYSEG and RG&E Embedded Cost of
2 Service Panel was asked in its Rebuttal Testimony at pages 6 – 7, whether or not
3 the costs of a hypothetical “minimum system” should be allocated in proportion to
4 the number of customers, on the theory that these represent fixed costs that do
5 not vary with peak demand. The Companies’ witnesses gave several reasons
6 why they disagreed with this approach, and explained that allocating the disputed
7 costs based on peak demand “reflects a much better recognition of cost
8 responsibility” and they noted they “used this approach in a consistent manner
9 for all four cost studies” (including both of their gas ECOS studies and both of
10 their electric ECOS studies).

11 NYSEG and RG&E's witnesses went on to point out flaws in the reasoning
12 that had been offered in support of relying on a hypothetical “minimum system” to
13 classify some costs as customer-related, thereby allocating the costs in
14 proportion to the number of customers. In particular, the witnesses expressed
15 concern because, in their view, this methodology tends to impose an
16 unreasonable burden on small customers:

17 The identification of any minimum installed system
18 contains a corresponding load carrying capability. For
19 small customers, which are the majority of NYSEG's and
20 RG&E's secondary customers, this is a major component
21 of load. The results simply over-allocate costs to the
22 smaller residential and general customer classes, which
23 are the majority of customers. In the final analysis, the
24 proposed recognition of a customer component by both
25 Staff and Dr. Rosenberg should be dismissed as flawed
26 and unrepresentative of cost responsibility.
27

28 (Rebuttal Testimony of NYSEG and RG&E's Embedded
29 Cost of Service Panel, Cases 09-E-0715, *et al.*, p. 8)
30

1

2 The reasoning behind their critique is straightforward: even if one separates out
3 the hypothetical cost of a “minimum system,” in practice any such system will
4 inherently have enough load handling capacity to accommodate the needs of
5 very small customers – and thus it is inequitable to also require them to pay a
6 pro-rata share of the remaining costs that are incurred to handle demands in
7 excess of the minimum system. Accordingly, for the Minimum System Approach
8 to be fair to small customers, they would need to be exempt from contributing
9 toward the part of the system in excess of the hypothetical “minimum” – that is to
10 say, the portion that is being allocated in proportion to peak demand. This is
11 something the other parties failed to do in the 2009 NYSEG and RG&E rate
12 cases (and which Con Edison did not do in this gas case).

13 NYSEG and RG&E's Embedded Cost of Service Panel emphasized this
14 concern in defending their objection to the Minimum System Approach, and their
15 preference for giving 100% weight to peak demand:

16 Failing to do this extra step results in this load capability
17 being ignored and the remaining non-minimum system
18 costs being allocated on each class's total load, thereby
19 creating a serious flaw - a "double dip" - which results in
20 an over-allocation of these costs to smaller customer
21 classes.

22
23 (Rebuttal Testimony of NYSEG and RG&E's Embedded
24 Cost of Service Panel, Cases 09-E-0715, et al., p.9)

25

26 Decisions in Other Jurisdictions Regarding Distribution of Gas Main Costs

1 Q. Has the Minimum System approach been universally accepted in other
2 jurisdictions?

3 A. No. This costing approach has been under debate for more than 30 years, and
4 the results of such debate have varied widely. The debate has been carried out
5 sporadically across multiple jurisdictions and many years. In many cases the
6 issue was not debated, and thus it is not readily apparent whether the approach
7 was used, or how it would have been dealt with if the issue had come to the
8 forefront.

9 Overall, it is fair to say that the Minimum System Approach is not
10 universally accepted by either utilities or regulators. Where it has been
11 discussed, it has often been very controversial. Even when it has been
12 accepted, it had not necessarily been fully relied upon. Some utilities may
13 analyze their costs based upon a hypothetical Minimum Distribution System
14 ("MDS") or a statistically-based variant of the concept called the zero-intercept
15 ("ZI") method, but they do not fully implement the concept in developing their
16 actual revenue allocation and rate design proposals. Other utilities choose not to
17 prepare this type of analysis, and instead classify and allocate all of the
18 distribution accounts in question based 100% on demand, as we recommend in
19 these cases.

20 Similarly, some state regulatory commissions may accept filings that
21 include a minimum system analysis, but may not necessarily accept or reject the
22 results, or may ignore or give little weight to the results when developing the
23 actual revenue allocation and rate design they ultimately approve. In fact, the

1 same jurisdiction may resolve the issue one way in one case, and another way in
2 another case – depending upon the circumstances in each case, including how
3 the issue was presented to it, and what evidence was available. Similarly, the
4 issue might be resolved one way in the context of class allocations, and another
5 way in the context of rate design. Examples of such state regulatory commission
6 decisions are presented later in our testimony.

7 This diversity of results can be gleaned to a degree from a careful reading
8 of the May 28, 2015 report by the American Gas Association (“AGA”), which we
9 cited in our direct testimony. That report includes distribution gas mains and
10 services in its list of “fixed” costs, which many of AGA’s member utilities believe
11 should be recovered through fixed monthly charges. However, the report goes
12 on to note that many utilities actually recover only “a portion of these costs
13 through a fixed charge on the customer's bill. This is most often called the
14 ‘customer charge,’ but it is also called minimum bill. . .” (AGA Energy Analysis
15 Report, page 1.) The report explains that cost recovery policies vary widely
16 across utilities and jurisdictions, and concludes that, on average “[t]he customer
17 charge...typically recovers only 46 percent of a utility's actual fixed costs...”
18 (AGA Energy Analysis Report, page 2.)

19 The data provided in Appendix 1 to the AGA report shows that as of 2015,
20 customer charges spanned a wide range both across jurisdictions and within
21 jurisdictions. The report includes many examples from around the country where
22 gas utilities have much lower customer charges or minimum bills than Con
23 Edison, including: AGL – Florida City Gas in Florida (\$8.00), Alliant – Interstate

1 P&L in Minnesota (\$5.00), Avista Corp in Idaho (\$8.00), Avista Corp in Oregon
2 (\$4.25), Centerpoint Arkla in Arkansas (\$9.75), Chesapeake Utility Corp in
3 Maryland (\$8.75), Coserv Gas in Texas (\$7.00), Dominion – Hope Natural Gas in
4 West Virginia (\$8.99), Integrys – Wisconsin Public Service Corp in Michigan
5 (\$5.00), Liberty Utilities in Iowa (\$7.95), Liberty Utilities in Illinois (\$9.90), Middle
6 Tennessee Natural Gas Utility District (\$7.00), Montana-Dakota Utilities in North
7 Dakota (\$3.50), Montana-Dakota Utilities in South Dakota (\$8.40), Northwestern
8 Energy in Montana (\$7.30), Northwestern Energy in Nebraska (\$8.00), Piedmont
9 Natural Gas in North Carolina (\$10.00), Public Service Electric and Gas in New
10 Jersey (\$5.46), Questar Gas in Utah (\$6.75), Sempra – Southern California Gas
11 in California (\$4.90), UGI Penn Gas in Pennsylvania (\$2.19), Washington Gas
12 Light in the District of Columbia (\$9.90), Wisconsin Power & Light (\$1.51), and
13 many others. Given monthly rates like these, it is clear that many regulators are
14 either rejecting the Minimum System concept, or they are largely ignoring it when
15 deciding what actual rates to charge customers.

16
17 Q. Can you provide a few examples of cases where the Minimum System approach
18 was rejected in other states?

19 A. Yes. One example is from Massachusetts, where the concept was advocated by
20 an intervenor but rejected by the Massachusetts Department of Public Utilities:

21 The Consortium contests the Company's classification of
22 distribution mains as entirely capacity-related (*id.*, p. 10).
23 The Consortium presented Alan Rosenberg, a consultant

1 with Drazen-Brubaker Associates, Inc., to support its
 2 capacity classification and allocation arguments

3
 4 The Consortium proposed that the Company conduct a
 5 study to identify and classify a minimum portion of
 6 distribution mains as customer-related The
 7 Department has reviewed and rejected a similar argument
 8 in Colonial Gas Company, D.P.U. 84-94, pages 73 and
 9 77-78 (1984) (“Colonial”).

10
 11 In Colonial, the Department . . . found that the size of a
 12 distribution main is determined by the amount of gas that
 13 would be sent through a particular main during the peak
 14 time period. *Id.*, p. 77. The Department found that
 15 distribution mains are capacity related Moreover, the
 16 Department has previously found that the costs of
 17 distribution mains do not vary with the loss or the addition
 18 of a single customer. *Western Massachusetts Electric*
 19 *Company, D.P.U. 20110-A, p. 13 (1982).*

20
 21 The Department notes that a strong correlation between
 22 two variables does not necessarily indicate cost
 23 causation. Specifically, the fact that number of customers
 24 and length of mains are strongly correlated does not
 25 establish that number of customers is a significant factor
 26 relative to other factors in causing the Company to incur
 27 distribution mains costs. In this instance, the Department
 28 will not rely on a statistical measure without a
 29 demonstration that the hypothesis being examined is
 30 based on sound reasoning.

31
 32 The Department reaffirms its past findings and concludes
 33 that there is a cost causative relationship between loads
 34 and distribution mains. The Department finds that there is
 35 no need for the Company to conduct a study to identify
 36 and classify a portion of distribution mains as customer-
 37 related.

38
 39 (Order Dated October 31, 1991, DPU Case 91-60 (WL
 40 531844).)

41
 42 Another example is this case in Illinois:

1 The arguments of IIEC and Wal-Mart do not persuade the
2 Commission to deviate from its past decisions and now
3 embrace the MDS. The MDS method fails to properly
4 emphasize the purpose of the distribution system — that
5 being to satisfy a customer's daily demand for electricity.
6 Ameren's method, on the other hand, does not suffer from
7 this weakness. The Commission also continues to believe
8 that distinguishing the cost of connecting customers to the
9 distribution system and the cost of serving its demand
10 remains problematic. Moreover, the Commission is
11 hesitant to rely on the 1992 NARUC manual cited by IIEC
12 and Wal-Mart because of its age and the changes in the
13 electric industry. Accordingly, the Commission will not
14 adopt the MDS in this proceeding. The Commission also
15 declines to adopt IIEC's suggestion that Ameren be
16 required to present a COSS in its next rate case
17 incorporating the MDS approach. In the Commission's
18 view, it would be unreasonable to require Ameren to
19 perform a COSS that incorporates a method repeatedly
20 rejected by the Commission.
21

22 (Order dated November 21, 2006 (Ill. C.C.) (WL
23 3863623).)

24
25 The Michigan Public Service Commission rejected the Minimum System concept
26 in a 1989 case involving Consumers Power Company, choosing instead to use
27 an allocation factor based upon average and peak (“A&P”) demand:

28 Consumers and ABATE each proposed that a portion of
29 Consumers' distribution mains — the minimum system —
30 is customer related and should be allocated on a
31 customer basis . . . The Staff proposed that all distribution
32 mains be allocated pursuant to the A&P methodology.
33

34 The ALJ determined that the Staff's allocation of
35 distribution mains was reasonable and recommended its
36 adoption by the Commission. In so doing, he noted the
37 Commission's preference for the A&P allocation
38 methodology and its recent rejection of the minimum

1 system concept in Case Nos. U-8635, U-8812, and U-
2 8854.

3
4 The Commission finds the arguments raised by ABATE
5 and Consumers are not persuasive. Any allocation
6 methodology utilized by the Commission is, to some
7 extent, arbitrary. Ideally, no customer should be assessed
8 more than the exact cost of serving that customer.
9 However, attaining this ideal standard would require a
10 separate rate computation for each customer.

11
12 In the final judgment, the question is not whether a more
13 exact methodology can be constructed; rather the
14 question is whether the method and result are reasonable.
15 The Commission finds the method proposed by the Staff,
16 which has been repeatedly utilized by the Commission in
17 other cases, is an accepted and reasonable way to
18 distribute the cost of Consumers' distribution mains.
19 Accordingly, the exceptions filed by ABATE and
20 Consumers are rejected.
21

22 (Order dated December 7, 1989 in Case Nos. U-8678 et
23 al. (WL 418755).)

24
25 Another example involved Mountaineer Gas Company, where the West Virginia
26 Public Service Commission weighed extensive arguments back and forth before
27 ultimately rejecting the Minimum System approach:

28 Staff takes issue with the Company's use of the minimum
29 system approach for allocating distribution plant . . . Staff
30 recommends using class peaks as a better method of
31 allocation of the distribution mains.

32
33 Mountaineer maintains that the minimum system
34 methodology presented in its class cost of service study is
35 the better method because: 1) it is consistent with good
36 allocation principles; 2) it is recognized by NARUC and
37 approved by several state Commissions . . .
38

1 Mountaineer disagrees with Staff and CAD's allegations
2 that: 1) the minimum system is not based on cost
3 causation; 2) that the minimum system places too much
4 emphasis on number of customers; and, 3) that
5 Mountaineer should allocate more of its cost based on
6 through-put. . .
7

8 Similar to the return on equity and rate of return issue, the
9 Commission is faced with the testimony and exhibits of
10 well qualified experts on rate design and three separate
11 class cost of service studies. In the final analysis, the
12 adoption of any of the parties' recommendations is a
13 matter of judgment. The Commission is persuaded by the
14 CAD's arguments regarding the Seaboard formula of
15 allocating distribution system cost. The Commission is
16 further persuaded by Staff and CAD's arguments that
17 Mountaineer's class cost of service study places undue
18 emphasis on allocating costs on the basis of the number
19 of customers, which tends to unfairly allocate more costs
20 to the residential customer.
21

22 (Order dated October 29, 1993 in Case No. 93-0005-G-
23 42T (WL 494175).)
24

25 Q. The Zero Intercept approach is sometimes offered as a compromise – a less
26 objectionable alternative to a traditional Minimum System analysis. Can you
27 describe the Zero Intercept Approach and provide some examples where this
28 option was discussed?

29 A. Yes. One way of understanding the Zero Intercept Approach is to think of it as a
30 variation of the Minimum System Approach, which focuses on an even more
31 extreme hypothetical concept: a system consisting of mains with an interior
32 diameter of 0 inches. These pipes are still very costly to purchase and install, but
33 they cannot carry any actual gas. In practice, the Zero Intercept approach is
34 developed by applying statistical techniques to the historical cost data, in an

1 effort to distinguish between the fixed and variable components of the installed
2 cost of mains. While it might be offered as a compromise or less objectionable
3 approach, it is still controversial, and depending on the adequacy of the data and
4 the specific statistical technique applied, it can result in cost estimates that are
5 actually larger than the standard Minimum System Approach.

6 In a 2002 case involving Gulf Power Company, the Florida Public Service
7 Commission rejected both versions, explaining their reasoning as follows:

8 The concept of a zero load cost is purely fictitious and has
9 no grounding in the way the utility designs its systems or
10 incurs costs because no utility builds to serve zero load.
11 There is no real equipment that equates to the costs
12 identified by the ZI methodology. We have rejected MDS
13 in the past for this very reason.
14

15 (Order No. PSC-02-0787-FOF-EI dated June 10, 2002 in
16 Docket No. 010949-EI (WL 1349501).)

17
18 That decision referred to the Florida Public Service Commission's history of
19 rejecting the method, citing an example from more than 20 years earlier, where it
20 had explained its fundamental discomfort with the concept:

21 The Company and staff have proposed the use of a
22 theoretical minimum distribution cost . . . we do not agree
23 that a theoretical cost of a minimum distribution system is
24 appropriate . . . The installation of the distribution system
25 is made in anticipation of a projected level of actual use.
26 The system does not contain a basic theoretical minimum
27 distribution system. Reliance on such a mechanism is
28 speculative at best.
29

1 (Order 9599, issued October 17, 1980 in Docket No.
2 800011-EU.)

3

4 A similar decision was made in a 1984 case involving Puget Sound Power &
5 Light, where the Washington Utilities and Transportation Commission rejected
6 both options:

7 The Commission rejects the company's use of the zero-
8 intercept method. The minimum system method, of which
9 the zero intercept method is a variant, is also rejected.
10 Both methods are likely to lead to the double allocation of
11 costs to residential customers and over allocation of costs
12 to low use customers.

13
14 (Order dated January 19, 1984 in Case No. U-83-26 (WL
15 1022551).)

16
17 Q. Can you provide an example of a case where the Minimum System approach
18 was accepted, yet the regulatory commission expressed reservations about the
19 concept?

20 A. Yes. In a 1984 case involving Enstar Natural Gas, the Alaska Public Utilities
21 Commission stated:

22 Although the Commission finds the overall methodology
23 used in the COS study to apportion distribution costs
24 results in a fair allocation among the classes, the
25 Commission believes that future use of a minimum
26 distribution study... may unfairly burden the residential
27 class. From an optimal ratemaking perspective, there
28 should be a direct cause and effect relationship between
29 any cost and the object to which that cost is being
30 allocated. While COS studies give the impression that the
31 above relationship is quite precise, this is seldom the
32 case, particularly when attempting to apportion the

1 distribution expenses of an integrated natural gas utility.
 2 Distribution costs in general do not always have a strong
 3 positive correlation, nor do they necessarily vary directly
 4 with the number of customers, the type of class, the
 5 demand, or the consumption of gas. In sum, distribution
 6 costs are joint-use expenses not subject to precise
 7 allocation. In the final analysis, the decision to allocate
 8 distribution expenses must be resolved by rather
 9 subjective policy decisions; the decision becomes a value
 10 judgment based on concepts of fairness, reasonableness,
 11 optimum pricing, etc., and not objectively measurable
 12 allocation criteria.

13
 14 For these reasons, the Commission is not persuaded that
 15 a major portion of distribution expenses, “justified” via a
 16 hypothetically derived minimum distribution study, should
 17 continue to be automatically assigned to the residential
 18 class via a customer component allocator...
 19

20 (Order No. 6 in Case U-83-38, dated February 14, 1984.)

21
 22 Q. Can you provide an example where a regulatory commission more firmly
 23 expressed its objections to the Minimum System approach?

24 A. Yes. About a decade after the Puget Sound case mentioned earlier, the
 25 Washington Utilities and Transportation Commission went even further in
 26 rejected it:

27 The company proposed to classify distribution costs using
 28 the Basic Customer method, which treats substations,
 29 poles, towers, fixtures, conduit, and transformers as
 30 demand-related. Service drops and meters are classified
 31 as customer-related

32
 33 WICFUR and SWAP recommended use of the Minimum
 34 System approach. This would classify most distribution-
 35 related costs according to the relative number of
 36 customers in a class. WICFUR argued that this method

1 better reflects the fact that a multitude of small customers
2 requires a more extensive distribution system as
3 compared to large customers with the same total energy
4 requirements.

5
6 The Commission finds that the Basic Customer method
7 represents a reasonable approach. This method should
8 be used to analyze distribution costs, regardless of the
9 presence or absence of a decoupling mechanism. We
10 agree with Commission Staff that proponents of the
11 Minimum System approach have once again failed to
12 answer criticisms that have led us to reject this approach
13 in the past. We direct the parties not to propose the
14 Minimum System approach in the future unless
15 technological changes in the utility industry emerge,
16 justifying revised proposals.
17

18 (Order dated August 16, 1993 in Docket No. UE-921262
19 et al (1993 WL 13812140).)

20

21 Q. Can you provide an example where the utility was actually required to perform a
22 Minimum System analysis, yet the results were ultimately rejected?

23 A. Yes. This occurred in a 2009 electric case involving Public Service Company of
24 Oklahoma:

25 Pursuant to the Commission's Order in PSO's last rate
26 case, Cause No. PUD 200600285, PSO performed and
27 filed a minimum system study that allocated a portion of
28 the distribution costs in Accounts 364-368 on the basis of
29 number of customers, instead of allocating those costs
30 based upon demand. . . . Although PSO performed the
31 minimum-system study as required, PSO did not utilize
32 the minimum-system study in its cost-of-service study and
33 advocated the continued allocation of the distribution
34 costs in Accounts 364-368 on a demand-only basis, as
35 has been approved by the Commission for PSO since the
36 1980s
37

1 Q. To wrap up this discussion, can you briefly explain what conclusion you reached
2 from your review of cases in other states?

3 A. The Staff Gas Rates Panel has relied upon the Minimum System approach in
4 developing their revenue allocation and rate design proposals, without providing
5 any explanation or support for why it has chosen to do this. While the Minimum
6 System approach has been used by New York utilities and accepted by Staff
7 and/or the Commission in other cases, this does not mean the concept is
8 universally accepted, nor does this sporadic pattern of past approval provide a
9 valid reason for relying on a Minimum System analysis to establish rates in this
10 gas case. The concept is fundamentally unsound, and we recommend that cost
11 results based upon this methodology not be given any significant weight in this
12 case.

13

14 **D. Recommended Treatment of Disputed Costs**

15
16 Q. Given the problems with the Company's "minimum system" approach, which was
17 adopted in the JP, what alternative do you recommend instead?

18 A. We recommend classifying the entirety of Account 376 as demand-related and
19 allocating it using a peak allocation factor – either the Company's Design Day
20 Demand factor or the 1 Hour NCP factor. We recommend using this approach
21 because it is has been used by other utilities and regulatory commissions and it
22 offers a reasonable basis for analyzing costs, with the exception of temperature
23 controlled and interruptible (IT) customers. Embedded cost-of-service based
24 pricing is not appropriate for this group of customers. The assigned share of
25 investment in transmission and distribution mains would approach zero in the

1 Company's ECOS studies as well as our own studies based upon either 1 Hour
2 Non Coincident Peak or Design Day Demand. Hence, the rate base allocated to
3 these classes would be extremely small relative to their size, and thus any
4 calculated class rates of return would be inordinately large. The resulting high
5 percentage rates of return would not be meaningful, nor would they provide an
6 accurate indication of how reasonable the interruptible and curtailable rates are
7 relative to the rates being paid by firm customers (since firm customers are being
8 assigned the full cost burden of mains that are shared by both firm and
9 interruptible customers). We discuss this problem again, later in our testimony,
10 when we discuss the Company's rate proposals for interruptible customers.

11
12 Q. Have you estimated the impact on our gas ECOS results for Con Edison's
13 customers of using these two alternative options?

14 A. Yes. As shown on Page 2 of Schedule 2 of Exhibit ____ (UGRP-JP-1), we have
15 developed a gas ECOS study that essentially replicates the data and
16 methodology used by the Company with one key difference: we classified 100%
17 of the costs in Account 367 as "demand-related" and allocated those costs to the
18 various customer classes using the Company's 1 Hour Non Coincident Peak
19 Demand allocator.

20 This one change results in noticeably higher rates of return for two of the individual
21 customer classes, and lower returns for the other two classes. Most strikingly,
22 the rate of return for SC-1 is 11.48% (far above the system average) using 100%
23 Demand, compared to 4.01% using the methodology proposed by the Company.
24 This demonstrates the impact of the "minimum system" approach which places a
25 much larger share of the cost burden on this class, because it has so many small
26 customers, each of whom place very little demand on the system.

1 On Page 3 of Schedule 2 of Exhibit ____ (UGRP-1), we show what
2 happens if 100% of the costs in Accounts 367 are classified as “demand-related”
3 and allocated using the Company's Design Day Demand allocator. This demand
4 allocator is used by some other New York gas utilities to allocate distribution
5 mains. For example, in recent gas rate cases both NYSEG and RG&E allocated
6 100% of distribution gas mains using this allocator, and none of the costs were
7 allocated using customers (i.e., the same approach we used on Page 3 of
8 Schedule 2). Also, KEDNY and KEDLI used this allocator for the demand-related
9 portion of distribution mains in their currently pending rate cases (Cases 16-G-
10 0058 and 16-G-0059).

11 Comparing Pages 2 and 3 of Schedule 2 of Exhibit ____ (UGRP-JP-1) we
12 see the choice of demand allocators has a relatively minor impact on the results,
13 at least when compared with the impact of using customers rather than demand
14 to allocate the disputed costs. For instance, the rate of return for SC-3 is 5.25%
15 using 1 Hour Non Coincident Peak and 5.27% using Design Day Demand. The
16 SC-1 class shows the largest difference: it has a return of 11.48% using 1 Hour
17 Non Coincident Peak and a return of 12.35% using Design Day Demand.

18
19 **V. REVENUE ALLOCATION**

20
21 Q. How has the JP proposed to distribute the gas revenue increase among the
22 various customer classes?

23 A. The JP relied heavily on the results of the Company's gas ECOS study. The
24 Company began by calculating class-specific surpluses and deficiencies for class
25 rates of return that fell outside a “tolerance band” of plus or minus 10% around
26 the total system return shown in its gas ECOS study. In developing the proposed

1 revenue allocation in the JP, the first priority was to increase rates for any class
2 with a return below the tolerance band, and then spread the remainder of the rate
3 increase on a more uniform basis across all classes. The JP applied one-third of
4 the class-specific surplus or deficiency per rate year, so that over the course of
5 the three Rate Years, 100% the calculated deficiency or surplus is used to shift
6 the revenue burden between classes.

7 Q. Can you please discuss your response to the JP's gas revenue allocation
8 proposals?

9 A. We disagree with the approach used in the JP, since it depends heavily on
10 ECOS results which we believe are invalid. While one might argue that the JP
11 makes an attempt to maintain a degree of "rate continuity," by phasing in the
12 ECOS results over three years, all of the proposed percentage rate changes are
13 closely tied to the ECOS results, and by the end of the Rate Year 3 the revenue
14 burden is shifted between classes to eliminate the entirety of the calculated
15 deficiencies and surpluses. Thus, it is fair to say that the revenue allocation used
16 in the JP is driven by the results of a single ECOS study, to the exclusion of any
17 other considerations. As we demonstrate in our Exhibits, if the same revenue
18 allocation methodology were used with the results of either of our gas ECOS
19 studies, all of the resulting class-specific percentage rate changes would be
20 significantly different. Because the JP uses a highly mechanical approach to
21 applying the results of this one ECOS study, any flaws in the Company's gas
22 ECOS methodology adversely impacts individual customer classes to a far
23 greater degree than if a less mechanical approach were used, such as one that
24 relied more on an across-the-board approach to spreading the burden of the gas

1 rate increase – like the approach used by KEDNY and KEDLI in Cases 16-G-
2 0058 and 16-G-0059.

3 In general, we believe revenue allocation should not be a purely
4 mechanical process that precisely tracks the results of a particular ECOS study.
5 Instead, we believe thought should be given to the potential hardships imposed
6 on particular classes, historical relationships among the classes, and other
7 elements of interclass equity. Given the inherent instability and subjectivity of the
8 various allocations, the goal of absolute uniformity in class rates of return can
9 probably never be achieved. Such an effort is an attempt to hit a moving target,
10 and it can potentially conflict with important policy objectives such as rate
11 continuity, gradualism, and stability.

12 Furthermore, the returns earned by each of the classes depend in large
13 part on the data used in that particular cost-of-service study. In some cases, a
14 class that has an above-average return during one test period might show a
15 below-average return during a different test period. When a proposal would
16 make substantial changes to the existing rate relationships (shifting more costs
17 on to or off of specific classes based on the ECOS results), it is preferable to
18 verify that similar results have occurred in other studies. The JP does not
19 discuss or give any weight whatsoever to any other ECOS studies.

20

21 Q. Do you agree with the JP's gas revenue allocation proposals?

22 A. No. First, we strongly disagree with the proposal to increase rates for the SC-1
23 Residential and Religious class by more than the overall average increase. This

1 proposal is entirely attributable to the Company's decision to allocate an
2 unreasonably large share of the system's costs to this class through its ECOS's
3 over-classification of costs as "customer-related." Because this class has so
4 many small customer accounts it is burdened with a disproportionate share of the
5 disputed costs. Conversely, this class is shown to be generating the highest
6 return of all the customer classes under both of our ECOS studies, suggesting
7 that these customers should be given a smaller percentage increase, rather than
8 a larger one.

9 Second, we disagree with the manner in which the incremental revenue
10 requirement attributable to Advanced Metering Infrastructure (AMI) is handled in
11 the JP. While the JP does not explicitly discuss this issue, it appears to implicitly
12 place most of the burden of AMI on small customers – those who are currently
13 paying the highest delivery rates. The Commission has indicated that AMI cost
14 recovery should be determined during rate cases. Yet, a substantial portion of
15 the incremental revenue requirement in the JP is directly attributable to AMI and
16 the JP is silent as to the manner in which this portion will be recovered.

17 The JP does not explain how AMI is being handled, but in the absence of
18 an explicit allocation methodology, it appears the JP is implicitly allocating the
19 AMI-related revenue requirement in proportion to delivery revenues. This
20 effectively forces small customers to bear the brunt of the AMI cost burden,
21 because these customers pay the highest delivery rates. This is not appropriate,
22 since most of the benefits of AMI will flow to much larger customers, who are
23 paying relatively low delivery rates.

1 We strongly disagree with this aspect of the JP, and agree with the
2 approach recommended by the UIU Electric Rates Panel. The incremental
3 revenue requirements associated with AMI should be allocated to customers
4 based upon the flow of benefits to AMI. The flow of benefits is not proportional to
5 delivery rates or revenues. To the contrary, many of the AMI-related benefits will
6 flow to the Company's largest customers. For example, these customers will
7 experience the greatest savings attributable to reductions in the commodity
8 portion of their bill, and they are in the best position to reap the full benefit of the
9 wealth of information that will be provided by AMI. Accordingly, we agree with
10 the recommendation of the UIU Electric Rates Panel to allocate the AMI-related
11 portion of the revenue requirement in proportion to energy usage. We have used
12 this approach in developing all of the illustrative rates and typical bill comparisons
13 included in our Exhibits.

14
15 Q. What are your recommendations concerning revenue allocation?

16 A. We recommend the Commission reject the revenue allocations included in the
17 JP, because they are heavily biased against small customers to the benefit of
18 larger customers. We recommend the revenue allocation be based upon a more
19 reasonable approach to cost allocation, as we discussed above. Assuming this
20 is done, the Commission should make reasonable progress toward reducing
21 some of the substantial deviations that exist in individual class rates of return
22 relative to the overall system average.

1 If a customer class currently pays relatively high rates, and this translates
2 into a class rate of return that is far higher than the overall system average, the
3 Commission should make an effort to constrain the rate increase imposed on
4 those customers. For example, Con Edison's SC-1 Residential and Religious
5 Non-Heat customers are paying very high effective rates per therm, as shown on
6 Schedule 3 of Exhibit ____ (UGRP-JP-1), and these high rates are resulting in a
7 very high class rate of return – 11.84% assuming the disputed costs are
8 allocated using 1 Hour Non Coincident Peak Demand, or 12.35% assuming the
9 disputed costs are allocated using Design Day Demand. Thus it would be
10 reasonable to increase rates for the SC-1 Residential and Religious Non-Heat
11 class by somewhat less than the other classes (the opposite of what is done in
12 the JP, based upon a single flawed ECOS study).

13 Similarly, if a customer group currently pays relatively low rates, and this
14 translates into a class rate of return that is significantly lower than the overall
15 system average, an effort should be made to increase rates paid by those
16 customers relative to other customers who currently pay higher rates and
17 generate a higher rate of return. For example, some of Con Edison's SC-2
18 General Service II (Heat) customers currently pay relatively low effective rates
19 per therm (particularly the largest customers in this class). As shown on
20 Schedule 3 of Exhibit ____ (UGRP-JP-1), these rates have resulted in a class rate
21 of return of just 3.23% or 2.96%, assuming the disputed costs are allocated using
22 either the 1 Hour Non Coincident Peak or Design Day Demand, respectively.

1 We also believe rate continuity is important, and believe moderation is
2 needed, to ensure no class experiences undue “rate shock.” Hence, the degree
3 to which specific rates are increased more than others will depend, to some
4 degree, on the final revenue requirement approved by the Commission, and the
5 extent to which other factors are considered by the Commission. In general, we
6 recommend trying to achieve a moderate degree of convergence toward more
7 uniform rates of return, without imposing extreme rate changes. We believe the
8 Commission can best achieve this by giving significant weight to either or both of
9 our ECOS studies, while also giving some weight to existing rate relationships,
10 as well as other relevant concerns (e.g. affordability). We strongly recommend
11 the Commission reject the revenue allocations included in the JP, because the
12 JP is heavily biased against small customers to the benefit of larger customers.

13 As mentioned earlier, to assist the Commission with striking an
14 appropriate balance amongst these various concerns, we prepared 9 Exhibits.
15 Exhibit___ (UGRP-JP-2) through Exhibit ___ (UGRP-JP-4) illustrate the effect of
16 using the JP’s revenue allocation process in conjunction with our 1 Hour NCP-
17 based ECOS study, while Exhibit___ (UGRP-JP-5) through Exhibit ___ (UGRP-
18 JP-7) illustrate the same process in conjunction with our Design Day Peak-based
19 ECOS study. Finally, Exhibit___ (UGRP-JP-8) through Exhibit ___ (UGRP-JP-
20 10) illustrate an Across the Board approach which is similar to the one used in
21 the JP in the KEDNY and KEDLI rate cases that are currently pending before the
22 Commission. This latter set of Exhibits is also similar to the revenue allocation

1 approach that was proposed by National Fuel Gas in its rate case, which is
2 currently pending before the Commission.

3 Throughout these Exhibits we assumed the AMI-related portion of the
4 revenue requirement will be allocated in proportion to therm usage, with the
5 exception of Schedule 1, where we isolate and clarify the impact of the AMI
6 portion of our recommendations. For instance, as shown in Exhibit___ (UGRP-
7 JP-4), if the AMI-related revenue requirement is implicitly allocated in proportion
8 to delivery revenues (as the JP appears to do), the rates paid by SC-1
9 Residential & Religious (Non-Heat) customers would increase by 2.53% in Rate
10 Year 3. However, if the AMI-related revenue requirement is allocated in
11 proportion to therm usage, these rates will increase by just 1.23%.

12 The impact of our AMI recommendation is most clearly delineated in
13 Exhibit___ (UGRP-JP-10). If the AMI-related revenue requirement is implicitly
14 allocated in proportion to delivery revenues, the rates paid by SC-1 Residential &
15 Religious (Non-Heat) customers would increase by 6.68% in Rate Year 3, but if
16 the AMI-related revenue requirement is allocated in proportion to therm usage,
17 and the remainder of the revenue requirement is allocated in proportion to
18 delivery revenues, these small customers' rates will increase by 5.29%. We
19 believe the latter increase is more reasonable and consistent with the purpose of
20 investing in AMI.

21

1 **VI. RATE DESIGN**2 **A. Background**

3 Q. Before delving into the details of the JP's rate design proposals and your
4 response to those proposals, can you briefly introduce this topic and explain your
5 general approach?

6 A. Yes. Although rate design is more of an art than a science, it is nevertheless a
7 very important part of the overall regulatory process. It is often in this stage of
8 the proceeding where the Commission's decisions will have the greatest short-
9 run impact on customers, and the greatest long-run impact on the Commission's
10 overall policy goals. We do not view rate design as an area where deference can
11 appropriately be given to the utility's preferences, or where "business as usual" is
12 an appropriate philosophy. The following discussion (in the context of electric
13 rates) from page 5 of the Smart Rate Design for a Smart Future issued by the
14 Regulatory Assistance Project in July 2015 is informative:

15
16 Rate design is important because the structure of prices
17 — that is, the form and periodicity of prices for the various
18 services offered by a regulated company — has a
19 profound impact on the choices made by customers,
20 utilities, and other . . . market participants. The structure of
21 rate designs and the prices set by these designs can
22 either encourage or discourage usage at certain times of
23 the day, for example, which in turn affects resource
24 development and utilization choices. It can also affect the
25 amount of electricity customers consume and their
26 attention to conservation. These choices then have
27 indirect consequences in terms of total costs and benefits
28 to society, environmental and health impacts, and the
29 overall economy.

30

1 In our view, some aspects of the JP's proposed rate structure do not
2 provide the right price signals to encourage energy efficiency and do not
3 sufficiently incentivize customers to invest in more energy efficient products
4 (such as higher efficiency water heaters and more efficient furnaces). We
5 believe reasonable steps can be taken to improve this situation, strengthening
6 the incentive for energy conservation and more effectively advancing the
7 Commission's policy goals.

8 To advance the policy goals set forth in the 2015 New York State Energy
9 Plan (system efficiency, carbon reductions, customer empowerment, and energy
10 affordability) as well as the goals underlying the ongoing REV proceeding (Case
11 14-M-0101), we recommend that the Commission steer the Company away from
12 high customer charges (or minimum bills) and low tail block rates. Together with
13 customer engagement technologies, this can better enable customers to take
14 greater control over their utility bills, and more clearly and effectively reward them
15 for investing in more insulation and energy-efficient appliances and heating
16 systems, as well as making lifestyle adjustments that enable them to use energy
17 more efficiently (e.g. using automated thermostats to adjust temperatures for
18 maximum efficiency while maintaining comfort). We will discuss some of the
19 weaknesses in the Company's existing rates, and opportunities to advance the
20 Commission's policy goals, throughout the remainder of our testimony.

21 Before going into greater detail concerning specific opportunities and
22 concerns applicable to these proceedings, it is worth noting that we understand
23 the Commission faces a difficult task, and we realize the Commission must weigh
24 the claims made by parties with widely varying perspectives. The Regulatory
25 Assistance Project explained on page 8 of the July 2015 Smart Rate Design for a
26 Smart Future paper:

1
2 A variety of stakeholder interests are at play in the debate
3 over rate design, and finding common ground is not easy.
4 Regulators face the task of fairly balancing concerns
5 among utilities, consumers and their advocates, industry
6 interests, unregulated power plant owners, and societal
7 interests. The regulator accepting the charge of
8 “regulating in the public interest” considers all of these
9 values.

10
11 For this reason, throughout our testimony we have endeavored to not focus only
12 on short-term customer impacts – although we realize those impacts are of great
13 importance to the interests of residential and small commercial customers whose
14 interests UIU represents in these rate proceedings – but to also place our
15 concerns into a broader context, which can help the Commission sort out
16 competing claims from other parties to chart a course that makes significant
17 progress toward achievement of the Commission's policy goals.

18
19 Q. Can you please elaborate?

20 A. Yes. We agree with the following statements found on page 73 in the Staff White
21 Paper on Ratemaking and Utility Business Models issued July 28, 2015 in the
22 REV proceeding:

23
24 Rate design is the process of determining how a utility's
25 revenue requirement will be recovered from customers.
26 Rate design sends price and value signals that influence
27 customer actions; the cumulative effect of many customer
28 decisions ultimately affects the cost of the system. Rate
29 design must try to prevent undue disproportionate or
30 inequitable impacts on different customers within classes,
31 and take into consideration policy objectives along with
32 technical cost causation analysis. For those reasons, rate
33 design requires a balancing among multiple objectives,
34 principles, and interests.

1
2 Traditionally, rate design has focused on the allocation of
3 system costs to customers, assuming a uni-directional
4 electric system designed around inelastic demand, with
5 one-sided transactions between utilities and customers.
6 While this approach has been effective historically,
7 technological advances mean that the assumptions behind
8 that approach no longer hold in their entirety.

9
10 Although written with a view toward electric utilities, these statements also
11 have relevance to gas utilities, and the rate design issues we will be discussing in
12 our testimony. Sufficient for the moment is to cite but one example: the goal of
13 empowering customers to have greater control over their utility bills (a goal which
14 tends to conflict with the past tendency in New York to accept proposals by
15 utilities to keep increasing the fixed customer charge). Regardless of the
16 motivations behind that past trend – which may have included the desire to
17 recover fixed costs through fixed rates, ensure revenue stability for the utilities, or
18 take advantage of inelastic demand by imposing rate increases on the rate
19 elements that are perceived as having the lowest price elasticity – this trend was
20 in direct conflict with the goal of empowering customers to exercise greater
21 control over their utility bills, as well as the broader national goal of encouraging
22 energy efficiency.

23 As the Commission stated on page 55 of the Order Adopting Regulatory
24 Policy Framework and Implementation Plan, issued February 26, 2015 in the
25 REV proceeding, pertaining to customer engagement: “Staff notes that the
26 majority of customers in New York currently lack the information, products,
27 technologies, and incentives to fully participate in energy markets and take
28 control of their monthly electricity bills.” Overcoming those obstacles is a
29 worthwhile goal that also has relevance to gas utilities.

1 Fortunately, the JP seems to be taking at least one step toward advancing
2 this goal – it does not propose to increase most of the existing fixed customer
3 charges (i.e., those portions of the utility bill that cannot be avoided no matter
4 how much a customer conserves energy). We will discuss this aspect of the JP’s
5 proposals in depth later in our testimony; for now, it is sufficient to point out that
6 whenever the Commission increases the fixed element of the bill and reduces the
7 volumetric energy delivery rate (which can potentially be avoided by conserving
8 energy), it reduces the customer’s ability and incentive to control his or her
9 monthly gas bill. As we will explain later in our testimony, customer charges are
10 already at very high levels in New York, and any further increase in this rate
11 element would tend to undermine one of the Commission’s stated goals, as
12 articulated in the REV proceeding.

13 We strongly believe that the public interest can best be advanced by
14 heading in the opposite direction. While a slow and gradual process may be
15 more appropriate than immediately implementing all of the changes that may
16 ultimately be needed, there are benefits to at least beginning to move toward
17 lower fixed charges and higher tail block rates. By decreasing the fixed part of
18 the bill and increasing the variable part (the per-therm rate – particularly in the tail
19 block), the Commission can provide a stronger incentive for customers to fully
20 participate in energy markets, and a stronger incentive to learn about energy
21 efficient products and technologies. Restructuring tariffs to move away from high
22 customer charges and increasing the delivery rates is the first step to move
23 towards a rate structure that better advances the goals of REV, more fully
24 embraces New York State’s long term energy efficiency policies, and advances
25 the broad public interest.

26

1 **B. Customer Charges and Volumetric Delivery Rates**

2 Q. What does the JP propose with respect to customer charges and volumetric gas
3 rates for residential and small commercial customers?

4 A. As shown on Schedule 4 of Exhibit ____ (UGRP-JP-1), in its initial filing the
5 Company proposed to keep most existing customer charges at the current level, and
6 the JP follows suit. An important exception is the SC-1 Residential and Religious
7 customer charge, which the JP proposes to increase from \$18.60 to \$19.75 in Rate
8 Year 1, \$21.75 in Rate Year 2, and \$23.70 in Rate Year 3. The JP does not include a lot
9 of detail concerning the volumetric rates that would be charged in each block of each
10 tariff, but it appears the intent is to increase the volumetric rates by a relatively uniform
11 percentage within each class, to achieve recovery of the revenue requirement allocated
12 to that class. .

13 Q. Do you agree with the JP's customer charge and volumetric rate design
14 proposals?

15 A. Not entirely. We agree with the JP's proposal to leave many of its customer
16 charges unchanged. However, we think it is feasible to slightly reduce some of
17 the customer charges in the first Rate Year and we don't think it is necessary to
18 increase the SC 1 customer charge.

19
20 Q. How do the Company's customer charges compare to those in other
21 jurisdictions?

22 A. In May 2015, the American Gas Association published a report that concluded
23 that the nationwide median residential customer charge was just \$11.25 per
24 month, and the median rate for commercial customers was just \$22 per month.
25 As shown in the table below, the data in this report suggest the Company (and

1 other New York gas utilities) have some of the highest customer charges in the
 2 United States – the result of an upward trend that which may have had some
 3 appeal for New York utilities, as it helps maintain stable revenues, but which we
 4 believe conflicts with many of the Commission's policy goals (including goals set
 5 forth in REV order) as well as the broader goal of achieving just and reasonable
 6 rates that treat both small and large customers fairly.

7
 8 **Table 2**
2015 Natural Gas Utility Median Monthly Customer Charges by Census Region

Census Region	Residential	Commercial
New England	\$ 13.50	\$ 28.41
Middle Atlantic	\$ 14.60	\$ 23.60
East North Central	\$ 11.38	\$ 24.00
West North Central	\$ 13.16	\$ 24.40
South Atlantic	\$ 10.00	\$ 22.00
East South Central	\$ 14.00	\$ 16.96
West South Central	\$ 13.24	\$ 18.51
Mountain	\$ 10.80	\$ 20.00
Pacific	\$ 4.95	\$ 14.90

14
 15 Q. Gas utilities sometime argue that a fixed monthly fee is the correct way to
 16 recover costs that are fixed. How do you respond to this argument?

17 A. While we concede there is some intuitive appeal to this argument, it is more of a
 18 pricing tactic than a goal. Utilities sometimes advocate increasing fixed rates, or
 19 matching fixed rates to fixed costs, because it provides a more stable and
 20 predictable revenue stream. However, it does not advance the public interest,
 21 and it is not an appropriate policy goal. To the contrary; we believe it leads to
 22 prices that are inconsistent with the public interest. In particular, higher fixed
 23 rates make it harder for customers to control their monthly bills, they reduce the
 24 incentive for improving energy efficiency, and they shift more of the cost burden
 25 on small customers, who gain less benefit from the system and should not be
 26 expected to contribute as much to these sorts of fixed costs as larger customers.

1

2 Q. Gas utilities also sometimes argue that customer charges should be increased,
3 to be more closely aligned with cost. How do you respond to this argument?

4 A. We disagree for several reasons, including the fact that the relevant costs are
5 lower than what is shown in the Company's gas ECOS study. For the reasons
6 discussed earlier, we do not think any portion of the cost of distribution mains
7 (Account 367) should be treated as customer-related or recovered through
8 customer charges. We also disagree with the assumption that the cost of
9 services (the line that connects a customer to the distribution main) should be
10 recovered as a flat monthly charge. While the cost of services (unlike the cost of
11 distribution mains) varies directly with the number of buildings connected to the
12 system, it does not necessarily vary with the number of customer accounts
13 (especially in New York City, where a very high number of residential customers
14 live in multi-unit buildings), nor is there any need to recover these costs through
15 the customer charge or the initial delivery block rate.

16 While we concede the investment in services is a fixed cost that doesn't
17 vary from month to month, at the time it is engineered and placed into service,
18 the investment does vary with the anticipated demand (the maximum rate at
19 which gas is expected to be delivered through the service) during its economic
20 life. The causation of this cost is therefore dependent in part on demand for
21 energy. Furthermore, in many cases, a single service line will be used by all of
22 the customers in a particular building – so the less capacity that is used by any
23 one customer, the more capacity that will be available for use by the other
24 customers in that building. In general, we think it is more logical and appropriate
25 to analyze and recover the cost of services on a per-therm basis, rather than
26 construing it as a customer cost.

1

2 Q. How do the Company's gas customer charges compare to its customer costs?

3 A. Schedule 5 of Exhibit ____ (UGRP-JP-1) compares Con Edison's customer
4 charges to its customer costs, based upon the Company's ECOS study,
5 excluding distribution gas mains and services. As shown, in all cases the
6 customer costs are lower than the current or proposed gas customer charges.
7 For example, as shown on Page 1 of Schedule 5 of Exhibit ____ (UGRP-JP-1), for
8 SC-1 Residential and Religious Non-Heat customers, Con Edison's current
9 customer charge of \$18.60 and the JP's proposed increases to \$19.75, \$21.75
10 and \$23.70 in Rate Years 1, 2 and 3 (respectively) are all higher than the
11 corresponding customer cost, which is just \$7.96 per month. Similarly, as shown
12 on Page 1 of Schedule 5 of Exhibit ____ (UGRP-JP-1), Con Edison's current and
13 proposed customer charge of \$20.40 for the SC-3 Residential and Religious
14 (Heat) is higher than the corresponding customer costs, which is just \$15.70 per
15 month.

16 A similar discrepancy exists for both of the Company with respect to the
17 SC-2 General Service customers. The current and proposed rate of \$30.45
18 exceeds the monthly customer cost of \$22.75 for Rate I and \$23.20 for Rate II.

19

20 Q. What are your recommendations pertaining to gas customer charges and
21 volumetric delivery block rates for residential and small commercial customers?

22 A. We recommend the Commission not increase the Company's fixed monthly
23 charges for any customers. The proposed revenue increase should be collected
24 exclusively through increases in these customers' delivery volumetric rates.
25 Given the JP revenue requirement, we believe it would be appropriate to
26 moderately lower the fixed monthly charges in Rate Year 1, rather than

1 maintaining them at their current levels – since the current customer charges
2 exceed the corresponding customer costs. For similar reasons, it would also be
3 appropriate to take some modest steps toward a block structure that declines
4 less steeply, particularly for small commercial customers. In general, if the
5 revenue requirement approved by the Commission is consistent with, or lower
6 than the level reflected in the JP, we believe the Company's rate design for most
7 classes can be improved by increasing the tail block rate and lowering the
8 customer charges at least a small amount.

9 By slowly transitioning rates in the direction we recommend, with less
10 emphasis on the customer charge and greater emphasis on recovering revenues
11 through the tail block, the Commission can avoid rate shock and gradually move
12 toward rates that better incentivize customers to conserve energy. This will be
13 more consistent with other policies which are intended to encourage greater
14 energy efficiency (e.g., outreach and customer education to encourage better
15 weatherization; rebates for the installation of high efficiency heating systems),
16 and will treat small commercial customers more equitably relative to larger
17 commercial customers served under the same rate schedule. We took a few
18 small steps in this direction in developing the illustrative rates included in our
19 Exhibits.

20
21 Q. Do you have any other recommendations pertaining to gas customer charges
22 and volumetric rates?

23 A. Yes. We recommend the Company implement a detailed study to better
24 understand residential and small commercial usage behavior, including the
25 various factors that impact residential bills and customer reactions to those bills.
26 The study should include a comprehensive review of the Company's residential

1 and small commercial gas load characteristics that can be used to develop
2 alternative rate design structures. Although our proposal incorporates a modest
3 redesign of the Company's residential and small commercial rate structures, we
4 recommend that the Company implement a detailed study to assist in evaluating
5 the end point of the transition – for instance, should all tail block rates be higher
6 than early block rates, and if so, by how much? The study should also evaluate
7 various factors that impact customer usage and pricing, such as customer usage
8 patterns, weatherization and installation of energy efficiency products, price
9 elasticity, block rate differentials, housing stock, affordability, bill impacts (low
10 income, median income, and all other customers), and weather sensitivities.

11
12 **C. Non-Firm Gas Rates**

13 Q. Would you please briefly explain how the Company's non-firm gas rates (i.e.,
14 SC12 Rate I, SC12 Rate II, etc.) differ from its firm gas rates?

15 A. Non-firm customers have not been analyzed and established in the same way as
16 the rates paid by regular firm customers. Non-firm gas customers were not
17 included in the Company's gas ECOS study, and their rates were not developed
18 on a cost-of-service basis. The Company has historically been given
19 considerable discretion to negotiate or establish "market-based" rates for non-
20 firm customers, because they often have the option of using an alternative fuel
21 (typically fuel oil), subject to some general constraints established by the
22 Commission.

23 This ratemaking treatment was briefly discussed in the testimony of the
24 Company's Gas Rate Panel:

1
2 Firm gas customers pay rates for delivery service that are
3 designed to recover the full cost of the Company's
4 distribution facilities. Non-firm gas customers use the
5 Company's gas delivery system when there is capacity
6 available in excess of firm gas customer requirements.
7 Because firm customers have a first call on the use of this
8 delivery capacity, non-firm customers pay discounted
9 delivery rates. However, the rate charged for non-firm
10 service should be set so that non-firm customers pay fair
11 value for the service they receive.

12
13 (pre-filed Direct Testimony of Con Edison Gas Rate
14 Panel, pp. 48-49.)

15
16 Consistent with the exclusion of these classes from the Company's gas
17 ECOS study, non-firm customers have not been allocated or assigned any
18 specific share of the Company's overall revenue requirement. Instead, firm
19 customers have been responsible for meeting the entirety of the Company's gas
20 revenue requirement, and then revenues received from non-firm customers have
21 been treated as an ancillary source of income, which is used as an offset to that
22 revenue requirement.

23

1 Q. Are the Company's non-firm rates relatively low, compared to rates paid by other
2 customers?

3 A. Yes. These rates are well below the analogous rates paid by firm customers,
4 and they are less than the rates that would maximize non-firm revenue margins
5 for the benefit of firm customers. In other words, there is room to increase these
6 rates without risking the loss of contribution from these customers due to bypass
7 (obtaining gas from a different source) or switching to an alternative fuel.

8 As shown on Exhibit__(UGRP-JP-1) Schedule 3, firm customers obtaining
9 gas pursuant to the regular tariffs are typically paying an average effective rate of
10 50 cents per therm (or more) for delivery service. As shown on Exhibit__(UGRP-
11 JP-2) Schedule 4, even the largest firm customers (who pay some of the lowest
12 regular rates) are paying approximately 30 cents per therm for gas delivery under
13 the JP's proposed rates. The rates paid by non-firm customers for gas delivery
14 are much lower, and the JP does nothing to reduce this discrepancy.

15 For example, customers whose estimated annual use of gas is at least 1
16 million therms, and who obtain gas using the Company's SC12 Rate II Off-Peak
17 Firm delivery service, currently pay a fixed rate of just 8 cents per therm. And
18 this rate is reduced to 7 cents per therm for monthly usage in excess of 500,000
19 therms per month. The Company originally proposed to increase these rates to
20 11.5 cents and 10.5 cents per therm, respectively. (Direct Testimony of Con
21 Edison Gas Rate Panel, pp. 47-48.) Even with the Company's original proposed
22 increase, these rates provide an effective discount of roughly 85% off the rate
23 paid by the average firm customer and an effective discount of roughly 65% off
24 the rate paid by the largest firm customers paying the regular SC-2 tariff rate.

1 Yet, the signatories to the JP negotiated even more favorable treatment for these
2 customers. Under the JP, these large, non-firm customers will not have their
3 rates increased at all in Rate Year 1, and the increases in Rate Years 2 and 3
4 are just a fraction of a cent – far less than is being required of the firm customers.

5

6 Q. From the perspective of economic theory, are there benefits to having some
7 customers that have dual-fuel capability, or are otherwise willing and able to have
8 their service interrupted?

9 A. Yes. Just as there are economic benefits when a utility system serves a diverse
10 mix of customers with loads that peak at different times, there are benefits to
11 serving both firm and non-firm customers on the same system. By turning some
12 customers off-line during peak periods, capacity is freed up for the use of other
13 customers. In general, when some customers can be interrupted or curtailed
14 during times when the system is congested, it becomes feasible to use a limited
15 amount of system capacity to serve more firm customers, or it becomes feasible
16 to provide a given set of firm customers with reliable service using a smaller, less
17 expensive system.

18 Interruptible and curtailable services have the potential to be a win-win
19 arrangement for everyone – the interruptible and curtailable customers benefit
20 from lower rates, and firm customers benefit from having more capacity available
21 to serve their needs during peak periods – thereby keeping system costs and
22 customer bills lower they would be if everyone received firm service. The extent
23 to which this arrangement benefits firm customers depends upon how congested

1 the system is (i.e., how close the firm load comes to exceeding available system
2 capacity), how costly it would be to increase capacity to relieve the congestion,
3 and the amount of revenue contributed by the non-firm customers (i.e., how
4 much firm rates are reduced due to the arrangement).

5 The extent to which this arrangement benefits non-firm customers
6 primarily depends on the magnitude of the discount they receive, relative to the
7 firm rate they would otherwise pay (assuming they would qualify for firm service),
8 or the magnitude of the savings they achieve by using non-firm gas service
9 rather than an alternative fuel, net of the additional costs they incur in order to
10 qualify for the rate (e.g. maintaining dual fuel capability, or shutting down their
11 operations during peak periods).

12

13 Q. To your knowledge, has the Commission endorsed the viewpoint that firm
14 customers should benefit from non-firm customers using the gas distribution
15 system?

16 A. Yes. We are not aware of any recent cases in which the Commission has
17 opined on the optimal pricing of curtailable and interruptible service. However,
18 the Commission has recognized that firm customers should receive the bulk of
19 the financial benefit when non-firm customers use that system, thereby helping to
20 offset some of the cost burden. As the Company's Gas Rate Panel notes in its
21 testimony, in a 1995 decision involving Long Island Lighting Company, the
22 Commission agreed that a pricing proposal designed to "maximize interruptible
23 revenue margins for the benefit of core firm service customers, is consistent with

1 established policy and practice and with the Commission's Opinion No. 94-26 in
2 the gas restructuring proceeding.” (Case 94-G-0786, Recommendation of
3 Department of Public Service dated April 27, 1995, Approved as Recommended
4 May 12, 1995, at p. 9.)

5 Opinion No. 94-26, among other things, established the principle that
6 interruptible transportation service is considered to be a “Non-Core Market”
7 service. (Case 93-G-0932, Opinion No. 94-26 (issued December 20, 1994) at p.
8 16.) That decision also placed some limits on the gas distribution utilities' pricing
9 discretion with respect to maximizing revenues from Non-Core Market services.
10 In particular, the Commission decided to “leave unchanged the prevalent policy
11 of setting the upper limit for the price of market-priced non-core service equal to
12 the rate (or net-of-gas margin) for the core service that would otherwise be
13 taken.” (*Id.* at p. 26.)

14
15 Q. Can you please elaborate on what Con Edison originally proposed with regard to
16 non-firm gas rates in this proceeding?

17 A. The Company proposed to increase SC12 Rate II Off Peak Firm rates by
18 approximately 3 cents per therm, which it describes as being “commensurate, on
19 a percentage basis, with the increase in firm rates . . . since the inception of the
20 off-peak firm rate.” The Company’s Gas Rate Panel explains:

21
22 ...the non-firm rate has not been adjusted in many years,
23 during which time firm gas rates have increased as has
24 the cost of the facilities used to provide service to non-firm
25 customers. Moreover, the Company believes that in
26 recent years the value of gas transportation service has

1 increased and it seems reasonable that the contribution to
2 the cost of facilities by non-firm customers to firm
3 customers should reflect that higher benefit.
4

5 (Direct Testimony of Con Edison Gas Rate Panel, pp. 48-
6 49.)
7

8 As mentioned above, in support of this proposal, the Company's Gas Rate
9 Panel quoted from a 1995 Order involving Long Island Lighting Company, in
10 which the Commission concurred with the stated goal of maximizing interruptible
11 revenue margins "for the benefit of core firm service customers, [which is]
12 consistent with established policy and practice and with the Commission's
13 Opinion No. 94-26 in the gas restructuring proceeding." (Case 94-G-0786,
14 Recommendation of Department of Public Service, supra, at p. 9.)
15

16 Q. What does the JP propose concerning non-firm gas rates?

17 A. The JP proposes that SC12 Rate 2 rates will remain during RY 1 at 8 cents per
18 therm. In Rate Year 2 this will increase by 0.25 cents to 8.25 cents and in Rate
19 Year 3 it will increase by another 0.50 cents, to 8.75 cents per therm. (See JP at
20 70) These are very small increases on rates that are already well below the
21 value of the service being provided to these customers.
22

23 Q. What do you recommend concerning non-firm gas rates?

24 A. Considering the unique characteristics of interruptible and curtailable service, we
25 believe it is reasonable to continue to use value-of-service as the primary basis
26 for setting these rates. We also believe it is appropriate to continue to offer these

1 customers a discount relative to the rate they would pay if they were to receive
2 firm service. We have seen no evidence that indicates the existing discounts are
3 too small, or need to be significantly increased – either to ensure these
4 customers are treated fairly, or to discourage them from switching to an
5 alternative fuel.

6 Since two of the main criteria for setting non-firm gas rates are to ensure
7 that a reasonable discount is offered for non-firm service relative to the
8 analogous rates charged for firm service, and ensuring that a reasonable
9 contribution is provided by non-firm customers for the benefit of firm customers, it
10 would be logical and reasonable to increase the rates charged non-firm
11 customers at the same time that rates are being increased for firm customers.

12 While we understand the tradeoffs that are involved with reaching a
13 negotiated settlement, we are troubled by the inordinately favorable treatment
14 given to large customers receiving gas delivery under SC12 Rate 2. These
15 customers are currently receiving discounts equivalent to 75% or more relative to
16 the rates paid by other customers under the standard tariffs, and these heavily
17 discounted rates have not kept pace with recent changes in the value of the
18 service being provided (e.g. considering the cost of natural gas relative to other
19 fuels). Under these circumstances, we disagree with the decision to completely
20 exempt these customers from any increase in Rate Year 1, and to increase their
21 rates by less than a penny a therm during Rates Years 2 and 3. In sum, we
22 recommend the Commission consider increasing non-firm rates to a moderate

1 extent beyond that reflected in the JP, while maintaining a reasonable discount
2 relative to firm service.

3

4 Q. Does this conclude your direct testimony in response to the JP, which was
5 prefiled with the Commission on October 13, 2016?

6 A. Yes.

1
2 (The following is the continued
3 testimony in the captioned matter in this
4 evidentiary hearing.)

5 ALJ LECAKES: Mr. Zimmerman, were
6 there any exhibits attached to that testimony?

7 MR. ZIMMERMAN: Yes, your Honor.
8 There are ten exhibits, UGRP-JP-1 through
9 UGRP-JP-10.

10 ALJ LECAKES: And I believe that on
11 the exhibit list I circulated prior to the
12 hearing we've marked those for identification
13 in the hearing as Exhibits 176 through 185.

14 MR. ZIMMERMAN: Your Honor, to that
15 list -- I'm trying to pull it up right now --
16 we have one small correction. The first
17 exhibit premarked as Exhibit No. 176 is
18 fourteen pages in length, not fifteen. There's
19 a misnumbered detail there.

20 ALJ LECAKES: Thank you. I will
21 correct that number.

22 MR. ZIMMERMAN: And I move to have
23 these exhibits entered into the record.

24 ALJ LECAKES: They'll be entered in
25 with the rest of the today's exhibits at the

1
2 end of today's hearing. I have New York City,
3 Ms. Trinsey, Mr. Diamantopoulos?

4 MR. LANG: Your Honor, before we go
5 to cross, just one very quick observation. My
6 apologizes, earlier when I made references to
7 exhibit numbers during my cross-examination of
8 the prior panel, it appears I was making
9 reference to exhibit numbers for the gas and
10 not the electric exhibits.

11 ALJ LECAKES: That might have been
12 with my additional support.

13 MR. LANG: So I don't know if, when
14 we get a transcript, if you want me to just
15 correct it with the correct exhibit numbers.

16 ALJ LECAKES: If necessary, we'll
17 understand that the electric rate panel
18 exhibits, UERP-JP-1 through UERP-JP-10, were
19 actually identified as Exhibits 165 through 174
20 for today's hearing. So to the extent that we
21 were making references to exhibit 176 to 185,
22 those were incorrect, it should be within the
23 166 to 174 range.

24 MR. LANG: My apologizes, your Honor.

25 ALJ LECAKES: Not a problem.

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2 MR. ZIMMERMAN: Thank you. The panel
3 is ready for cross-examination.

4 ALJ LECAKES: Mr. Diamantopoulos.

5 MR. DIAMANTOPOULOS: Good afternoon,
6 your Honor. Good afternoon, panel.

7 DR. JOHNSON: Good afternoon.

8 MR. DIAMANTOPOULOS: I'm going to try
9 not to ask some of the same questions I asked
10 of the first panel because I think some of the
11 answers that you gave earlier, Ms. Panko, apply
12 to this panel as well.

13 My first question is directed to you,
14 Mr. Johnson. When were you retained by UIU as
15 a consultant for this rate case?

16 DR. JOHNSON: Spring of 2016. I
17 don't recall the exact date.

18 MR. DIAMANTOPOULOS: Were you also
19 retained for the electric case, the
20 accompanying electric case as well? Because, I
21 don't know if you were here earlier, did you
22 hear about the RFQs that were issued by UIU for
23 the various -- there was seven or eight of them
24 or something like that.

25 DR. JOHNSON: Yes.

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2 MR. DIAMANTOPOULOS: So your
3 retention, was that in response to one or more
4 of those RFQs?

5 DR. JOHNSON: We were contracted to
6 assist with the cases. They, Daymark, focused
7 primarily on electric. My firm, myself,
8 focused primarily on gas. There was some
9 overlap from time to time, the most example
10 being there was an issue that was handled by
11 another panel that I was part of in the
12 original litigation involving the allocation
13 cost in between gas and electric.

14 MR. DIAMANTOPOULOS: Mr. Johnson, am
15 I correct that you were retained by UIU to
16 ensure its foremost objective, to ensure the
17 protection of New York's residential and small
18 commercial consumers' interests?

19 DR. JOHNSON: I do understand the UIU
20 has a concern in that area. We disclosed to
21 them the fact that my firm does a lot of work
22 for large industrial customers. They were
23 fully aware of that, it never seemed to trouble
24 them. We certainly, throughout this process,
25 were very clear on my views as to various cost

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2 allocation and other issues, and at no time did
3 I get the impression that primary focus of
4 theirs was to the exclusion of all other
5 factors.

6 MR. DIAMANTOPOULOS: Would you agree
7 that a condition to your retention, based on
8 the RFQs that were issued by UIU, was that
9 their foremost objective, as indicated in their
10 RFQs, was to ensure the protection of New
11 York's residential and small commercial
12 consumers' interests?

13 MR. ZIMMERMAN: Objection. If
14 Counsel is asking for the conditions of
15 Dr. Johnson's retention, I mean, those are a
16 matter for UIU management and/or the
17 contractor.

18 ALJ LECAKES: I agree, and I also
19 think that the question is not substantially
20 different from the previous one. I understand
21 what the RFQ request is in this case. I
22 understand that that is an expectation that was
23 placed, at least by UIU, on the product it
24 would receive. I think we've gone over this
25 area substantially with the electric rates and

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2 I will take it as part of the record that it
3 applies equally to the gas rates panel here.

4 MR. DIAMANTOPOULOS: Thank you, your
5 Honor.

6 Is it true, panel, that most of the
7 utilities cost must be allocated to the
8 customer classes on the basis of an allocation
9 process that reasonably attributes costs on the
10 basis of cost causation?

11 DR. JOHNSON: I don't think I have
12 any disagreement with that statement. Was the
13 word "must be?" The first part of it, I want
14 to make sure I understood.

15 MR. ZIMMERMAN: Could you restates
16 the question?

17 MR. DIAMANTOPOULOS: Yes, I did say
18 must be.

19 DR. JOHNSON: Whether it must be or
20 not depends on the document it was taken from.
21 There may be some states where it's mandated,
22 other states it's discretionary on the part of
23 the Commission. But in general, this principle
24 of cost causation is pretty universal in most
25 proceedings I've been involved in.

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MR. DIAMANTOPOULOS: Thank you.

Am I correct that all utilities are not required to perform cost of service studies in exactly the same way?

DR. JOHNSON: Typically commissions use cost of service studies as a tool. It's often one of the most important tools they use. They often can receive several different studies, including the one from the company. Typically they would not mandate the company to use a particular methodology. The commission will then typically use that results or ignore the results or reject them, or through various process of feedback and orders they may indicate that they generally like the result but they disagree with the specific aspects of it, but throughout that process, the typical situation is the utility continues to have discretion to advocate whatever cost allocation methodology it prefers.

MR. DIAMANTOPOULOS: Am I correct that the cost of service studies are not simply arithmetic exercises and they require the exercise of judgment by the analysts performing

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them?

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DR. JOHNSON: Yes, very true.

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MR. DIAMANTOPOULOS: Is it correct that when doing an embedded cost of service study allocation that dollars are allocated only to classes with an initial deficiency?

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DR. JOHNSON: No, that doesn't sound correct to me. There may be some context where that happens, but that doesn't normally describe the process.

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MR. DIAMANTOPOULOS: Is it correct to stay that classes that have surpluses where there's been a cost of service study do not receive decreases?

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DR. JOHNSON: I don't think you can say that. I think it varies. You seem to be conflating two or three different things. There are a bunch of different steps in the process. As was briefly alluded to earlier, you typically have cost studies filed by one or more parties, those are evaluated by the commission and uses its discretion to how much weight to give those studies, and through that process it ultimately allocates the revenue

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2 requirement.

3 If you're in a case where there's a
4 rate reduction, for example, you may
5 concentrate -- the Commission may put more of
6 the reduction onto classes that the evidence
7 from multiple studies all indicate have
8 surpluses or have high rates of return. That
9 would be one example that would be the opposite
10 of what you're suggesting where you actually
11 would have reductions due to evidence about
12 surpluses.

13 More typically, you're dealing with a
14 rates increase and the information coming out
15 of various studies is used and the Commission,
16 using its discretion in deciding how much to
17 increase the various classes, sometimes they'll
18 use it across the board percentage increase for
19 all classes, other times they'll increase some
20 classes more than others, and the information
21 from the cost studies would typically be a
22 factor considered in doing that.

23 There could be other things as well,
24 public interest, a class like NYPA or MTA or
25 something like that, might conceivably get a

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2 lesser increase because of concerns of broader
3 public welfare, depending on the state. But,
4 again, the surpluses are simply a tool used in
5 that process by the Commission.

6 MR. DIAMANTOPOULOS: You have
7 familiarity with how the New York State Public
8 Service Commission does these?

9 DR. JOHNSON: Yes, and I've seen
10 different instances and different cases, both
11 those that I've personally been involved and in
12 records that I've reviewed or orders that I've
13 reviewed.

14 MR. DIAMANTOPOULOS: We can even
15 narrow it down a little bit more, you actually
16 have experience with a Con Edison cost of
17 service studies in the 2013 case; is that
18 correct?

19 DR. JOHNSON: Yes, as well as the
20 process that was used in that settlement of
21 that case to resolve revenue allocations.

22 MR. DIAMANTOPOULOS: And that
23 experience in the 2013 case was both in
24 electric and gas; is that correct?

25 DR. JOHNSON: Yes.

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2 MR. DIAMANTOPOULOS: I'd like to ask
3 you now some questions about the non-firm
4 rates.

5 DR. JOHNSON: Okay.

6 MR. DIAMANTOPOULOS: Am I correct
7 that the rates paid by Con Edison's firm gas
8 customers and Con Edison's non-firm customers
9 is not an apples to apples comparison because
10 non-firm customers only use the company's gas
11 delivery system when there is capacity
12 available on the system in excess of firm gas
13 customer requirements?

14 DR. JOHNSON: There's a lot there. I
15 think the essence of the question is they're
16 not comparable and I'm not sure that's the way
17 I want to put it. I think they are comparable
18 from customers' perspective. They can look at,
19 Do I want to pay eight cents or do I want to
20 pay 40 cents, and they can look at the quality
21 of service or the value of service, however
22 they might phrase it, and judge whether that
23 discount is sufficient to make up for the fact
24 that there might be a few hours of the year or
25 a few days of the year that would have to do

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2 without gas service. The more important the
3 gas service is to the operation of the company
4 or the customer, the more likely they would opt
5 for an interruptible service.

6 MR. DIAMANTOPOULOS: Okay, but Con
7 Edison doesn't treat the two the same, does it?

8 DR. JOHNSON: They do not treat them
9 the same in the way they go about their rate
10 setting process and negotiating process.

11 MR. DIAMANTOPOULOS: In fact, the
12 company does not use non-firm customers in its
13 cost of service statements; is that correct?

14 DR. JOHNSON: That's correct. That's
15 something I agree with.

16 MR. DIAMANTOPOULOS: Am I correct
17 that the fair value of non-firm customer rates
18 may properly be set by signatory parties to the
19 joint proposal, which includes the utility and
20 which contains compromises among those
21 signatory parties on a wide variety of issues?

22 MR. ZIMMERMAN: Could you restate the
23 question, I honestly couldn't understand.

24 MR. DIAMANTOPOULOS: Sure. Am I
25 correct that the fair value of non-firm

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2 customer rates may properly be set by signatory
3 parties to a joint proposal, which includes the
4 utility and which contains compromise among
5 those signatory parties on a wide variety of
6 issues?

7 MR. ZIMMERMAN: Objection. It calls
8 for a conclusion of rates set by the
9 Commission.

10 ALJ LECAKES: In some ways the
11 objection is correct, but I don't think
12 Mr. Diamantopoulos was asking whether the
13 settlement that results from those compromises
14 necessarily has to be accepted by a Commission,
15 just whether it's a proper procedure to engage
16 in negotiations and settle out the fair value,
17 and that's the way I understood the question;
18 is that correct, Mr. Diamantopoulos.

19 MR. DIAMANTOPOULOS: It is, your
20 Honor.

21 DR. JOHNSON: Well, procedurally,
22 having issues be resolved through settlement is
23 not uncommon. It seems to be a bit more
24 pervasive in New York than the other states
25 I've worked in; I've worked in a lot of other

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2 states. The process ultimately, though, even
3 in a state like New York where the parties
4 resolve many of these issues in a package
5 that's presented to the Commission, the
6 Commission still has the discretion, from what
7 I have been able to observe, to reject the
8 entire package or any element of it and I've
9 seen that in operation. I've seen it in the
10 actual proceedings that I was involved in, I
11 was working with.

12 So the difficulty becomes when you
13 have a group of parties that focus on one
14 particular compromise, and that may be exactly
15 what the Commission would have preferred, the
16 Commission ultimately has to decide whether to
17 defer to the judgment of the parties it
18 negotiated or whether it should step in. When
19 you get the cumulative affect over multiple
20 years, that concern might grow. In this
21 particular case, we have a situation with
22 interruptible rates where hopefully the
23 Commission will notice what's been happening
24 and focus on that and use its own judgment to
25 decide whether the lack of increases for those

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2 customers and very low rates for those
3 customers are the very best resolution of the
4 case.

5 MR. DIAMANTOPOULOS: Panel, am I
6 correct that the fair value of non-firm
7 customer rates agreed to in the joint proposal,
8 which includes in rates for rate years two and
9 three is within the range of litigated outcomes
10 in this case?

11 MR. ZIMMERMAN: Objection. That's
12 asking for a conclusion.

13 ALJ LECAKES: I agree, sustained.
14 It's calling for a legal conclusion on the
15 interpretation of the how the Commission would
16 view DD outside files of a litigated case. And
17 on top of that, the litigated case itself has
18 not been put forward, so it's hard to tell.
19 Judge Wiles and I have to make that decision
20 where we make the recommendation to the
21 Commission and I think we can leave it at that
22 as to whether we believe that without hearing
23 the opinions of a panel on that.

24 MR. DIAMANTOPOULOS: Okay. I'll get
25 the information I need in another way, your

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2 Honor.

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4 Am I correct, panel, that there were
5 filings by parties in this Con Edison gas rate
6 case in which there would be no increase in the
7 interruptible rates?

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8 DR. JOHNSON: Are you talking about
9 interruptible rates generally or the specific
10 rate group that was in dispute in this
11 particular filing? There are other customers
12 that have negotiated rates that may be locked
13 in.

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14 MR. DIAMANTOPOULOS: Separate and
15 apart from what was negotiated in the joint
16 proposal, parties filed direct testimonies or
17 have applied testimonies in this case, and is
18 it correct that there are parties whose
19 positions in those files was that interruptible
20 rates should not be changed at all?

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21 MR. ZIMMERMAN: Objection. The other
22 parties' testimony speaks for itself.

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26 ALJ LECAKES: Yes, but it's a factual
27 question based -- or, trying to find out the
28 witness's knowledge of those filings, so I
29 think it's an acceptable question.

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2 DR. JOHNSON: I recall looking very
3 specifically at the dispute, the company's
4 original testimony which gave the history of
5 one particular rate that they were proposing to
6 increase in this proceeding, and had indicated
7 that they had wanted to raise it more in the
8 previous proceeding and really felt they needed
9 to start catching up because it was getting out
10 of alignment with others.

11 Having just looked at a very similar
12 issue in the Brooklyn Union Gas and Long Island
13 case where it was also being disputed as to the
14 proper balance between certain regulated
15 interruptible rates or non-firm rates and firm
16 rates, I thought it was something of interest
17 and something that the client allowed us to
18 look into. We talked about it extensively and
19 we ultimately filed testimony on it. So I was
20 very aware of it and I was also aware of what
21 the other parties were saying, and I was
22 empathetic to or sympathetic to the position
23 being taken by some of the witnesses that the
24 resulting percentage increases were rather
25 large. The difficulty was those large

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2 percentage increase were being calculated over
3 very, very low rates; you're talking rates like
4 8 compared to 40 cents for large commercial
5 customers or a dollar for some small customers.
6 So the percentages tend to get dramatic.

7 And the other problem was that it was
8 the cumulative effect that was holding these
9 rates down for a while. So there was this
10 tension and I understood that tension, and we
11 felt it was important enough to the broad
12 public interest and the impact on all
13 customers, both interruptible and firm
14 customers, that we should write about it, and
15 so we did. So, yes, I'm aware of what was
16 going on. I understand the position we're
17 taking, don't necessarily think they would have
18 prevailed in the case of litigation.

19 MR. DIAMANTOPOULOS: Your Honor, I
20 would like to ask if you could strike the
21 portion of the answer that's unresponsive to my
22 question. I'm not sure I got an answer to my
23 question.

24 ALJ LECAKES: Actually, I did hear
25 partially an answer to your question. I'll let

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2 the rest stand. Although, the portion that I
3 had didn't really agree with the fact that the
4 witness knew that there were parties that
5 advocated for a zero increase to the
6 interruptible rates so much as it reiterated
7 some of it is the understanding of the
8 company's position on the matter. It may be
9 that he does not know what other parties in
10 this case have advocated.

11 MR. DIAMANTOPOULOS: I'm ask him a
12 more focused question.

13 ALJ LECAKES: Okay.

14 MR. DIAMANTOPOULOS: My client, New
15 York Energy Consumers Council, are you aware of
16 our position in the filings in this rate case
17 on the interruptible rates?

18 DR. JOHNSON: I reviewed it last
19 spring, but I do not recall the details and the
20 and particular details of your position versus
21 the City's or other parties. Right now, at
22 this point, the precise nuances of the
23 different positions, it's a bit of a blur for
24 me.

25 ALJ LECAKES: I will note,

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2 Mr. Diamantopoulos, that the prefiled litigated
3 case for NYECC is an exhibit, so it is in the
4 record for the Commission to consider.

5 MR. DIAMANTOPOULOS: Thank you, your
6 Honor.

7 Am I correct that the joint proposal
8 provision on the extent to which firm customers
9 benefit from non-firm rates is also part of the
10 joint proposal's compromise and you do not
11 oppose or address this provision in your
12 testimony; is that correct?

13 MR. RICHTER: Can I have that
14 question read back?

15 MR. ZIMMERMAN: Or maybe broken down
16 into separate questions.

17 ALJ LECAKES: Actually, I'd rather
18 have it rephrased, because I think it could be
19 stated without the surrounding part from the
20 beginning. I think the question is more, isn't
21 it true that the gas rates panel here didn't
22 take issue with a particular section of the
23 joint proposal.

24 MR. DIAMANTOPOULOS: I'll adopt your
25 Honor's question.

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2 ALJ LECAKES: Which particular
3 section was it? I couldn't remember the exact
4 reference you were looking at.

5 MR. DIAMANTOPOULOS: I guess I'll
6 reword it.

7 ALJ LECAKES: Okay.

8 MR. DIAMANTOPOULOS: Are you aware
9 that there is a provision in the joint proposal
10 in which firm customers benefit from non-firm
11 customer rates?

12 DR. JOHNSON: I wouldn't word it that
13 way. It's been the Commission's position that
14 firm customers should benefit from the presence
15 of non-firm customers, and it's been the
16 position of Con Ed, and studies were done in a
17 prior cases, suggesting that that benefit isn't
18 as great as it should be or could be. But to
19 say that the JP is suddenly creating a benefit,
20 I think, is implying that -- struck me as a
21 little odd. My impression is that's the
22 Commission's requirement, releasing benefit to
23 firm customers.

24 MR. DIAMANTOPOULOS: But you are aware
25 of that provision in the joint proposal?

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2 MR. ZIMMERMAN: Can you identify the
3 provision, please?

4 DR. JOHNSON: If there's a question
5 pending, I'll need to hear it again. I'm
6 sorry.

7 ALJ LECAKES: We're checking the
8 joint proposal or reference, because I agree
9 with Mr. Zimmerman that having a specific
10 provision in the joint proposal that we can
11 point to would benefit the record.

12 MR. DIAMANTOPOULOS: I would like to
13 direct the panel's attention to page 17 of the
14 joint proposal, subparagraph C, on non-firm
15 revenue.

16 DR. JOHNSON: Okay. Yes, I remember
17 seeing this.

18 MR. DIAMANTOPOULOS: Does the
19 panel -- are you familiar with this provision?

20 DR. JOHNSON: Yes, in general terms.
21 It's been a while since I looked at it.

22 MR. DIAMANTOPOULOS: Am I correct
23 that you do not take issue with this provision?

24 DR. JOHNSON: I think it would be
25 fair to say that we recognize there are many

1
2 compromises in the JP. While we may take issue
3 with some of those, they didn't rise to the
4 level of it something we were objecting to. So
5 it's a little bit different. I don't feel
6 comfortable saying we don't take issue with it
7 in the sense that, in some other proceeding, we
8 might take issue.

9 In the context of this case, UIU did
10 not object to it. I did not file detailed
11 testimony on these calculations. We did not as
12 a panel. So in that sense, you could say it is
13 not part of the issues that are in dispute as
14 between UIU and the proposers of the proposal.

15 MR. DIAMANTOPOULOS: Thank you.

16 Am I correct that not all firm Con
17 Edison/non-firm customers qualify for firm
18 service?

19 DR. JOHNSON: Yes.

20 MR. DIAMANTOPOULOS: Do you know how
21 many non-firm customers qualify for firm
22 service?

23 DR. JOHNSON: I'm assuming you're
24 using the term qualify in the sense that they
25 could join the system without having to pay a

1
2 lot of expense to in order to join. My
3 understanding is there are some locations where
4 enough capacity does not currently exist to
5 accommodate the customer who wants to switch,
6 so they generally would have to stay on the
7 non-firm rate, at least as a practical matter.

8 MR. DIAMANTOPOULOS: Hypothetically
9 speaking, if all non-firm customers could
10 change to firm service tomorrow, could Con
11 Edison's gas delivery system handle that
12 combined capacity of existing firm customers
13 and former non-firm customers who would now
14 also be firm customers under peak conditions?

15 MR. ZIMMERMAN: Objection, calling
16 for speculation.

17 ALJ LECAKES: Actually it's asking if
18 the witness knows, basically, the capacity
19 constraints of the Con Edison distribution
20 system, as far as I understand the question.

21 DR. JOHNSON: It's a complex
22 question. The system itself has a lot of
23 robustness to it, which effectively serves as
24 additional capacity that could accommodate
25 additional firm use, but it's very

1
2 location-specific. There's some locations
3 where that's readily possible and other
4 locations where you'd have to increase the
5 pressure of the gas or you have to rebuild a
6 system, use larger items, you'd have to do
7 something to accommodate those customers.
8 What's clear is that the company does not
9 design the system around the needs of non-firm
10 customers, but in some situations a non-firm
11 customer could potentially switch to firm
12 service without disrupting the system or
13 causing major problems. It's really, really
14 location specific.

15 MR. DIAMANTOPOULOS: But it would not
16 be able to do that for all non-firm customers,
17 right?

18 DR. JOHNSON: Right. If you're
19 saying are there any customers out there where
20 that wouldn't be possible, I would assume there
21 are some, or at least there would be a risk
22 involved.

23 MR. DIAMANTOPOULOS: Am I correct
24 that UIU has not conducted any study and does
25 not know what price interruptible rates would

1
2 drive non-firm customers off of interruptible
3 rates and into firm rates?

4 DR. JOHNSON: I guess that depends on
5 the word study, so I'm not sure how to answer
6 it. I think I have some expertise in the area
7 and I have some sense of it. I've looked at
8 studies Con Edison's done. I've looked at
9 other information that's available, but I
10 haven't put forward and would not argue that I
11 have studied the issue in-depth for Con Ed
12 specifically.

13 MR. DIAMANTOPOULOS: Is it correct
14 that the mere passage of time alone can never
15 cost justify increasing any rate?

16 DR. JOHNSON: I'm not sure what
17 you're asking me.

18 MR. DIAMANTOPOULOS: I'm asking if
19 the mere passage of time, whether it's five
20 years or ten years, is that factor alone
21 sufficient grounds ever to cost justify an
22 increase in any rate?

23 DR. JOHNSON: I'm having trouble
24 envisioning any scenario where it would be
25 grounds for cost justifying rate. Generally

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2 what it is is that correlation, time has passed
3 and costs have gone up, or time has passed and
4 competing fuels have shifted in the price, or
5 time has passed and other rates that other
6 customers are paying and have gone up. And so,
7 out of fairness, not cost justification, but
8 out of fairness you might consider raising the
9 rate. But the mere passage of time alone, I
10 can't really visualize a situation where that
11 alone would justify raising the rate.

12 MR. DIAMANTOPOULOS: How does the
13 panel value the service provided by the firm
14 customers to the Con Ed system?

15 DR. JOHNSON: I think it really
16 depends on the context when you say how do we
17 value, but in general, the way that term has
18 been used by Con Edison, and maybe that's what
19 you're asking, certainly we responded to, Con
20 Edison talks about, or other parties have
21 talked about value to the system, and to the
22 extent there is a value, it's that margin that
23 is being contributed over and above the
24 out-of-pocket costs or the marginal cost of the
25 non-firm customers.

1
2 So to the extent there is a margin
3 being contributed and that margin is greater
4 than zero, then there is some benefit to the
5 firm customers. On the other hand, if that
6 margin is less than optimal or less than it
7 could be or should be, then you could argue
8 that, and I think you could fairly describe it
9 as being a benefit, as less than what it
10 optimally should be. If it's less than it
11 should be, then I'm not sure how the word value
12 comes in and it's kind of a hard word to use
13 and understand.

14 MR. DIAMANTOPOULOS: Am I correct
15 that interruptible gas customers foster system
16 reliability?

17 DR. JOHNSON: I wouldn't word it that
18 way. The existence of interruptible customers
19 makes it economically feasible to deliver gas
20 to both the non-firm and firm customers at less
21 total cost than if everybody were a firm
22 customer. So there are some economic savings
23 that are achievable through that arrangement
24 and typically what you're looking for is a fair
25 split of the benefit or the savings that are

1
2 achieved from that arrangement.

3 MR. DIAMANTOPOULOS: Am I correct
4 that interruptible customers are an essential
5 resource for management of Con Edison's load in
6 emergencies?

7 DR. JOHNSON: Again, I wouldn't word
8 it that way. In practice, the ability to
9 interrupt some customers may be beneficial,
10 then that ability is taken advantage of or is
11 used by Con Edison, but I wouldn't word it that
12 way.

13 MR. DIAMANTOPOULOS: No further
14 questions, your Honor. Thank you, panel.

15 ALJ LECAKES: Ms. Trinsey?

16 MS. TRINSEY: Good afternoon, panel.
17 My name is Amanda Trinsey. I'm from Couch
18 White and I'm here on behalf of the City of New
19 York.

20 DR. JOHNSON: Good afternoon.

21 MS. TRINSEY: I'm going to ask you a
22 few questions starting with the classification
23 of distribution mains.

24 DR. JOHNSON: Okay.

25 MS. TRINSEY: Your testimony

1
2 recommends that the Commission reject the JP
3 proposed method of allocating the cost of
4 distribution mains in its gas ECOS study,
5 correct? I'm reading directly from your
6 testimony, page seven.

7 DR. JOHNSON: Yes.

8 MS. TRINSEY: And isn't it true that
9 you propose that main be classified on a 100
10 percent demand basis, correct?

11 DR. JOHNSON: Yes, that's an approach
12 that we've recommended. It's one that's been
13 accepted by the Commission and by the staff in
14 other cases. We think it's a reasonable
15 solution to the problem.

16 MS. TRINSEY: And isn't it true that
17 the joint proposal adopts an ECOS approach that
18 uses the minimum system methodology and
19 classifies costs both on the customer and
20 demand basis, correct?

21 DR. JOHNSON: Yes, it characterizes
22 that way.

23 MS. TRINSEY: Thank you.

24 Are you familiar with gas NARUC
25 manual?

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DR. JOHNSON: Yes.

MS. TRINSEY: Do you have a copy with you?

DR. JOHNSON: Not the entire manual.

MS. TRINSEY: We can actually use staff's exhibit to their joint proposal, which I believe has been marked as Exhibit 140.

DR. JOHNSON: Okay.

MS. TRINSEY: When you turn to pages 22 to 23 of the gas NARUC manual, do these pages address the classification and allocation of customer costs?

DR. JOHNSON: What is your question, did I address what?

MS. TRINSEY: I'm just asking, do these pages address the classification and allocation of customer costs.

DR. JOHNSON: They address the classification allocation of customer costs, as well as energy, commodity, demand, capacity costs. There's quite a bit on those two pages.

MS. TRINSEY: Okay, thank you.

Isn't it true that under the customer costs included on these pages that two methods

1
2 are set forth with respect to classifying
3 customer costs?

4 DR. JOHNSON: They discussed a couple
5 of methods, yes.

6 MS. TRINSEY: Right, two methods.
7 And those two methods are the minimum
8 main theory and the zero-inch main theory,
9 right?

10 DR. JOHNSON: No. I mean, they do
11 talk about those but they also talk about --
12 I'll check the location. The basic system, I
13 think, is the phrase they use. So in one
14 sense, there's two or three different methods
15 being discussed.

16 MS. TRINSEY: Can you point out to me
17 the three specific methods that they're
18 discussing.

19 DR. JOHNSON: Well, they start with a
20 discussion of what they call "zero or minimum
21 size main theory", and in practice, there are
22 distinctions that sometimes are drawn on a
23 theoretical basis between a zero approach and a
24 minimum approach. So at one point in the
25 discussion, they sort of lump those together

1
2 and you could call those as one method with two
3 variations. And then they go on to talk about
4 the basic system theory of approach, so that's
5 why I'm saying you can think of it as two
6 methods or three, depending on one.

7 MS. TRINSEY: We also can say that
8 there's two methods where you can classify on a
9 demand basis or on a combination of a customer
10 and demand basis, correct?

11 DR. JOHNSON: Well, in terms of their
12 discussion, that's how it's laid out. If you
13 look at more broadly at what --

14 MS. TRINSEY: No, I'm limiting my
15 question to exactly what's in the NARUC manual,
16 that's all. We'll get into the Commission in a
17 minute.

18 DR. JOHNSON: Repeat your question
19 and I'll make sure I'm realizing you're asking
20 only limited to what their discussion says.

21 MS. TRINSEY: In the NARUC manual, do
22 they discuss two methods of classifying
23 customer costs, you can do it on a customer
24 demand basis or on a demand basis?

25 DR. JOHNSON: I'm just not sure the

2 thrust of what you're asking me. I mean, is it
3 the count or is it the labeling, because some
4 people would describe the basic system method
5 as an alternative to classifying some of the
6 costs as customer costs, if you follow me. So
7 I don't think it's that crucial, ultimately.
8 The decision maker hopefully understands all
9 the nuances of what's going on. It's the
10 labeling --

11 MS. TRINSEY: Thank you. Let's move
12 on to the next question, because the NARUC
13 speaks for itself and we'll move on to the next
14 question.

15 I'd like to direct your attention to
16 pages 47 through 52 of your testimony, and that
17 is the section you describe as prior Commission
18 decisions regarding this issue.

19 DR. JOHNSON: Yes.

20 MS. TRINSEY: Let's skip ahead and
21 you can start with page 49, where you talk
22 about the 2015 NYSEG/RG and E cases.

23 DR. JOHNSON: Yes.

24 MS. TRINSEY: Is it your position
25 that what's set forth on this page and the

1
2 following page of your testimony was a
3 Commission decision?

4 DR. JOHNSON: If you're asking me
5 whether those particular sentences are
6 describing a Commission decision, probably not.
7 There seems to be more of a discussion of what
8 the utilities were doing in those particular
9 cases. Elsewhere, the Commission ultimately
10 adopted a joint proposal that dealt with the
11 problem and resolved it.

12 MS. TRINSEY: Dr. Johnson, I just ask
13 you that because you labeled this section of
14 your testimony "Commission Decisions," but you
15 don't talk about very many Commission
16 decisions, so I wanted to make sure that you
17 understood the difference between prefiled
18 testimony and Commission decisions.

19 So when you moved to the 2009
20 NYSEG/RG and E cases, is what you state in your
21 testimony a Commission decision?

22 MR. ZIMMERMAN: Can you be more
23 specific as to what statement or testimony?

24 MS. TRINSEY: Sure. Starting on line
25 10 of page 50, there's a discussion of the 2009

1
2 NYSEG RG and E.

3 DR. JOHNSON: I mean, it's
4 self-evident it's talking about rebuttal
5 testimony. It's not quoting from a decision.

6 MS. TRINSEY: Thank you.

7 So have you reviewed the Commission
8 decision in both the 2015 and the 2009 NYSEG/RG
9 and E decisions?

10 DR. JOHNSON: Yes.

11 MS. TRINSEY: And in either of the
12 those decisions, did the Commission adopt a
13 particular ECOS methodology?

14 DR. JOHNSON: The decisions speak for
15 themselves. My recollection is the 2009 had a
16 fairly extensive discussion of the dispute
17 amongst the parties and the manner in which in
18 a joint proposal they attempted to resolve it.
19 It was clear from the decision, as well as the
20 joint proposal itself, that that decision had
21 certain specific effects going forward but was
22 not in any way binding on the commission.
23 There was very specific binding that was in
24 essence saying that by adopting this joint
25 proposal, the Commission was not committing to

1
2 using a particular method. Going forward, the
3 parties weren't necessarily precluded from
4 advocating alternatives to that.

5 The 2015 is somewhat similar and had
6 a joint proposal and it was adopted, and that
7 had very specific language indicating that the
8 revenue allocation that was used in that joint
9 proposal did not rely on any one cost of
10 service study. If you actually look at the
11 numbers and study it, it's pretty clear that it
12 does not match any one study.

13 MS. TRINSEY: So just to clarify the
14 answer to my question, no, the Commission did
15 not adopt a particular ECOS methodology in both
16 of those decisions?

17 MR. ZIMMERMAN: Objection. I mean,
18 the Commission's decisions speak for
19 themselves.

20 ALJ LECAKES: That's enough. He did
21 answer it, Ms. Trinsey.

22 MS. TRINSEY: Okay.

23 ALJ LECAKES: And he does pretty much
24 agree with your statement, so far as I
25 understand it, that there was no adoption of

1
2 any one particular ECOS methodology in either
3 of those Commission decisions on the NYSEG/RG
4 and E cases.

5 MS. TRINSEY: One more question on
6 this topic and then we'll move to something
7 else. Isn't it true that the propriety of
8 using the minimum system methodology has been
9 litigated before the Public Service Commission?

10 DR. JOHNSON: I'm sorry, say that
11 again?

12 MS. TRINSEY: The propriety of the
13 minimum system approach has been litigated
14 before the Public Service Commission, more
15 specifically, an approach that uses both a
16 customer and demand approach has been litigated
17 before the Commission.

18 DR. JOHNSON: Let me put it this way,
19 I don't believe there's been rule making. I
20 don't believe there's any decision that was
21 written in such a sweeping manner that it would
22 be inappropriate for parties to continue to
23 litigate or debate the most appropriate method
24 of allocating these types of costs or handling
25 these costs, and my impression is, in general,

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2 that the decisions that are out there go back
3 quiet a few years. We're actually not dealing
4 with the JP, they go back a fair number of
5 years and they quite appropriately react to the
6 information that was in front of the Commission
7 at that time, the actual evidence put forward,
8 the actual testimony in those cases. I've not
9 seen anything that would suggest the Commission
10 doesn't want parties to continue to debate
11 these issues and litigate -- I'm going to use
12 your term -- for the Commission's benefit in
13 trying to resolve the issues in the individual
14 cases.

15 ALJ LECAKES: There was an answer to
16 your question there.

17 MS. TRINSEY: Okay. I'll move on to
18 the next topic, non-firm rates. A few moments
19 ago when you were responding to one of
20 Mr. Diamantopoulos's questions, you stated that
21 non-firm and firm customers are comparable from
22 a rates perspective, and I just had a few
23 questions related to that statement. Do
24 non-firm customers have the same rights to the
25 gas system as firm customers?

1
2 DR. JOHNSON: No. They have a
3 different set of rights, including the right to
4 purchase interruptible gas supplies that are
5 sometimes available on interstate systems at
6 lower costs than firm gas. So they just have a
7 different set of rights.

8 MS. TRINSEY: Do firm customers have
9 its access to gas or the gas system curtailed
10 when there are certain temperatures or when
11 there are peak periods?

12 DR. JOHNSON: Hopefully not.
13 Normally, the way we work is -- I think if
14 we're talking about a distinction between firm
15 and our choices, or firm and non-firm, the
16 general goal would be that firm customers have
17 continuous gas service and would not be
18 interrupted. Obviously, if you had a gas
19 explosion, for example, or a safety incident
20 and you shut down parts of the system, of
21 necessity, someone has less than 100 percent
22 continuous service under those unusual
23 circumstances.

24 But as a general, firm customers,
25 it's exactly what they do, they have firm

1
2 continuous service; whenever they want gas,
3 they have it. Temperature-controlled customers
4 have the equivalent level of continuity of
5 service except during specified cold periods.
6 Interruptible customers do have a third
7 category, it depends on the tariff conditions,
8 they potentially also have some sort of degree
9 of vulnerability to interruption depending on
10 the way the tariff is written and the way it's
11 put into practice.

12 MS. TRINSEY: Just a couple of more
13 questions, and if you just want to answer yes
14 or no, that would be great. Do firm customers
15 incur penalties for failing to curtail usage?

16 DR. JOHNSON: Do they incur
17 penalties?

18 MS. TRINSEY: Penalties.

19 DR. JOHNSON: Yes, they can.

20 MS. TRINSEY: A firm customer will
21 incur a penalty from the utility when it does
22 not --

23 DR. JOHNSON: I thought you said a
24 non-firm customer. I'm sorry.

25 MS. TRINSEY: Firm. Do firm

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2 customers incur penalties for failing to
3 curtail their gas usage?

4 DR. JOHNSON: By definition, they're
5 not expected to curtail gas usage, so they're
6 not asked to curtail and therefore there
7 wouldn't be a penalty.

8 MS. TRINSEY: Okay.

9 Do firm customers need to maintain an
10 entirely different fuel supply and system?

11 DR. JOHNSON: In some cases they
12 might, like a hospital, and the case just
13 depends. Depending on the need for
14 reliability, they might have back up of
15 propane, or in the case of electricity, they
16 might have their own generators with propane or
17 some other method to feed that system.

18 MS. TRINSEY: I'm asking as a firm
19 customer, are they required to maintain these
20 additional --

21 DR. JOHNSON: By tariff, they're not
22 required at all. But the problem is the way
23 you phrased it. If you think of a hospital or
24 something like that, yes, they are required to
25 have backup in order to keep people safe inside

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the hospital.

MS. TRINSEY: Thank you, that's a great response. Thank you very much.

So there's a distinction between firm and non-firm customers and saying that they're comparable is not accurate, correct?

DR. JOHNSON: I've said from the very beginning that there are differences and comparabilities; both exist simultaneously.

ALJ LECAKES: But I think Ms. Trinsey's question goes to the fact that you would acknowledge that, in the company's tariff, firm customers are treated differently from non-firm customers in terms of rights and obligations; isn't that correct?

DR. JOHNSON: Absolutely, yes.

ALJ LECAKES: Okay.

Ms. Trinsey, continue.

MS. TRINSEY: You know what? George asked this question, so I have no more questions.

ALJ LECAKES: Ms. Krayeske or Mr. Richter, do you have any questions?

MS. KRAYESKE: No.

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ALJ LECAKES: Staff?

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MR. DIAMANTOPOULOS: No.

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ALJ LECAKES: Any other party?

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(No response.)

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ALJ LECAKES: We'll take a few

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minutes to see if there's any redirect.

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Mr. Zimmerman, we'll go off the record until

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you're back. Thank you.

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(Whereupon, there is a recess taken.)

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ALJ LECAKES: Mr. Zimmerman, is there

12

any redirect for this panel?

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MR. ZIMMERMAN: No redirect, your

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Honor.

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ALJ LECAKES: Thank you very much.

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Panel, you're excused. Ms. Panko, you are no

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longer under oath as well, nor are you, Dr.

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Johnson.

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DR. JOHNSON: Thank you.

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ALJ LECAKES: Before we close up for

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the day, I have two things for the order of

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business. One concerns the exhibits. Let's

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deal with that first.

24

Normally, in a litigated hearing, we

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would have each of the panels put their

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2 exhibits into the record through affidavit.
3 We're going to make an exception for the
4 parties that had no witnesses appearing here.
5 I'll just note for the record that, prior to
6 this case, as I mentioned before, I sent out an
7 e-mail asking parties to respond for exhibits
8 that they propose to be put into the record.
9 In addition to the ones that we've already
10 identified, we have Exhibits 192 to 201
11 sponsored by CPA. We have Exhibit 202, which
12 was co-sponsored by the Environmental Defense
13 Fund and PACE. We have Exhibits 203 through
14 212 sponsored exclusively by EDF. Exhibits 213
15 to 220 sponsored by MTA. Exhibits 221 through
16 241 sponsored by the City of New York.
17 Exhibits 242 through 256 sponsored by NYECC.
18 Exhibits 257 through 264 sponsored by the New
19 York Power Authority, NYPA. Exhibit 265
20 through 281 sponsored by the PACE Energy and
21 Climate Center, and Exhibit 282 through 299
22 sponsored by the Public Utility Law Project,
23 PULP. Exhibits 300 through 302 sponsored by
24 Time Warner Cable, Incorporated. Exhibit 303
25 by Great Eastern Energy and other parties, 304

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2 and 305 sponsored by the Northeast Clean Heat
3 and Power Initiative. Exhibit 306 sponsored by
4 the Association for Energy Affordability, inc
5 no. 307 sponsored by the Community Housing
6 Improvement Program. Exhibit 308 sponsored by
7 Digital Energy Corp., and Exhibit 309 sponsored
8 by E-Cubed and the joint supporters.

9 On my own motion, I'm going to move
10 that we put all those exhibits into the
11 evidentiary record, including the ones, like
12 316, that were offered during the hearing
13 itself. Are there any objections to any of the
14 exhibits on the hearing exhibit list?

15 (No response.)

16 ALJ LECAKES: Hearing none, I now
17 move all those exhibits into the hearing
18 record.

19 Now that we have a complete hearing
20 record with transcripts on the way on an
21 expedited basis, I want to turn to post-hearing
22 briefs. Initially it was my intention, and
23 Judge Wiles' intention, to talk to the parties
24 about whether they felt there was a need for
25 briefing. We anticipated that the parties in

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2 support of the joint proposal would not see any
3 need, while the parties opposing the joint
4 proposal would see some need. Rather than
5 going through the discussion, what we've done
6 is decide what we need for our own purposes of
7 the briefing schedule. So we're going to allow
8 one round of briefs. The brief will be due on
9 November 14, 2016. The brief will also be
10 limited to ten pages. If a party feels that
11 ten pages is insufficient, you will have to
12 make a motion with the proposed brief attached
13 to it requesting more pages. However, there's
14 no guarantee that we will provide that relief.

15 In order to maintain those ten pages,
16 we strongly note that there is no reason
17 whatsoever to put into your brief anything that
18 has already been put into a statement in
19 support or opposition or reply statement in
20 support or opposition. That material has fully
21 been briefed to us, as you can see from some of
22 our questions and our interactions with Counsel
23 and the witnesses. We're fully aware of the
24 issues that have been brought to our attention
25 so far. So what we would like to see is either

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2 new arguments or evidence that came out through
3 the cross-examination process in the briefs and
4 that's it.

5 So, again, that's limited to ten
6 pages and due November 14, 2016. To the extent
7 that ten pages is insufficient, and given the
8 restrictions that we've put on them, I don't
9 see how it will be, parties are free to make a
10 motion requesting more time, but you have to
11 include the brief. The motion should also be
12 made by November 14th as well, which is the due
13 date of the briefs.

14 I have nothing further. Are there
15 any questions on that?

16 MR. DIAMANTOPOULOS: I do, your
17 Honor.

18 ALJ LECAKES: Yes,
19 Mr. Diamantopoulos?

20 MR. DIAMANTOPOULOS: When is the
21 transcript going to be available?

22 ALJ LECAKES: The transcripts have
23 been requested on an expedited basis. I've
24 already spoken to our stenographer who was here
25 yesterday, I know she's been diligently working

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2 on the transcript today. They're usually due
3 on an expedited basis within one business day,
4 so yesterday's will be due tomorrow or should
5 be provided to Judge Wiles and myself tomorrow
6 for our look and approval to get posted on DMM.
7 Today's's should be on Monday.

8 Yes, Mr. Lang?

9 MR. LANG: Just one clarification,
10 your Honor. When you just mentioned new
11 arguments or new evidence, just to be clear,
12 you're not inviting new evidence, it's just
13 evidence that was developed on this record?

14 ALJ LECAKES: Right. I'm sorry. The
15 evidence that is in the evidentiary record is
16 what has been established as soon as I close
17 the hearing in a few minutes. New evidence
18 that was brought out during the course of this
19 hearing through cross-examination or through a
20 new introduced exhibit, such as 313, 14, 15,
21 and 16 -- actually, I think 311 was the first
22 one we added with the affidavit.

23 Mr. Pollack, did you have a question?

24 MR. POLLACK: Yes. I thought that
25 there were two other exhibits. I think they

1
2 were marked 311 and 312, and those were Con
3 Ed's answers to the staff's interrogatories.

4 ALJ LECAKES: Right, so 310 -- thank
5 you for bringing that up -- 310 was the
6 affidavit of Mr. Killkenny getting his
7 testimony. Thereafter, 311 through 316 are new
8 exhibits, 311 and 312 were offered yesterday
9 and those are responses to interrogatories that
10 were put into the record by Mr. Pollack and his
11 client, NYICA.

12 MR. LANIADO: Your Honor, which
13 number did you assign to the MTA exhibit?

14 ALJ LECAKES: The MTA exhibit was --
15 which one was that? That was the packet of
16 RFQs today?

17 MR. LANIADO: Yes.

18 ALJ LECAKES: That was Exhibit 316,
19 which was last hearing exhibit offered.

20 MR. LANIADO: Thank you.

21 MR. ZIMMERMAN: Your Honors, as to
22 the formating of the brief, is that ten pages
23 inconclusive of a cover page?

24 ALJ LECAKES: No, you can have an
25 additional cover page. I'll give you ten pages

1
2 of writing. So it also doesn't include a table
3 of contents, that can be page 11 and page 12.
4 But if it's a ten-page brief, I don't expect a
5 table of contents that would go over one page.

6 MR. ZIMMERMAN: And is that --

7 ALJ WILES: Try not to argue.

8 MR. ZIMMERMAN: That's following the
9 Commission's standard rules of submission, I
10 think courier font size 12, one-inch margins,
11 that sort of thing?

12 ALJ LECAKES: Yes, please. Nothing
13 on a font of 3.5.

14 MR. ZIMMERMAN: And that's
15 November 14, COB.

16 ALJ LECAKES: Yes, close of
17 businesses.

18 MR. ZIMMERMAN: Thank you.

19 MS. KRAYESKE: Your Honor, I just
20 have one question; perhaps I messed up. Con
21 Edison's exhibit that was attached to its JP
22 testimony, I don't see that on the list. It
23 was a three-page exhibit which I can e-mail
24 when I get back to the office.

25 ALJ LECAKES: It was attached to

1
2 the...

3 MS. KRAYESKE: To the rebuttal JP
4 testimony that was submitted on October 21st.

5 ALJ LECAKES: Okay, because all I did
6 was, with the lists that were e-mailed to me, I
7 just copied and pasted it, so it may not have
8 been added there. Why don't we reserve Exhibit
9 No. 317 for that exhibit to the extent that it
10 does not appear on this hearing exhibit list.
11 So we'll have that as Exhibit 317.

12 (Whereupon, Exhibit 317, Con Edison's
13 exhibit attached to joint proposal
14 testimony, is marked for identification,
15 as of this date.)

16 ALJ LECAKES: We'll move that into
17 evidence, as well, right now in case we missed
18 it. If it does appear that it was somewhere on
19 the list that was distributed, we'll just
20 strike 317 and use the initial number that I
21 assigned to it.

22 MS. KRAYESKE: Yeah, I looked through
23 it and I don't see it.

24 ALJ LECAKES: So we'll just assume
25 for purposes right now that that's Exhibit 317.

1
2 MS. KRAYESKE: Okay. Thank you, your
3 Honor.

4 ALJ LECAKES: Mr. Richter?

5 MR. RICHTER: Just for clarification,
6 especially for parties that are not familiar
7 with Commission practices, when you say close
8 of business, everybody is working towards the
9 same deadline, I believe that close of business
10 for this purpose means 4:30.

11 ALJ LECAKES: We'll give it 5
12 o'clock.

13 MR. RICHTER: Just so everybody
14 knows.

15 ALJ LECAKES: Just so everybody's on
16 the same page, we'll give you 5:00 p.m.,
17 because if it comes in at 4:30 or 5:00 p.m.,
18 I'm not going to read it until the next morning
19 anyway, but I agree with you that there
20 shouldn't be people sending in things at
21 11:00 p.m. at night.

22 ALJ WILES: During the hearing, I had
23 one request of the company, which was --

24 MR. RICHTER: Come up with that list
25 of -- and we're working on that.

1
2 ALJ WILES: Do you think it will take
3 a couple of days?

4 MR. RICHTER: Give it to you sometime
5 next week.

6 ALJ WILES: No problem.

7 MR. DIAMANTOPOULOS: Do we want that
8 marked, your Honor, or no?

9 ALJ WILES: First we want to get it.

10 MR. LANG: I'm just saying, should we
11 reserve a number for it?

12 ALJ LECAKES: We can reserve 318 for
13 that one as well. So we've got 317, which is
14 the Con Edison exhibit that was attached to the
15 reply testimony and we'll call 318 Judge Wiles'
16 request of Con Edison.

17 (Whereupon, Exhibit 318, Judge Wiles'
18 request of Con Edison, is marked for
19 identification, as of this date.)

20 Is there anything further?

21 MR. LANIADO: Your Honor, I'm
22 assuming the ten-page limit is inclusive of any
23 attachments?

24 ALJ LECAKES: Inclusive of any
25 appendices or exhibits, yes. The exhibits

1
2 should count as part of the ten-page limit. I
3 don't anticipate that there will be any need to
4 put on attachments or appendices, as we have a
5 whole exhibit list right now of things that can
6 be cited to in the brief, but if a party does
7 feel the desire or need to put on an attachment
8 that they've created that condenses a number of
9 exhibits or a number of points into one small
10 diagram or something like that, they're free to
11 do it, it just will count against the ten-page
12 limit.

13 MR. RICHTER: But not for the purpose
14 of new exhibits that weren't introduced during
15 the hearing?

16 ALJ LECAKES: Right. It should not
17 be -- I do not see, if there's a chart that's
18 offered in Exhibit 110, for example, and a
19 chart that's offered in Exhibit 210, and
20 somebody wants to make a page putting those
21 charts together because it's for comparison
22 sake, I don't consider that new evidence, I
23 just consider that as presentation of evidence.
24 But, again, that will count as a separate page
25 for the ten-page limit.

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All right, thank you so much everyone
for your attendance here and we are done. This
hearing is concluded and we're off the record.

(Time noted: 3:41 p.m.)

2 November 3, 2016

3 I N D E X

4 E X H I B I T S

5	FOR IDENT.	DESCRIPTION	PAGE
6	313	prepared testimony of the Staff Gas	
7		Rates Panel in the matter of	
8		Corning Natural Gas Corporation,	
		case 16-G-0369	13
9	314	Staff Report and Recommendations in the	
		Value of Distributed Energy	
		Resources Proceeding, case 15-E-0751	14
10	315	request for information labeled 16-UIU-08	55
11	316	package of six requests for quotations	
12		issued by UIU Director Hogan	78
13	317	Con Edison's exhibit attached to joint	
14		proposal testimony	229
15	318	Judge Wiles' request of Con Edison	231

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C E R T I F I C A T E

STATE OF NEW YORK)
) ss.:
COUNTY OF RICHMOND)

I, Therese L. Sturges, a Shorthand
Reporter and Notary Public within and for the State of
New York, do hereby certify:

I reported the proceedings in the
within-entitled matter and that the within transcript is
a true record of such proceedings.

I further certify that I am not related to
any of the parties to this action by blood or marriage;
and that I am in no way interested in the outcome of this
matter.

IN WITNESS WHEREOF, I have hereunto set my
hand this 5th of November, 2016.

THERESE L. STURGES