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September 23, 2013

By Electronic Mail

Hon. Kathleen H. Burgess
Secretary to the Commission
New York State
Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Cases 13-E-0030; 13-G-0031; 13-S-0032
Con Edison Electric, Gas and Steam Rate Cases
Post-Hearing Reply Brief

Dear Secretary Burgess:

In accordance with the August 5, 2013, Ruling on Schedule issued in the above-referenced matters, attached for filing please find the Post-Hearing Reply Brief of Consolidated Edison Company of New York, Inc.

Very truly yours,

/s/ Enver Acevedo

C: (via electronic mail)
Hon. Paul Agresta
Hon. Julia Smead Bielawski
Hon. Eleanor Stein
All Active Parties in Cases 13-E-0030; 13-G-0031; 13-S-0032

BEFORE THE NEW YORK STATE
PUBLIC SERVICE COMMISSION

Case 13-E-0030	**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.**	**Before**
Case 13-G-0031	**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.**	**Hon. Paul Agresta** **Hon. Julia Smead Bielawski** **Hon. Eleanor Stein**
Case 13-S-0032	**Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Steam Service.**	

REPLY BRIEF ON BEHALF OF CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. IN SUPPORT OF PERMANENT ELECTRIC, GAS AND STEAM RATE INCREASES

Dated: **New York, New York**
September 23, 2013

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BEFORE THE NEW YORK STATE
PUBLIC SERVICE COMMISSION

Case 13-E-0030	**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.**	**Before**
Case 13-G-0031	**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.**	**Hon. Paul Agresta** **Hon. Julia Smead Bielawski** **Hon. Eleanor Stein**
Case 13-S-0032	**Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Steam Service.**	

REPLY BRIEF ON BEHALF OF
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
IN SUPPORT OF PERMANENT ELECTRIC, GAS AND STEAM RATE INCREASES

I. Overview of Proceeding

In its Initial Brief, the Company expressed the view that the totality of Staff's adjustments and ratemaking proposals, if adopted by the Commission, would constitute a rate plan that does not provide adequate compensation for the necessary costs of providing safe and reliable service, and significantly limits the Company's flexibility to cost-effectively manage its operations. The Company explained why many of Staff's proposals are unreasonable on an individual basis and, in the aggregate, represent a gross imbalance between the interests of customers and investors. While this perspective is admittedly subjective, one need look no further than Staff's Initial Brief as validation of that perspective. In explaining why Staff is not recommending that the Commission implement an earnings sharing mechanism in this proceeding, Staff states:

> Not only is there no multi-year rate plan presented for the Commission’s consideration here, we believe the negative revenue requirements in the instant proceedings should dispel any notion that Con Edison would not elect to file for new rates to go into effect after the end of the 2014 rate year. (Staff-IB, p. 286)

To the Company's knowledge, it is not Commission policy to establish rates in the absence of a multi-year rate plan that are designed to be so onerous as to compel a utility to immediately seek new rates immediately following issuance of a Commission rate determination. To the contrary, the Company has always understood the Commission to encourage utilities to avoid repeated requests for rate relief. However, this is only practicable and possible where the starting point is reasonable rates,[1] the utility has the opportunity to achieve and retain efficiencies for the period of the rate plan, and the rate plan contains mechanisms designed to address variations in material costs that cannot be reasonably forecast in an appropriate manner.[2] And while the Company cannot provide assurance that new rate filings will not be necessary and appropriate shortly following a Commission decision in these proceedings (even assuming rejection of Staff's adjustments), establishing unreasonably low rates that make the need for such filings foregone conclusions would be contrary to both law and good ratemaking practice.

The Company's Initial Brief explained that the comprehensive revenue requirements developed by the Company and Staff reflected a difference of approximately $800 million, based on Staff's position in their July 17, 2013 revenue requirement presentation (CECONY-IB, p. 2). Based upon Staff's Initial Brief, the differential now stands at approximately $700 million.[3] Although the Company recognizes that the $100 million in adjustments sponsored by Staff is material and not insignificant, the Company explains in detail in its Initial Brief and this Reply Brief why Staff's remaining adjustments totaling $700 million are also unreasonable, unsupported and/or unwarranted.

In its Initial Brief, the Company made a good faith effort to address issues raised by Staff and other parties in their direct and/or rebuttal testimony (and, where relevant, testimony given during the hearing) with respect to myriad issues in addition to revenue requirement issues, and the reasons presented by parties in support of their positions. In this Reply Brief, the Company focuses on matters

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[1] Public Service Law §65(1); CECONY-IB, p. 95.

[2] The Company notes that it did demonstrate in May 2012 the Company's willingness to delay filing a rate request.

[3] Staff's Initial Brief updates Staff's proposed revenue requirements to reflect (i) certain aspects of the Company's June 21, 2013 update and (ii) the impact of adjustments that were resolved subsequent to the hearings, based on additional technical review of issues and underlying data. Staff now proposes smaller rate decreases for electric, gas and steam of $146.4 million, $95.3 million and $10.2 million, respectively. The Company's Initial Brief made several minor adjustments to its proposed revenue requirements, reducing the requested rate increases by approximately $7.0 million in the aggregate for electric, gas and steam. The proposed increases are now $417.6 million for electric, $27.3 million for gas, and $7.9 million for steam. Please note the primary difference between the amounts reflected in the Company's Initial Brief and the current revenue requirement is attributable to reflecting the impact of the recent $140 million NYC property tax refund as a reduction to rate base and for uncollectible expense updates.

raised by Staff and other parties in their initial briefs and avoids, to the extent practicable, duplicating arguments made in the Company's Initial Brief.[4]

The Company notes that some parties' initial briefs restate positions in their initial briefs taken in testimony that ignore information and/or explanations provided by the Company in its rebuttal testimony in direct response to these testimonial positions. The Company submits that material contained in reply briefs that address for the first time explanations and/or information provided in the Company's rebuttal testimony be stricken from the record and/or that the Company be provided a reasonable opportunity to respond to such arguments by means of a sur-reply brief. Absent such relief, the Company will be unreasonably denied a fair and reasonable opportunity to address these matters.

II. <u>Sales Revenues</u>

A. <u>Electric Forecast</u>

Staff claims that its forecasting model is more appropriate than CECONY's, alleging that CECONY uses "unreliable forecasting models" (Staff-IB, pp. 3-8). CECONY's Initial Brief explained the reasons why CECONY's models produce a reasonable forecast and Staff's models do not.

For the first time in its Initial Brief, Staff claims that the use of a dummy variable for the fourth quarter of 2012 in two of CECONY models demonstrates that CECONY's models should not be used. As support for its position, Staff claims that the Company's introduction of a dummy variable for the fourth quarter of 2012 in the SC9 sales and sendout[5] models is further evidence that CECONY's models are unreliable. Staff contends that (i) the Company has not adequately explained why the forecast of SC 9 sales and sendout would be unusually low without the dummy variable and (ii) if a dummy variable was necessary for the SC9 sales and sendout models, such a variable should have been included in the models for the other classes (Staff-IB, pp. 5-7). As is explained below, Staff is incorrect. The Company explained the need to use the dummy variable in the SC 9 sales and sendout models and showed that a dummy variable was unnecessary in sales models for the other classes. Moreover, Staff's position is inconsistent – first they claim that the models are unreliable because a dummy variable was inserted in two of the models and then they claim that the dummy variable should have been inserted in all models.

Staff's assertion that the Company did not explain why the forecast for SC 9 sales and sendout would have been unusually low without the dummy variable is incorrect. The Company provided such

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[4] Unless otherwise indicated, the Company continues to support the positions taken in its direct, supplemental and rebuttal testimony and its Initial Brief. To the extent that certain topics/sub-topics in this Reply Brief are not addressed, it is because the Company has no changes or additions to the discussions of these topics/sub-topics in its Initial Brief.

[5] The sendout model only looks at the volume of electricity to be provided to customers. This model is not used to forecast revenues.

explanation in its update testimony, stating that a dummy variable for the fourth quarter of 2012 was introduced in the SC9 sales and sendout models as there was a negative impact on SC 9 sales and sendout in that time period that was likely due to the effects of Superstorm Sandy (CE-EFP-U, pp. 5-6). A significant, though temporary, impact on sales can have a material effect on the forecast, which is projected off the actual historical data. If there is a large decrease in delivery volume in the last period of historical data that is not explained by the explanatory variables in the model, then the forecast will be projected from that lower-than-usual point. The dummy variable is a tool to remove the impact of such an outlying data point on the forecast. .

The Commission should reject Staff's statement (Staff-IB, p. 6) that "where a forecasting model, such as the Company's, is so heavily influenced by a temporary impact, it has not been developed correctly and is therefore unreliable." The use of dummy variables to account for outlying data is a widely accepted tool in econometric modeling. Adding a dummy variable to the model does not make the model unreliable. Dummy variables have been used in CECONY's Commission-approved forecasts for years. For example, the Commission adopted CECONY's forecast in Case 07-E-0523, *et. al.*, which used a dummy variable related to the World Trade Center. In fact, the contention in Staff's brief that "Staff's models do not require fixing via the inclusion of such a dummy variable" (p. 7) is belied by the fact that in the current case, two of Staff's volume forecasting models include dummy variables (Ex. 290, pp. 4-5).

Staff's second concern is that the dummy variable is included in only two of CECONY's models. Staff questions why a dummy variable was not included in the models for SCs 1, 2, 8, and 12 as well (Staff-IB, p. 6). CE-EFP explained during the hearing that there was no need for a dummy variable in these classes as sales in these classes were not as significantly affected by Superstorm Sandy (408).

Staff also asserts that the CE-EFP applied a double standard in deciding when to use or reject such a dummy variable, citing Ex. 55 and Ex. 455, to support the claim that CECONY has included dummy variables even though they are not statistically significant at the five percent level (Staff-IB, pp. 6-7). A search through Ex. 55 and Ex. 455 reveals Staff's claim to be false; all the dummy variables in the CECONY models were significant at the five percent level. CE-EFP tested the significance of each dummy variable in each of CECONY's volume forecasting models, and has only included those that are statistically significant at the standard five percent level.

With the exception of SC 12, the CECONY models are based on quarterly data, so the dummy variable used in the SC 9 sales and sendout models covers the entire fourth quarter of 2012. While delivery volumes of all service classes may have been negatively impacted in the days during, and immediately after, Superstorm Sandy, there are reasons why the net impact for the entire quarter may not be significant for some service classes. For example, when service was restored after the storm, much work was done to clean and repair residences and businesses. For some service classes, like the residential and small business classes, the additional electricity consumed by the machinery and tools that were used in the clean-up and repair work during the remaining portion of the quarter likely compensated for the loss during the outage. Hence, the delivery volumes for the entire fourth quarter for these service classes were found to be not significantly different from what they would normally be.

As noted above, Staff's position is inconsistent and contradictory; Staff's criticism of the Company's use of the dummy variable is not supported by any evidence on record; and Staff's claim that CECONY's models are unreliable is unfounded and should be rejected. As such, the Company's electric sales forecast should be used in this proceeding.

B. <u>Gas Forecast</u>

As noted in CECONY's Initial Brief (pp. 10-14), by Staff's implicit acceptance of the Company's average use per bill in its models, the difference between the Company's and Staff's forecasts for gas service is primarily attributable to the projections of the numbers of customer bills (and resulting customers) in the Rate Year.

For the first time in brief, Staff's attempts to demonstrate through the use of two charts that in comparing the actual levels of bills[6] issued by the Company for the first six months of 2013[7] against the Company's and Staff forecast levels, Staff's forecast is closer than the Company's (Staff-IB, pp. 8-11) and therefore, Staff's forecast should be adopted. In making this demonstration, Staff relies on data that is not part of the record in this proceeding.[8] For example, the charts included in Staff's brief combine information from a series of discovery responses from Staff to the Company, none of which are exhibits in this case. In fact, Staff attempted to enter the discovery responses into the record during the hearing but their request was denied (462-463). For the sake of a complete record, the Company hereby responds to Staff's argument using comparable charts and similar data.

In addition to the fact that Staff relies on out-of-record evidence to support its position, Staff's comparison should be rejected because (i) Staff did not include comparisons for bills for all RPC classes

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[6] The actual level of bills is actually a rolling twelve month average which is based on a combination of Exs. 794 and 795. To gain this average, the January 2013 level is based on February 2012-January 2013; the February 2013 level is based on March 2012-February 2013. The "Company Update" column and the "Staff Forecast" column use a blend of information from workpapers and the discovery responses relied on by Staff.

[7] Staff's forecast that was submitted on May 30, 2013 and the Company's updated forecast that was submitted on June 21, 2013, are all based on the same time frame, the twelve month period ending December 31, 2012.

[8] The Company would note that in their September 10, 2013 *Ruling Denying Introduction of New Evidence* ("New Evidence Ruling"), your Honors noted that "CPA's motion is without merit as it fails to demonstrate compelling circumstances that would justify a need to include it in the record at this late juncture to the possible detriment of other parties who have not had the opportunity to file a factual rebuttal to the evidence or to challenge it through cross-examination at the hearings." Staff's belated attempt to enhance the record should be rejected.

or on an overall RPC category basis; (ii) Staff made a comparison of the SC1 class, which is not an RPC category, and the average bill for this category only comprises a small amount of the $6.728 million difference between the Company and Staff's forecast; (iii) six months worth of bills does not make a trend; and (iv) Staff continues to maintain it used the best R2, which is inconsistent with their testimony and their results.

Staff looked at rolling twelve months of bills for two classes – SC1 (which is outside the RPC mechanism) and SC31 (which is an RPC class). Looking at one RPC class in isolation does not provide the entire picture. The Company looked at all the classes on a class-by-class basis and on an overall basis. On an RPC class basis, the results are not as favorable as Staff claims in its Brief. For example, for SC2 Rate 2 and SC 3 (1-4 dwelling units), incorporating the results for the last six months into the rolling 12-month average show that both forecasts are close to the actual but that Staff's forecast is greater than the actual results by a larger amount than the Company's forecast in most months.

The results of SC2 Rate 2 were as follows:

	Actual	**Company Update**	**Staff**
Jan-13	63,267	63,307	63,371
Feb-13	63,299	63,439	63,422
Mar-13	63,244	63,468	63,474
Apr-13	63,266	63,516	63,525
May-13	63,283	63,567	63,577
Jun-13	63,294	63,609	63,628

The results of SC3 (1- 4 Dwelling units) were as follows:

	Actual	**Company Update**	**Staff**
Jan-13	271,287	271,341	271,672
Feb-13	271,862	272,013	272,111
Mar-13	272,044	272,315	272,549
Apr-13	272,258	272,709	272,988
May-13	272,624	273,142	273,427
Jun-13	272,960	273,585	273,865

As is evident in looking at other classes, Staff's forecast is generally higher than both the actual levels and the Company's forecast. More important, on an overall RPC basis, excluding SC1, Staff's argument does not hold up. As can be seen in the below chart, using all RPC groups, excluding SC1, in every month from January through June, both the Company's and Staff's forecasts are higher than the actual twelve months rolling average number of bills. And in every month, Staff's forecasted level is higher than the Company's.

The comparison of all RPC classes adds the forecasts by service classification to develop the totals:

	Actual	Company Update	Staff
Jan-13	412,341	412,359	412,894
Feb-13	413,097	413,297	413,491
Mar-13	413,249	413,638	414,088
Apr-13	413,634	414,121	414,686
May-13	414,154	414,658	415,283
Jun-13	414,628	415,204	415,880

As can be seen, the variation between Staff's forecasted level of bills issued and the actual level of bills issued has increased in the last several months. Since the bills issued in the January 2013 to June 2013 period are not increasing at the levels projected by Staff's linear regression in the short term, it is difficult to envision that the bills issued will increase to Staff's projected level between now and the end of the Rate Year. Moreover, if the results of the past six months were included in the data that Staff included in their forecasted monthly growth rate, that data would likely decrease their forecast of bills for the Rate Year.

Regarding SC1, the Company concedes that the overall number of bills issued in the January to June period is higher than forecast.[9] However, the SC1 class is for customers using gas primarily for cooking purposes. The class has the lowest potential impact on revenue on a revenue per bill basis, with the average bill being around $22 per bill. Using Staff's chart, with approximately 1,750 more bills in June multiplied by $22 per bill times 12 months, the variation is around $460,000 for a one-year period. This amount is small compared to the overall variation in revenues between the two forecasts.

Staff seems to argue that Staff's forecast should be accepted because the latest trends over a short period are favorable (Staff IB, p. 10). On cross, Staff conceded that several months does not equal a trend (465-466). In fact, Staff noted there is a "different trend for each class"[10] and agreed that the numbers of bills issued could change over periods of time (466). As such, Staff's reliance on the last six months worth of data to bolster its forecast should be rejected.

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[9] The Company would note that in two of the six months, Staff's forecast was higher than the actual data (Staff-IB, p. 11).

[10] Staff's entire statement was "… it's different for each class, and I have to look at each individual class alone" (466). This statement itself demonstrates that Staff's linear regression is not suitable for forecasting in this case.

Finally, Staff claims[11] (its br., p. 9) that "Staff utilized the most recent historic trend of underlying data, while at the same time achieving the best r-squared values (Tr. 455)." This statement is at odds with Staff's testimony on cross where it was shown that a higher R2 value could have been obtained using a shorter time period than Staff used, which would have resulted in a lower bill forecast (454-458). The Company's Initial Brief (pp. 10-21) demonstrated that Staff's model and testing were not statistically proper.

As was explained in the Company's Initial Brief and is demonstrated above, Staff's forecast would produce higher than expected bill and revenue amounts and Staff's forecast should be rejected. The Company's forecast for gas service should be adopted.

C. <u>Revenue Decoupling Mechanisms</u>

In its Initial Brief (CECONY-IB, pp. 14-21), the Company addressed Staff, NYPA and CPA positions with respect to proposed modifications to the Company's electric and gas revenue decoupling mechanisms. In this Reply Brief, the Company addresses several points raised by these parties in their initial briefs.

1. Subjecting EJP and RNY to the RDM

Both Staff and NYPA maintain that the Company has the ability to promote these economic development programs to potential customers and, therefore, these two programs should be excluded from the RDM. Staff claims (its br., p. 13) that the Company admits that it has some impact on whether customers ultimately participate in the RNY program. NYPA claims that because CECONY hosted two meetings for energy service companies ("ESCOs"), one in 2011 and one in 2012 (Exs. 931, 932), where RNY was advertised as a topic for discussion, CECONY has an impact on enrollment (NYPA-IB, pp. 4-7). Neither claim supports Staff's and NYPA's contentions.

Staff relies on the following exchange during the hearing to support its contention that the Company admitted that it has some impact on whether customers ultimately participate in the RNY program:

> Q. Well, let me ask you then, your characterization in your testimony of meaningful impact, what is it based on exactly?
>
> A. That we have some impact on participation (2055).

Staff mischaracterizes this exchange. The question sought CE-RDMP's <u>definition</u> of "meaningful impact," which the Panel explained means "some impact." However, as to whether the

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[11] Staff's Brief makes a number of other similar unsupported attempts to bolster its forecast. For example, Staff states "it is clear that Staff's model, which includes a linear regression analysis to develop the number of customers in the Rate Year, yields a more accurate sales forecast based on the number of bills in the Rate Year" (Staff-IB, p. 9). Staff offers no support for this and similar assertions and they should be disregarded.

Company has had some impact on participation, the CE-RDMP testified several times that they believed that the Company had no impact on participation (CE-RDMP-R, pp. 11-12; 2045-2049). For example, in response to the question, "Now is it possible that the Company's, these efforts, ESCO awareness or educational programs were successful in increasing or attracting Recharge New York enrollments?" the CE-RDMP responded, "I don't get that from this, no, I don't" (2053). Moreover, in response to the question, "And is it fair to say that the forum on November 18th, 2011 was to promote or showcase, sort of the kick off, the Recharge New York program that was scheduled to come into effect in July of 2012; is that correct?," the CE-RDMP responded, "I don't think that's necessarily correct, no. I think the purpose of this was, as it says, to share new initiatives that can affect the Power Your Way program" (2051) and "I don't know that I would call it a promotional type of event" (2052). Nor did the Panel testify that they believed the Company's efforts would have "some impact."

NYPA also fails to demonstrate that the ESCO meetings to which it refers demonstrate that the Company impacts enrollment in NYPA's program. NYPA's suggestion that impact be assumed because the Company failed to demonstrate that these ESCO meetings did not impact enrollment (NYPA-IB, p. 7) should also be rejected by the Commission. Not only is it unreasonable to assume that the two annual ESCO meetings to which NYPA refers are the types of activities that the Commission was concerned not be discouraged by including economic development customers in the RDM, there is no evidence in the record that would lead a reasonable person to conclude that including EJP and RNY in the RDM would negatively impact the Company providing such information prospectively.

Staff makes several other assertions as support for its claim that EJP/RNY should remain outside the RDM (Staff-IB, p. 12). Staff claims that including these programs in the RDM would be confusing to customers, subject customers to additional volatility, and that these programs are excluded in the RDMs for other utilities in the State (Staff-IB, p. 12). Neither Staff's brief nor its testimony provides any demonstration that customers are or would be confused nor does Staff make any showing that EJP/RNY customers know, or care, how their revenue is currently treated. Further, the evidence available demonstrates that RNY customers support including RNY in the RDM.[12] CPA customers, who are sophisticated business people, understand the risks that they would be taking as it relates to RDM surcharges/credits, thereby also making Staff's concern about additional volatility inapt. Finally, the fact that EJP/RNY are excluded from the RDMs of other State utilities should not preclude the Commission from authorizing a different approach in this case, where the Company has demonstrated that it does not have a meaningful impact on participation in EJP/RNY programs.

[12] Case No. 11-E-0176, *Order Denying Petition of Consumer Power Advocates* (issued February 20, 2013).

Accordingly NYPA's and Staff's assertions should be rejected.

2. Outage Credit Policy Proceeding

Without advancing any new arguments, Staff continues to press its position that, if no decision is issued in the generic Outage Credit Policy Proceeding, the Commission should implement its preferred approach on the Company prior to implementing it for all other utilities. Interestingly, Staff makes no attempt to reconcile the inconsistent positions of its Staff Policy Panel and Staff Consumer Policy Panel. As noted in the Company's Initial Brief (pp. 16-17), the SPP proposes to implement a policy (although it is unclear what that policy is) absent a Commission decision (SPP, p. 78) and the SCPP states that the Commission should address the policy generically for all utilities (SCPP, p. 11). As such, Staff's position should be dismissed.

3. Single Service Class for the RDM

4. Subjecting Gas SC1 to the RDM

In support of its position that gas SC1 should be included in the gas RDM, CPA posits, for the first time, and without any support, that there is conservation in SC1 because pilot lights have been replaced with spark ignition and there may be additional advances to follow (CPA-IB, p. 4). However, CPA provides no indication (nor is there any evidence in the record) of what those advances may be; whether there is any reasonable expectation that such advances will be made and implemented during the Rate Year; whether there is any potential role for the Company with respect to such advances; or that these advances would have even a measurable impact on forecasted gas usage for SC1 for the Rate Year. As noted earlier, the average bill for SC1 gas customers is around $22 per month, with nearly $19 of the $22 related to the customer charge (that includes the initial three therms of gas) and with most customers consuming under three therms per month. Accordingly, the potential for advancement in pilot lights provides no basis for including SC1 in the RDM. As such, CPA's proposal should be rejected.

5. Replacing Gas RPC with the Electric RDM Model

6. Other RDM Issues

D. <u>Steam</u>

1. Steam Weather Normalization Clause

Staff, NYC, CPA and NYECC each continues to oppose the Company's proposed steam weather normalization clause ("WNC"). The Company's Initial Brief explained these parties have not provided any reasonable basis for rejecting the Company's proposal (CECONY-IB, pp. 22-24). The Company will not reiterate these points but will respond to certain mischaracterizations evident from these parties' initial briefs.

NYC (p. 6), CPA (p. 6) and NYECC (p. 8) continue to erroneously assert that a WNC will reduce rate certainty. For example, NYC reiterates Mr. Gorman's claim in testimony that a WNC would introduce substantial cost volatility into steam rates, thereby making it difficult for steam customers to understand, predict, and manage their steam costs (NYC-IB, p. 6). However, NYC ignores Mr. Gorman's tacit acknowledgement during cross-examination that the WNC will result in monthly steam bills closer to, rather than further from, customers' projections of their steam bills (533-536).

The same is true with respect to erroneous claims that the WNC would lead to overall revenue volatility during the course of a rate year. Staff (pp. 17-18), NYC (pp. 6-7), and NYECC (p. 9) each asserts correctly that the Company would have implemented a significant surcharge for the 2011/2012 period and a smaller credit for the 2010/2011 period if the WNC been in effect during these years. Moreover, neither the surcharge nor the credit introduces volatility for customers in terms of actual bills versus expected bills. In fact, the opposite is true. That is, the WNC adjustments result in customers paying bills reflecting revenues more closely aligned with revenues forecasted when rates were established and that would have been realized by the Company absent weather that was colder or warmer than normal.

NYC (pp. 5-6), CPA (p. 6), NYECC (p. 10) also equate erroneously financial impact and financial need. Specifically, the Company readily acknowledges that operation of the WNC has a potential financial impact. However, the potential financial impact is equal with respect to both customers and the Company; no party has alleged that the proposed WNC is designed in any manner to favor the Company over customers in terms of possible financial impact; and no party has explained why the Commission should assume past is prologue in terms of the WNC producing prospectively a financial benefit to the Company as opposed to a financial benefit to customers.

Parties also continue to assert erroneously that the Company proposed a WNC to address a financial need. For example, NYC notes correctly that the Company's Steam Forecasting Panel (CE-SFP) testified that the WNC is being proposed to mitigate the financial impact of weather-related deviations from the steam sales forecast, citing both testimony and cross-examination (NYC-IB, p. 5). However, in both references relied upon by NYC, the CE-SFP made clear that the proposal was designed to mitigate the financial impact on both the Company and customers. Clearly, a mechanism proposed by the Company that has an equal chance of producing a credit to customers cannot reasonably be found to have been designed to address a financial need. In fact, further evidence of NYC’s intention to blur the clear distinction between financial impact and financial need is NYC’s conveniently edited reference to the CE-SFP’s rebuttal testimony. Specifically, NYC states on page 6 of its Brief that "the Company concluded that 'a Steam WNC is even more important today to protect ... the Company from the revenue variations [*i.e.*, financial impact] resulting from abnormal weather.'" The "..." in the quoted passage replaced the words "customers and," demonstrating NYC's refusal to acknowledge (and wrongful attempt to mischaracterize) a clear Company intention to address both customer and Company interests.

Nor, as suggested by NYC (its br., pp. 5-6), does the establishment of a five percent dead band relative to the steam return on equity provide any basis for asserting that the WNC was proposed to address a financial need. First, a dead band does not moderate the risk of weather-related sales variations on the steam ROE. Again, the opposite is true. That is, the dead band provides for the Company (and customers) to assume some risk of weather variations without adjustment. Second, the dead band is symmetrical. Third, the proposal to establish a dead band relative to the ROE is simply for the purpose of calculating a dollar threshold before an adjustment is made, which is a common Commission practice (*see, e.g.*, property tax reconciliation in effect today for the Company's electric,[13] gas and steam services). Accordingly, there is no basis for NYC (and any other party) to infer that the Company proposed the WNC to address a financial need.[14]

NYECC (its br., p. 8) curiously attempts to argue rejection of the WNC because of the structure of the earnings sharing mechanism under the current steam rate plan. However, even assuming *arguendo* the potential relevancy of a WNC in the context of an earnings sharing mechanism, as addressed by the Company and Staff, there is no proposal for an earnings sharing mechanism to be established for the Rate Year by any party to this case, and no reasonable basis or expectation that the Commission would do so on its own initiative.

Finally, the Commission should reject unfounded assertions by NYC (its br., p. 7) and NYECC (its br., p. 11) that the WNC would discourage investments in energy efficiency or foster a further exodus of steam customers, respectively. There is no evidence in the record as to either assertion. Moreover, there is no basis for giving any credence to NYC's assertion that the WNC would discourage energy efficiency by individual customers. The WNC proposed by the Company is designed to operate in a similar manner as the class-based revenue decoupling mechanisms.

For the foregoing reasons, the Commission should find that no party has established any basis to reject the proposed WNC, which should therefore be adopted as proposed by the Company.

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[13] 2010 Electric Rate Order, JP p. 18.

[14] NYECC (p. 9) argues that the +/- 5% dead band is arbitrary and that any other dead band would be just as arbitrary (NYECC-IB, p. 9). Selecting a dead band is a matter of judgment and no basis for rejecting a WNC.

III. Other Operating Revenues[15]

A. POR Discount Revenues

CECONY and Staff agree on the Rate Year level of projected electric and gas Purchase of Receivables Discount Revenues ("POR revenues") related to CECONY's purchases of accounts receivable from ESCOs (CECONY-IB, pp. 24-25; Staff-IB, p. 18). No other party has taken a position on the subject. The amounts included in Staff's August 30 revenue requirement calculations should be adopted.

CECONY explained that the credit and collections portion of the POR revenues is combined with amounts billed to full service customers for those services and the total credit and collections revenue and the rate allowance for the cost of those services should be the same amount so that there is no effect on base rate revenue requirements (CECONY-IB, p. 25). Staff indicated its concurrence (*Id.*; Ex. 914). Staff did not address the subject in its Initial Brief but Staff's August 30 revenue requirement calculations reflect the correct approach and it should be adopted.

As with the credit and collection portion of POR revenues and related expense, the portion of POR revenues providing for recovery of uncollectible accounts and the rate allowance for uncollectible accounts should be the same amount so that CECONY's participation in the POR program in furtherance of retail access will not affect base rate revenue requirements (CECONY-IB, p. 25). Staff, however, proposes a POR revenue level that includes a provision for uncollectible accounts expense that is greater than the rate allowance for the expense that Staff proposes (*Id.*; Staff-IB, pp. 65-66) – the excess improperly reduces base rate revenue requirements. This results from Staff incorrectly disconnecting its forecast of POR revenues from its forecast of related uncollectible accounts expense. In doing so, Staff claims CECONY "mistakenly views" the uncollectible accounts expense portion of the POR discount rate as intended to be a reasonable estimation of the level of expense (Staff-IB, p. 66). CECONY is not mistaken in that regard as shown by Staff's own explanation of the intent of the POR discount rate. As Staff explained (SAP, p. 31):

> The discount rate is determined bi-annually and is designed to compensate Con Edison for its exposure to uncollectible ESCO accounts, credit and collection costs, administrative costs and risk that the actual uncollectible rate may be higher than the assumed uncollectible rate.

Consequently, based on Staff's own, and correct, explanation of the intent of the POR discount rate, base rate revenue requirements should not be affected by disconnecting the uncollectible accounts portion of

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[15] Some parties' briefs refer to expenditures for 2015 and beyond. The Company addressed these comments in limited circumstances where there was potential to influence a decision for the Rate Year and/or to clarify the record.

POR discount revenues from the uncollectible accounts expense those revenues are "designed" to provide for. Staff's approach is wrong and must be rejected.

B. Medicare Part D

CECONY and Staff agree on the amounts of deferred Medicare Part D tax benefits for electric, gas and steam, and related amortization amounts for the Rate Year (CECONY-IB, pp. 24-25; Staff-IB, pp. 18-19). No other party has taken a position on this subject. The amounts included in Staff's August 30 revenue requirement calculations should be adopted.

C. John Street

Staff continues to place great significance on the Company's unintentional accounting mischarges of property taxes from 1996 to 2008 and proposes to penalize the Company for such mischarges by reimbursing the Company for the costs it actually incurred and denying the Company any share of the increase in the fair market value of the John Street property since 1963 (Staff-IB, pp. 19-22).[16] The Company's Initial Brief dispelled Staff's arguments and explained in detail why Staff's proposal is unjustified. No further reply is needed here except to note that Staff misapplies the Commission's test for determining who should receive the gain in value of property that had been, but is no longer, in a utility's rate base. Although there is no dispute between Staff and the Company that the Commission's general practice is to allocate the gain in value on such property based upon who shouldered the risk of any change in the fair market value (*i.e.*, the party who bore the risk of loss in market value should receive the gain in market value), Staff argues that "customers were exposed to a much larger risk [than the Company] resulting from the Company's inappropriate accounting methods," which resulted in mischarges of property taxes to customers between 1996 and 2008 totaling some $1.1 million (Staff-IB, p. 21). Staff's argument makes no sense.

The risk of loss has nothing to do with payment of property taxes. The risk of loss is shouldered by the party for whose interest it is held. When the book cost of the John Street property was included in rate base, ratepayers shouldered the risk of loss regardless of who paid property taxes on the property and are thus entitled to any appreciation in the value of the property while the property was in rate base. Similarly, when the cost of the property was transferred to a non-utility account in 1996, it was shareholders who shouldered the risk of any loss in value regardless of who paid the property taxes and, thus, it is shareholders that are entitled to any gain in the value of the property after 1996. Indeed, Staff's

[16] Ironically, Staff proposes to make the Company whole for the property taxes it paid after 2008 by reimbursing the Company for such costs plus interest, but rejects the Company's proposal to make ratepayers whole for the property taxes they paid between 1996 and 2008 by reimbursing them for such costs plus interest.

position would lead to the absurd conclusion that a municipality would be entitled to any appreciation in the value of a property whose owner failed to pay property taxes.

In short, the Company's proposed allocation of the gains is reasonable and fully consistent with the Commission's historic practice.

D. Spent Nuclear Fuel

Staff's position with respect to the Company's recovery of its prudently-incurred litigation costs relating to spent nuclear fuel ("SNF") is a perfect example of the well-known adage "No Good Deed Goes Unpunished." Despite Staff's acknowledgement that the Company was unequivocally entitled to continue recovery of its SNF litigation costs in the Company's last electric rate case (Case 09-E-0428) through the allowance for legal expense, despite Staff's recognition that it recommended in that rate case that, given the likelihood that the Company will be successful in its litigation, the Company should defer recovery of its litigation costs until the litigation is concluded so as to mitigate any rate increase to customers, and despite the fact that the only plausible explanation why the revenue requirement established in that proceeding did not reflect any SNF litigation costs is that the Company acceded for the benefit of ratepayers to Staff's request that recovery of SNF litigation costs be deferred, Staff continues to urge that the Company be denied recovery of those costs, claiming that the absence of a provision in the JP resolving Case 09-E-0428 expressly authorizing the Company to seek to recover its litigation costs at a later time bars the Company from ever seeking to recover those costs (Staff-IB, pp. 22-23).[17]

The Company thoroughly explained why the silence of the JP in Case 09-E-0428 on the Company's recovery of its SNF litigation costs has no bearing on the Company's right to seek recovery of its prudently-incurred litigation costs and why the absence of a provision in the JP expressly authorizing the recovery of such costs is not at all indicative that the Company waived its right to do so as part of the overall settlement embodied in the JP, especially when the outcome of the litigation was expected to produce over $100 million for the benefit of ratepayers (CECONY-IB, p. 29). The Company will not repeat those arguments here except to emphasize that, had the Company waived its right to recover its SNF litigation costs as part of the overall settlement in Case 09-E-0428, there would have certainly been a

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[17] Staff also claims that since the Company did not defer incurred litigation costs on its books, "from an accounting perspective, there is nothing to recover (Staff-IB, p. 23)." Staff's claim is without merit. In the first place, the costs at issue were expensed in 2007, 2008 and 2009 because the Company anticipated that those costs would be included in the three-year historical average used to set the allowance for legal costs established in Case 09-E-0428. Second, if recovery of those costs were authorized by the Commission in this proceeding, the Company would defer those costs on the books at the end of this year, to be amortized beginning in the 2014 Rate Year. Finally, even if Staff were correct that the Company should have deferred those costs in 2010, the Company's inadvertent failure to do so should be no more a bar to recovery of those costs than an inadvertent failure to defer a credit due to customers should be a bar to providing the credit to customers.

provision in the JP memorializing such a waiver so as to prohibit the Company from seeking to recover its litigation costs from the substantial proceeds expected by the Company and Staff. The Company would also note that, as pointed out by the Company's Accounting Panel (R/E, p. 61), there can be no question that had the litigation been resolved in the Company's favor with a substantial award of damages, as had been expected by Staff and the Company, Staff would not have opposed recovery by the Company of the very costs incurred to obtain that award regardless of the JP's silence on such recovery. The fact that the Company was unsuccessful in its litigation, despite its best efforts and through no fault of its own, should not be a basis for denying the Company recovery of costs prudently-incurred for the sole benefit of ratepayers.[18]

E. <u>Net Plant Carrying Charges</u>

CECONY and Staff agree on the amounts of deferred carrying charges, and related amortization amounts for the Rate Year, associated with the net plant reconciliation mechanism in effect under CECONY's current electric rate plan in Case 09-E-0428 and those associated with the implementation of a joint proposal adopted by the PSC resolving an audit of CECONY's capital expenditures during the three-year period ended March 31, 2008 (CECONY-IB, pp. 30-31; Staff-IB, p. 24). No other party has taken a position on the subject. The amounts included in Staff's August 30 revenue requirement calculations should be adopted.[19]

F. <u>59th Street Gas Conversion</u>

As CECONY explained (CECONY-IB, pp. 31-32), recovery of the June 2013 through December 2013 carrying costs associated with CECONY's investment adding gas-firing capability to the 59th Street Steam Generating Station should be allowed. Customers have been enjoying the fuel cost savings since the project commenced operations in June 2013. Providing recovery will simply implement the language and intent of the current steam rate plan regarding the project and be consistent with the PSC's February 22, 2012 order in Case 09-S-0794 addressing recovery of the cost of the project. Staff's opposition rests on its disingenuous and punitive "unauthorized deferral" position -- that the PSC is precluded from

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[18] Staff's argument that allowing the Company to recover its SNF litigation costs would inappropriately enhance the Company's Rate Year earnings is specious (Staff-IB, p. 23). The Company's earnings would have been enhanced over the period covered by the JP had it been allowed to recover its costs in that case through the allowance of legal expense and the Company's earnings would have been enhanced in 2010 had it set up a regulatory asset for the costs as Staff says it should have. In short, the Company's earnings will be enhanced whenever the Company recovers the litigation costs it incurred and expensed in a prior period and there is nothing inappropriate about it.

[19] With respect to the net plant reconciliation mechanism in effect under Case 09-E-0428, the carrying charge amount does not pertain to continuation of the mechanism after the March 31, 2013 end of the three-year term of the current electric rate plan up to the start of the Rate Year. The mechanism will continue during that period as described by CECONY witness Muccilo and not opposed by Staff (CECONY-IB, p. 30).

ensuring its previous orders are reasonably effectuated by later providing authorization of necessary procedures. The PSC is not so precluded and recovery of the carrying charges should be allowed.

Staff's Initial Brief (p. 25) states:

> Despite its assertion, the Company is actually seeking to recover costs associated with the project prior to traditional base rate recovery. That is contrary to the February 201[2] Order, the Company is seeking to recover carrying charges associated with its investment prior to inclusion in rate base in this proceeding.

With due respect, Staff's characterization of the Company's actions and reading of Commission orders is plainly incorrect.

The Commission's February 22, 2012 *Order Denying Accelerated Recovery* in Case 09-S-0794 states "[t]he Company instead should seek to recover all its prudently incurred costs associated with the projects through traditional base rate recovery in its next steam filing." This statement was made in response to a Company request to recover these costs on an accelerated basis through the steam FAC. The Commission rejected that request, which the Company accepted without appeal, and the Company filed for recovery as part of its next steam rate filing, fully in accord with this Commission statement.

Nothing in the *Order Denying Accelerated Recovery* suggests that the costs to be recovered through steam base rates could not or should not include carrying charges commencing with the operation of the new gas burning equipment. In fact, such a reading would be in direct conflict with the JP adopted by the Commission in Case 09-S-0794, which states (JP, pp. 25-26):

> …the Company's recovery of and a return on these investments, incremental O&M expenses, if any, and incremental property taxes, if any, will commence on the date that such equipment is placed in service, subject to Commission approval of the petition described below. …
>
> In the event the Company proceeds with the project(s), it shall submit a filing for Commission review and approval containing: (1) a detailed justification as to why the company proceeded with the project(s), (where the project was undertaken to comply with a change in rule, law and/or regulation, the Company will be required only to cite to the change); (2) the underlying costs associated with the investments; and (3) <u>a proposed method of recovery, including the justification for such method, for the period from the in-service date to the next time base rates are reset</u>. This filing should be made at least ninety (90) days before the expected in-service date (emphasis added).

The Company's steam rate filing meets all of the criteria of the JP with respect to such recovery, which specifically contemplates recovery from the in-service date forward. The Company's earlier request for accelerated recovery and the Commission's rejection of that request, in no way modify the 2010 Steam Rate Order regarding recovery of these costs as of the in-service date of the facilities.

Staff does not explain why the Company needed or should have sought Commission authorization to defer these costs in light of the clear language in the JP adopted by the Commission. Staff's opposition to the recovery of these costs should be rejected.

G. Property Tax Refunds

On August 22, 2013, CECONY filed a notice with the PSC, pursuant to 16 NYCRR § 89.3, regarding CECONY's receipt of a $140 million property tax refund from New York City.[20] The refund pertains to electric and steam properties and although it was not received in time to be addressed in the testimony or exhibits of any party, CECONY informed the record of the refund during hearings (1599). On brief, Staff makes certain recommendations regarding the refund (Staff-IB, pp. 25-27) that CECONY does not oppose. Specifically, Staff recommends that the PSC address the refund in determining the revenue requirements in these proceedings regardless of whether a PSC determination in the refund proceeding becomes available in time to be reflected in these proceedings (*Id.*). Staff recommends that be accomplished by the revenue requirements in these proceedings reflecting rate base reductions in amounts consistent with CECONY's proposed distribution of the refund and that the customers' share of the tax refund be preserved as a deferred credit and used to mitigate any future electric and steam rate increases (Staff-IB, pp. 26-27).[21]

IV. Expenses and Credits

A. Labor Expense / Staffing

There are several issues related to the projection of labor expense for the Rate Year. They relate to matters such as the employee level to be reflected in labor costs, the rate of escalation to be applied, the calculation of the productivity imputation, and the allocation of labor costs to expense and non-expense cost categories such as capital. These and other matters, including the Union's positions, are addressed below.

1. Base Employee Level

Staff's opposition to using the average number of employees during the Historic Year as the base level of employees to which program change employees are added for labor cost forecasting is contrary to the Commission's determinations and reasoning in the 2009 Electric Rate Order and contrary to Staff's position in the last three CECONY rate cases (CECONY-IB, p. 33). These are points Staff does not acknowledge while proposing that the actual employee level for a single month, December 2012, be the base level.

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[20] Case 13-M-0376, Con Edison – Proposed Distribution of a Property Tax Refund.
[21] Other matters related to Property Taxes are addressed in the Property Taxes and Reconciliation sections of this Brief.

CECONY explained why the employee level for December 2012 was not representative of the employee level for the Historic Year and will not be for the Rate Year (CECONY-IB, pp. 33-34). On brief, Staff attempts to minimize the significance of CECONY's explanation of why the employee level for that month should be viewed as significantly suppressed (Staff-IB, p. 28). That the effects of labor negotiations and the related work stoppage, Superstorm Sandy and the time of year on the employee level for December 2012 are not quantifiable, does not mean they did not occur and should be ignored as Staff suggests. CECONY did not "concede[]" that its points were "theoretical" as Staff asserts. What CECONY said is that those circumstances "would logically contribute to" a suppression of the December 2012 employee level (CE-AP-R/E, pp. 71-72). That is undeniable and important to setting a reasonable base level of employees.

In addition, CECONY's point regarding December 2012 is demonstrated by Ex. 311, Staff's employee level trend line, to which Staff refers. While Staff asserts that the decrease in the number of employees from the end of the Historic Year (June 30, 2012) to December 2012 "is consistent with trends for the prior four years" (Staff-IB, p. 28), Ex. 311 to which Staff refers in support of that assertion clearly shows that the rate of decrease during that six-month period was greater than during the past periods. That is wholly consistent with CECONY's unquantifiable, but common sense, explanation of why the employee level for December 2012 was suppressed and should not be considered representative of any period.

Moreover, Staff's labor expense is based on 13,323 employees for the Rate Year including program change employees that had not yet been hired as of December 2012 (Staff-IB, p. 29). Because of Staff's unreasonably low base level, Staff's Rate Year employee level is less than the 13,400 actual level of employees as of June 2013 (1761; Ex. 912). There is no reasonable basis for Staff's Rate Year employee level. For purposes of these proceedings, there is no reason to deviate from using the historic period average approach, which the PSC explained is the more logical approach in comparison to using the employee level for a single month as a base level, and has been used in CECONY's last four rate cases.

2. Additional Employees

CECONY's initial and update filings explained the need for additional employees associated with various program changes (CECONY-IB, p. 34). Staff has reflected all of them in its August 30 revenue requirement calculations (Staff-IB, p. 29). No party has opposed them and they should be approved.

3. Labor Escalation

i. Progression Increases

Staff's Initial Brief explains why the Commission did not reflect union employee progression increases in the labor expense projection in the 2009 Electric Rate Order (Staff-IB, pp. 31-32). Consistent with Staff's testimony opposing the method used by CECONY in these proceedings to reflect progression increases in the labor expense projection, Staff's brief opposes CECONY's method on the basis of unarticulated, generalized beliefs of why the method used by CECONY is not responsive to the Commission's explanation for not previously including progression increases (Staff-IB, p. 32). CECONY explained at length and in detail how the method it used in these proceedings, including limiting the percentage of employees assumed to be eligible for such increases in the Rate Year, addresses the Commissions's earlier concerns and the analyses CECONY performed to develop that method (CE-AP/E, pp. 108-111).[22] CECONY's method is responsive to the Commission's concerns and it should be approved over Staff's results-oriented objection.

In addition, Staff's attempt to set up a "lose lose" result for CECONY regarding progression increases and employee levels should be rejected. Although Staff objects to CECONY's inclusion of progression increases in the labor expense projection, Staff did not deduct those increases when quantifying its adjustment to CECONY's labor expense projection. Staff's reasoning for not deducting the progression increases is that its "lower actual" recommended employee level (*i.e.*, the actual level for December 2012) is "in effect capturing some of the savings that would otherwise offset wage progressions in the rate year" (SAP, p. 78; Staff-IB, p. 32). However, Staff's position is that if its recommended employee level is not adopted by the Commission, then the progression increases should be deducted from the labor expense rate allowance (Staff-IB, p. 32). That suggestion should be rejected. There will be wage progression increases in the Rate Year regardless of the employee level used to project labor expense. CECONY has set forth a method of providing for them that is reasonable and responsive to the Commkission's earlier concerns. Progression increases should be included in Rate Year labor expense.

CECONY explained why WC's explanation of its opposition to the method CECONY used to project progression increases for union employees is without merit and why WC's suggested alternative approach is impossible to implement and unnecessary (CECONY-IB, p.35). WC does not address the

[22] For example, the comparable attrition rates for employees nearing retirement age and those not nearing retirement age and the average annual wage increase including progression increases for those same groups.

subject in its Initial Brief. Assuming WC continues to oppose CECONY's method and/or support the alternative suggested in its testimony, its position(s) should be rejected.

ii. Escalation Rate

CECONY explained why WC's objections to CECONY's labor cost escalation rate were without foundation and should be rejected (CECONY-IB, p. 35). WC does not address the subject in its Initial Brief. No other party has expressed opposition to the escalation rate calculated and applied by CECONY. Assuming WC continues to object to CECONY's labor cost escalation, its objection should be rejected. CECONY's labor cost escalation rate should be used in the labor expense projection.

4. General Productivity Imputation

Staff incorrectly calculated the 1% productivity imputation for the Rate Year by starting the calculation in July 2012 (the beginning of the linking period) instead of December 2012 (the month Staff selected for determining the base employee level) (CECONY-IB, p. 36). The productivity imputation should begin at the start of the linking period when the base employee level is the average for the Historic Year, but if the base employee level is selected as of a later time, the productivity imputation calculation should start at that time to avoid a double counting of productivity gains in the interim (*Id*; CE-AP-R/E, p. 75).

Staff says CECONY is incorrect in that regard because the productivity imputation, although calculated based on labor and reflected as a reduction to labor expense, is intended to capture unspecified productivity savings that can result from any aspect of the cost of doing business. CECONY is aware of the intent and application of the productivity imputation. In fact, Staff cites the testimony of a CECONY witness to that effect (Staff-IB, p. 30). What Staff does not acknowledge, but what should be noted, is that labor costs are included in the costs of doing business from which productivity savings may be attained in order to offset the imputation reflected in rates. Consequently, Staff's productivity imputation contains a double counting of at least the productivity gains inherent in its "lower actual" recommended employee level (Staff-IB, p. 32), which Staff says is "in effect capturing some of the savings that would otherwise offset wage progressions in the rate year" (*Id.*). As explained above, Staff is attempting to set up a "lose lose" situation for CECONY as to progression increases and the "lower actual" employee level. However, Staff also ignores the savings inherent in the "lower actual" employee level when calculating the productivity imputation setting up a triple-lose situation for CECONY. Staff can't have it three ways. Staff's productivity calculation is flawed and should be rejected.

Staff's brief on this subject also contains many extra-record statements that should be given no weight. On page 30, Staff asserts that CECONY's position that Staff's productivity calculation is overstated "is merely a function of the method by which the Company computes its productivity adjustment." There is no demonstration to that effect in the record.

Staff continues on page 31 with assertions about the productivity imputation in other rate cases, presents a productivity imputation amount allegedly calculated accordingly and alleges that it is "on par with other New York Utilities." There is no record evidence of Staff's assertions and especially not in the testimony of the CE-EIOP which Staff cites in support. Staff continues even further on page 31 with the alleged results of analyses and calculations not on the record and extra-record assertions of how those results are "well below other utilities."

Staff should not be allowed now to attempt to influence the Commission's decision-making with unsupported assertions of fact, an unsupported presumption of relevance, newly created data and undisclosed calculations "to the possible detriment of other parties who have not had the opportunity to file a factual rebuttal to the evidence or to challenge it through cross-examination at the evidentiary hearings."[23]

5. Expense / Non-Expense Mix

Staff's August 30 revenue requirement calculations reflect a 55% expense / 45% non-expense allocation of labor costs based on Ex. 894, which is a payroll distribution report for the Historic Year (Staff-IB, p. 33). CECONY agrees with that allocation in so far as it is applied to the base level of employees reflected in the labor cost forecast. Such an allocation factor is appropriate for the base level of employees because that number of employees is undefined as to work function on an individual employee basis. Staff goes too far, however, when it suggests, for the first time on brief, that the 55% / 45% Historic Year allocation should apply to the labor cost for the additional employees related to program changes (Staff-IB, pp. 33-34). The incrementals cost for specifically identified and described work functions for program change employees were correctly reflected as 100% expense in CECONY's revenue requirement calculations without earlier objection from Staff and in Staff's earlier revenue requirement calculations (*Id.*).

Staff's suggestion should be rejected because it is untimely "to the possible detriment of other parties who have not had the opportunity to file a factual rebuttal to the evidence or to challenge it through cross-examination at the evidentiary hearings."[24] Staff's suggestion is also contrary to record evidence regarding the program change employees showing that because of the nature of the work the additional employees will perform, the full incremental labor cost for them will properly be accounted for

[23] New Evidence Ruling, p. 2.
[24] *Id.*

as expense and rates should be set accordingly. The areas of operation to which the program change employees relate and associated testimony and exhibits explaining their functions are as follows:

Cybersecurity (CE-SSP-R, pp. 18-22; Ex. 76)
Information Resources (CE-SSP/E, pp. 86-90)
Security (CE-SSP/E, pp. 116-118; Ex. 402)
Human Resources (CE-SSP/E, p. 100; Ex. 392)
Business Finance (CE-AP/E, pp. 77-78, 81)
Business Ethics & Compliance (CE-AP/E, p. 95)
Legal (CE-AP/E, pp. 100, 103)
Customer Operations (CE-COP/E, pp. 30 – 32, 59; Ex. 522)
System and Transmission Operations (CE-EIOP, pp. 204, 217-225)
Substation Operations (CE-EIOP, pp. 204)
Central Engineering (CE-EIOP, pp. 204)
Energy Management (Kimball, pp. 26-28; Ex. 432)

6. Staffing Level Issues

According to the Union, there are "two important staffing questions" at issue in this case (Union-IB, p. 6). The first is the need to determine the appropriate staffing level to be used in setting rates in this proceeding (*Id*.). CECONY addresses this question in Section IV. A. 1. above.

The second question is whether Con Edison has a "staffing problem" (Union-IB, p. 6) and the answer is clearly "no." Despite a lengthy proceeding involving comprehensive CECONY testimony, numerous interrogatories, cross examination and detailed briefs, the Union has presented little more than speculation to support its claims. The Union has not provided specific information to support its claims of a staffing deficiency, to verify the alleged effects of the claimed deficiency, or to demonstrate that its proposed relief is warranted. The Union's Initial Brief just rehashes the unsupported claims from the Union's testimony concerning CECONY's safety and reliability, staffing, and maintenance activities while simply ignoring the evidence in these proceedings that demonstrates that the Union's allegations are baseless. Simply repeating the same claims in testimony and in the Initial Brief does not make the unsupported statements true or provide evidentiary support for the requested relief.

The Union continues to assert that CECONY's use of contract labor is "neither just nor reasonable" (Union-IB, p. 26). To begin with, the Union is entirely mistaken when it contends that CECONY uses contractors in a manner contrary to its own standards (Union-IB, p. 26). The Union refers to a variety of functions that contractors perform, including vehicle and building maintenance, janitorial services, construction, tree trimming, trenching, paving, plumbing, pole inspection/treatment, stray voltage services, and environmental services, and states that "it is hard to imagine any significant services for which the Company does not currently use contractors" (Union-IB, p. 37). But the Union works on CECONY's electric system day-to-day and is obviously aware of the "significant" utility worker functions for which CECONY uses its skilled union work force either exclusively or predominately. In Ex. 982, CECONY stated:

> The Company needs to maintain a well trained and stable work force to respond to emergencies and handle normal day to day operation and maintenance of the system. Contractors on the other hand allow the Company the flexibility to supplement its workforce with skilled technicians without the need to retain them when workload decreases. The determination as to whether to use contractors is primarily dependent on the availability of internal staff. The Company's [sic] uses contractors in order to avoid the need to maintain a larger workforce than is required to meet normal operating requirements.

CECONY employs thousands of skilled and experienced union workers to respond to emergencies and perform the normal, day-to-day operation and maintenance of the electric system. CECONY supplements this work force with a small amount of skilled contractor labor in overhead electric system operations, primarily in Queens.[25]

The Union contends that the use of contract labor in Queens Overhead is "contrary to [CECONY's] own standard" stated in Ex. 982 (Union-IB, pp. 26-27). The evidence refutes the Union's contention. As stated in Ex. 982, CECONY is using contract labor in Queens Overhead to compensate for the unavailability of internal staff. The Brooklyn/Queens region had a high attrition rate in 2012 (CE-EIOP-R, p. 120; 1330), and contract labor is used to supplement the work force in Queens Overhead. CECONY is actively hiring and training union workers, as well as transferring workers, to increase its work force in both Queens and Brooklyn. CE-EIOP stated that CECONY's "plan" is the use of "overtime and use of contractors" during the period when the Brooklyn/Queens work force is being replenished with transferees and new hires (1333). As stated in the Appendix to the Union's Initial Brief (p. 2 of 2):

> From August 2012 to date [July 2013], Union worker inflow in the Brooklyn/Queens operating area has been 74 employees. This number consists of 52 new hires and 22 transfers from other Company organizations. … Through the end of 2013, the Company proposes to bring in, either through new hires or transfers from other Company organizations, an additional 58 union employees.

CECONY's plan is fully consistent with the approach stated in Ex 982 to use contract labor when internal resources are insufficient for the workload and replenish internal staff to maintain a trained and

[25] The Union cited Queens Overhead as its only example of the use of contract labor for day-to-day operations and maintenance work (Union-IB, p 27; Koda/Vuono, p. 7). The Union is correct that CECONY is supplementing its Queens Overhead work force with contractor labor for day-to-day operations and maintenance work.

stable work force to respond to emergencies and handle day-to-day operation and maintenance of the system. The Union's contention that CECONY is using contractor labor to displace the internal work force is false.[26]

In contrast to day-to-day emergency response and normal operation and maintenance of the electric system, CECONY uses contract labor to build electric system structures. CECONY's use of contractors to perform electric system construction work has been a long-standing practice, and functions making up a large part of CECONY's capital expenditures, such as excavation and the installation of conduit, vaults and manhole infrastructure, have never been performed by CECONY's union workers (1336).

There has been no demonstration in this proceeding, beyond the self-serving statements of the Union, that CECONY's use of contractors – either to supplement day-to-day emergency response and normal system operation and maintenance or to construct system infrastructure – in any way diminishes the safety and adequacy of the system or the service provided to customers.

The Union's Initial Brief argues that the use of contract labor has several disadvantages that should limit or preclude its use. None of the Union's arguments have any merit.

The Union speculates that "contract labor *can be* subject to safety and other standards that are less stringent than those to which full-time Company employees are held, and is not subject to the stringent training requirements that apply to full-time Con Edison personnel" (emphasis added) (Union-IB, p. 4). In fact, these contract workers are skilled union members from various Locals of the International Brotherhood of Electrical Workers and are trained under IBEW standards. As explained by CE-EIOP (1343-44):

> [W]hen we hire an overhead contractor, these are trained journeymen. These are folks that have done this in and around the country for years, with the same sort of demographics as our workforce, the same level of experience, the same level of training, the same strength and the same standards. When we--when they come into the Con Ed system, we just give them a much shorter, to your point, training orientation on our system, our safety practices, our work methods and that is what they receive. But they're already received all of their professional training from their employer.[27]

CECONY has established a variety of "checks and balances" to make sure that contractors perform to CECONY's standards and at reasonable cost. CECONY establishes bidders' lists of approved

[26] CECONY also uses contract labor to conduct annual stray voltage testing and five-year cycle equipment inspections pursuant to the PSC's Electric Safety Standards (CE-EIOP-R, pp. 57-60). Internal labor has not been displaced from this work; CECONY has used contract labor for this work since the inception of the Electric Safety Standards in 2005.

[27] CE-EIOP also stated that all contract labor is required to comply with a "HASP, health and safety procedure" that is part of the contract documents (1345).

contractors to compete with one another in bidding for work. CECONY excludes contractors from bidders lists for not performing to an adequate level in areas such as work quality and safety. CECONY's bid documents and contracts with its contractors establish the specifications to which the work must be performed and establish the skills that contractor labor must possess. CECONY maintains "strong oversight" over its contract labor. CECONY assigns CECONY supervisors and inspectors to oversee contractor compliance with these specifications at the worksite and to assure that the contractor's charges for the work are appropriate. Contractor work is subjected to the same Quality Assurance reviews as work performed by internal labor (1279, 1287-88; 1345-46).[28]

In an effort to attribute motives to CECONY's staffing strategies that are targeted at collective bargaining employees, the Union refers to a "consistent strategy of cutting its in-house workforce" (Union-IB, p. 12). This is simply untrue. While the Union may not welcome the natural ebb and flow of hiring related to Con Edison's capital budgets and work, there is a sound business rationale to this process. For example, CECONY explained that the "2009 through 2013 reduction in the Union work force corresponds with the Company's current Rate Plan. Under the current Rate Plan, capital spending was reduced. As such, the Union work force head count was reduced" (CE-EIOP-R, p. 110). CE-EIOP further explained that "[b]ased on the company's predictions for its capital expenditures going forward, we anticipate an increase in the work force. Based on historical patterns, an increase in construction work will likely correspond with an increase in the work force" (*Id.*, pp. 110-111). Furthermore, during cross-examination, when asked about the increase in the Union workforce that will likely correspond to an increase in construction work, the CE-EIOP explained that

> when there is more activity in the street, to manage, build, construct, design, we have typically ramped up our workforce. As those levels of activity go down, it's natural for us to reduce the workforce so that we effectively manage the workload at that point in time with the required workforce. We don't want too many folks nor do we want too few (1288).

The Union claims erroneously that "the Company's staffing practices have left it without a sufficient complement of trained and experienced in-house staff [and] there is no evidence in this proceeding that Con Edison acknowledges the problem, let alone intends to address it" (Union-IB, p. 9). The Union claims "Reduced levels of knowledgeable and experienced internal employees threaten safety and reliability of the system, as well as the ability to transfer experienced-based knowledge of the system to younger employees who will operate it in the future" (Union-IB, p. 28). CECONY uses a sophisticated

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[28] CECONY disagrees with the Union's contention that CECONY's in-house oversight of contractors is inefficient (Union-IB, p. 3). Oversight is necessary whether the workers are internal or contractor labor. CECONY assigns supervisors to internal union workers at a ratio of about 1 to 7 or 8 employees (1272-73).

succession planning modeling tool to assure that the size of the internal work force is appropriate to meet the demands of expected workloads.[29] CE-EIOP testified that CECONY performs "workforce planning to ensure that when people retire there are qualified people in the pipeline to step up and assume their greater and often skilled abilities" (1331-1332) As CECONY plans for work, the succession planning modeling tool is used to review staffing resources, specific skills, attrition and promotion rates, and workload demands. If the model identifies a workforce deficiency, CECONY hires employees to fill the gaps (1289-90, 1292).

Moreover, the Company's comprehensive resource planning analysis is in compliance with the recommendations of the Liberty Audit (1617). Further, CECONY's succession modeling and review appear to be comparable to National Grid's "span of control" review, a practice that the Moreland Commission found to be a best practice for implementing the Commission's recommendation that "Utilities should review existing staffing levels and evaluate the impacts of an aging workforce on their abilities to effectively respond to a major events."[30]

The Union argues that "Staffing deficiencies are having significant adverse consequences on service quality and reliability" (Union-IB-15). None of the examples that the Union provides have merit.

The Union argues that "reduced staffing has impacted routine equipment inspections, cable replacements, and pole replacements (*Id*., p. 16). The Union provides no specific data to support this claim. CECONY would point out that it has met annual Commission Safety Standard inspection requirements for inspecting 20 percent of electric equipment annually, that it completed all 2013 pre-summer system preparations, and has never failed its pole replacement metric in the Reliability Performance Mechanism.

The Union claims that parts of the network system are "plagued by open mains" (*Id*.). As shown in Ex. 862, the open main backlog at the end of 2012 was only 1,610 mains out of over 550,000 mains, the lowest in five years, and stood at about 1,200 or 1,300 mains at the time of the hearings in August 2013 (1445). In addition, CECONY's open mains prioritization process allows CECONY to identify and target for repair the open mains that present the highest risk of a service outage (CE-EIOP, pp. 36-37).

[29] CE-EIOP testified, "The objective is to hire to a level needed for the work that we have on our plate in the near future. So what we'll look for is to make sure that we've got the right mix of employees in the right titles to accomplish the work plan" (1334-1335).

[30] *Final Report* of the Moreland Commission on Utility Storm Preparation and Response (June 22, 2013), p. 55. National Grid's "span of control" review studies how staffing cuts through consolidation would affect operations. CECONY does not agree with the Union's contention that the Moreland Commission credited the Union's comments, along with similar statements from other Con Edison labor representatives…" (Union-IB, p. 35). The Final Report recites but does not endorse or confirm the allegations submitted by the Union to the Moreland Commission.

The Union speculated that low voltage conditions *may be* an indication of insufficient staffing (emphasis added) (Koda/Vuono, p. 16). During cross-examination, the Union asked the CE-EIOP whether the implementation of voltage reductions during a heat wave could be an indication of a failure to conduct maintenance in a timely manner, and the Union was told, unequivocally, that it was not (1254-1255). Nonetheless, in its Initial Brief, the Union continues to speculate on this theory by stating:

> [t]he provision of lower voltage service *may* itself by (sic) indicative of staffing problems….The problem in such instances *may well be* that the existing cabling and related infrastructure in the affected part of the Con Edison system is inadequate to handle the load. In turn, that situation *may be the result* of a failure to install additional cabling in the area, which *may itself be the result* of not having the people on staff to do the work in a timely manner (Union-IB, p. 18, fn. 11)(emphasis added).[31]

The Union relates unsworn and unidentified "crew" reports of an allegedly flooded 460-volt transformer vault on Roosevelt Island and speculates that the alleged flooding resulted from Superstorm Sandy, that the vault had not been inspected following Sandy, that the rusted condition of an I-Beam in the vault could have, but did not, cause the transformer to collapse, and that CECONY had to reduce voltage to the network to "rectify the problem" (Union-IB, pp. 40-41). The Union's speculation upon speculation is remarkable. The fact is that Con Edison reduced voltage to the Roosevelt Island network on May 24, 2013 because of outages to feeders supplying Roosevelt Island. Transformer vault conditions had nothing to do with this event, and CECONY has no record any 460 distribution transformers on Roosevelt Island that have bad I-beams and/or had damage due to Superstorm Sandy.

Even aside from the absence of factual support, the Union's allegations of scattered instances of maintenance deficiencies are manifestly insufficient to demonstrate overall inadequate staffing or deficiency in CECONY's maintenance programs. Thus, the Union cites the alleged non-inspection of a 460-volt vault on Roosevelt Island as the sole example of failure to adequately inspect the electric system for post-Sandy salt-water damage (Union-IB, pp. 40-41). What the record does show is that CECONY implemented "an aggressive program…following the storm, where we inspected 20,000 underground structures and made all the high priority repairs prior to this summer to make sure the system was ready for this summer as well as this hurricane season" (1270).[32]

The Union claims that a door hanger designed to advise a customer that a temporary service may require four to six weeks to make permanent is "an unfortunate byproduct of the absence of sufficient

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[31] The evidence in these proceeding is just the opposite. Each year, CECONYs' Primary Feeder Relief program reinforces and relieves all network feeders projected to operate in an overloaded condition, *i.e.*, above 100 percent of their ratings under both normal and contingency (two feeders out of service) conditions (CE-EIOP, p. 154).
[32] The Union has provided no information to support its reference to "the continuation of Sandy-related problems in Brooklyn/Queens" (Union-IB, p. 19, fn. 13).

Con Edison personnel" because in the past temporary repairs were made permanent in three to five days (*Id*. pp. 17-18). CE-EIOP explained that four to six weeks is normal when the repair requires excavation of an obstructed duct and the time is needed to obtain a City permit and schedule a construction crew. Without an obstructed duct, CE-EIOP stated that the job is typically completed in "one or two parking cycles … [about] a week"CE-EIOP explained that the door hanger is an effort to more effectively communicate to the customer what to expect regarding the job (1299-1301). It is noteworthy that the PSC's Electric Safety Standards, section 4l, provides 90 days to make temporary repairs permanent.

Lastly, the Union's brief ineffectively cites CECONY's reliability metric performance as supporting the Union's "concerns about adverse impacts on the Company's service reliability" (Union-IB, pp. 19-23). The worst that the Union can find from these performance statistics is that Superstorm Sandy outages would cause CECONY to miss 2012 network (underground system) performance targets unless the Commission grants a waiver that is permitted by CECONY's Reliability Performance Metric for "a catastrophic event beyond the control of the Company, including … natural disasters (e.g., hurricanes, floods earthquakes)" (*Id*., p. 21). Because the Union is forced to acknowledge that CECONY met its 2012 radial (overhead system) targets as well (*Id*., p. 22), the Union feebly cites text in Staff's report indicating that CECONY's 2012 average service restoration (duration) performance of 2.04 hours was just above the target.

The Union sums up its case stating, "Overall, these data show that when not faced with a weather problem, Con Edison is barely able to meet key reliability indicators [and] the ability to provide minimally reliable service when skies are clear is plainly not enough …" (*Id*. p. 23). Despite the Union's strained argument, the fact remains that Con Edison's reliability performance is exceptional and not indicative of an understaffed utility operation. CECONY's network interruption rate is exponentially lower than the other utilities in New York and in the nation. Con Edison's electric overhead system performance is two and a half times better than the rest of the state and the nation (CE-EIOP-R, pp. 105-107; 1267-1268). CECONY's performance targets reflect CECONY's excellent historical performance and are set at a level that is intended to maintain CECONY's superior level of performance (2155). Being "barely able to meet key reliability indicators" demonstrates consistency with past performance, not a decline.[33]

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[33] CECONY's annual performance targets are designed to reflect CECONY's performance absent the impact of "major storms, which are defined as storms that cause outages lasting at least 24 hours or affecting 10 percent of the customers in the operating area (SRPMP, pp. 8-11). Consequently, the impacts of variable weather events not reaching the "major storm" threshold are still counted in CECONY's annual performance. In any year, the volume of summer thunderstorms and winter storms that do not reach "major storm" status will nonetheless cause substantial service interruptions and outage durations that will be reflected in CECONY's performance even though

The Union contends that the duration of outages following the Long Island City outage in 2006 and Superstorm Sandy in 2012 resulted from "insufficient internal workers knowledgeable about the Company's underground and overhead systems to restore service to customers in a timeframe acceptable to customers and the Commission" (Union-IB, pp. 11, 24).[34] These two events are clearly inapt to demonstrate insufficient internal staffing. Both events involved extraordinary damage to the electric system that required substantial support from contractor and mutual aid personnel at manpower levels that normal internal staffing for day-to-day operations could not remotely support. The outages in Long Island City involved extensive secondary system damage.[35] At peak, CECONY received the assistance of crews with underground electric system skill sets from eight utility and four contractor resources.[36] Superstorm Sandy was the largest, most damaging storm event in CECONY's history.[37] As explained by the CE-EIOP in this proceeding, "whether we have 150 linemen, or 160 linemen or even 200 linemen, really would not make a dent in the resources for an event like Sandy. We had 5,700 people from around the country in to assist us during Sandy" (1349-1350).[38] The timeframe for service restoration following these two events was dictated by the large scope of damage, not by whether CECONY might have a few dozen more internal crews to deploy in lieu of contractors and mutual aid crews.

For large events, it is an industry practice to utilize mutual assistance crews – a practice that has served CECONY well (1349). Mutual assistance allows utilities to "get the qualified trained resources on the property when they are needed and only for the period when they are needed and they go off back to their home base after the event is over" (*Id*.). As such, it is clear that the Union's citation to these extraordinary circumstances as evidence of "understaffing" is without merit.[39]

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these storm impacts are also beyond CECONY's ability to control. A year with a high number of "non-major storms" can adversely impact performance as measured by the targets.

[34] It is noteworthy that the Union does not contend that CECONY has insufficient internal workers to timely address the day-to-day service outages that occur on the electric system.

[35] Case 06-E-0894, Part 105 Compliance Filing by Consolidated Edison Company of New York, Inc., Event Preparation, Recovery and Communication, September 25, 2006, p. 2-1.

[36] *Id*., pp. 5-27 and 5-28. While the Union speculates that "contract labor *may* lack the training needed to operate within Con Edison's unique urban and underground utility environment" (emphasis supplied) (Union-IB, p. 9), CE-EIOP pointed out that "every major urban area has underground systems" and there is a market for contractor workers trained in working on an underground system (1344).

[37] Case 13-M-0025, Consolidated Edison Company of New York, Inc., Report on Preparation and System Restoration Performance, Sandy – October 29 through November 12, 2012, January 11, 2013, p. 2.

[38] In response to a discovery request, the Company indicated that approximately 4,700 mutual assistance and contract workers were involved in the Sandy restoration efforts (Ex. 994).

[39] The Union's Initial Brief recognizes that "[S]ome reliance on mutual aid assistance is unavoidable … there will always be a need to call on other utilities for some assistance in times of severe weather" (Union-IB, p. 4). Nonetheless, the Union contends that "there is no way to justify that Con Edison had only 255 overhead personnel to call upon to restore service, when it apparently needed more than thirteen times as many mutual aid workers" to respond to Superstorm Sandy (*Id*., p. 40). The Union claims that "CECONY's use of mutual aid has [not] been

The Union's allegations are further undermined by the breadth of factual errors and misunderstandings permeating the Union's testimony. CECONY's Initial Brief pointed out several: the Union's factual misrepresentations concerning double poles and the process by which multiple equipment owners transfer facilities (CECONY-IB, p. 38); the Union's false claim that "essential day-to-day maintenance was not being performed" during the July 2012 lock-out (*Id.*); and the Union's false and disparaging comments concerning the qualifications of the mutual assistance workers who provide valuable services to CECONY and its customers during times of emergency (*Id.*).

The Union is also wrong in claiming that lower voltage service causes the customer meter to run faster so that the customer pays more for lesser quality service (Union-IB, p. 18). This theory is factually incorrect. The "speed" of the meter is a function of the Voltage X Current. A meter measures Voltage X Current over time to get Energy. Lowering any one of those without changing the other will actually cause the meter to run slower.

The record contradicts the Union's claim that the continued use of paper insulated lead covered (PILC) cable is a sign of an ancient system that is deteriorating (Union-IB, p. 10; Koda/Vuono, p. 7). PILC cable itself remains serviceable, but the connections between PILC cable segments and other types of cable are problematic and thus warranted removal of the cable. CE-EIOP testified that CECONY has reduced the percentage of PILC cable from about 50 percent of the network cable to about 14 percent and is now reducing the targeted removal of the cable because removal is no longer producing significant benefits (1340). CE-EIOP explained (1339; 1342):

> But just to clarify, that the cable itself has shown -- has proven over a very long period of time to be very reliable. And when we target those sections, it really is around those interconnection points as opposed to the paper cable itself.
>
> I've already said that paper cable is a really a -- was a marvelous product. And there are--not only is it still in use in our system, there are a number of utilities that have not undertaken a replacement program and in fact are still even installing it. So it is a -- it's not inherently bad. What we found to be inherently a problem were the transition interconnections with other cables and that's what we really targeted with our program.

The Union's proposed relief, that the PSC initiate a generic proceeding to establish minimum in-house employee levels (Union-IB, p. 9, 42-43.), is clearly an attempt to involve the PSC in the

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efficient" and asks the PSC to commence a proceeding to establish the appropriate levels of mutual aid assistance to be used by Con Edison" (*Id.*, p. 45). The Union's request should be rejected. The complement of necessary mutual aid and contractor resources should be dictated by the scope of the storm outage event and need, not by regulatory mandate. The nation's electric utilities are currently working to improve the mutual assistance process that has served the industry well for decades. The improvements are intended to streamline and more effectively dispatch mutual aid resources to the electric systems in proportion to damage, outages and need (1346-1348). The PSC's Staff is monitoring this process through the participation by New York's utilities.

collective bargaining between CECONY and the Union and should be rejected. And while the Union clearly has an interest in criticizing the work of these contractor resources, there has been no demonstration in this proceeding, beyond the self-serving statements of the Union, that CECONY's use of contractors in any way diminishes the safety and adequacy of the system or the service provided to customers

The Union set a standard for judging CECONY's maintenance and overall stewardship of the electric system when the Union stated that system performance during the summer 2013 heat wave will demonstrate whether the system is safe and reliable. The Union testified (Koda/Vuono, pp. 3-4, 33):

> Right now, important maintenance activities are not being conducted, nor were they conducted in connection with the expedited efforts to restore service following Super Storm Sandy. Con Edison's electric distribution system was in a weakened condition leading up to the Storm because of the Company's July 2012 lockout of the members of Local 1-2, and was in an even weaker condition following the Storm. There is reason for concern going forward. Significant service safety and reliability problems can arise when the salt water damage inflicted by Sandy is combined with the heavy demands placed on the system in connection with the arrival of summer heat. The potential for such a combination of circumstances is now at hand. (3-4)
>
> In the meantime, we will have a better idea as to the impact of the salt water flooding after the coming summer when summer heat waves will place additional stress on underground cabling. As the cable damage may well have been significant, we can expect more service reliability and safety issues this coming summer than would have been the case had Sandy not hit New York.

The electric system passed the heat wave test set by the Union with flying colors. CE-EIOP reported on 2013 heat wave performance as follows (1267-1268, 1371):

> And I think the performance in the heat wave, the seven day heat wave which broke records in the city demonstrated the investment that we made in the system in terms of on every level, substation, primary feeders, transformers and the secondary system; every step along the way to customers. So it--we can certainly go into other programs. We changed out paper cable for new cable. We've got an aggressive transformer management program taking care of the transformer fleet. We are adding new feeders every year. We are--we will split networks and create new networks. We've got all of the stimulus, the smart grid work that we're doing where we've made smaller grids and smaller networks out of the larger networks. We've got sectionalizing switches in the field. We've created the first loop underground feeder between two networks. The list goes on and on, and I think the record certainly indicates the robustness of the programs, but I think more importantly the robustness of the performance of the system.
>
> And when you look at certainly the performance in the last heat wave, the failure rates are very good as we target our programs, right. So the last heat wave was stressful overall but when you look at failure rates, they were certainly in good shape.

For the reasons set forth herein and in CECONY's Initial Brief (CECONY-IB, pp. 36-42) and based on the facts and evidence presented by CECONY in this proceeding, the first five recommendations put forth by the Union should be rejected.[40]

B. Management Variable Pay

In its Initial Brief, the Company responded to arguments raised on recovery of management variable pay ("MVP") (CECONY-IB, pp. 42-46) and addresses in this Reply Brief new arguments and/or clarifications as necessary.

Staff agrees that the Company has complied with the Commission's standards and agrees with the Company that NYECC and WC[41] raised no reasonable bases for denial of full recovery (Staff-IB, pp. 37-38). While Staff discusses possible modifications of the Commission's standards for MVP recovery to be applied in future cases, Staff fails to articulate the precise parameters it recommends for any future compensation/benefit study and/or proposes parameters with potentially mutually exclusive criteria that must be reconciled. Accordingly, any changes to the Commission's standards must not only be prospective, but also definite and subject to reasonable implementation in connection with the Company's next rate filing.

Staff makes two recommendations. First, Staff recommended that "the targets for the management compensation plan be adjusted to reflect any changes to the corresponding targets for the Commission's shareholder incentives, and should incorporate the performance measures and targets for any new shareholder incentives that are implemented by the Commission" (Staff-IB, p. 35). The Company's MVP plan already includes an annual review process for targets that specifically recognizes inclusion of performance indicators related to goals established by the Commission (CE-CBP-R, p. 27). The goals for 7 of the 14 performance indicators (Ex. 476) currently reflect targets established by the Commission. Thus, even without its being specifically ordered, the Company would incorporate any new or revised Commission targets into the MVP plan effective for either the 2014 or 2015 calendar year performance period, depending on the effective date of the Commission's order and any implementation issues associated with new metrics.[42]

As to Staff's second recommendation, notwithstanding its agreement that the Company complied with both the Commission's standards and Staff recommendations, Staff urges the Commission to

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[40] CECONY has no objection to the Union's sixth recommendation concerning first responder status for utility workers.

[41] UIU did not itself submit testimony on Compensation/Benefits and instead supports arguments of NYECC and WC (UIU-IB, pp. 6-8). The Company has addressed the arguments as raised by NYECC and WC herein and in its Initial Brief (CECONY-IB, pp. 45-46).

[42] NYECC also argues that any new metrics ordered by the Commission should be included in the MVP plan (NYECC-IB, p. 25).

"improve" the compensation study guidelines by adopting the rebuttable presumption that the Company be required to benchmark a minimum of 50% of positions in future rate filings (*Id*. at p. 35). In support of its proposal, Staff cites three separate compensation/benefit studies (performed by National Grid, Pacific Gas and Electric Company ("PG&E"), and Southern California Gas Company ("SCG"), respectively) that allegedly comply with this 50% position benchmarking standard (Staff-IB, p. 36).

To recover in rates the costs of management compensation plans, the Commission requires that a utility demonstrate that the level of total compensation and benefits, including variable pay, is reasonable and comparable to that of its peers.[43] In making such demonstration, the Commission has emphasized the importance of consistent peer groups in order to meaningfully compare the total package of compensation and benefits. If it is infeasible to show compensation comparability using a single peer group, the Commission observed that it is:

> nevertheless essential that the choice of peer groups used to assess the comparability of various components of total compensation be fully justified. Peer Group A may provide benefits comparable to those of O&R, and Peer Group B comparable base pay, but that does not necessarily imply that total pay and benefits for A and B combined is comparable to the total for O&R.[44]

The Commission's statement implicitly acknowledges that there are fundamentally distinct approaches to compensation and benefits in different industries. Some industries, like innovative technologies, may offer employees high cash compensation but few benefits, reflecting the expectations of highly mobile employees. Other areas of employment, like government and utilities, which place a high value on institutional knowledge of complex systems, offer lower cash compensation but more extensive benefits to encourage long-term, career employees.

As demonstrated in its presentation in these proceedings, the Company's study presented a clear comparison of total compensation/benefit packages across peer and industry groups. The necessary consequence of this focused approach is a lower percentage of position matching. A larger percentage of position matching can occur, but at the expense of consistency in peer companies/industry across elements of total compensation and benefits. For example, by adding peers to compare compensation (to increase position matching), but not measuring those same peers for benefits, is contrary to the Commission's guidance in the O&R case. To a varying degree, the increased matching achieved by National Grid, PG&E, and SCG compensation/benefit studies came at the expense of consistency in peers

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[43] Case 10-E-0362, Order Denying Petitions for Rehearing and/or Clarification (issued November 17, 2011); Case 11-E-0408, Order Adopting Terms of Joint Proposal, with Modification, and Establishing Electric Rate Plan (O&R Joint Proposal Order)(issued June 15, 2012)..

[44] *O&R Joint Proposal Order*, p. 20.

across all compensation and benefits elements. While this approach does result in a higher percentage of position matching, it also produces a loss of consistency within an industry or peer group. Consistent with Staff's prior position, the mixing of peer groups leads to a measurement that is not necessarily reflective of the total benefits/compensation for a peer or industry group.[45]

In other words, Staff appears to urge the Commission to adopt the very approach that Staff criticized as inadequate little more than a year ago. In recommending deviation from a consistent peer group across all compensation and benefits elements, Staff notes its earlier criticism but says "[i]t would be short-sighted to presume that this Commission, which did not formally adopt this [consistent peer group] recommendation, would not allow reasonably, if not perfectly, consistent peer group data in certain situations, if doing so would allow for a more accurate, comprehensive, and reasonable representation of the employee population as a whole" (Staff-IB, p. 37). This concern for "representation," however, would appear to contravene the Commission's expressed concern for comparable peer groups and the attendant benefits of "more accurate, comprehensive, and reasonable representation" of the employee population.

Turning to NYECC, the Company has already comprehensively replied (CECONY-IB, pp. 45-46) but certain arguments and assertions bear clarification in light of NYECC's Initial Brief. NYECC's argument that the Company failed to examine the three elements of compensation -- base compensation, incentive compensation, and long-term compensation (NYECC-IB, p. 25) -- is wrong. The Company *did* examine all three elements in its study (CE-CBP, pp. 20-21, 42-44). The Company clearly showed each of the three elements of compensation were examined as part of the review with total direct compensation (the sum of base salary, variable pay, and long-term compensation) being 8% below the median of both the Expanded Utility Peer Group and the Metropolitan Peer Group (Ex. 459).

NYECC claims that the "different definitions of success" between the MVP plan and long-term incentives present "conflicting views" between ratepayer and shareholder interest which creates "an element adverse to ratepayers' interests and promotes results inconsistent with Commission policies" (*Id*.,

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[45] Interestingly, in support of a 50% standard, Staff quotes the testimony of O&R witness Paul Schaefer, in O&R Case 11-E-0409, in which he stated that a 50% matching of O&R employees was "typical market practice for studies of this nature" (Staff-IB, p. 36). To reach that percentage, that study, however, used three separate peer groups without maintaining consistency in peers across all compensation and benefits elements. Staff was highly critical of this approach and instead recommended that companies use a consistent peer group. While not expressly adopting Staff's recommendation in Case 11-E-0409, the Commission strongly urged companies to address what the Commission described as Staff's "substantive" recommendation for "use of consistent peer groups for all components of the total compensation package being evaluated—base pay, incentive pay, equity grants and benefits. . .[and] those peer groups should include all types of companies with which O&R competes for employees, not just energy companies." *O&R Joint Proposal Order*, pp. 18-20. In fact, the Company followed this very recommendation in developing the compensation/benefits study that it presented in these proceedings.

p. 14). This argument reflects NYECC's failure to interpret the Commission's guidance (CECONY-IB, p. 45, n. 47).[46] NYECC next argues that the Company's inclusion of some projects and programs to address cost-effectiveness could "potentially" be adverse to ratepayers' interests (NYECC-IB, p. 21). In doing so, NYECC fails to recognize that the Company modified its MVP to include these types of measures in direct response to the Liberty Audit, the recommendations of which NYECC otherwise criticizes the Company for not following.[47] While acknowledging that the CE-CBP provided extensive detail as to the underlying studies and the actions taken in response thereto, both in testimony and discovery, NYECC argues that the Company should have provided a "final report, which should necessarily include an executive summary." The failure to provide such a report, according to NYECC, constitutes a "flaw" sufficient enough to deny recovery (*Id*., p. 23).[48] As the CE-CBP testified, the review and implementation of its findings were an iterative process with the results fully presented in testimony. The CE-CBP provided a thorough explanation of the entire process of the Company's review of its total compensation and benefits for non-officer management employees, including the Company's MVP (CE-CBP, pp. 19-76; CE-CBP-R, pp. 15-33).

NYECC's remaining arguments with respect to the Company's compensation/benefits analysis also lack merit.[49] As shown by the CE-CBP, the Company undertook the process of comparing the totality of its compensation/benefits package with the totality of the compensation/benefits package offered by its utility peers and general industry peers. This is an inherently complex process of measuring both the *design* and *value* of benefits across a range of companies and positions within companies that is to some extent reliant on the degree to which companies participate in detailed surveys. As described above, in undertaking this review, the Company was informed by its best understanding of the standards of the Commission and the guidance of Staff. The Company's approach was comprehensive.

To the extent that NYECC criticizes the Company's methodology to measure benefit design and benefit value, NYECC presents unsubstantiated and/or unsupported assertions. For example, NYECC erroneously conflates the concepts of design and value (NYECC-IB, p. 28) and NYECC declines to recognize the industry-practice of aging information (NYECC-IB, pp. 30-31, CE-CBP, p. 34). In a broad

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[46] It bears emphasis that the Company is not seeking recovery of long-term incentives in these proceedings (CE-CBP, pp. 16-17).
[47] The Company has complied with 91 of the 92 recommendations of the Liberty Audit (Ex. 491) and described its efforts specifically with respect to the MVP in its Initial Brief (CECONY-IB, pp. 45-46).
[48] Without a scintilla of cognizable demonstration of bias or deviation from industry practice by Aon Hewitt, NYECC also appears to make the flawed argument that Aon Hewitt's testimony in support of its work is a basis to deny recovery (NYECC-IB, pp. 23-24).
[49] The Company addressed many of NYECC's arguments in its Initial Brief (pp. 45-46) or has addressed in connection with its discussion of Staff's 50% position matching recommendation (*Id*., pp. 44-45).

swipe, NYECC insists on characterizing the Company's MVP plan as having no benefits to customers (NYECC-IB, p. 12) without comment on the CE-CBP's detailed description of how the MVP plan specifically measures actions that directly benefit ratepayers (CE-CBP, pp. 60-76). NYECC suggests that recovery of the costs of the MVP plan be denied because every employee eligible for the MVP did not participate in the development of the plan (NYECC-IB, p. 15), while ignoring the employees' role in achieving the MVP's goals (CE-CBP, p. 73) and without explaining why all employees should participate in the development of a compensation plan. Finally, NYECC attempts to make something of National Grid's incomplete participation in the surveys used in the Company's study (NYECC-IB, pp. 31-32). As the CE-CBP explained, the difference of only one company did not impair the study (1827).

Nothing in NYECC's Initial Brief provides any basis for the Commission to preclude full recovery of this reasonable and necessary business expense.

Turning to WC, Staff also concluded that the Company's data did not support WC's claim of "excessive" salaries (Staff-IB, p. 38). Because the Company failed to "break down the components of variable pay," WC argues that the Company's MVP is not adequately tailored to ensure that it is reasonable and prudent (WC-IB, pp. 8-9). Apparently WC is arguing that the Company is required to delineate with specificity the precise monetary amounts of MVP pay linked to each of the specific MVP goals. Not only has the Commission never sought this degree of granularity in the presentation of an MVP, it is difficult to imagine any useful purpose served by examination of such an exercise, especially when MVP is implemented on an overall, rather than a goal-by-goal, basis.

C. <u>Pension/OPEB Expense Level</u>

The reasons for Staff's opposition to the Company's recovery in rates of the Company's Supplemental Retirement Income Plan ("SRIP") are without merit. Not only is the design of the Company's SRIP in parallel with similar plans established by the State of New York and the City of New York, the Company also complied with the Commission's standards for OPEB recovery.

Staff persists in mischaracterizing the SRIP as a discretionary benefit in excess of the Company's qualified pension plan (Staff-IB, p. 40). In its Initial Brief, Staff willfully ignored the Company's demonstration that the SRIP is a mechanism to address certain Internal Revenue Code ("IRC") limits on non-discretionary existing obligations and is a component of the Company's pension plan (CECONY-IB, p. 47) and Staff offered no response or explanation thereto. As the Company showed in the benefits index analysis of its compensation/benefits review (without consideration of the SRIP for CECONY or any of the peer companies), the Company's overall benefits package is more than 7% below median (Ex. 457). In this context (and given the SRIP's relative value as part of the Company's overall benefits package is about 4%), it bears emphasis that the degree to which the Company's benefit programs area are already more than 7% below the median, the Company would remain below said median even with recovery of the SRIP.

The Company maintains that it is a common practice for public, state, and local government employers to establish such a mechanism (CE-CBP-R, p. 12). Contrary to Staff's assertion (Staff-IB, p. 39), there is no difference between public and governmental employer plans of this nature and the Company's plan. Staff claims that a key difference between public and governmental plans is that governmental plans are funded by the governmental employee, not its employer (*Id.)*. Staff's conclusion is not correct. For example, the State of New York authorizes establishment of separate plans that coordinate with the tax-qualified New York State and Local Retirement Employees' Systems and the New York State and Local Police and Fire Retirement System.[50] These plans are solely funded by the employer and provide benefits to participants that would otherwise have been payable under the qualified plan but for limits set forth under IRC Section 415. This is similar to the manner in which the Company's SRIP coordinates with its tax-qualified pension plan. New York City has also established similar plans that are solely funded by employers participating in the New York City retirement systems, *i.e.*, the New York City Employees' Retirement System, the New York City Teachers' Retirement System, the New York City Police Pension Fund, the New York City Fire Department Pension Fund, and the New York City Board of Education Retirement System).[51] These plans also provide benefits to participants who cannot be paid under the tax-qualified plan because of IRC Section 415 limits.

Finally, the Company notes that its filing with respect to the SRIP was fully compliant with the rate case filing requirements of the Commission's Pension Policy Statement[52] for OPEB plans. The Company reported (1) the status of its program, (2) any initiatives considered and rejected, (3) initiatives taken to reduce overall cost of the plan, (4) annual cost benefits, (5) impacts on current revenue requirements, and (6) description of any plan amendments with estimates of rate impacts (CE-AP/E, pp. 65-68; CE-AP/G, pp. 58-60; CE-AP/S, pp. 44-46; CE-C/BP, pp. 120-126).

D. <u>Municipal Infrastructure</u>

1. Staff O&M Adjustment

2. Staff Capital Adjustment

At the outset, the Company would note that Staff's Initial Brief barely mentions the arguments Staff put forth in its direct testimony relating to the Company's forecasted interference expenditures.

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[50] 2 NYCRR, Sections 372 and 373.

[51] New York City Charter and Code, 13-196.

[52] Case 91-M-0890, *Statement of Policy and Order Concerning the Accounting and Ratemaking Treatment for Pensions and Postretirement Benefits Other than Pensions* (issued September 7, 1993), App. A, p. 18.

These arguments were each discussed in the Company Initial Brief (CECONY-IB, pp. 47-52). These omissions are telling. Instead, Staff's Initial Brief makes the vague, unsupported assertion that the Company's forecasts "have a great number of variables and are based, in large part, on unverifiable judgment" (Staff-IB, p. 41). Staff's own testimony belies this statement. For example, Staff does not dispute that there is a direct relationship between the City's capital expenditures and the Company's interference costs (SMISP, pp. 12, 15). In developing its interference forecast, the Company uses the City's Capital Commitment Plans, which reflect the latest, most relevant information available regarding New York City's projected capital expenditures (CE-MISP, pp. 11-14; CE-MISP-R, pp. 4-5). Because Staff's proposed forecasting methodology ignores the City's Capital Commitment Plans, Staff's methodology is flawed and its proposed adjustment should be rejected.

Staff claims that, unlike the Company's interference forecasting methodology, Staff's methodology has "firm grounding in objective fact" (Staff-IB, p. 41). While the Company acknowledges that the use of a five-year average, as proposed by Staff, is an appropriate forecasting methodology for some costs that do not generally vary by a material amount, the Company explained why such an approach suffers from significant deficiencies when applied to interference costs, which are subject to material variations on short notice, are not avoidable by the Company, and have recently demonstrated an upward trend for which there is no indication will change in the Rate Year (CECONY-IB, pp. 50-51). Contrary to Staff's claim, CECONY's forecasting methodology is based on objective data from New York City's Capital Commitment Plans, which are prepared by the New York City Office of Management and Budget (CE-MISP, p. 11).[53] There is no better or more objective source regarding the City's planned capital expenditures than recent actual expenditures and forecasts of spending prepared by the City itself. What Staff does correctly identify (Staff-IB, p. 43), and what the Company does not dispute, is the uncertainty associated with City projects, particularly related to the timing and scope of such projects (CE-MISP, pp. 12, 23). However, Staff unreasonably ignores recent trends and forecasts in favor of a five-year average that captures years of low spending that are not at all indicative of current or forecasted City activities.

Staff cites the Commission's decision in Case 08-E-0539 as providing support for Staff's proposed methodology because it relies on fewer variables (Staff-IB, p. 42). However, the Commission's decision in that case was primarily driven by the then-prevailing economic downturn and the Commission's conclusion that under such conditions the Company was unlikely to incur interference

[53] NYC Capital Commitment Plans are posted on the City's website at the following link: http://www.nyc.gov/html/omb/html/publications/publications.shtml

expenses higher than the historic average.[54] Today, we face significantly different economic conditions. The City is forecasting dramatically higher levels of capital expenditures for 2014 (CE-MISP-R, p. 5). As noted in the Company's Initial Brief, application of Staff's proposed methodology has resulted in forecasts that are significantly lower than recent actual expenditures (CECONY-IB, p. 51, fn. 56). Under current economic conditions and based upon recent actual experience, the Commission could not reasonably reach the same conclusion with respect to the appropriate methodology for forecasting interference expenses.

Staff also suggests that the refinements the Company has made to its forecasting methodology have increased the number of variables (Staff-IB, pp. 42-43). Staff does not explain or provide any evidence to support its suggestion that the Company's current forecasting methodology relies upon a greater number of variables compared to methodologies the Company has used in the past. The Company described its forecasting methodology in its Initial Brief (CECONY-IB, p. 48). The Company also refuted each and every Staff critique of the Company's current forecasting methodology described in SMISP's direct testimony (*Id.*, pp. 48-52).

Staff criticizes the Company for relying on the City's Capital Commitment Plans for the Company's interference forecast. Staff contends that "[t]he Company has not shown that the most recent publication, *i.e.*, the May 2013 publication, contains the most reliable budget or commitment target, as compared to what New York City will ultimately spend in a given fiscal year" (Staff-IB, p. 43). Staff touts the fact that its methodology "obviates reliance on the ever changing New York City capital commitment plans" (Staff-IB, p. 44). As explained above, the fact that there is a direct relationship between City capital expenditures and the Company's interference costs is not in dispute (SMISP, pp. 12, 15). The City's Capital Commitment Plans are the best source of information on the City's planned capital expenditures for the Rate Year (CE-MISP, pp. 11-14). The Company used the May 2013 City Capital Commitment Plan to develop its updated interference forecast because it is the latest available information (CE-MISP-R, pp. 4-5). The City's Capital Commitment Plans are forecasts and, by definition, there may be differences between the City's forecast of what it will spend in 2014 and what it actually spends. The Company is well aware of this uncertainty and has proposed a reconciliation mechanism to address this issue, which is addressed separately in this Brief. However, this uncertainty should not serve as a justification for ignoring the best and latest information in developing a reasonable forecast of the Company's interference expenses in the Rate Year.

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[54] 2009 Electric Rate Order , p. 63.

Moreover, it is not reasonable to assume that Staff (or the Commission) would choose to ignore City Commitment Plans or recent actual spending that were dramatically below a five-year historical average in setting interference expense for the Rate Year. By ignoring the recent higher spending and higher forecasted City spending, Staff's approach unreasonably places all the risk associated with the uncertainty of interference costs on Company shareholders. Since these costs can be significant and are beyond the Company's control, Staff's proposal is inherently inequitable.

Finally, Staff contends that, when applied over time, its forecasting methodology has resulted in reasonable forecasts (Staff-IB, p. 44). In support of this contention, Staff compares cumulative targets established under the current rate plan using Staff's proposed methodology for electric interference O&M expense ($208.6 million) with actually incurred expenses ($201.6) over the three-year course of the electric rate plan (April 1, 2010-March 31, 2013) (*Id.*, pp. 44-45). Upon closer examination, however, the data Staff cites illustrates the unreasonableness of Staff's proposed approach. First, Staff's proposal applies to a single rate year rather than to a multi-year period, as was the case with the methodology applied under the current electric rate plan. Second, the methodology applied under the current electric rate plan includes a reconciliation mechanism that offers protection to both customers and shareholders.[55] Staff is proposing no reconciliation for its proposed one-year plan (Staff-IB, p. 169). Third, when targets and actual expenditures are broken down by rate year, it becomes evident that the recent year-to-year trend has been actual expenditures that have consistently and significantly increased. The Company's experience under the most recent rate year (RY3) has been actual expenditures that exceed targets (see table below) (Ex. 898).

Interference O&M Expenses - Electric		
Rate Year	**Target***	**Actual***
RY1 - 4/10-3/11	$68,470,000	$59,675,603
RY2 - 4/11-3/12	$69,435,000	$66,485,264
RY3 - 4/12-3/13	$70,650,000	$75,442,876
	$208,555,000	**$201,603,743**

*Target and Actual amounts exclude Labor

In RY3, the Company's actual electric interference costs exceeded the target by $4.8 million.[56] The significant increases since 2010 in the Company's actual expenditures mirror recent increases in the

[55] 2009 Electric Rate Order, Attachment 1, pp. 19-20.

[56] It should be noted that information from the latest full rate years for gas and steam interference expenses (*i.e.*, RY2 under the current gas and steam plans) similarly shows actual expenses that exceed targets by $3.3 million for

City's capital expenditures, which the Company forecasts will continue in the Rate Year (CE-MISP, pp. 23-24; CE-MISP-R, pp. 4-5). Thus, if the Company's experience in the Rate Year is anything like the Company's experience in RY3 (which the Company expects to be the case), and Staff's proposed methodology is adopted, the Company will incur millions of dollars in interference expenses above its Rate Year target without any mechanism for recovery of such costs.

Finally, the Company notes that Staff's Initial Brief fails to reflect any of the concessions Staff appeared to make at the evidentiary hearing. Although Staff appeared to concede on cross-examination that the Company is responsible for the costs of non-City funded municipal projects (92) and that Staff's estimate of the City's FY 2013 expenditures was likely understated based on recent actual City expenditures and on the City's established spending patterns (96-98), none of these concessions are reflected in Staff's proposed adjustment, which is unchanged from its direct testimony. Nor does Staff attempt to ascribe any other meaning to such statements made during the hearing.

3. Interference Overheads

CECONY's June 21 revenue requirement update reflected an increase in funding for interference O&M expense in response to New York City issuing its May 2013 Capital Commitment Plan, accompanied by a commensurate reallocation of interference overhead costs from capital to expense (CECONY-IB, p. 52). Staff objects to the reallocation of the overhead costs for a variety of reasons related to details of CECONY's estimate of the amount (Staff-IB, pp. 45-46). Staff does not, and cannot, object to the propriety of a reallocation. Not providing for a reallocation would be wrong and would knowingly result in a revenue requirement that excludes a legitimate expense.

Staff wrongfully chides CECONY on a variety of matters related to the calculation of the reallocated overheads. While Staff points out that CECONY's response to a discovery request (Ex. 896) did not contain a "breakdown" of the overheads to be reallocated (Staff-IB, p. 46), Staff provides no explanation of why that is a shortcoming of CECONY and fails to acknowledge that CECONY offered a breakdown, Staff accepted the offer (1602) and it was provided to Staff, all other parties and the ALJs by e-mail on August 7, 2013. Staff says that the CE-AP was unable to explain whether the overheads represented those for the entire construction management department or only those associated with interference work (Staff-IB, p. 46). Again, Staff provides no explanation of the significance of the distinction Staff created. Staff also refers to what Staff claims to be mismatches of figures from a variety of sources and says because of that Staff cannot verify CECONY's reallocation of the overheads (*Id.)*. Different amounts with the same label are not necessarily mismatches because numbers are developed for

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gas and $1.3 million for steam (Ex. 898). RY3 continues until the end of September 2013. 2010 Gas and Steam Rate Order, p. 11.

a variety of particular purposes or on a variety of particular bases (1605-08). As to that being an insurmountable obstacle to Staff, the claim is disingenuous. CECONY is unaware of any circumstance in these proceedings where Staff's audit of CECONY's filings was precluded for the reasons Staff claims.

CECONY's estimate of reallocated overheads is correct in principle and far more reasonable than Staff's reallocation of zero overheads.

E. <u>Electric Non-Labor Expense Adjustments</u>

1. Underground Five Year Facility Inspection Program

Staff's Initial Brief agrees with CECONY's projected $34.5 million budget for this program and withdraws SEIIP's proposed adjustment to this program (Staff-IB, p. 50). CECONY's Initial Brief clarified that because the PSC's May 22, 2013 memorandum Order in Case 04-M-0159 extended the time for CECONY to complete underground structure inspections from December 31, 2014 to March 31, 2015, CECONY plans to conduct some inspections in 2015 that were initially planned for 2014. Consequently, CECONY's 2014 cost for the Underground Five Year Facility Inspection Program is estimated to be approximately $30,279,000.

2. Manual Stray Voltage Testing Program

CECONY and SEIIP agree that CECONY's initial filing reflecting $3.2 million for this program should be reduced by $847,000. CECONY continues to caution that this adjustment not be double counted – once for the change reflected in CECONY's update filing (CE-EIOP-R, pp. 25-26; Ex. 97 Sch. 9, p. 2, adjustment 8d)[57] and again for SEIIP's $847,000 adjustment to the $3.2 million reflected in CECONY's initial filing (Ex. 243, p. 9).

3. URD Transformer Inspections

CECONY and Staff agree that CECONY's rate year cost to inspect pad-mounted transformers was reduced due to the PSC's March 25, 2013 *Order Granting Petition in Part and Modifying Electric Safety Standards* in Case 04-M-0159 ("March 25, 2013 Order"), which ended a requirement that CECONY inspect the inside of pad-mounted URD transformers. CECONY's update filing reflected a savings of $657,450 (CE-EIOP-R, pp. 26-27; Ex. 97, Sch. 9, p. 2, adjustment 8d). As stated in CECONY's Initial Brief, SEIIP's overall adjustment to the 2014 cost of the Five Year Facility Inspection Program reflected an adjustment of $950,000 for these savings.[58] SEIIP's proposed adjustment of $950,000 conflicts with Ex. 865, which SEIIP offered into evidence, showing CECONY's response to

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[57] Adjustment 8d in the amount of $1.504 million includes $847,000 for stray voltage testing savings and $657,000 for facility inspections (discussed below).

[58] Staff's Ex. 243, p. 9 showed Staff's overall adjustment to the Five Year Facility Inspection Program to be $13.37 million, but SEIIP's corrected testimony, filed July 17, 2013, changed the adjustment to $13 million, although SEIIP did not make conforming changes to SEIIP's testimony on page 92, line 20 or to Ex. 243, p. 9.

information request DPS-766 updating the 2014 savings for pad-mounted transformer inspections as $657,450. The conflicting adjustment amounts appear to be resolved by Staff's withdrawal of its overall adjustment to the 2014 cost of the Five Year Facility Inspection Program (Staff-IB, p. 50), leaving the reduction of $657,450 reflected in CECONY's update filing.

4. Mobile Stray Voltage Testing

CECONY and Staff agree that the rate year cost of this program should be set at $7.8 million, the amount reflected in the CECONY's initial filing.[59]

5. Queensboro Bridge Pipe Inspection Refurbishment Program

As discussed in CECONY's Initial Brief, CECONY's June 21, 2013 update increased the 2014 cost of the O&M project from $1.15 million to $2.45 million because a portion of the work scope was transferred from capital to O&M (CE-EIOP-R, pp. 23-25). No party addressed this program change in its initial brief. The program change should be accepted.

6. Enhanced Tree Trimming Program for Storm Hardening

As discussed in CECONY's Initial Brief, CECONY's June 21, 2013 update increased 2014 O&M funding for tree trimming by $3.5 million (Ex. 97 Sch. 9, p. 2, adjustment 8b) whereas CECONY's initial filing reduced funding by $1.5 million. No party addressed this program change in its initial brief. The program change should be accepted.

7. Electric Production O&M

F. <u>Gas Non-Labor Expense Adjustments</u>

1. Global Adjustment

The Company's Initial Brief addresses the differences between Staff and the Company regarding the appropriate methodology to use in forecasting gas O&M expenses (CECONY-IB, pp. 58-59). In support of Staff's proposed adjustment to the Company's forecasted gas O&M expenses in the Rate Year and apart from the differences in methodologies, Staff's Initial Brief makes various assertions, including that the Company has failed to meet its burden of proof (Staff-IB, pp. 52-53). For the reasons set forth below, none of Staff's assertions provide any basis for adopting Staff's proposed adjustment.

Staff states that "[t]he Company did not justify its <u>increased expense level</u> over the historic year" [emphasis added](*Id.*, p. 52). Staff concludes that the Company failed to meet its burden of proof to

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[59] Acknowledging the reasons stated in the confidential portion of CE-EIOP's rebuttal (CE-EIOP-R, pp. 59-60), Staff's Initial Brief grants that the cost of this program in 2015 and 2016 could be higher than $7.8 million, which SEIIP initially proposed, and now recommends $8.6 million. While this issue will not affect the rate year revenue requirement in this proceeding, 2015 and 2016 cost could be at issue in a subsequent rate case. Based on current information, CECONY continues to propose $9.1 million for 2015 and 2016 and does not accede to Staff's position (*i.e.*, the 2015 cost should reflect a blend of the 2009 and the 2010 costs rather than just the 2010 cost on which Staff appears to have relied).

demonstrate the basis for the Company's requested cost (*Id.*). Staff's misstatement of the facts belies its erroneous conclusion. Apart from the normalized adjustment of $2.2 million that is not in dispute (SGIIP, p. 39), the Company is not seeking an increase over the $88.2 million in actual O&M expenses in the Historic Year (CE-GIOP, pp. 156-157). Rather, CECONY's forecast maintains the Historic Year level of spending in the Rate Year, despite the fact that the Company anticipates that the level of work it will perform in the Rate Year will be the same or more than the level performed during the Historic Year (CE-GIOP, pp. 157-158; Ex. 640).

Staff claims that in the Company's rebuttal testimony, the Company provided, "for the first time, new information regarding two water main breaks that occurred in July 2011 and August 2011 that it failed to include in its initial case" (Staff-IB, p. 52). Later, Staff contends that "[t]he expenses relied upon by the Company were not reflected in the Company's Productivity Reports and was new information without any supporting workpapers" (*Id.*, pp. 52-53). However, the costs for these water main breaks are embedded in the actual O&M costs incurred during the Historic Year as reflected in Ex. 640, which is Exhibit GOP-3 - O&M Expenditures by Category, and, therefore, were provided with the Company's initial case as part of the testimony of the Company's Gas Infrastructure and Operations Panel. The fact that specific costs for two water main breaks were not separately broken out or identified as being part of the Historic Year's costs does not provide a basis for removing these costs from the Company's forecast and does not constitute a failure on the Company's part to meet its burden of proof. Following Staff reaching its conclusion that the water main breaks were not reflected in the Productivity Reports and the Company then explaining in rebuttal testimony the distinction between the Historic Year data and the data reflected in the Productivity Reports, Staff had ample opportunities – through discovery following the submission of the Company's rebuttal testimony and through cross-examination – to verify the Company's Historic Year costs related to water main breaks, but failed, or elected not, to do so.

Staff contends that its adjustment should be adopted because CECONY failed to reconcile the Productivity Reports provided in response to interrogatories with the Company's forecast. Specifically, Staff's Initial Brief states as follows: "Staff asked the Company to reconcile its O&M Productivity Report with its forecast, but the Company did not provide any additional information (Ex. 591)" (*Id.*, p. 52). However, Ex. 591, which is a more than 100-page exhibit containing various Company interrogatory responses, does not include any Company interrogatory responses that support Staff's contention.

Staff also argues that the Company failed to identify the water main breaks in response to a Staff interrogatory asking the Company to reconcile the Productivity Report for calendar year 2012 with an Element of Expense ("EOE") report for the 12-month period ending June 2012 (*Id.*). In response to this interrogatory, the Company stated "[t]here are at least two reasons for the difference" and then identified two primary reasons the Productivity Report and the EOE report could not be reconciled: (1) they covered different time periods; and (2) one report included actual expenses, while the other included normalized expenses (Ex. 836). Considering these two material differences and there being only an approximate 2% difference between the annual expenditures for these two disparate annual periods, it was incumbent upon Staff, not the Company, to pursue additional detail if Staff had additional questions.

Thus, contrary to Staff's assertions, the Company has met its burden of proof and Staff's proposed adjustment should be rejected.

G. Steam

1. Trap Replacement and Cap Inspections

The Company proposed elimination of both the steam trap replacement program and the annual trap cap inspection that follows installation of replacement traps, which would produce annual savings of $500,000 if the PSC approves the Company's proposal (CE-SIOP-R, p. 26).

In its Initial Brief, Staff now agrees that the trap cap inspections are no longer necessary and the Company should be permitted to cease the program, "which would result in O&M cost savings" (Staff-IB, pp. 53-54). Staff does not recommend eliminating the annual steam trap replacement program, however, stating that doing so without a comprehensive study of the effective life-span of a steam trap in the Company's system "could result in situations where Con Edison may wait until this vital operational equipment fails before it is replaced" (*Id*., p. 54).

As the Company explained in its Initial Brief, annual replacements of traps are no longer necessary since new strainer components have essentially eliminated the risk that the traps will be clogged by debris (CECONY-IB, pp. 59-60; CE-SIOP, p. 25). Moreover, there are redundant traps in the system and when a trap does fail it does so in the open position (673).[60]

The Company continues to support elimination of both the replacement and inspection programs. However, if the Commission accepts Staff's recommendation, the Commission needs to determine the O&M savings attributable to eliminating the trap cap inspection requirement, but not the annual replacement requirement. The record reflects that eliminating both requirements would result in the $500,000 savings, but does not address the possibility of eliminating only the cap inspection requirement. The Company estimates that Staff's proposal to eliminate only the cap inspection requirement would

[60] The transcript states:

> Mr. Mazza: At that point again, unless they fail they can be replaced?
>
> Mr. Boyle: Well, if a trap fails I'd be in no position to -- whether it's failed -- because. Additionally, we've done the traps on that system and – traps (673).

Based on the audio recording, Mr. Boyle actually said, in part, "the trap fails in the open position … In addition, we have redundant traps on our system" (August 25, Audio, Part 2, at 1:44). The rest of Mr. Boyle's response is indecipherable and it is not possible to create a more extensive transcript of his response.

result in annual O&M savings of approximately $200,000 (and, therefore, continued annual steam trap replacements would cost approximately $300,000). The Company recognizes that there is no record support for the $200,000 figure, but offers it in this reply brief since Staff makes this proposal for the first time in its Initial Brief and did not discuss the financial implications of its proposal. The Company stands ready to provide backup documentation for the record upon request.

2. Mandated Trap Inspections

Staff objects to the Company's proposal to eliminate steam distribution trap inspections in locations where the Remote Monitoring System ("RMS") is installed and functioning properly, because it asserts that the Company has not demonstrated that the RMS System is sufficiently reliable to take the place of the required inspections and the Company did not provide procedures for the trap monitoring nor a training program for employees monitoring the traps (Staff-IB, pp. 54-55). Staff acknowledges that the Company will schedule a trap for inspection if an RMS device associated with the trap location stops reporting, but states "that process would potentially enable the trap to be out of service for 10 weeks" (*Id.*, p. 54).

To eliminate any confusion, the Company is *not* proposing to eliminate steam distribution trap inspections in locations where RMS is installed and functioning properly; the Company is proposing a *reduction* in the frequency of inspections in such locations from six times a year to annually (CE-SIOP-R, p. 27).

For the reasons stated in the Company's Initial Brief, it has fully demonstrated that the RMS is sufficiently reliable to take the place of the currently required inspections (CECONY-IB, pp. 60-62). As to Staff's concern that a trap could potentially be out of service for ten weeks, reliance on RMS actually reduces the risk of a trap being out of service for ten weeks. Using the manual inspection schedule, if a trap problem occurs the day after a trap inspection, the Company may not know about the problem until ten weeks later, depending on the timing of the next inspection. When the Company relies upon RMS, by contrast, the Company will be notified when the trap problem occurs rather than at the next scheduled inspection, and can potentially eliminate the problem far more quickly. At worst, the risk of a trap being out of service for 10 weeks is precisely the same with the current inspection schedule and with reliance upon RMS as proposed by the Company, since the Company would track the date the RMS device stops reporting as the last trap inspection date and begin the ten-week cycle on that date (CE-SIOP-R, pp. 29-30). The only way that reliability would be less with the RMS system is if the RMS were to send a false signal that a non-working trap is working. Staff has not asserted that such a problem exists. Further, the reliability risk is minimal if a trap fails. As noted above, when a trap fails, it does so in the open position and there are redundant traps in the system (673).

While Staff has not previously proposed that the Company provide procedures for the trap monitoring or a training program for employees monitoring the traps,[61] and thus there is no reason that the Company should be expected to have provided the procedures or training program, the Company did describe its procedure in general terms as reverting to the manual inspection cycle when the RMS stopped reporting (CE-SIOP-R, pp. 29-30).

Staff also contends that since the trap inspections are required by 16 NYCRR 420.8(a) and cannot be waived in this proceeding, the Company should demonstrate the required level of RMS reliability and then petition the Commission for modification of the regulations (Staff-IB, p. 55). While the Company acknowledges that the PSC would not amend regulations without complying with the State Administrative Procedure Act, the Company disagrees with Staff that the Commission cannot waive application of the rule to a particular utility, where, as here, the Company has demonstrated that a waiver would reduce the Company's O&M costs without any diminution in reliability.[62] Moreover, contrary to Staff's reference to "waiver," the Company is only asking for a partial waiver that would reduce the frequency of inspections from six times per year to annually.

H. Shared Services Non-Labor Expense Adjustments

Staff argues that its adjustments for three programs (Structural Inspection and Repair Program ("SIRP"), Painting and Wall Treatment Maintenance Program ("PWTM") and Floor Maintenance Program ("FMP")) should be accepted because the Company's rebuttal testimony stated that the main reason that this work was not completed was due to the Company waiting for roofs to be repaired and that the record shows that this assertion is not correct (Staff-IB, pp. 55-59). Upon further review, the Company agrees that roof repair was not the "main" reason this work was not completed and that the main reason for the delay of these projects was the reprioritization of projects pursuant to the Company's budgeting processes. However, the Company disagrees that "Con Edison undercuts the likelihood of actually completing the scheduled work during the Rate Year as well, when it notes that in the past it has perhaps under-spent on these Facilities Programs, using the money for other programs" (Staff-IB, p. 58).

Absent a demonstration that projected work is not in customer's interest, that the Company does not have the ability to undertake the projected work, or that the estimated cost of the projected work is overstated, rates should be established that reflect an overall budget that includes the estimated cost of the

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[61] Staff's proposal is limited to the following: "The Panel is recommending a continuation of the current mandated trap inspection and replacement program until such time the Company demonstrates that the reliability and reporting of the RMS have reached an acceptable level" (Staff Steam Safety Panel, p. 9).

[62] While the Company acknowledges that its testimony used the terms "amendment" (CE-SIOP, p. 118) and "modified" (*Id*., p. 119), the Company requests that the Commission consider the Company's request to be for a partial waiver in order to allow the Company to reduce the frequency of inspections so as to avoid incurring unnecessary O&M costs that would be borne by its customers.

projected work. The potential for project re-prioritization should not be a basis for reducing the Company's overall capital budget. Necessarily, there will always be some projects that are lower on the priority list and may be "bumped" due to higher priority work. In fact, the Commission explicitly recognizes that the Company must have the ability to refocus and reprioritize expenditures (for example, 2010 Electric Rate Order, JP, p. 13; 2010 Gas Rate Order, JP, p. 22; 2010 Steam Rate Order, JP, p. 21). Accordingly, the potential for re-prioritizing (even the same project on more than one occasion) does not provide a basis for rejecting good faith estimates of projected work and reflecting the estimated costs of such work in rates.

I. Employee Benefit Expenses

1. Health care escalation

2. Enrollment levels

The Company fully addressed Staff's arguments on this issue in its Initial Brief (CECONY-IB, pp. 65-66). The Company notes, however, that it expects to know the final enrollment number for the Rate Year (calendar year 2014) on or before November 30. To allow for the inclusion of the Company's actual enrollment numbers in the Commission's rate determination, the Company will notify the Judges, Staff, and the parties as to the 2014 enrollment level on or about December 1 when new enrollment has been completed.[63]

J. Insurance

CECONY and Staff agree that the rate allowance for insurance should include the updated amount for conventional property insurance that CECONY provided at the hearings and for which supporting documentation had previously been provided to Staff (CECONY-IB, pp. 66-67; Staff-IB, pp. 61-62). No other party has taken a position on the subject. The rate allowances for insurance expense reflected in Staff's August 30 revenue requirement calculations should be adopted.

K. Institutional Dues and Subscriptions

CECONY and Staff agree on the rate allowance for this element of expense (CECONY-IB, p. 67; Staff-IB, pp. 62-63). No other party has taken a position on the matter. The rate allowances for Institutional Dues and Subscriptions reflected in Staff's August 30 revenue requirement calculations should be adopted.

L. Research and Development

The Company and Staff agree on planned R&D expenditures (Staff-IB, p. 63). Staff raised no issues regarding Electric and Steam R&D programs. As to the Gas R&D program, Staff agrees with the

[63] The inclusion of actual updated enrollment numbers is consistent, for example, with the Commission's use of updated property tax assessments and pension updates.

Company that there be no downward-only reconciliation in a single-year rate plan and the Company agreed with Staff's proposed adjustment to the Millennium Fund surcharge.

EDF, the only other party to address R&D expense, makes the vague recommendation that the Company launch an "expanded" R&D and demonstration program to support "meter, storage and other climate resiliency technological innovation and pricing, demand management, and methane leakage reduction pilots" (EDF-IB, p. 6). The Company does have a "prime interest," as suggested by EDF (*Id*., p.13), in supporting new technology to mitigate demand and, in fact, currently participates in projects that support all the areas EDF lists. For example, Gas R&D includes development of non-interruptible meter change out kits (meter and methane reduction) (Devries/G, p. 21) and Electric R&D includes the Transportable Energy Storage System (storage), development of breakaway connectors (climate resilient technology), and a Thermostat-Enable Smart Outlet for Window Room Air Conditioners (demand management) (Devries/E, pp. 18-19, pp. 13-14, p. 12, respectively) . In addition, as part of its efforts to improve its understanding of methane emissions from its gas distribution system, the Company is a participant in a "local distribution" methane gas emissions study, recently begun by Washington State University, in which EDF is also a participant (CE-GIOP-R, pp. 127-128; Ex.570).

For the foregoing reasons, and the additional reasons provided in testimony and the Company's Initial Brief, EDF's proposal should be rejected by the Commission (CECONY-IB, pp. 67-69).

M. <u>Consultant and Regulatory Commission Expenses</u>

The Company explained why it was wrong and contrary to Commission precedent for the Staff Accounting Panel (SAP, pp. 84-85) to exclude from the historical three-year average used to forecast Rate-Year Consultant and Regulatory Commission expenses the costs of CRA and KPMG, the consultants retained by the Commission and the Company, respectively, in connection with the investigative audit and prudence investigation following the arrests in 2009 of Company employees for accepting bribes and kickbacks from a contractor (CECONY-IB, pp. 69-70). Staff's brief (pp. 63-65) is no more enlightening than its testimony as to why Staff considers such costs to be non-recurring. Commission-mandated audits are neither unusual nor unexpected and, while a specific audit is non-recurring, this type of expense will likely recur in the Rate Year albeit in a somewhat different guise. That is the very reason for using a historical average to capture such costs that are difficult to project, but are more than likely to be incurred during the Rate Year. And that is precisely why, as discussed in our Initial Brief, the Commission rejected a similar Staff proposal in Case 08-E-0539.

Staff contends that the Commission's decision in Case 08-E-0539 is distinguishable because, there, the Commission had already identified a new audit (*i.e.*, the CRA audit that Staff seeks to exclude here) that would replace the costs of the non-recurring audit that Staff sought to exclude in that case (*i.e.*, the Vantage audit), while in this proceeding no replacement audits for the CRA audit have been identified for the Rate Year (Staff-IB, p. 64). Staff is both theoretically and factually wrong. Staff is theoretically wrong because in Case 08-E-0539, the Commission recognized that, as a general matter, "the Company will incur costs of other, similar regulatory reviews in the Rate Year, which would replace the costs of the Vantage" audit, and identified the new CRA audit as an example of such "other, similar reviews in the Rate Year."[64] Staff is also factually wrong because the Commission has already instituted in the recent past at least two new audits that will result in Rate Year costs (Case 13-M-0314 -- A Comprehensive Review of Security for the Protection of Personally Identifiable Customer Information and Case 13-M-0314 -- Focused Operations Audit of Utilities' Reported Data).

Finally, Staff argues that costs for KPMG should be excluded because "the consultant expenses associated with the investigative audit were due to breakdowns in Con Edison's internal controls (Staff-IB, p. 65)." Staff offers no evidence to support its allegation and it can offer no such evidence because that prudence proceeding has yet to be litigated and the Company has not yet been given the opportunity to formally demonstrate that its internal controls were robust and fully in line with, if not superior to, the industry standard. Staff 's assertion at this stage of the prudence proceeding that the KPMG costs be disallowed because of Company imprudence should be summarily dismissed.

N. Uncollectible Expense

This item relates to POR discount revenues and is addressed in that section of this Brief.

O. Project One

CECONY addressed Staff's unfounded position regarding the magnitude, approach to quantification and timing of savings to result from CECONY's implementation of Project One on which Staff relies to recommend a significant savings imputation (CECONY-IB, pp. 70-72). Staff's position is contrary to the facts and based on speculation of what Staff's position during settlement negotiations in Case 09-E-0428 might have been in certain assumed circumstances (Staff-IB, pp. 67-68).

With respect to Staff's demand for the Company to file annual reports regarding Project One costs and benefits, the Company explained which of Staff's demands are reasonable and which are not (CECONY-IB, p. 72).

P. Austerity Imputation Reversal

In its Initial Brief, Staff argues that reflecting the reversal of the austerity imputations embedded in current electric, gas and steam rates without providing a verifiable link between Historic Year and Rate Year costs is prohibited by the Commission's *Statement of Policy on Test Periods in Major Rate*

[64] 2009 Electric Rate Order, pp. 98-99.

Proceedings (issued November 23, 1977) ("Test Year Policy Statement") (Staff-IB, pp. 68-69). The PSC expressed no such verifiable link concerns when it adopted the austerity imputations in clear view of there being no verifiable links given that the rate plans call for CECONY to explain later where CECONY would cut expenses to meet the imputations (CECONY-IB, p. 73). In other words, the PSC allowed the verifiable links to be created after rates were set. That is what CECONY has asked for with the reversal of the imputations (*Id.*).

Q. General Inflationary Cost Escalation

WC objects to reflecting inflationary cost escalation in the forecasts of the working capital component of rate base and O&M expenses claiming "[a]s a general matter, Westchester submits that inflation is not a known and measurable change" (WC-IB, p. 11). WC's position is misguided. The PSC explained long ago that when setting rates:

> [t]he projected operating results for the new rate period will necessarily be a forecast of future operations . . . [and] [t]the forecast material should be developed from the historical base . . . [and][a]ll assumptions of changes in price inputs because of inflation or other factors or changes in activity levels due to modified work practices or other reasons should be separately developed (emphasis added). Test Year Policy Statement, pp. 5, 7-8.

CECONY's forecast of expenses and the working capital component of rate base provide for general inflationary increases from the Historic Year to the Rate Year as provided for by long-standing PSC policy and rely on United States Department of Commerce issuances regarding inflation (CECONY-IB, pp. 73-74). WC's position is contrary to PSC policy and is not an attempt to provide for reasonable rate allowances but to improperly prevent them and it should be rejected.

R. Informational Advertising

The rate allowance for Informational Advertising should be based on .08% of total revenues. This includes revenue for items such as purchased power, gas supply, Gross Receipts Taxes and Public Service Law § 18-a assessments as called for by the Commission's *Statement of Policy on Advertising and Promotional Practices of Public Utilities* (issued February 25, 1977) and as provided in the 2009 Electric Rate Order (CECONY-IB, p. 74). Staff initially based the rate allowance on a revenue level that excluded several elements of revenue then acknowledged the propriety of using total revenues (Ex. 915). Staff does not address the subject in its Initial Brief, but Staff's August 30 revenue requirement calculations follow the correct approach. The final revenue requirements in these proceeding should do the same.

S. A&G Costs Capitalized ("A&G credit")

CECONY and Staff agree that the amount of A&G costs estimated to be capitalized rather than expensed ("A&G credit") is not dependent of the level of capital expenditures (CECONY-IB, pp. 74-75; Staff-IB, p. 70). That is because the nature of A&G costs incurred in support of construction projects, being primarily labor and departmental expenses related to functions such as accounting, purchasing and information resources, makes it reasonable to expect that the A&G credit should increase from historic levels only as a result of wage increases and general inflation (CECONY-IB, pp. 74-75). No other party has taken a position on the subject. The amounts of the A&G credit reflected in Staff's August 30 revenue requirement calculations should be adopted.

V. Taxes Other Than Income Taxes

A. Property Taxes

There is agreement that the property tax rate allowances for electric, gas and steam should reflect the final actual tax rates for New York City taxes for its July 2013 – June 2014 fiscal year should they become available in time for the PSC to do so (CECONY-IB, p. 75; Staff-IB, pp. 70-71). In addition, if final tax rates become available in November, CECONY would provide Staff with workpapers showing the impact of the final rates on the Rate Year level of property tax expense and deferred property tax balances projected through the end of the 2013 linking period, so those known changes may be incorporated in the final revenue requirements.

However, it must be recognized that when New York City will announce the final tax rates for its July 2013 – June 2014 fiscal year is completely outside CECONY's control and CECONY will need a reasonable time to perform necessary analyses and calculations.

Further, as CECONY explained, the availability of the final New York City tax rates for its July 2013 – June 2014 fiscal year, and actions taken to recognize them in the revenue requirements, does not at all lessen the appropriateness of a full, bilateral property tax reconciliation mechanism as is addressed more fully in CECONY's Initial Brief (CECONY-IB, pp. 75, 153-54) and in the Reconciliations section of this Brief.

B. Payroll Taxes (Unemployment)

Staff acknowledged that its initial revenue requirement calculations did not reflect State and federal unemployment taxes at the tax rates and payroll bases scheduled to be effective during the Rate Year but that the final revenue requirement calculations in these proceedings should (CECONY-IB, pp. 75-76). Staff's August 30 revenue requirement calculations reflect unemployment taxes on those bases and that approach would appropriately be continued in further revenue requirement calculations, including the final ones, in these proceedings.

C. <u>Subsidiary Capital Tax</u>

The Subsidiary Capital Tax ("SCT") should be calculated in the same manner it is for actual tax return purposes. Staff's SCT calculations are not and CECONY has explained the numerous errors and shortcomings of Staff's calculations (CECONY-IB, p. 76). For example, when Staff reflected an SCT calculation in its initial revenue requirements, Staff calculated the SCT in a manner inconsistent with the manner in which the tax is actually calculated but made no mention of that much less explain why (SAP, p. 120). In its Initial Brief, Staff proffers a single conclusory statement that the equity base used in the SCT tax calculation should be 48% of the combined electric, gas and steam rate bases (Staff-IB, p. 72). In doing so Staff ignores that the equity base for the SCT calculation is not limited to the portion of equity that supports only rate base and that the SCT calculation is not subject to ratemaking conventions and adjustments, such as the Earnings Base / Capitalization adjustment to rate base (CECONY-IB, p. 76). Staff has provided absolutely no explanation of its position and it should be rejected.

VI. <u>Depreciation</u>

A. <u>UIU Depreciation Presentation</u>

As CECONY explained in detail and at length, UIU's presentation on depreciation encompassing Average Service Lives ("ASLs"), survivor curves, net salvage factors, depreciation rates, depreciation expense, theoretical reserves, the relationship of the book depreciation reserve to the theoretical reserve and the treatment of any reserve variation is fundamentally unreliable. UIU's presentation is conceptually flawed, contains calculation errors of major magnitude, is lacking in disclosure and consistency, and demonstrates a lack of rigor and diligence (CECONY-IB, pp. 77-79). CECONY will not reiterate here all of the examples of why UIU's depreciation presentation should be given no weight but will limit this brief to explaining examples of how UIU compounds the problems on brief thereby ratifying CECONY's position.

UIU witness Majoros' approach to calculating depreciation expense and theoretical depreciation reserves is conceptually and technically flawed causing understated depreciation expense and understated theoretical reserves (CECONY-IB, pp. 77-78). This was proven at the hearings with Mr. Majoros' acknowledgment (58-62) and Staff's concurrence (67-68; 75-76). UIU comes close but then skips away from admitting this, instead blaming CECONY for the shortcomings in the proposal of Mr. Majoros, who UIU would have the Commission see as a novice who was kept uninformed by the CE-PTDP (UIU-IB, p. 15). If Mr. Majoros wanted the CE-PTDP to explain how it calculated its theoretical reserves because he did not know or could not tell (*Id.*), he should have asked and an explanation would have been provided. On the other hand, Mr. Majoros is the president of a firm he says "specializes in public utility depreciation" and says that he has "testified in over 100 proceedings on the subject of public utility depreciation" and his "summary" of his qualifications and experience and tabulation of his "appearances as an expert witness" is nine pages long (Majoros, pp. 1-2, App. A, B). Despite that, UIU would have the Commission believe that the CE-PTDP's work was impenetrable to Mr. Majoros. Even if so (although the Company strongly disputes that should be the case for a presumed expert in depreciation), rather than seek to understand CE-PTDP's work, UIU makes a baseless and unsupported suggestion that CECONY's assessment of the difference between the book depreciation reserves and the theoretical reserves is wrong by nearly $2 billion (CECONY-IB, p. 79), which highlights the recklessness of UIU's position. Moreover, that does not explain why Mr. Majoros decided to use a particular theoretical reserve formula endorsed in the NARUC Manual but then used it in a manner inconsistent with how the NARUC Manual says it should be used (CECONY-IB, pp. 77-78).

Despite UIU's claim on brief that Mr. Majoros could only assume what the CE-PTDP did, and tacitly acknowledging that UIU knows better now, UIU astoundingly marches forward with the results of Mr. Majoros' flawed calculations urging the PSC to adopt them (UIU-IB, pp. 15, 20-21). Not only should they not be adopted, they should be rejected wholesale. In addition, on brief UIU reiterates the incorrect statement in Mr. Majoros' rebuttal testimony that he recalculated his proposed theoretical reserves at that time to reflect his adoption of Staff's proposed ASLs and presented them in his rebuttal Exhibit MJM-9, or Ex. 115 (UIU-IB, p. 10). The fact is that Mr. Majoros did not present a recalculation of his theoretical reserves despite his claims (CECONY-IB, p. 78).

UIU's Initial Brief perpetuates the mystery surrounding what Mr. Majoros did regarding net salvage factors used in his revised calculations of depreciation rates and expense presented in Ex. 115 that accompanied his rebuttal testimony and what his testimony on the subject is intended to convey. UIU says that Ex. 115 is UIU's calculation of depreciation rates and expense "using UIU's proposed net salvage ratios" (UIU-IB, p. 10). UIU also says that Mr. Majoros "continued to use the net salvage estimates contained in his direct testimony and exhibits" (UIU-IB, p. 14). With that, one would reasonably expect the net salvage factors in Ex. 115 and in Mr. Majoros' initial exhibit (Ex. 320) to be the same. They are not by a wide margin. Of the 89 net salvage factors in Ex. 115 for electric, gas, steam and common plant accounts, 53, or 60%, are different from those presented in Mr. Majoros' initial Ex. 320 (CECONY-IB, pp.78-79). No explanation of this major discrepancy has been provided.[65]

[65] If the statement that "[a]dditionally, Mr. Majoros corrected certain mathematical errors in his initial calculations discovered while making calculations to adopt Staff's lives" (UIU-IB, p. 10. n. 21) is intended to be the explanation,

Consequently, as in CECONY's Initial Brief, the discussions below concerning ASLs and survivor curves, salvage factors, theoretical reserves and book depreciation reserve variances address only the proposals by the Staff Depreciation Panel and NYC witness Arnett. For the reasons stated above, the presentation of Mr. Majoros on those subjects should not be credited.

B. <u>ASLs and Survivor Curves</u>

A depreciation study should be more than a mathematical exercise – the Commission says so and the authoritative NARUC Manual says so (CECONY-IB, p. 79). Staff's approach is not and its proposed ASLs and survivor curves are improperly developed and should not be adopted. Staff's approach to estimating ASLs and survivor curves is based only on "graphical curve fittings" to see which ASLs and survivor curves "are visually better fits" (*Id.*). On brief, Staff attempts to counter CECONY's criticism of the shortcomings of Staff's narrowly focused approach by saying that Staff's ASL and survivor curve recommendations "are based, not solely on the output of computer statistical software, but also based on visually comparing h-curves for each account with the actual survivor curves" (Staff-IB, p. 73). That does not counter CECONY's criticism but, rather, ratifies it.

Staff does not deny that a broader scope approach is endorsed by the Commission and NARUC or that Staff's study does not conform to it. Instead, Staff attempts to deny that CECONY's study was based on the approved broader-scope approach (*Id.*). Staff is wrong. Staff was given extensive and detailed work papers prepared by CECONY in connection with its study. That those work papers, like most others, are not formally entered as exhibits does not mean Staff can deny or ignore that such information was provided when assessing CECONY's presentation on depreciation or any other subject (Staff is certainly free to disagree with the implications of such work papers). If that approach were permitted, then Staff's position on many matters would not be supported in the record. For example, details of Staff's development of each of the myriad of elements of O&M expense, rate base and taxes are clearly not presented in Staff's exhibits. Staff does, however, rely on its own work papers that it does not present as exhibits to make its own case and to assess CECONY's case (see, *e.g.*, Staff-IB, p. 45). However, an example of CECONY's depreciation study work papers is included in NYC witness Arnett's Ex. 141 at pages 10 through 37. Although the work papers relate to the net salvage segment of CECONY's depreciation study rather than the ASL segment, they clearly show that CECONY's approach to

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that cryptic, passing comment belies the extent, nature and significance of the discrepancies and should not be countenanced.

performing a depreciation study is not limited to simply developing historical data but informed judgment is applied and other factors are taken into account.[66]

Staff's Initial Brief, focusing on mathematical and statistical criticism of ASLs and survivor curves recommended by CECONY, does nothing but entrench Staff even deeper into the wrong approach to a depreciation study. CECONY's recommended ASLs and survivor curves are well founded and reasonable and should be adopted. Staff's incorrectly grounded alternatives, which result in sweeping, dramatic changes to ASLs and survivor curves established in recent rate cases with little new information in the interim (CECONY-IB, p. 80), should be rejected.

C. Salvage Rates and Methods

1. NYC's Extra-Record Briefing Points

NYC's Initial Brief regarding establishing net salvage rates and related subjects argues against CECONY's approach on the improper bases of assertions of extra-record facts and presentation of new analyses. NYC's Initial Brief should be disregarded from the paragraph beginning with the words "In, addition" on page 13 through the paragraph beginning on page 14 and ending with the words "in the future" on page 15 as explained below.

NYC begins this portion of its Initial Brief by asserting, "In addition, Figure 5 paints an incomplete picture because it ignores the fact that pre-paying for estimated negative net salvage creates significant adverse tax impacts" and continues with the assertion that "The Company's approach requires customers to pay higher income taxes prior to an asset being retired" (NYC-IB, p. 13).[67] NYC continues with assertions of fact regarding the effects of income taxes on customer costs in an effort to discredit CECONY's analysis presented in Figure 5 and CECONY's related conclusions as to the comparative costs of different party net salvage proposals over time.

There is no record assessment of the effects of income taxes on the costs over time of the various net salvage proposals made in these proceedings. Assertions that CECONY's approach results in a "higher income tax liability" that is "included in rate base, on which customers pay a return" and that under CECONY's approach "the tax liability is greatest compared to any of the alternatives presented" have not been demonstrated in the record. This is true despite NYC attempting to create an illusion to the

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[66] For example, some notations in the workpapers: "Most of the work since 1999 has removed assets without a retirement. Would not expect this to continue . . ." (Ex. 141, p. 16); "All trends are toward higher but no huge movements are indicated" (Ex.141, p. 18); "Virtually no recent history but (like previous account) a level of negative net salvage should be expected in the future . . . " (Ex. 141, p. 20); and "The abnormal amount [of book cost of plant retired] is actually holding the negative percent lower than it 'could' be . . ." (Ex. 141, p. 27).

[67] Figure 5 appears on page 94 of the CE-PTDP's rebuttal testimony. Figure 5 compares, over time, the relationship of the cost of depreciation expense and return on rate base of the net salvage proposals of CECONY, Staff, NYC and UIU for a specific plant account.

contrary by citing to NYC witness Arnett's testimony at pages 3 through 5 and his Ex. 145 (NYC-IB, p. 46). That testimony and exhibit do not even address what NYC claims they support.

If NYC believes that CECONY's approach produces adverse income tax effects, it could have presented an analysis of that nature in its testimony comparing at least NYC's net salvage proposal to CECONY's, but NYC did not even raise the subject in its testimony. NYC should not be allowed now to attempt to influence the outcome here with unsupported assertions of fact "to the possible detriment of other parties who have not had the opportunity to file a factual rebuttal to the evidence or to challenge it through cross-examination at the evidentiary hearings."[68] Moreover, the Commission has already determined that customers enjoy tax advantages under the approach used by CECONY in comparison to the PAYGO approach, which the alternative net salvage proposals essentially are (CE-PTDP-R, pp. 52-53 (citing the 2009 Electric Rate Order)).

The portion of NYC's Initial Brief identified above continues with an extra record analysis that NYC purports to be a recasting of Table 12, which was presented by the CE-PTDP (NYC-IB, p. 14).[69] NYC asserts that Table 12 should be recast using "the accepted practice to recognize a discount rate" and asserts it did so using "an 8 percent discount rate" (*Id.*). NYC then claims that the extent to which CECONY's proposal results in lower costs than other proposals is not as great as CECONY calculated (NYC-IB, pp. 14-15).

There is no record basis that an analysis of the costs over time of the various net salvage proposals made in these proceedings should be subject to a discounting calculation or if doing so is relevant to the PSC's resolution of net salvage approach issues in these proceedings. There certainly is no record basis that if a discounting calculation should be made that the discount rate should be 8%.

Again, if NYC believes that discounting is an essential element of assessing the comparative costs of CECONY's and alternative net salvage proposals, it could have presented an analysis of that nature in its testimony comparing at least NYC's net salvage proposal to CECONY's, but NYC did not even raise the subject in its testimony. NYC should not be allowed now to present unsupported assertions of fact, an unsupported presumption of relevance, newly created data and undisclosed calculations "to the possible detriment of other parties who have not had the opportunity to file a factual rebuttal to the evidence or to challenge it through cross-examination at the evidentiary hearings."[70]

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[68] New Evidence Ruling, p. 2.
[69] Table 12 appears on page 96 of the CE-PTDP's rebuttal testimony. Table 12 compares the total cost, over time, of depreciation expense and return on rate base of the net salvage proposals of CECONY, Staff, NYC and UIU for a specific plant account.
[70] New Evidence Ruling, p. 2.

2. Staff and NYC

Staff's and NYC's net salvage proposals are attempts to align negative net salvage recovery with what the Company has recently spent to remove plant assets. The PSC has historically established depreciation rates so that customers pay the estimated net salvage amount to be experienced at the time of the retirement of assets over the life of the assets. That approach is stated in the PSC's rules and regulations as General Instruction 22 of the PSC's Uniform System of Accounts (CECONY-IB, p. 86). Neither Staff nor NYC suggests that the PSC change its rules and regulations but, rather, suggest that the PSC act in this proceeding contrary to them by abandoning the traditional depreciation practice that applies the rule. The PSC's rule in this regard is based on the intergenerational equity principle that customers who benefit from the plant asset over time should contribute to its cost including the cost to remove it (*Id.*). Staff has not even mentioned that point. NYC claims that the approach is inequitable to customers today in favor of customers tomorrow and offers an inapt analogy as support for its view.[71]

As CECONY has explained, the Staff and NYC proposals to net salvage are essentially PAYGO approaches (CECONY-IB, p. 82) and NYC agrees with regard to its and Staff's proposed methods (NYC-IB, pp. 10-11). Staff claims that the Commission's rejection of PAYGO is not relevant here because Staff's proposed method is not the same as PAYGO because Staff's approach continues to accrue net salvage costs rather than expense them as PAYGO does (Staff-IB, p. 79). Staff is wrong. Expensing current negative net salvage costs whether it be through depreciation expense (Staff's approach) or O&M expense (PAYGO approach) are horses of the same color as CECONY explained at length and in detail (CE-PTDP- R, pp. 32-36; 41-44). The Commission rejected PAYGO because it is contrary to the principle of intergenerational equity and produces short-term savings but higher long-term costs compared to the traditional approach to net salvage (CE-PTDP-R, pp. 51-53 (citing 2009 Electric Rate Order)). The CE-PTDP has demonstrated that the Staff and NYC approaches do the same. Accordingly, they should be rejected.[72]

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[71] NYC analogizes requiring customers today to pay a portion of the eventual cost to remove the asset providing service to them to requiring homeowners to cover, through their mortgage payments, the eventual demolition of their new house when it becomes inadequate for the needs of the owners wanting to rebuild the home (NYC-IB, pp. 11-12). If the original owners of the home had the obligation to replace it when it became inadequate, akin to CECONY's obligation to provide continuing safe and reliable service, then placing such a requirement on the homeowner would not be unreasonable.

[72] NYC now favors Staff's approach rather than NYC's own and says that if the PSC "rejects Staff's PAYGO approach" then NYC's approach should be adopted (NYC-IB, pp. 15-16). Staff, however, agrees with CECONY that NYC's proposed approach should be rejected (Staff-IB, p. 80).

Staff attempts to support its claims that the Commission has authorized use of its proposed method without qualification by pointing to CECONY referencing qualifying language from the recommended decisions rather than the orders in Central Hudson and National Grid rate cases (Staff-IB, p. 76). In each of those cases, the Commission adopted the recommended decision except as may have been modified by the order.[73] The orders in those cases made no changes to or expressed disagreement with the recommended decisions on the points for which CECONY cited them, making the language of the recommended decisions that of the Commission.

3. Gas Mains and Services Net Salvage Caps and O&M

As CECONY indicated, Staff's proposal to cease the long-standing approach of capping the amount of negative net salvage chargeable to the depreciation reserve for the Steel Mains and the Services gas plant accounts while providing an O&M expense rate allowance is a function of Staff's flawed proposed change to the manner in which negative net salvage factors should be determined and it should be rejected (CECONY-IB, pp. 82-83).[74]

D. Reserve Variations

As CECONY explained, if the PSC adopts any of the proffered alternative methods for establishing the net salvage component of depreciation rates, which it should not, the change from the long-standing practice should not be implemented in a way that will result in changes (reductions) to the theoretical reserves such that it will appear that the new method should have always been used and that customers overpaid according to that method (CECONY-IB, pp. 83-84). Any such changes should be implemented prospectively without disturbing existing variations between the book and theoretical reserves because it should not be incorrectly presumed that they are the result of PSC-approved depreciation practices and rates being "wrong" for decades. No proponent of implementing an alternative method for establishing the net salvage component of depreciation rates has presented a plan for the implementation to be accomplished without changing the theoretical reserves as if the PSC has been "wrong" for decades. Consequently, no such changes should result in termination of the existing reserve deficiency amortizations for electric plant or rejection of CECONY's request to establish a third such amortization (CECONY-IB, p. 83).

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[73] Case 08-E-0887, *et al.*, Central Hudson – Rates, *Order Adopting Recommended Decision With Modifications* (issued June 22, 2009), p. 78; Case 10-E-0050, *et al.*, National Grid – Rates, *Order Establishing Rates for Electric Service* (issued January 24, 2011), p. 114.

[74] The irony of Staff criticizing NYC's proposal for capping the amount of negative net salvage and providing related O&M expense rate allowances because it would allow CECONY to gain or lose if the actual O&M expense is less or more than the rate allowance while proposing to continue the cap and expense approach for Cast Iron Gas Mains (Staff-IB, p. 80) is notable.

E. Asset Retirement Obligations

UIU wants the PSC to reclassify $420 million of the accumulated provision for depreciation as a regulatory asset representing non-legal Asset Retirement Obligations. UIU's Initial Brief essentially reiterates UIU witness Majoros' initial testimony on the subject (Majoros, pp. 22-29; UIU-IB, pp. 16-20) which, as CECONY pointed out, Mr. Majoros reiterated in his rebuttal testimony (Majoros-R, pp. 4-11; CECONY-IB, p. 84, n.95). Saying something three times does not make it correct.[75]

UIU has not only not made a case for its suggestion, its presentation on the matter is fraught with misconceptions, errors and hyperbole as CECONY explained in detail and at length (CECONY-IB, pp. 84-87). In summary (CECONY-IB, p. 87):

> Mr. Majoros' allegation of pending harm to customers is based on (1) an out-of-context extension of SFAS 143; (2) minimization of the powers of the PSC; (3) an incomplete reading of FERC Order 631; (4) incomplete reference to the PSC's USofA; (5) a mischaracterization of CECONY revenues for recovery of depreciation expense, and (6) concerns about an event not reasonably likely to occur during the Rate Year or outside the purview of the PSC - the deregulation of CECONY. The suggestion that the amount of the non-legal AROs be classified as a regulatory liability to customers should be rejected.

VII. Income Taxes

A. Manufacturing Tax Deduction

CECONY has no further comment on this subject at this time other than that the PSC should note in its order in these proceedings that (1) the record shows CECONY suffered a $4.5 million loss to secure hundreds of millions of dollars of benefits for customers by voluntarily using the Bonus Depreciation tax depreciation method and (2) CECONY's decision to not further pursue recovery of the $4.5 million loss is without prejudice to any position CECONY might take in any proceeding on matters where CECONY incurs a cost or suffers a loss because of its actions to obtain benefits for customers (CECONY-IB, pp. 87-88).

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[75] On brief regarding Asset Retirement Obligations, UIU continues its far less than rigorous presentation of its position that CECONY pointed out (CECONY-IB, p. 85, n. 96-98). For example, UIU states that the $420 million figure is shown at page 101 of CECONY's 2012 Form 10-k included in Mr. Majoros' Exhibit (MJM-8), or Ex. 321 (UIU-IB, p. 16). When Mr. Majoros took the stand, he explained that such was not the case and made related changes to his testimony regarding the amount and source of his figure (57).

VIII. Cost of Capital

A. Summary

B. Financial Market Environment

In its Initial Brief, the Company established why its projected "stand-alone" average capital structure for the Rate Year, including a common equity ratio of 50.06%, should be used to determine the Company's cost of capital (CECONY-IB, pp. 88-106). As to the cost of equity, the Company demonstrated that its use of the Discounted Cash Flow ("DCF") and Capital Asset Pricing Model ("CAPM") methodologies produces the reasonable cost of equity for the Company of 10.1%.

In marked contrast, Staff's recommended Return on Equity ("ROE") of 8.7% is severely understated, particularly when compared with other returns authorized over the past 30 years. As Moody's concluded in its July 31, 2013 Credit Opinion regarding CECONY (Ex. 972, p. 2), "[T]he outcome of this rate case will be a litmus test for the current tone of the PSC and the regulatory environment in New York State, which are key considerations in determining CECONY's ratings." CECONY submits that if the PSC adopts Staff's proposed ROE, the PSC will have announced to both Moody's and the financial community the establishment of a fundamentally negative regulatory environment in New York State. Such an environment will jeopardize CECONY's credit ratings. This result would be particularly detrimental to CECONY considering that the PSC in June 2013 granted Brooklyn Union Gas Company, d/b/a National Grid NY ("Brooklyn Union") a ROE 70 basis points higher than the ROE recommended by Staff in these proceedings. Although the PSC established the ROE for Brooklyn Union in the context of a joint proposal extending an existing rate plan, the second year of Brooklyn Union's extended rate plan is identical to the Rate Year at issue in these proceedings (*i.e.*, calendar year 2014). Considering the extent and timing of the PSC's action regarding Brooklyn Union, CECONY finds it telling that Staff failed to even address, let alone justify, this major disparity in its Initial Brief.

If the PSC adopts Staff's proposed ROE, the PSC will be treating two New York utilities in a fundamentally different manner, much to the detriment of CECONY and its customers. While CECONY acknowledges that joint proposals may result in utilities being treated differently on various issues for discrete time periods, such materially disparate treatment should not extend to provisions that will fundamentally disadvantage one utility versus another utility, as would be the result if Staff's position is adopted in this case. Regulated utilities such as CECONY and Brooklyn Union must compete for debt capital in a fully competitive market, and their parent companies must compete in the equity market. Hampering CECONY's ability to attract capital on competitive terms, particularly in comparison to New

York's other utilities, undermines the interests of both CECONY's shareholders and its customers. Adopting a materially lower ROE for CECONY also will impair the PSC's reputation in capital markets by undermining investors' belief in the fairness of the PSC's ratemaking process.

UIU and WC addressed the Company's cost of capital, both in their pre-filed testimony and their Initial Briefs. As these proceedings have advanced, both UIU and WC have either adopted or voiced their non-opposition to various Staff positions (*e.g.*, capital structure). Despite this convergence, UIU and WC continue to recommend a ROE for CECONY lower than Staff's inadequate recommended ROE. In its Initial Brief, CECONY demonstrated why neither UIU's nor WC's cost of capital presentation is worthy of serious consideration (CECONY-IB, pp.104-106).

Finally, Assemblywoman Paulin addresses the issue of ROE for the first time in brief and argues that CECONY's proposed ROE is excessive (Paulin-IB, pp. 4-9). Ms. Paulin, however, fails to propose a specific cost of capital for CECONY, let alone provide support for her assertions. For example, although she questions the relative merits of the DCF and CAPM approaches, she fails to explain how these approaches should be modified or replaced (Paulin-IB, p. 9). In her Initial Brief, Ms. Paulin echoes without explanation or support Staff's argument that CECONY is a low risk utility (Paulin-IB, p. 8). In its Initial Brief, the Company refuted the notion that CECONY's risks have lessened over the past few years (CECONY-IB, pp. 91-92). In light of these fatal shortcomings, the Commission should accord no weight to her arguments.

While the Company in its Initial Brief anticipated and addressed the majority of the arguments posed by Staff and the other parties, the Company will address a few discrete points below.

C. <u>Capital Structure</u>

In its Initial Brief, CECONY demonstrated why its stand alone capital structure should be adopted by the Commission (CECONY-IB, pp. 89-93). Staff asserts that it employed a "consolidated approach" in establishing CECONY's capital structure (Staff-IB, p. 83).[76] Using such approach, Staff freely acknowledges that CECONY "has generally been allocating its common equity between its riskier competitive businesses and the regulated utilities in a manner that appears commensurate with their disparate levels of risk" (Staff-IB, p. 84). Despite this acknowledgement, Staff asserts that CECONY's stand-alone capitalization is unreasonable. Staff, however, has offered no theoretical or empirical support for this conclusion or for its pro forma 48.00% common equity ratio[77] (Staff-IB, pp. 83-86). Staff

[76] By recommending the adoption of its standard 48.00% common equity ratio, it does not appear that Staff's employment of a consolidated approach serves any practical purpose.
[77] While both UIU (UIU-IB, pp. 22-23) and WC (WC-IB, p. 14) now acquiesce to Staff's proposal, neither provides any empirical evidence or theoretical support to buttress Staff's proposal.

certainly has presented no evidence that a 48.00% common equity ratio is "optimal" for CECONY. Rather, Staff's justification boils down to the fact that the Commission has employed a 48.00% common equity ratio in prior CECONY rate cases, as well as in rate cases of other New York State utilities. Such a result is particularly inappropriate given that the average equity ratio of Staff's proxy group operating utilities is 52.80% (Hevert-R, p. 100). Staff's proposed common equity ratio is inconsistent with prevailing industry practice and subjects CECONY to the risk of greater financial leverage.[78] Staff's position also improperly jettisons the proxy group approach inherent in the Commission's generic financing methodology simply because the results of such approach fail to support its targeted objective. Staff states that "a utility's projected stand-alone capitalization should not be blindly approved. It must first be reviewed for reasonableness" (Staff-IB, p. 84). The Company agrees and has provided such demonstration in these proceedings. In contrast, Staff categorically ignores the use of a stand-alone capital structure and formulaically defaults to past decisions relying on a consolidated capital structure.

Staff asserts the truism that "equity is the most expensive form of capital for a utility" to buttress its proposed 48.00% common equity ratio (Staff-IB, p. 84). Such assertion, however, essentially begs the question. In these proceedings, the PSC should focus on the question of what capital structure best allows CECONY to maintain its credit ratings, so that it can attract capital on reasonable terms, consistent with the Company's risk profile, and prevailing industry practice. This is anything but an academic issue given CECONY's acknowledged need to make significant capital investments to maintain system reliability, particularly relating to storm hardening. As discussed in CECONY's Initial Brief (pp. 89-91), CECONY's proposed capital structure is far superior to Staff's proposed capital structure in accomplishing this objective.

Finally, CECONY disputes Staff's contention that its proposed capital structure and ROE will provide the Company with adequate cash flow and afford the Company with an opportunity to achieve credit metrics that are generally consistent with its recent past (Staff-IB, p. 85). The Company's cash flow, a continuing source of concern to the rating agencies, has only improved recently due to bonus depreciation – a financial wellspring that has run dry (Lapson-R, pp. 31-32). Moreover, Ms. Lapson demonstrated that Staff's cash flow analysis contained multiple fatal flaws (Lapson-R, pp. 35-41; 169-172). Staff's cash flow analysis also failed to account for the adverse impact of Staff's depreciation proposal which Staff estimated will decrease CECONY's proposed electric, gas and steam depreciation expense by approximately $120.6 million, $18.0 million and $2.7 million, respectively (Lapson-R, p. 3).

[78] The increased risk associated with Staff's recommended 48.00% common equity ratio provides additional support for the Commission's adoption of the Company's proposed ROE.

1. Cost of Debt/True-Up Mechanism

CECONY has developed the cost rates for its two projected new debt issuances during the Rate Year by using forecasts of Treasury rates from the publication *Blue Chip Financial Forecasts* ("*Blue Chip*"), plus a spread to Treasuries based on indicative quotes from financial institutions (Sanders, p. 10). In contrast, Staff argues for the use of "the most recent actual Treasury yield because short-term movements in long-term interest rates are difficult to forecast" (Staff-IB, p. 87). As noted in the Company's Initial Brief, Staff's reluctance to use *Blue Chip* forecasted Treasury rates is fundamentally inconsistent with its use of *Blue Chip* forecasts when calculating CECONY's equity capital (CECONY-IB, p. 93). Staff's position also is contradicted by Staff's assertion that interest rates on long-term debt securities "can be projected with somewhat relative certainty" (SCSP, p. 45).

Staff also argues that there is no need to continue the current Commission policy of truing-up the cost rates associated with CECONY's debt securities (Staff-IB, pp. 88-89). As noted in CECONY's Initial Brief, this position ignores the ongoing and projected increase in interest rates (Hevert-R, p. 8). In fact the unprecedented quantitative easing activities of the Federal Reserve, discussed by Mr. Sanders (Sanders-R, pp. 15-16), constitute just the sort of "special circumstances" alluded to by the PSC as justifying a true-up of debt costs.[79] Staff attempts to discount the risk of rising interest rates, which is driven in no small part by the doubts regarding the Federal Reserve's potential actions during the Rate Year, by merely asserting that "[T]he most recent 30 year treasury yield and the Citibank spread estimate from the Company's most recent issuance would incorporate investors' expectations on both a macroeconomic level and specific to Con Edison" (Staff-IB, p. 89). Staff fails to provide any support as to why its position aligns with investors' expectations, particularly in a changing interest rate environment. Moreover, absent a true-up mechanism, the Company's risk would be further expanded if the Commission adopts Staff's 48.00% common equity proposal, which likely will result in CECONY issuing additional new debt securities during the Rate Year.

D. <u>Cost of Equity</u>

1. Earned ROEs

In its Initial Brief, Staff concedes – correctly - that its recommended ROE of 8.7% is below the national average electric ROE authorizations over the past ten years. In fact, as noted in CECONY's Initial Brief, if granted by the PSC, this return would be the lowest in 30 years on a national basis (CECONY-IB, p. 102). Referring to Ex. 272, Staff seeks to justify its recommendation by alleging that

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[79] 2009 Electric Rate Order, p. 144.

Staff's ROE methodology, in conjunction with the many credit-positive attributes of New York regulation, has resulted in New York utilities actually achieving modestly higher earned ROEs than their peers nationally. First and foremost, for the purposes of determining a fair ROE for CECONY during the Rate Year, it is irrelevant whether New York State utilities have been able to earn closer to their allowed ROEs than out of state utilities. Second, as discussed by Ms. Lapson, Ex. 272 fails to demonstrate that New York utilities have achieved a modestly higher earned ROE than their peers nationally (Lapson-R, pp. 41-45). Moreover, Ms. Lapson established that Staff's assessment regarding the benefits of New York regulation was grossly exaggerated (Lapson, pp. 57-73). Unfortunately for both the investors in and customers of CECONY, the grim reality remains that Staff's recommended ROE is severely understated, even relative to comparable New York utilities (*i.e.*, Brooklyn Union). There is no evidence that either the New York regulatory environment or New York utilities' actual earned returns in any significant manner would, in the minds of investors, offset Staff's severely inadequate allowed ROE.

The discussion regarding earned returns in Staff's Initial Brief suffers from another logical defect. Staff suggests that its methodology produces a ROE that will afford CECONY the opportunity to earn a return that is commensurate with the return on equity for investments in other businesses with similar risk (Staff-IB, pp. 90-91). However, Staff also notes that electric utility authorized ROEs have "generally been in the low 10.0%'s in recent years" (Staff-IB, p. 90), and that Staff's analysis assumes a "long-run electric utility earned ROE of about 10.1%" (Staff-IB, p. 92). Staff supports its 8.70% recommendation by arguing that New York utilities have previously earned a higher ROE than authorized. It beggars belief, however, particularly in light of Staff's asymmetrical rate case presentation in these proceedings, that Staff's recommended ROE will afford CECONY the opportunity to earn a return in the low 10.00% range.[80] Moreover, Staff's own analysis indicates that over the past ten years New York utilities have earned a return "roughly 40 basis points higher than the authorized levels" (Staff-IB, p. 110). Plainly, adding 40 basis points to Staff's recommended 8.70% ROE in these proceedings will be insufficient to put CECONY on par with other electric utilities' returns.

2. Proxy Groups

As a general matter, Staff (Staff-IB, pp. 94-95) and UIU (UIU-IB, p. 25) recognize that the characteristics of their proxy groups do not differ significantly from those of CECONY's proxy group.[81] Staff does fault CECONY for excluding two allegedly suitable surrogates, CEI and Edison International

[80] Staff acknowledges the severity of its rate case presentation when it states "the negative revenue requirements in the instant proceedings should dispel any notion that Con Edison would not elect to file for new rates to go into effect after the end of the 2014 rate year" (Staff-IB, p. 286).
[81] WC's gas and electric proxy groups are both seriously flawed for the reasons noted by Staff and consequently are unworthy of serious consideration (Staff-IB, pp. 95-96).

(Staff-IB, p. 95). Such criticism is unwarranted. As discussed by Mr. Hevert, the inclusion of CEI would introduce an inappropriate circularity into the ROE analyses (Hevert-R, p. 27). Edison International was properly excluded given its recent significant losses an ongoing restructuring through bankruptcy proceedings.

IX. Rate Base

A. Electric Capital Adjustments

As Staff's Initial Brief indicates, CECONY has been successful in each of the last five years (2008 through 2012) in containing T&D capital expenditures as measured by its annual T&D capital budgets (Staff-IB, pp. 113-14). During this period, capital budgets have declined year over year; and CECONY did not exceed its capital budget in any year and incurred an average budget under-run of $49.4 million (about 3.8 percent) on an average T&D budget of $1.3 billion (*Id*.).Staff's Initial Brief contends "The comparison of historical budgeted expenses and actual expenses is a method to measure how well the Company executes its capital programs" and asserts that under spending justifies downward adjustments in projected capital expenditures (Staff-IB, pp. 113-14). CECONY disagrees.

CECONY's capital under spending reflects an overall effort to optimize and prioritize expenditures and control costs (CE-EIOP, pp. 47, 54-55, 62-64). CECONY should not be discouraged from these processes by holding up the savings from these efforts as a rationale for reducing the Company's projected capital costs that are supported in testimony, work papers, discovery responses and testimony during the hearings.

Staff's Initial Brief contends that Staff's adjustments to particular T&D programs totaling about $38 million in the rate year are "reasonable" because the CECONY's average annual total T&D capital under-spend of over the last five years was $49.4 million (Staff-IB, p. 114). Staff's approach would discourage spending below forecasted levels because CECONY will be on notice that the failure to spend up to the amounts reflected in rates will be a basis for adjusting downward forecasted expenditures in the next rate case.

Each program should be examined on its own merits, and where historic under spending has occurred, CECONY should not be penalized with an "average spending adjustment" for re-prioritizing funding to other higher priority programs or if work were delayed for good reason.

1. Emergent Transmission Reliability Program (Transmission Operations)

2. Area Substation Reliability and Auto Ground Circuit Switchers ASRAGCS Program (Substation Operations)

Staff's Initial Brief continues to support a funding level of $8.5 million based on expenditures between 2009 and 2012 and fails to address CE-EIOP's rebuttal-testimony explanation why expenditures before 2012 are not a useful guide for expenditures in 2014. As explained by CE-EIOP, CECONY reduced circuit switcher installations in the years before 2012 while it was modifying equipment design to develop a lower-cost fault clearance solution for transformer vaults where space was too limited to install circuit switcher equipment without expensive modifications. Beginning in 2012, after completing the redesign, CECONY began installing equipment incorporating Digital Transfer Trip ("DTT") technology and increased its budget to complete installations at more substations using DTT equipment in limited space applications and circuit switchers elsewhere. With the new equipment, expensive vault modifications are not required, and CECONY can upgrade more substations at a lower average cost. The 2012 budget increased to $10.5 million, and CECONY upgraded nine transformers in 2012 at a cost of $12.6 million (CE-EIOP-R, pp. 44-45).

SEIIP stated that "during the period 2009 through 2012, an annual average of 2.75 switches were installed and two removed, at an average yearly expenditure of $8.5 million" (SEIIP, p. 64). SEIIP's focus on the historic installation average masks the increase in program installations using DTT equipment beginning in 2012. CE-EIOP's rebuttal testimony pointed this out, stating that Staff's analysis "overlooks the current main component of this program, which is now the installation of the DTT equipment" (CE-EIOP-R, p. 45). Staff's Initial Brief fails to address the equipment redesign and program augmentation as well.

Further, Staff's Initial Brief stated without citation and quite erroneously, "the Company believes its lower actual historical spending is primarily the result of slowed work progress, resource availability, and outage delays," and Staff's Initial Brief goes on to state, "Given that the resource availability and the delays in installation work would likely continue, we don't believe that Con Edison can achieve its proposed replacement levels " As discussed in CE-EIOP's rebuttal, the historical spending level reflected spending levels in the years before the DDT equipment design was developed when installation costs were higher and fewer installations were preformed. Neither CE-EIOP nor its information request responses to Staff ascribed historical spending levels to resource availability and outage delays. In fact, far from being constrained by resources and outage delays, CECONY overspent its budget for this program ever year from 2009 to 2012 (Ex. 242, p. 30).

Staff's Initial Brief states that three switches that had been planned in the spring of 2013 had been cancelled, and that none were completed year to date (Staff-IB, p. 115). Of the three specific switch project, one unit has been rescheduled for the fall, and the other two have been deferred until 2014, but ten other additional units are planned for upgrade by year-end, with equipment outage windows provided by System Operations, work packages complete, and working group resources committed. One circuit switcher/circuit interrupter installation has been completed in 2013.

This program illustrates the shortsightedness of Staff's adjustments based on historic spending. This program is subject to outage scheduling constraints due to the long-duration outages that are required to install the equipment. However, if Staff reduces the funding level to $8.5 million dollars, less work can be planned for a given year, and any outage cancellation would result in a higher percentage impact to the budget. This would likely result in additional under spending in the future, to which Staff's response would be additional reductions. Staff adjustments, if any, should reflect the overall merit of the work plan rather than a predictive notion of how much of that work plan will be accomplished in a future year.

3. Facility Improvement Program (Substation Operations)

Staff's Initial Brief acknowledges that CECONY has identified over $17 million in projects that are available for work in 2013 and 2014, but states that "spending for this program is discretionary" because "[o]nly a select number of the projects from the Company's candidate list are completed in any given year" and because CECONY reduced the 2013 budget from $6.6 million to $4.5 million to provide funding for 2013 storm hardening work" (Staff-IB, pp. 116-117). Prioritization of necessary work within the Facility Improvement program and prioritization of this program within the larger Substation Operations budget and within the even larger T&D budget to set a $6.6 million budget does not lead to the conclusion that the projects in this program "are pursued on a discretionary basis." By recommending $5 million for this program, Staff obviously believes that the program is necessary and should be pursued. CE-EIOP's testimony demonstrated that new costs of about $1 million dollars for construction of office structures and the installation of backflow preventers on substation water supplies are being imposed on this program and are not reflected in the historical average that Staff used to compute its adjustment. Further, the deferral of $1.6 million from the $6.6 million program budget in 2013 to support storm hardening work makes it even more important that the 2014 budget be restored to $6.6 million. SEIIP's adjustment to reduce the Substation Operations Facility Improvement Program from $6.6 million to $5 million should be rejected.

4. High Voltage Test Sets (Substation Operations)

5. Roof Replacement Program (Substation Operations)

As discussed in detail in Ex. 495, pp. 84-86, CECONY has a comprehensive program to inspect, rate, and repair or replace roofs. The entire population of about 500 roofs is inspected every five years on average with older roofs inspected more frequently. Staff's Initial Brief acknowledges CECONY's "going forward work plans" to increase funding for roof replacements but believes that "historical figures showing that the Company has under spent its budget are enough reason" to trump the need to expand this program (Staff-IB, pp. 117-118). In taking this position, Staff's Initial Brief fails to speak to CE-EIOP's ample justification in testimony and in information responses (Ex. 242, pp. 346-358) of the need to expand this program. And in selecting a <u>five</u>-year average to produce a $1.5 million recommendation, SEIIP misses both CECONY's actual ramp-up of spending above this level over the last <u>three</u> years and its expenditures over budget during this period. From 2010 through 2012, roof replacement expenditures totaled $5.63 million – an average of $1.9 million per year – and exceeded the three-year budget of $4.7 million by about 20% (CE-EIOP, pp. 53-54; Ex. 242, p. 31).

Staff's Initial Brief does not dispute that CECONY increased its 2013 budget from $1.8 to $3 million or the need for the increased roof replacement work that CECONY has initiated in 2013 and is planning for 2014 as discussed in detail in Ex. 242, pp. 346-358. Staff's Initial Brief notes the City's position that if the need for roof replacement is genuine the funding should be provided – rather than adhere to historic spending levels. In relying on historic spending, Staff does not recognize the genuine need and in using a five year average, Staff produces a low recommended budget that fails to account for CECONY's increased spending for this program over the last three years and the ample justification of its planned $3 million expenditure in 2014. Staff's $1.5 million adjustment should be rejected.

6. Transformer Replacement Program (Substation Operations)

Staff's Initial Brief contends that the program budget should be reduced by $5.9 million in anticipation of outage constraints, cash flow variations, and construction scheduling changes that in last four years resulted in expenditures averaging $6.7 million per year below budget (Staff-IB, pp. 119-120). Staff fails to recognize that CECONY plans to replace more power transformers, including a higher number of the most expensive transformers, over the next three years and requires an increased budget to support planning, procurement and construction activities.

CE-EIOP testified that about 150 of approximately 400 power transformers on the system are over 40 years old. Rather than spending $60-70 million per year to replace these units over the next ten years, CECONY's asset management program uses diagnostic tools to identify for replacement the transformers that have the highest risk of failure (CE-EIOP, pp. 81-82). The Transformer Replacement program has budgeted an average of $20.6 million per year and spent an average of $16.8 million per year over the five-year period of 2008 to 2012 to replace these highest risk transformers (Ex. 242, p. 31). (SEIIP uses a four-year average to support its assertion that CECONY has spent an average of $14.8 million per year.) CECONY is planning to replace eight power transformers over the next four years including three 345kV units – the most expensive units to replace. From 2007 to 2012, CECONY replaced nine transformers but just one 345kV unit (Ex. 242, p. 340). To conduct more replacements of higher cost units over the next several years, CECONY seeks to increase the program budget to an average of $25.5 million from 2014 to 2016, including $25.9 million in 2014 (CE-EIOP, pp. 81-82).

In the course of a budget year, the program budget is allocated to a variety of costs for multiple projects that are in varying stages of progress, such as, progress payments on purchases of new transformer units, construction payments for projects begun in a prior year, and construction payments for new projects begun in the budget year (Ex. 242, pp. 7-8, 340). Staff's $5 million budget reduction would restrict CECONY's ability to manage more than one or two projects during the year and over three years would equal the cost of one of the three 345kV units that CECONY plans to replace from 2014 to 2016 (CE-EIOP-R, pp. 51-52). While outage constraints, cash flow variations, and construction scheduling changes can occur, these have impacted budgets by only $3.8 million on average from 2008 through 2012 and do not support Staff's $5.9 million adjustment. Reducing this program in anticipation of outage constraints, cash flow variations, and construction scheduling changes that may or may not occur is not warranted since the adjustment will certainly reduce the number of the highest risk transformers that CECONY can replace. Staff's adjustment should be rejected.

7. Failed Transformer Program (Substation Operations), Failures other than Transformers Program (Substations Operations), and the Transmission Feeder Failures Program (Transmission Operations)

8. Technology Improvements (Substation Operations)

CE-EIOP's rebuttal testimony clearly articulated that CECONY has a critical need to upgrade its Maximo work management system and its underlying Oracle database to the latest versions because these systems will not run on Windows 2008, R2 operating system to which the corporate services will be upgraded in March 2015. This single upgrade project will cost $900,000 in 2014 and leave just $100,000 for other Substation Operations technology work in 2014. Staff's Initial Brief does not dispute the need for the Maximo / Oracle upgrade, the reasonableness of the cost, or the likelihood that the full $900,000 will be spent. Staff simply rejects an otherwise justified expenditure because it not in the range of the historic average expenditure of $528,000 and advises CECONY to fund the software upgrade by reprioritizing its overall T&D capital budget.

Staff's adjustment is arbitrary and at odds with Staff's stated "objective [is] to make recommendations to the Commission that correctly reflect, as closely as possible, the reasonable costs of the Company's capital programs" (Staff-IB, p. 113). The reprioritization suggested by Staff will reduce by at least $300,000 the cost of another program or project that Staff has recommended to the Commission as reasonable. The relatively small amount of Staff's reprioritization is no less arbitrary than if Staff had disallowed on the same pretext a project ten or more times more costly. Once the PSC has determined the reasonable projected cost of the overall T&D portfolio for the Rate Year, the Commission itself has recognized that the Company may need to re-prioritize programs and projects to address unanticipated developments during the year.[82] CECONY should not have to reprioritize reasonable project costs in advance of the Rate Year simply because they do not fit into the historical average. Indeed, the projected 2014 program cost of $1 million is not the first time that expenditures for Substation Operations Technology Improvements will exceed the $528,000 historic average. CECONY spent $1.15 million in 2009 and $0.76 million in 2011 (Ex. 504, p. 1).

9. Primary Feeder Relief

Staff's Initial Brief reiterated that SEIIP's network load forecast analysis for Staff's Transformer Relief program adjustment supports SEIIP's proposal to reduce the 2014 Primary Feeder Relief Program from $10.5 million to $7 million. The errors in SEIIP"s network load forecast analysis are discussed in the Network Transformer Relief section below.

Staff acknowledges the Company's point that the $7.84 million budget in 2013 had been reduced by $0.9 million to provide funding for 2013 storm hardening work but dismisses this point as a "red herring," asserting that "storm hardening projects will be implemented in 2014 that will be at or above the levels for 2013 but this had no impact on how we determined our proposed funding level for this program" (Staff-IB, pp. 122-123).[83] Staff appears to argue that the 2014 budget will also be reduced by $0.9 million to provide funding for storm hardening. As discussed in CE-EIOP's rebuttal (CE-EIOP-R, p. 32) and in CECONY's Initial Brief, the 2013 budget for Primary Network Relief was $7.84 million. CECONY opposes reduction of 2014 reliability programs, such as Primary Feeder Relief, on account of 2014 storm hardening projects.

10. Network Transformer Relief

Staff's Initial Brief restates and fails to correct the erroneous claim initially stated in SEIIP's testimony that actual annual spending in the network transformer relief program has been $14 million less than budget on average from 2007 to 2012 (SEIIP, p. 80). CECONY's Initial Brief demonstrated that the total expenditures for this program from 2007 to 2012 were $218.9 million against a total budget of $197.6 million; that the average budget from 2007 to 2012 was $32.9 million; and that the average annual

[82] See 2010 Electric Rate Order, JP, p. 13, which states "The Company has the flexibility over the term of the Electric Rate Plan to modify the list, priority, nature, and scope of the capital projects identified in the Project/Program List, subject to the reporting and rate case demonstration provisions set forth below."
[83] In contrast, in discussing the Network Transformer relief adjustment, Staff's Initial Brief (p. 125) states "the rationale for a decrease in spending in this program due to the large cost of storm hardening [in 2014] remains." Staff's position on decreasing 2014 capital expenditures to offset 2014 storm hardening capital expenditures is confusing. As discussed in the Storm Hardening section of CECONY's Initial Brief, Staff also proposes an adjustment when 2014 rates are established to implement a $58.1 million adjustment over and above proposed adjustments to some of the same programs from which the $58.1 million is derived.

expenditure was $36.4 million. Expenditures exceeded budget by a total of $21 million over the six year period or by an average of $3.5 million annually (CE-EIOP-R, p. 34; Ex. 242 p. 26). Thus, an argument that historic budget under spending supports a downward 2014 budget adjustment is without merit.

As stated in Staff's Initial Brief, SEIIP examined the year-to-year network load increase from 2013, as reported in the 2012-2021 ten year load relief report, to 2014, as reported in the 2013-2022 ten year load relief report, and concluded that "the projected network loads … are very similar" and support "a budget for 2014 which reflects the budget level for 2013" (Staff-IB, p. 124; see also SEIIP, pp. 80-81 where SEIIP states "approximately similar"). But, when CE-EIOP's rebuttal pointed out that the ten year load relief reports relied on by SEIIP actually showed a 5 MW load growth (3 percent) from 2013 to 2014 (CE-EIOP-R, p. 34), Staff's Initial Brief disassociated Staff from the reports and states (p.125) "The work that will be done will be based on a ten year load relief report that has been further refined as additional actual load information is obtained." Staff's Initial Brief speculates that the load forecast in the next edition of the ten-year load relief report will decrease. In addition, referring to Ex. 861 (CECONY's response to DPS 758), Staff contends that the independent network load forecast that Con Edison used to show that network load growth of 167 MW from 2013 to 2104 exceeded network load growth of 162 MW from 2012 to 2013 by 5 MW (3 percent) is different than the ten-year load relief reports that SEIIP used to conclude that the increase in network load growth is similar. The independent network load forecast that Con Edison used is an input into the ten-year load relief reports that SEIIP used and is the source of the network load projections used in the reports that Staff relies on as well.

SEIIP also failed to recognize that, in proposing a 2014 budget in the same amount as the 2013 budget, the program budget for 2013 was actually $28 million, a sum that was later reduced by $5.5 million to $22.5 million to provide funding for storm hardening work in 2013 (CE-EIOP-R p. 34; Ex. 242, p. 83). A 2014 budget level that reflects the budget planned for 2013 would be $28 million, not $22.5 million. Therefore, even if the 2014 network load growth were similar to the 2013 network load growth, Staff's proposed $7 million reduction (33 percent) from the 2013 budget of $28 million is unsupportable.

Lastly, Staff's Initial Brief states that SEIIP's $7 million adjustment is warranted because large storm hardening capital expenditures are expected in 2014. Continued reductions to this program can have an adverse effect on system equipment and reliability. As stated in Ex. 186, p. 86, the $5.5 million reduction from the 2013 budget postponed to 2014 the scheduled "relief of some lower priority network transformers estimated at being greater than 100% of normal rating. Transformers operating at or over their design criteria during limited emergency load periods could exhibit a degradation of their internal components with a resulting reduction in their service life." Staff's adjustment would increase the $5.5

million reduction to $7 million in 2014 and compound adverse impacts on equipment and reliability. Reliability programs such as Network Transformer Relief should not be defunded year after year in order to accommodate increased capital expenditures for storm hardening measures.

11. Secondary Open Mains (Electric Operations)

Staff's Initial Brief contends that "The Company did not provide justification for the need of approximately $10 million more funding in 2014 versus 2013 (Staff-IB, p. 127). Staff is incorrect in characterizing the change from 2013 to 2014 as a $10 million increase. Staff acknowledges the Company's point that the $142 million budget in 2013 had been reduced by $12.7 million to provide funding for 2013 storm hardening work but dismisses this point as a "red herring," asserting that "storm hardening projects will be implemented in 2014 that will be at or above the levels for 2013 but and (*sic*) this had no impact on how we determined our proposed funding level for this program" (Staff-IB, pp. 126-27).[84] Staff appears to argue that the 2014 budget will also be reduced by $12.7 million to provide funding for storm hardening. CECONY opposes reduction of 2014 reliability programs, such as Secondary Open mains, on account of 2014 storm hardening projects.

In response to CECONY's position that SEIIP's proposed $9.7 million adjustment would add about 485 cable sections to the average annual backlog of 2,000 open mains, a 24% increase (CE-EIOP-R, pp. 38-39), Staff's Initial Brief contends increasing the open mains backlog is "acceptable" because it would increase only low priority mains and would not exceed 2,549, which was the highest year-end backlog amount in the last five years (Staff-IB, p. 127; Ex. 862). The 2,549 year-end backlog in 2011 was an outlier. The average year-end backlog from 2008 to 2012, excluding 2011, was 1,866 open mains (Ex. 862). CE-EIOP explained that the number of open mains is driven largely by high summer loads and winter storms "which cannot be reliably predicted" (CE-EIOP-R, p. 36).[85] Staff's proposal to reduce funding for this program would drive the baseline year-end backlog to the outlier level and leave the system exposed to even higher-than-outlier year-end levels whenever high summer loads and winter storms swell the number of open mains, as occurred in 2011. Even assuming Staff is correct in

[84] In contrast, in discussing the Network Transformer relief adjustment, Staff's Initial Brief, states "the rationale for a decrease in spending in this program due to the large cost of storm hardening [in 2014] remains." Staff's position on decreasing 2014 capital expenditures to offset 2014 storm hardening capital expenditures is confusing. As discussed in the Storm Hardening section on CECONY's Initial Brief, Staff also proposes an adjustment when 2014 rates are established to implement a $58.1 million adjustment over and above proposed adjustments to some of the same programs from which the $58.1 million is derived.

[85] In 2011, the 2,549 open mains backlog at year end was a consequence of substantial winter snowfall (which included the largest snowfall ever recorded for January) and record summer temperatures; both of which contributed to the number of open mains. In addition, Hurricane Irene in August taxed CECONY's resources and impacted the ability to repair open mains contributing to a higher year-end backlog.

concluding that only low priority mains would increase as the outlier level is approached (for which Staff does not discuss any supporting analysis), CE-EIOP cautions that low priority mains will rise in priority if and when a nearby main fails (CE-EIOP-R, pp. 37-38). Staff's proposal increasing the backlog of low priority open mains would leave the system more vulnerable to service outages whenever high summer loads and winter storms swell the number of open mains adjacent to the increased population of low priority mains.

CECONY's Initial Brief pointed out that CECONY will incur revenue adjustments if it fails to meet very rigorous network outage and duration targets set in CECONY's Reliability Performance Mechanism (CECONY-IB, p. 113). In 2012, open mains accounted for 8 percent of CECONY's network interruptions (Ex. 869, p. 15). Thus, in addition to increasing the number of network interruptions to customers caused by open mains, Staff's proposal, if adopted, would create an unwarranted increase in the risk that CECONY would incur a revenue adjustment.

12. EO Transformer Purchases

13. Overall CapEx Adjustment

SEIIP proposes that the 2014 revenue requirement be reduced by the imputed revenue requirement impact of CECONY's continued deferral of $58.1 million in capital distribution and substation projects to offset 2014 storm hardening costs (SEIIP, pp. 50-53). As discussed in CECONY's Initial Brief (pp. 114-115), CE-EIOP opposed Staff's proposal for several reasons. First, the reduction could come on top of SEIIP's total program specific T&D capital reductions. Second, SEIIP double counts program adjustments by imputing the full revenue impact of 2014 carrying charges on $58.1 million, while at the same time proposing reductions in 2014 capital funding for some of the same programs that are the source of the $58.1 million deferral. Lastly SEIIP failed to explain the basis for their general conclusion that "We find that these projects can continue to be deferred or eliminated" (SEIIP, p. 52).

Staff's Initial Brief addresses only the last point. Staff implies that if the impacts were acceptable to CECONY in 2013, the impacts should be acceptable in 2014. CECONY disagrees. While certain work can be deferred for a year without anticipated adverse impact on component performance, deferring certain work year upon year will serve to degrade component performance. This is true for the work that Staff would have the Company continue to defer in various reliability programs, amounting to deferrals of $44.9 million: primary feeder relief, network transformer relief, repair of secondary open mains, network reliability (feeder installations), high voltage circuit breaker replacement, over-duty circuit breaker replacements, transformer (proactive) replacements, failed transformer replacements, and circuit switcher replacements. This is true as well for programs to improve deteriorating structures amounting to deferrals of $4.1 million: relay house enclosures, switchgear enclosures, and facility improvement.

Staff's Initial Brief claims that "similar type programs" can provide "the same end result" to address the impact of deferred work in another program. As an example, Staff claims that the Emergent Load Relief program and the PILC Replacement program address the overload conditions that the Network Reliability program addresses. CECONY disagrees. Reliability programs are not overlapping to a significant degree, and Staff's example demonstrates this point. The Network Reliability program de-bifurcates main runs (legs) of an existing distribution feeder to create two new feeders that (1) provide more balanced network feeder loading during normal operation, (2) increase the number of feeders available during contingencies to mitigate the potential for cascading feeder failures associated with high feeder 1oading due to shifting load following a feeder failure and (3) reduce the number of components (*i.e.*, cable, splices, and transformers) per feeder, thereby reducing exposure to failures and improving reliability (CE-EIOP, p. 243). The PILC Replacement Program replaces PILC cable with solid dielectric cable on network feeders to improve reliability by eliminating feeder components (PILC cable sections and transition joints) that have elevated failure rates during summer heat waves (Ex. 495, p. 161). PILC replacement does not address feeder loading, and de-bifurcation of feeders does not generally remove PILC sections and transition splices. The Emergent Load Relief program that Staff also mentions is a Substation Operations program that has nothing to do with network reliability.

14. USS (Unit Substation) Program

NYC's Initial Brief discussed CECONY's program to replace Unit Substation switchgear houses and proposes that CECONY "(i)identify the causes of failure and the most appropriate long-term and cost-effective approach to managing these assets; and (ii) implement that approach" (NYC-IB, p. 25). CECONY's Initial Brief discussed the Unit Substation Program thoroughly and agreed that a review of the USS Life Extension and Replacement programs is warranted to identify whether these programs most effectively address unit substation structure and equipment issues. CECONY stated it would conduct such a review and provide a report to the PSC by March 31, 2014.[86]

15. Storm Hardening

CECONY agrees with Staff's conclusion that "there is a sufficient record in these proceedings for the ALJs to make [storm hardening and resiliency] recommendations for the rate year in their

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[86] NYC's Initial Brief can be read to request that the PSC direct CECONY to study the causes of failure related to all capital programs for replacing deteriorated structures. If so, the proposal should be denied. NYC makes this proposal for the first time in its initial brief and has not specified other "deteriorated structures" or otherwise provided CECONY an opportunity in this proceeding to respond to such proposal.

recommended decision, and for a Commission determination" (Staff-IB, p. 131). CECONY's Initial Brief discussed Staff's findings and recommendations for 2014 storm hardening projects.

i. Impact of New Design Standard

As CECONY prepares engineering designs and refines project costs in preparation for storm hardening work commencing in 2014, CECONY is incorporating into its 2014 storm hardening projects the design standard stated in the stipulation set forth in Ex. 846. That design standard states:

> CECONY's capital investment design standards for resilience- or storm-hardening related capital projects initiated during 2014 for the portion of its service territory located in the City of New York will reflect the FEMA Preliminary Work Maps issued in June 2013, take into consideration the location of the floodplains and extent of potential flooding set forth on those maps, and design projects located within the 100 year floodplains with the objective of withstanding the level of a 100-year flood plus three feet to address, among other things, considerations of the impact of future climate change.

This design standard affects coastal flooding storm hardening projects at substations, at generating stations, and in networks. CECONY has continued to refine its estimates for these projects to reflect both the design standard and the detailed scope of work analysis and refinement that has been conducted over the last several months in preparation for project initiation in 2014 (1423).

While the design standard will generally increase the height of protective measures at substations and generating stations, incorporation of this design standard is not anticipated to materially impact overall 2014 expenditures for coastal flooding storm hardening projects presented in this proceeding and the Company is not adjusting its revenue requirement request to account for any increased costs for such projects. The estimates of substation and generating station project costs presented in this proceeding included contingency funding estimates that are expected generally to accommodate increased costs resulting from incremental measures associated with new design standard.

In the case of the East 13th Street Substation, the estimated 2014 to 2016 cost has increased from $105.1 million to $120.7 million as a function of both the new design standard and detailed scope of work analysis and refinement in preparation for project initiation in 2014, but the projected expenditure of $32 million for this project in 2014 is unchanged from the 2014 projection in this proceeding. For the three network coastal flooding initiatives, the new design standard may enlarge inland the inundation zone where submersibles and switch installations will be needed in years beyond 2014, but CECONY 2014 work, as projected in this proceeding, will continue to take place in flood zones closest to the coastline that are the most at risk for flooding, and no changes in 2014 costs are anticipated.

ii. NYC's Criticisms of CECONY's Storm Hardening Initiatives

(1) Accounting for Storm Hardening Projects

NYC's Initial Brief contends that "[v]irtually all of the projects and programs proposed by the Company that are now described as "storm hardening" are actually continuations of existing programs that formerly were considered reliability-based programs (NYC-IB, p. 21). CECONY does not agree with NYC's characterization of storm hardening projects.

Prior to Superstorm Sandy, the reliability portion of CECONY's capital program included initiatives to make equipment more robust to withstand the effects of wind and water intrusion during storms, or provide for faster restoration to the system equipment in the event that it became unavailable, either due to electrical faults or planned shutdowns ("pre-existing reliability programs") (CE-EIOP, pp. 15-20). Following Superstorm Sandy, CECONY established a variety of <u>incremental</u> "storm hardening" initiatives to further strengthen the system to withstand more extreme storm and wind events (CE-EIOP, pp. 20-40). Incremental "storm hardening" initiatives include an expansion of existing proven measures, while others are completely new initiatives (Ex. 186, p. 90). These initiatives had not been projected in CECONY's five-year budget plan prior to the occurrence of Superstorm Sandy (*Id.*). CECONY's response to Staff information request 100 provided work scopes and estimated costs of CECONY's electric system incremental "storm hardening" projects together with planned expenditures by year from 2013 to 2016 (Ex. 186, pp. 257-347). A "Summary Table" in that IR response provided an overview of both the incremental storm hardening projects and the pre-existing reliability programs with planned expenditures by year through 2016 (*Id.*, p. 347). CECONY is separately accounting for incremental "storm hardening" initiatives as requested by Staff.

NYC's Initial Brief contends that CECONY is presenting "pre-existing reliability programs" as incremental "storm hardening" projects in this proceeding. As examples, NYC's Initial Brief cites five pre-existing reliability programs presented in Case 09-E-0428, CECONY's prior electric rate case – Exs. 879 (coastal storm program), 880 (transmission structures), 881 (Dunwoodie reconductor), 885 (Queensboro Bridge 69 kV feeder replacement), and 886 (distribution pole repair/replacement) – as well as three additional "pre-existing reliability programs" – underground sectionalizing switches, transmission hardening, and overhead secondary reliability (NYC-IB, pp. 21, 23-24). For all of these programs, except Queensboro Bridge 69 kV feeder replacement and underground sectionalizing switches, the 2013 to 2016 expenditures planned prior to Sandy are shown as "preexisting reliability programs" identified as such on the Summary Table (Ex. 186, p. 347) and are not presented as incremental "storm hardening" projects in this proceeding.[87] Any expansions of these programs developed after Superstorm Sandy to address more severe storm and wind events are presented as incremental "storm hardening" projects in Ex. 186, p. 347, and in CECONY's exhibits in this proceeding. The CE-EIOP described the difference between "preexisting reliability programs" and incremental "storm hardening" projects in the following discussion with NYC's attorney (1381-1382):

> MR. LANG: What you're now calling storm hardening projects. Would you agree with me that many of those projects are simply continuations or enhancements of pre-existing projects?
>
> MR. MIKSAD: I don't think I would agree with that. I mean, this--what we're talking about now is certainly, to me, a new ballgame. I mean, we operated our overhead system the way it was for a long time, and we've already talked about performance of that system. What we're talking about now, going after and limiting number of customers to very small amounts, increased sectionalizers, talking about fall strength and wire strength and wire type, we've never put underground-type cables or disconnectable connectors up on--well, this is--to me it's a major, major jump from where--from what we've done traditionally for storm resiliency.

Staff's Initial Brief notes that the Staff Policy Panel recommends that CECONY separately track storm hardening projects for accounting purposes (Staff-IB, p. 137). CECONY will continue to separately account for the incremental "storm hardening" initiatives as Staff has requested.[88]

(2) Scope of Storm Hardening Projects

NYC's Initial Brief contends that prior to CECONY's commitment to the design standard provided in the Stipulation (Ex. 846), CECONY's storm hardening projects were "limited to addressing a future storm that is identical to Hurricane Sandy," [and] "did not demonstrate any intent to address the

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[87] Ex. 885 concerns replacement of 69 kV feeders on the Queensboro Bridge presented in Case 09-E-0428. That project was cancelled and was not presented in this proceeding. In this proceeding, CECONY presented the capital Queensboro Bridge Transmission Feeder Pipe Support Project to install transmission feeder supports (CE-EIOP, pp. 215-17; Ex. 495, pp. 20-21) and an associated O&M project to repair feeder supports and repair sub-transmission feeder pipe leaks (Ex. 79, PDF pp. 5-8; CE-EIOP-R, pp. 23-25). CECONY has not presented either the capital or the O&M Queensboro Bridge projects as incremental "storm hardening" projects or "preexisting reliability programs."

CECONY's pre-existing sectionalizing switch program installs primary underground sectionalizing switches on targeted network feeders to increase network reliability by rapidly isolating faulted segments of primary feeders, allowing the portion that is not faulted to be re-energized, in order to reduce the amount of load shifted to other distribution feeders and reduce the failure rates for adjacent feeders that pick up the load of the faulted feeder section (CE-EIOP, pp. 239-40). That pre-existing use for sectionalizing switches is quite different than CECONY's coastal storm hardening programs to reconfigure the boundaries of the Bowling Green and Fulton networks and install similar isolation switches at 70 locations in nine other Manhattan networks to de-energize customer equipment associated with high tension (13,800 volt) installations (Ex. 186, p. 283), which are presented as incremental "storm hardening" projects.

[88] The Company emphasizes that its willingness to separately account for these storm hardening projects is separate and distinct from the Company's continued position that there should not be a separate category of storm hardening costs for purposes of the net plant reconciliation mechanism.

potential for major storm events that have different trajectories, and impacts, than Sandy" (NYC-IB, p. 22). CECONY disagrees. CE-EIOP's direct testimony stated that CECONY's immediate storm hardening work in advance of the 2013 hurricane season (June 2013) would address the substations that were actually impacted by Superstorm Sandy and that additional work on some of these stations would continue in 2014 and after until finished; the CE-EIOP also stated that CECONY would storm harden the other substations in the flood plain from 2015 to 2016 "based on different hurricane/flooding scenarios" (CE-EIOP, pp. 35-36).[89] With the adoption of the Stipulation (Ex. 846), CECONY is planning storm hardening work during 2014 to 2016 at all substations that are encompassed in the new design standard (1424).

NYC's Initial Brief contends that Con Edison does not efficiently merge equipment replacement / upgrade work with storm hardening related to the same equipment. NYC refers to work at the East 13th Street Substation (no specific upgrade / replacement work is identified) and at Vernon and Fresh Kills substations (canopies over relay cabinets is the example given) (NYC-IB, pp. 24-25). CECONY disagrees. CECONY's storm hardening projects incorporate other planned capital when cost effective and operationally practical. The 13th Street Substation storm hardening project has considered and merged other equipment replacement and upgrade work into the storm hardening scope. A specific example is the upgrade of category alarms, which is a standard capital program. At 13th Street, a planned alarm system replacement project was cancelled and the upgrade of the alarm panel was merged into the storm hardening project. The new alarm panel is being incorporated into the new Human Machine Interface (HMI) system that is being installed for the new control room. The original alarm panel

[89] Q. Do you anticipate the need for any additional work to be done in the area of storm hardening in the future?
A. We do. Our ultimate goal is to provide for full storm hardening of each station. This effort will include protecting all stations and critical substation equipment and assets against future storms. We are anticipating the need to harden other stations based on different hurricane/flooding scenarios. We have evaluated some of these stations; some still need to be evaluated; and work scopes will need to be developed for all of them. Accordingly, we anticipate undertaking some level of hardening initiatives similar to the ones mentioned above at the following stations:

- Sherman Creek
- Bruckner/Hellgate
- West 49th Street
- Academy
- Astoria East/Astoria West/North Queens
- Farragut
- Rainey
- Vernon

We may also determine that hardening efforts related to wind events are required at additional facilities. We would anticipate that the hardening efforts at these facilities would commence in 2015 and would be completed in 2016. (pp. 35-36) replacement project already planned to incorporate a new microprocessor based system and a fiber optic network. Because this is the type of work planned for the 13th Street storm hardening project, the two were merged (Ex. 186, p. 197).

In regard to the canopies over relay cabinets at Vernon and Fresh Kills, the canopy structures are not intended to provide flood protection. The purpose is to block inclement weather from above, such as rain and snow. This type of weather has degraded the integrity of the relay houses, so the canopies will protect the houses and provide a safer environment for employees to work on the equipment. The relay houses themselves are on elevated foundations already and turning the canopies into watertight, flood-proof enclosures would significantly increase the cost of the projects. Also, Vernon and Fresh Kills are locations where the current storm hardening plan provides for perimeter flood protection for the entire property. Consequently, the relay houses would not be impacted by significant flood water and therefore do not need individual protection.

(3) Optimization of 2013 Storm Hardening Capital Expenditures

NYC's Initial Brief contends that "for 2013 storm hardening capital investments, the Company ignored its capital optimization and prioritization process" and departed from compliance with an unspecified Management Audit recommendation (NYC-IB, p. 23, fn. 10). NYC is entirely incorrect. CECONY followed its capital optimization and prioritization process rigorously.

NYC does not appear to understand the capital optimization and prioritization process. The process is much more sophisticated than the City's expectation that all programs and projects falling below a particular total spending line should be axed.

At the hearing, CE-EIOP explained that in CECONY's optimization and reprioritization process, capital work for the annual budget is not selected by arbitrary elimination of the programs and projects that fall below a particular total expenditure demarcation point, but rather by performing strategic value weighting within an optimized listing of all programs and projects to identify portions of projects that can be eliminated or deferred consistent with the maintaining the value of the project or program for system benefit. The CE-EIOP described this process as follows (1425-26, 1435-37):

> I don't believe we reran the whole process, but certainly the decisions were based on the strategic weight of those projects, consultation with operations and engineering. . . . [W]e were able to reprioritize what was a robust list of projects and a fully vetted set of projects, and in consultation with operators and engineers and strategic values already assigned to those projects in the optimization, we were able to carve out generally portions of projects, margins on projects. So it's not as if we didn't replace any breakers last year, but we replaced less. And so it relied on the strategic weighting that the optimization process brings with it ... We never take the [list] from a computer and make that our capital program. It's vetted, it's iterative, but that's the major guide to determine our spending in prioritization. So for example, a program, if it's got a hundred pieces, a

> hundred widgets to program #5, it's potentially, at that point in time, the hundre[dth] widget is going to deliver less value than the second widget in program #12 … We don't just draw a line and say we're going to drop everything south [of] project #49. We take a look at the impact and the integration and the depth of these programs, and we make those difficult decisions based on those discussions and that vetting. And that's what you get in this case.

During 2012, in preparation of its 2013 budget, CECONY developed a prioritized and optimized list of 2013 programs and projects. That list is provided in Ex. 833. After Superstorm Sandy occurred in late October 2013, CECONY planned a variety of initiatives to harden and improve the resiliency of its electric system (CE-EIOP, p. 15). To incorporate and fund these initiatives within the 2013 budget, CECONY examined the overall portfolio of previously planned 2013 T&D capital programs and projects to identify lower priority work within particular programs and projects that could be deferred. As discussed in CECONY's response to the City's information request 286 (Ex. 186, p. 88):

> The reprioritization decisions were made after considering the overall impact of Hurricane Sandy, the projected costs of capital programs that would prevent or reduce many of the impacts experienced from future storms, the relative importance of all of the work planned in our overall T&D portfolio, and analysis of discrete program or project details.
>
> … all programs are subjected to analysis in determining the potential impact due to reprioritized funding reductions ….

iii. Economic Cost Benefit and Risk Analysis

UIU's Initial Brief proposes "use of a robust economic cost benefit model and a formal, detailed probabilistic risk management approach (with up-to-date climate data and potential impacts included in the inputs) as the underpinnings of decisions regarding storm hardening and resilience projects (UIU Initial Brief, p.36). UIU contends that this process would "protect protect the interests of customers far more effectively than Con Edison and the Commission's traditional planning and ratemaking process" both because of the large role of "engineering judgment" and the "little or no input from outside parties" in these traditional processes (*Id*., p. 40). Thus, UIU calls for "a bottom-up" review to (40-41):

> Identify[ ] customers who will lose service in the absence of the project, the probability they will lose service, how long they will lose service, and how much economic damage they will sustain as a result of losing service. … the potential economic benefits of these specific projects, … the specific circumstances under which those benefits would occur, … the probability that those circumstances will arise (and thus the benefits will be realized) during the useful life of the project.

UIU's Initial Brief concludes the discussion of the proposed approach with the following caveat (UIU Initial Brief, pp. 41-42):

> [G]iven the many uncertainties involved with extreme storm events, it may be more cost-effective to accept that (1) some parts of the system will be damaged during a major storm, (2) it is impossible to predict precisely which specific parts of the system will fail, and (3) predictions regarding meteorological events are inherently uncertain and these uncertainties will be exacerbated by the uncertainties involved with future climate change, no one can precisely predict the "worst case" storm which the system needs to be protected against. In turn, this implies that, at least for some parts of the system, it may be prohibitively expensive to harden the system against damage from any conceivable future storm event, and thus it may make more sense to concentrate on making the system more resilient, so that damaged parts of the system can be repaired or replaced very quickly, and thus service can be restored very rapidly.

With regard to the PSC's review of CECONY's 2014 storm hardening costs, UIU's Initial Brief proposes that the PSC "provide[s] the Company with sufficient funding to move forward expeditiously with high priority projects during 2014" provided that the PSC avoid endorsing specific "storm hardening" projects included in the 2014 budget it approves [and] avoid commenting on the optimal size of the Company's planned 2015 and 2016 resiliency budgets (UIU's Initial Brief, p.40). UIU asks that the PSC encourage CECONY to participate in the Storm Hardening Collaborative process and use the results of the process to refine storm hardening priorities and capital budgeting process (*Id*.).

CECONY is participating vigorously in the collaborative working group that is examining risk assessment and economic cost benefit analysis. CECONY is optimistic that the risk analysis used in the selection of its storm hardening projects can be enhanced through the work of the collaborative. At this stage, for reasons Dr. Johnson describes, among others, CECONY is not optimistic that a workable economic cost benefit analysis model can be developed for purposes of deciding whether to construct particular storm hardening projects.

UIU's witness, Dr. Ben Johnson, an economist, testified regarding the difficulties that will be encountered in modeling storm hardening initiatives. Dr. Johnson stated he has never "participated in [a] cost benefit study analyzing the benefits of storm hardening and resiliency" (727-28). He offered the example of the US Army Corp of Engineers work on economic cost benefit analysis relating to the construction of levees, stating they have been "using cost benefit analysis in one form or another since the early 1900s" (Johnson, p. 4). But he did not know whether there is "some work product already out there that would be available" for use as guidance for the economic cost benefit model he suggests (759-760). Dr. Johnson did not offer an economic cost benefit model for CECONY's use.

Dr. Johnson stated that the analytical process he proposes has "many subtle and arcane aspects" (Johnson, p. 8). In lieu of an "exhaustive discussion" of such aspects (694), Dr. Johnson singled out two aspects: "One subtle and difficult and …potential … controverted areas [is] what discount rate you use" (696). He pointed to "potential controversy for what's the right discount rate to use, and for certain scenarios, it may make a big difference" (696). Dr. Johnson provided the following example of the controversial nature of the discount rate (698):

> There was a difference in say discount rates applied to customers and potential benefits 40 years from now and for those customers, there's not a lot of benefit there because it's so far out in the future and the discount rate is so high, they'd be better off having that money today in their pocket, not being sent to Con Ed so that they can pay down their credit card bills. I can give you a simple example of the kind of thing. The Commission can resolve that. They just have to make a decision whether they think the appropriate discount rate is 4% or 8% or 14% much more easily than to just pick a number and say we think there ought to be 100 million or 200 million or 30 million.

The second subtle and arcane aspect Dr Johnson discussed is the "question of probabilities." He described this question as "tak[ing] a series of scenarios that you believe are relevant and assign probabilities to them" (696). He described the process as follows (699):

> [W]e would have a methodology in which you would assign a probability to the various events and a value to the benefit of avoiding the outage. I think it's--this is a good example in the sense of the hospital, it's self-evident that it's more important than say a typical store down the street, okay? … And the really key thing there is it gets to losing power for an hour or two is not nearly as serious for a hospital as losing it for several days because the first hour or two, they have backup generators intended to handle that kind of common short, brief interruption.

Dr. Johnson then discussed a third aspect of an economic cost benefit analysis – assigning economic and non-economic impacts to the loss of service. When asked about assigning impacts of loss of service to a hospital, Dr. Johnson stated:

> Q: Are there non-economic impacts from the loss of electric service to a hospital?
>
> A: Maybe, but nothing comes to mind at the time as we kind of convert everything into economic terms so maybe I'm just having a blind spot at the moment but most—we talked about people being sick; we're talking about them dying, we tend to convert that into money terms.

16. Staff Proposal for Downward Reconciliation of Storm Hardening Expenditures

17. Bulk Power System Substations Security Upgrades

18. Queensboro Bridge Capital Subtransmission and Distribution Projects

NYC's Initial Brief demonstrates both a lack of understanding of CECONY's projects relating to electric feeders crossing the Queensboro Bridge and supply to Roosevelt Island and a lack of understanding of electric system design. The combination puts NYC in a poor position to suggest an extremely costly redesign of the electric system supplying Roosevelt Island. CECONY's is undertaking two capital projects for facilities located on the Queensboro Bridge. The first capital project, the

Queensboro Bridge Transmission Feeder Pipe Support Project, is a sub-transmission feeder reliability project that will add and replace supports (anchors and rollers) for the six 138 kV and six 69 kV subtransmission feeders that traverse the bridge (CE-EIOP pp. 215-17; Ex. 495, pp. 20-21; 1448-49). An associated O&M project will repair some feeder supports in lieu of replacement and repair 69 kV sub-transmission feeder pipe leaks. The second capital project, 59th Street Bridge Crossing, is a distribution feeder – new business and reliability project. The project will replace the six 13 kV distribution feeders currently traversing the Queensboro Bridge and supplying Roosevelt Island, enclose all feeders in a new conduit system to provide protection from the elements and reconfigure feeder routing to reduce single point of failure exposure, and provide the capability to install six additional distribution feeders to supply future load on Roosevelt Island (CE-EIOP, pp. 149-50; Ex. 498, pp. 29-31; 1453-55).

Regarding the sub-transmission feeder reliability project, NYC's Initial Brief erroneously states that CECONY "propose[s] to replace and upgrade the existing 69 kV feeders" in the rate year or later (NYC-IB, p. 32). As explained by CE-EIOP, the six 69kV feeders on the bridge emanate from 138/69 kV transformers in Queensbridge substation. At one time, CECONY planned to change the feeders from 69 kV to 138 kV. CECONY is not proceeding with that plan, and instead the Queensboro Bridge Transmission Feeder Pipe Support Project and associated O&M repairs will maintain the ongoing reliable operation of all the sub-transmission feeders on the bridge at substantially lower cost than the feeder upgrade to 138 kV (1447-53).

NYC's Initial Brief misstates the scope of the distribution feeder project. While acknowledging that the project will upgrade the existing six distribution feeders supplying Roosevelt Island, NYC does not appear to appreciate that these six upgraded feeders will be installed in a new conduit system that will provide the capability to add six additional feeders for supplying the island as load grows and will protect the feeders from the elements and reduce single point of failure exposure (1454-55). Thus, the NYC's Initial Brief misstates the project scope and proposes a completely unnecessary redesign of the Roosevelt Island distribution system as follows (NYC-IB, pp. 32-33):

> However, the Company has acknowledged that replacing and/or upgrading the six 13 kV feeders would not be sufficient to supply the expected load growth on Roosevelt Island. Rather than proceed with mere replacements of the existing feeders, the Company should use this opportunity to take a fresh look at the Queensboro Bridge projects to account for the increased load on Roosevelt Island, while simultaneously strengthening this infrastructure against salt, weather, vehicle fires, and climate change. The City recommends that the Company's two projects be combined into a single project in which two of the 69 kV feeders directly serve Roosevelt Island from Queens. (CEIP-D 18-20.) This design should serve the Island's present and projected future needs more reliably, while also reducing the load at the 63rd Street Substation. The 13 kV lines could be maintained as a reliable backup source (redundant power sources are

> increasingly common on high tech facilities). The City recognizes that this approach would require the construction of a new substation on Roosevelt Island, but such an approach represents a far more robust and appropriate design than the Company's inadequate plan

CE-EIOP actually testified that the six distribution feeders now supplying Roosevelt Island could "certainly supply [the Cornell-NYC Tech Applied Sciences complex] for a number of years. We don't need that capability now" and two new feeders will eventually be required to supply increased load on Roosevelt Island (1453-54). Far from "mere replacements of existing feeders" as NYC's Initial Brief asserts, CECONY's 59th Street Bridge Crossing project will provide more reliable service by (1) installing upgraded feeders in a new conduit system that protects against all the environmental dangers mentioned by NYC and (2) reduced single point of failure exposure by diversifying feeder routes, and (3) provides capability to add up to six feeders for future load growth.

NYC's proposal to build a new substation supplied by two 69kV feeders to serve Roosevelt Island directly would not meet second contingency reliability design criteria, which would require a third 69kV feeder to supply the proposed station.[90] While no estimate is available for such a station, it would likely cost in the range of $150 million dollars to construct with three supply feeders. In comparison to the $3 million cost of the near term distribution feeder upgrades and conduit system, and the cost of future distribution feeder installations, in the order of $7.5 million, it is evident that CECONY's approach is much more cost effective.

In summary, the 59th Street Bridge Crossing will adequately handle near and longer term load growth on Roosevelt Island, and will do so in the most cost effective manner, and the Queensboro Bridge Transmission Feeder Pipe Support Project will maintain the ongoing reliable operation of the sub-transmission feeders on the bridge. NYC's proposal should be rejected.[91]

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[90] NYC's proposal to maintain existing 13 KV lines "as a reliable backup source of supply to the new substation" makes no sense. The proposed substation would be supplied by 69 kV feeders and power transformers at the substation would transform the power to 13 kV to supply the 13 kV distribution feeders on the island.

[91] NYC's Initial Brief calls into question the Company's technical and planning capabilities regarding CECONY's Queensboro Bridge projects and alleges that the Company is relying on 1940's technology (NYC-IB, p. 31). NYC does not provide a citation supporting this allegation, and given that NYC's Queensboro Bridge was placed into service in 1909, NYC's comments regarding the operation of older technology are unclear. NYC completed extensive renovations of the bridge in 2012, and in this proceeding, CECONY is proposing renovations and upgrades to maintain the ongoing reliable operation of the electric infrastructure on the bridge.

19. Programs Presented in the Update Filing

20. CECONY's Use of Voltage Reduction

NYC's Initial Brief contends that CECONY relies on voltage reductions ("voltage reduction") to address system load growth instead of implementing load relief measures to reinforce the electric system (City-IB, pp. 28-31). NYC's Initial Brief refers to the testimony of CE-EIOP (p. 80) discussing the planning use of voltage reduction to defer infrastructure upgrades otherwise required for load relief. NYC's Initial Brief also refers to the testimony of NYC's CPP (pp. 29-30; Ex. 171) discussing CECONY's use of 5 percent or 8 percent voltage reduction in several distribution networks a number of times during 2012. These are very different uses of voltage reduction. The City confuses the use of voltage reduction as a measure in the Company's load relief plan to provide sub-transmission feeder relief and the use of voltage reduction as a tool to maintain system reliability during network operating contingencies, such as feeder failures.

CECONY's 2012-13 2021 Load Relief Program (Ex, 242, pp, 8, 16) shows that without load relief sub-transmission feeders supplying the E. 4th St., No. 1 and No. 2 and Murray Hill area substation and sub-transmission feeders supplying the Brownsville No. 1 and No. 2 area substations will be overloaded in 2018 and 2019, respectively. The relief of the potential overload in a substation contingency situation ultimately requires expensive projects, such as, transfer of load to another area substation or the construction of a feeder cooling plant or a new area substation. To defer the construction of such load relief measures for one year in the case of Brownsville No. 1 and No. 2 and two years in the case of E. 40th St. No. 1 and No. 2 and Murray Hill area substations, the 2012-2021 Load Relief Program provides for the use of voltage reduction in a contingency situation. Such a substation contingency scenario would not occur, if at all, until 2018 or 2019, and the potential use of voltage reduction would be ended when the load relief project is deployed a year or two later. This is not the voltage reduction scenario that occurred in several networks in 2012 as discussed by NYC-CPP and shown in Ex. 171.

CECONY's 2014-2023 Load Relief Program will not provide for voltage reduction at the Brownsville No. 1 and No. 2 area substations because these are first contingency design stations where the potential for implementing voltage reduction (triggered upon the loss of one sub-transmission feeder) would be greater than at a second contingency substation like E. 40th St. No. 1 and No. 2 and Murray Hill area substations (triggered upon the loss of two sub-transmission feeders). Thus, CECONY's use of voltage reduction to address substation contingency only for second contingency design area substations and only as a short-term interim measure (one or two years) to defer costly sub-transformer load relief.

But CECONY would use voltage reduction at any time as an operating tool to address distribution feeder contingencies.

The voltage reduction use discussed by CPP and shown in Ex. 171 was described by CECONY's EIOP during the hearing. CE-EIOP explained that voltage reduction is used as an "operational tool" to maintain system reliability when feeders supplying networks fail during high load periods ("network contingency"). CE-EIOP explained the benefits of voltage reduction during a network contingency as follows (1475-76):

> The purpose of volt[age] reduction is the reliability; it's an operational tool for reliability. What we have found is it does stabilize the system once we get into a network configuration, once we get into a contingency situation where we get into second and third contingencies. It has the effect of stabilizing by reducing voltage stresses on equipment to basically cut down to next to zero of failures in this situation … overall we feel that it is an operational tool that has contributed to the performance that we put in, in terms of keeping our networks up and running.

CECONY's annual Primary Feeder Relief program reinforces and relieves network feeders projected to operate in an overloaded condition, i.e., above 100 percent of their ratings under both normal and contingency (two feeders out of service) conditions (CE-EIOP, p. 154). Contrary to NYC's belief, CECONY does not use voltage reduction as a substitute for annual network feeder relief. Nonetheless, feeder components (cable sections, splices, transformers) can fail for causes unrelated to overloading (CE-EIOP, p. 243), and CECONY may reduce voltage in a network if two or more network feeders fail on a high load day.

NYC summarizes its concern as follows: "when low voltage reduction is continually used as a means of load relief, infrastructure investment is the correct course of action" (NYC-IB, p. 30). NYC asks that the PSC "require[ing] the Company to proceed with the load relief projects it plans to defer in favor of voltage reductions [and] investigate whether Con Edison is properly reinforcing and expanding its electric system, and whether that system will be adequate to reliably meet present load and future load growth." No basis exists for NYC's proposal. NYC misunderstands CECONY's use of voltage reduction as an operational tool during a network contingency. CECONY examines and addresses projected overloads on its network feeders before each summer peak load season. CECONY does not use voltage reduction as a substitute for network feeder load relief.

CECONY's use of voltage reduction in networks during 2012 was not related to the potential use of load relief in 2018 and 2019 prior to CECONY's relief of sub-transmission feeders supplying the Brownsville No. 1 and No. 2 and e. 40th St. No. 1 and No. 2 and Murray Hill area substations. The potential use of voltage reduction for a substation contingency is remote due to the high reliability of sub-transmission feeders, the very low probability of failure during a peak load period, and the need for two feeders to fail before triggering voltage reduction.

NYC is also concerned that the use of voltage reduction has interfered with elevator operation in New York Housing Authority buildings and conjectures, though offers no support for a possible impact on water plant pumps. CE-EIOP discussed the measures that CECONY is taking to limit its use of voltage reduction for network contingencies. In advance of the 2013 summer peak load season, CECONY modified its operating procedures resulting "in about a 20% decline in what it would have been otherwise in our previous procedure" (1473-1474). CECONY has studied and found no impact on customer appliances or elevators, which can generally operate at voltage lower than that during a voltage reduction (*Id*.). CECONY has met with NYCHA and found that long distances from CECONY's point of service to NYCHA's buildings throughout a housing complex contributes to voltage drop. CECONY has worked with NYCHA to mitigate a number of these conditions.[92]

B. <u>Gas Capital Adjustments</u>

1. Slippage Adjustments

As explained in the Company's Initial Brief, the Company under-spent in certain gas capital categories, but spent in line with forecasts on an overall basis (CECONY-IB, pp. 123-124). This was due to capital funds being reallocated in order to perform unavoidable and unanticipated priority work, while maintaining spending to budget levels established in rates under the current gas rate plan (*Id.*). Staff's Initial Brief does not question any of the facts underlying the Company's explanation or offer any alternative approaches the Company should have pursued in order to meet forecasted spending targets in each gas capital category while still performing the priority work identified by the Company. Instead, Staff's Initial Brief simply states that "Con Edison must do a better job at budgeting individual projects in the context of its overall budget" (Staff-IB, p. 138). Staff goes on to state that "[t]he Company's capital budget is crucial to the rate setting process and if the Company repeatedly fails to spend up to its forecasted levels it undermines the credibility of both the Company's ability to accurately forecast its capital needs and the projects reflected in its budget" (*Id.*, pp. 138-139). These assertions do not provide a basis for applying Staff's proposed slippage adjustment. The Company operates in a dynamic environment where the flexibility to respond to unforeseen developments is both appropriate and essential

[92] NYC's Initial Brief suggests the use of shunt capacitor banks to "solve the problem of low voltage" and by implication, avoid the use of voltage reduction. Voltage reduction is used by the Company because the reduced voltage lessens the likelihood of subsequent feeder failures by reducing voltage stress, not to address "low voltage" as mentioned in NYC's brief. Shunt capacitor banks serve to provide reactive compensation, reduce losses and voltage drop, but would not provide any reliability advantage such as that afforded by the use of voltage reduction during network contingencies.

(CECONY-IB, p. 123). Staff's position, if adopted by the Commission, would make meaningless both the Company's flexibility to reprioritize set forth in the current gas rate plan adopted by the Commission[93] and the Company's Asset Optimization Program, which Staff has endorsed (See Leak, pp. 14-15). Absent evidence that the Company has improperly exercised this necessary discretion, of which Staff has offered none, Staff's proposed adjustment is unwarranted.

Staff also criticizes the Company for not reducing its Rate Year forecasts to reflect actual historic spending (Staff-IB, p. 139). Staff essentially seeks to have the Company impose a slippage adjustment on itself through the forecasting process and ignore the Company's good faith forecasted expenditures for the Rate Year. Moreover, the reasons for the increased forecast in the Transmission and Generation category from 2012 to 2014 are significant new projects planned for the Rate Year, including the Bronx Border to White Plains project ($0 in 2012; $25 million in 2014), the Critical Components – Hunts Point to Bronx Border project ($0 in 2012; $6 million in 2014), the St. Ann's Tee to Hunts Point Downgrade project ($0 in 2012; $3 million in 2014) and the Hunts Point Regulator Refurbishment project ($0 in 2012; $2.5 million in 2014) (Ex. 566). With the exception of the Critical Components – Hunts Point to Bronx Border project, which is addressed in the Company's Initial Brief (CECONY-IB, p. 128), Staff has not challenged these projects.

For the same reasons provided above and in the Company's Initial Brief, the increased Rate Year forecasts over the 2012 actual spending for the two specific capital categories identified in Staff's Initial Brief do not support Staff's proposal and Staff's criticism of the Company's forecasting process should be rejected.

2. Oil-to-Gas Conversion Costs

Staff's Initial Brief (p. 140) states, in relevant part, as follows:

> In rebuttal, the Company, for the first time, states that it incorrectly reported data related to its oil-to-gas conversions on its 2012 year-end Productivity Report due to what it claims was a transition problem to a new computer program (CE Gas Infrastructure, R/U, p. 28). Con Edison's explanation is highly suspect considering it was only introduced after Staff submitted its case and made a significant adjustment to the Company's oil-to-gas capital expenditures program based on the Company's actual reported costs (Tr. 1063). Moreover, it is the Company's responsibility to adequately justify any change and provide documentation that there was an error. As discussed below, that was not done here (Tr. 1060).

[93] 2010 Gas Rate Order, Joint Proposal, p. 22 ("The Signatory Parties acknowledge that the Company has the flexibility over the term of the Gas Rate Plan to modify the list, priority, nature and scope of its gas capital projects.")

Staff's statements are clearly erroneous and contradict the record evidence in this case establishing that Staff was provided with corrected capital conversion cost data and Staff met with the Company to discuss such data <u>before</u> Staff filed its direct testimony (CECONY-IB, pp. 125-126). The Company's update testimony was simply the appropriate stage in the process established in these proceedings for the Company to <u>formally address</u> this error and was made necessary by Staff's decision to ignore in Staff's presentation of its direct case the material provided by the Company to Staff in discovery that explained the error. If Staff believed the corrected material and/or explanations that were provided during formal and/or informal discovery were inadequate, Staff certainly could have explained why in its direct case. Staff's narrow focus on when and how errors in the 2012 Productivity Report were identified in the record does not provide a basis for the Commission to reject the Company's updated data. Despite Staff's effort to ignore salient information properly introduced during discovery, the Company met its responsibilities by providing corrected data and meeting with Staff to discuss the data (*Id.*).

Staff also claims that the Company provides no valid reason why unit costs for main and service extensions related to oil-to-gas conversions differ from Traditional New Business projects (Staff-IB, pp. 140-141). Again, Staff ignores, rather than addresses, explanations provided by the Company. Oil-to-Gas conversions jobs are typically larger than Traditional New Business projects (which include 1-4 family gas conversions). For example, oil-to-gas conversions often require main reinforcement and/or main extension in order to provide customers with adequate service (Ex. 567, p. 3). Most Traditional New Business jobs, on the other hand, are small jobs requiring a single service and in some cases, a short main extension (*Id.*, p. 1). Another reason for lower unit costs related to Traditional New Business work is the fact that less than 20% of the services installed under Traditional New Business over the last five years were in Manhattan (Ex. 838, p. 6). Meanwhile, almost 40% or double the services installed under the Oil-to-Gas Conversion work in 2011 and 2012 were in Manhattan (Ex. 591, p. 68). As the Company has explained with respect to other types of projects, working in Manhattan results in significantly higher costs than working in the other boroughs (CE-GIOP-R, pp. 68-69).

3. LNG Year-Round Liquefier

Staff continues to propose an adjustment to disallow costs associated with the Company's LNG Year-Round Liquefier project based upon the historical usage of the facility (Staff-IB, pp. 141-142). As discussed in the Company's Initial Brief, this project is a modest investment that will better allow the Company's LNG facility to meet its reliability/contingency function, particularly in the event of an emergency or unforeseen occurrence (CECONY-IB, p. 127).

4. Removal of Leak Prone Pipe

Because the Company did not propose to implement its program to remove leak-prone pipe in flood prone areas until 2015 (after the Rate Year), the Company did not address this issue in its Initial Brief. However, both Staff and NYC did address this issue in their respective Initial Briefs. Staff recommends that this program be disallowed because, in Staff's view, insufficient analysis has been performed to justify it (Staff-IB, p. 143). Instead, Staff recommends that CECONY incorporate potential flood damage as a risk factor in its main replacement prioritization ("MRP") program (*Id.*, p. 144). NYC, on the other hand, proposes that CECONY implement this program in 2014 and increase the amount of low pressure gas main in flood zones replaced under this program to ten miles per year (NYC-IB, pp. 43-45). For the reasons set forth below, both NYC's and Staff's proposed adjustments to this program should be rejected.

While CECONY supports the replacement of additional leak-prone pipe within the flood zone areas, the funding required to replace ten miles of such pipe a year, as proposed by NYC, would be a significant cost to firm ratepayers (CE-GIOP-R, p. 106). NYC's proposal would require increased funding of $79.2 million in 2014 (*Id.*). By contrast, CECONY proposed $33 million in funding over two years (2015 and 2016), which would equate to three to four miles of replacements per year if performed in Manhattan at the associated unit costs (*Id.*). While the Company does not conceptually oppose NYC's proposal to implement this program in 2014, as a practical matter, and as NYC itself recognizes, (NYC-IB, p. 44), the Company will need an appropriate amount of lead time to ramp up this program. Therefore, the Company is not proposing to implement this program in 2014.

Since these proceedings seek to establish rates for 2014, the Company did not Staff's criticisms of the Company's 2015 program. To the extent Staff's arguments are considered in the context of implementing this program during the Rate Year, they should be rejected. CECONY should not incorporate potential flood damage as a risk factor in its MRP program, as suggested by Staff. These are separate and distinct efforts that should be treated separately (CE-GIOP-R, p. 105). Replacing leak-prone pipe is something that is done for public safety reasons, while replacing leak-prone pipe in flood zones is instead done primarily for service/system reliability (*Id.*). If CECONY adds a factor for mains in flooded areas to its MRP, the resulting prioritization ranking would elevate reliability over public safety in some instances (*Id.*). In addition, because of the unique drivers associated with the current MRP and the proposed targeted replacement of leak-prone pipe in flood zones, the targeted flood zone replacement should be separate from the existing main replacement program that seeks to replace smaller diameter cast iron segments of gas main (*Id.*). The proposed program to replace leak-prone pipe in flood zones will result in more efficient replacement of main within flood-prone areas, for system reliability purposes, while keeping public safety the main priority of CECONY's MRP (*Id.*).

5. Critical Components – Hunts Point to Bronx Border

6. Storm Hardening – Vent Line Protection Devices[94]

Both Staff and NYC support CECONY's proposal to install Vent Line Protection ("VLP") devices (Staff-IB, pp. 146-147; NYC-IB, pp. 48-49). However, due to concerns with the actual operation and longevity of this new technology, both Staff and NYC propose that the Company be required to annually remove and test a randomly selected sampling of 5% of the VLP devices (*Id.*). The Company's Initial Brief (pp. 128-129) addresses the proposal to test 5% of the VLP devices.

NYC also proposes that the Commission require the Company to adhere to its schedule for installing the VLP devices and impose "consequences" if the Company fails to achieve installation scheduling goals (NYC-IB, p. 49). While the Company did not expressly mention this proposal in its Initial Brief, the Company does address various new performance measures proposed by other parties (which includes NYC's VLP proposal). (CECONY-IB, p. 225).

With respect to VLP devices, the Company initiated and has consistently demonstrated its commitment to this program (CE-GIOP-R, p. 109). While the Company accepts that certain performance metrics are a standard part of utility rate plans, NYC's proposal related to the installation of VLP devices is unwarranted and, to the Company's knowledge, no other New York State utility is subject to similar performance measures (*Id.,* pp. 102-104).

7. Updates

Staff proposes to adjust the Company's 2013 Traditional New Business budget by reducing the Company's projected expenditures from $47.3 million to $42.9 million or by $4.4 million (Staff-IB, pp. 148-149). Staff argues that the Company fails to explain why the cost per foot of main for the West Village High Pressure Upgrade project deviates so substantially from the Company's historic and forecasted levels (*Id.*). Since Staff's Initial Brief was the first time Staff proposed this adjustment, the Company is now addressing this proposal in this Reply Brief. Staff's analysis of general, Company-wide unit cost data fails to recognize the significant costs related to this particular job.

This project is located in Manhattan where, as the Company has explained with respect to other types of projects, work results in significantly higher costs than working in other boroughs (CE-GIOP-R,

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[94] Aside from the installation of the Vent Line Protection devices, all other Company gas storm hardening projects were proposed for implementation after the Rate Year. As such, these projects are not addressed by the Company in this Reply Brief. This should in no way be interpreted as a waiver by the Company of its rights to address the merits of post-Rate Year projects at the appropriate time and in the appropriate forum.

pp. 68-69). Moreover, while most Traditional New Business work are small jobs (Ex. 567, p. 1), this is an unusually large job involving the installation of 16 inch high pressure plastic pipe (Ex. 839). By comparison, most of the mains currently installed in this area are 8 inches or less (*Id.*). Staff's proposed adjustment should, therefore, be rejected.

C. Steam Capital Adjustments

1. Emergent Projects

2. Storm Hardening

The Company has already fully supported the need for the intake tunnel sealing and sluice gate installation (CECONY-IB, pp. 133-134) and is actively participating in the Storm Collaborative to facilitate Staff's review of its Storm Hardening projects. Staff did, however, express an understandable concern regarding the Company's update/rebuttal testimony that the costs of the 59th Street intake tunnel sealing and sluice gate installation tripled from $5.5 million to a total of $16 million due to more refined cost estimates, stating that it reinforces the need to further review the cost versus benefit of the project in the Storm Collaborative (Staff-IB, p. 150). In fact, the Company inadvertently compared apples and oranges in its update/rebuttal testimony and incorrectly stated that the costs had tripled. In its initial testimony the Company had stated that it planned to order sluice gates in 2013 for installation in 2014 at an estimated cost of $0.5 million, with an estimated cost of approximately $5.0 million in 2014 for installation of the sluice gates and tunnel sealing (CE-SIOP, pp. 87-88). The Company's update/rebuttal testimony, included more than just sluice gates and tunnel sealing. The $16 million referred to in the update/rebuttal testimony also includes the desilting of both the north and south tunnels (assuming agency [NYSDEC] approval) and the installation of one reinforced concrete wall in each tunnel (CE-SIOP-R, p. 9); Ex. 662; Schedule 2, p. 34).[95]

Similarly, NYC stated a concern about significant drops in some Steam Storm Hardening costs while the overall budget remained the same, concluding that Staff should diligently audit the Storm Hardening programs to ensure that project costs and variances from project estimates and budgets are reasonable and fully supported (NYC-IB, pp. 58-60). The Company fully supported its Storm Hardening Budget, describing various increases and decreases in its update/rebuttal testimony and associated exhibits (CE-SIOP, pp. 7-14; Ex. 662; Schedule 2, p. 34). It should have been expected that there would be changes in the costs of individual projects as the Company refined its costs. The Company notes that it has proposed continuation of the annual reporting requirements of capital and O&M expenditures set

[95] The update/rebuttal testimony includes a reference to "initiation of de-silting for additional tunnel sealing at 59th Street" (CE-SIOP-R, p. 9) and the supporting white paper includes both the desilting of the north and south tunnels and the installation of concrete walls in each tunnel (Ex. 662, Schedule 2, p. 34).

forth in section IV.J.5 of the current Steam Rate Plan, except that annual reporting for steam production will be by functional category instead of by project, providing the information necessary to demonstrate that project costs and variances continue to be reasonable (CE-SIOP, p. 108).

In addition, NYC asked that the PSC require the Company to update its Steam storm hardening plan to study the feasibility of 1) improving resiliency to electric and gas outages and 2) improving the resiliency of Steam T&D. Regarding improving resiliency to electric and gas outages, NYC acknowledged "that measures available to improve the ability of steam system assets to operate during such outages may be cost-prohibitive or otherwise infeasible, and that the Company must plan carefully which capital investments it will undertake so as to avoid unduly burdening price sensitive steam customers" (NYC-IB, p. 54). Despite that acknowledgement, NYC set forth several topics for the Company to address, including, in the case of black start capability for various production facilities, the costs, need, benefits, and steam rate impacts, all to be provided in a full report in the Company's next rate case (*Id.*, pp. 54-57). The Company will review such issues as part of the Storm Hardening Collaborative; however, the PSC should not require completion of the studies proposed by NYC, since the subject matter will be discussed in the Collaborative and NYC has not provided any basis for believing that there are cost-effective measures that warrant the costs and diversion of human resources necessary to complete such studies.

Regarding Steam T&D, NYC recognizes that increasing the resiliency of the entire steam system, including T&D assets, could require cost-prohibitive capital investments (*Id.*, p. 57), but then asks that the Company be required to include in its next steam rate filing the results and implementation plan, if any, associated with an analysis of options to improve the resiliency of steam mains and reduce the size of system segments affected by flooding (*Id.*). NYC claims that its recommended studies "should not impact steam rates," since "the recommended studies are necessary to ensure that storm hardening projects are defined appropriately, and that the costs and benefits of each such project have been identified," so it would be appropriate for the "costs – including consultants' costs – associated with the recommended studies to be supported by the base rate allowance for resiliency projects that is approved in this proceeding" (*Id.*, p. 58). NYC does not explain how passing along the costs of the studies, which it apparently concedes could include studying cost-prohibitive capital investments, would not impact steam rates. The Company will consider investments to increase Steam T&D resiliency as part of the Storm Hardening Collaborative; however, the PSC should not require completion of the studies proposed by NYC, since the subject matter will be discussed in the Collaborative and NYC has not provided any basis for believing that there are cost-effective measures that warrant such studies.

D. <u>Electric Production Capital</u>

1. Emergent Projects

Staff's Initial Brief essentially repeats the Staff Steam Infrastructure Panel testimony and does not address the Company's rebuttal testimony that Staff has not explained why historical data is a valid basis for Steam Production emergent capital, but not for Electric Production Emergent Capital (CE-EPP-R, pp. 20-21). Similarly, while Staff's Initial Brief describes the Company's monthly budgeting "sweep" process as allowing for the reallocation of funds to emergent projects with high strategic value and refers to the actual emergent projects being funded through the capital prioritization and optimization process (Staff-IB, p. 152), Staff does not address the Company's arguments that the optimization process cannot function as designed without proper funding levels (CE-EPP-R, pp. 112-113). In addition, Staff's proposed downward only net plant reconciliation frustrates the optimization/prioritization process by denying the Company the flexibility to move capital from one budget category to another (*Id*., pp. 17-18).

2. Storm Hardening

Staff continues to argue that sluice gates and moats are redundant (*Id*., pp. 153-154), but ignores the Company's rebuttal testimony that the sluice gate and submarine door solutions will be fully functional regardless of a storm surge elevation (CE-EPP-R, pp. 23-25) and thus provide a protection not offered by a moat or storm wall. In fact, Staff conceded that an underground tunnel would not be adequately hardened and protected from flooding by an aboveground wall (2172-73).

E. <u>Municipal Infrastructure</u>

F. <u>Hudson Avenue</u>

CECONY has supported its proposal to transfer the Hudson Avenue Station ("Hudson Avenue") to the electric department (CECONY-IB, pp. 138-40). NYC supports the transfer but with a significant qualification (NYC-IB, pp. 63-68), which should not be accepted as explained below. The bases of Staff's and other parties' opposition to the transfer were addressed by CECONY and NYC in their Initial Briefs (CECONY-IB, pp. 138-40; NYC-IB, pp. 63-70). Consequently, CECONY will address only limited aspects of other parties' initial briefs on the subject, including NYC.

WC opines that ratemaking principles "dictate that rates are to be set prospectively" and because the Hudson Avenue Station will not be used to provide electric service in the Rate Year, "the proposed transfer defies traditional ratemaking principles" (WC-IB, p. 30). WC is mistaken. Plant held for future use has historically been included in rate base by the PSC and the unrecovered Hudson Avenue investment is in net plant rate base as a function of the PSC's accounting (and ratemaking) rules, which provide for the unrecovered investment in retired property to be carried as a negative balance in the accumulated provision for depreciation (Muccilo/E, pp. 84-85).

In a similar vein and equally incorrect, NYC, while supporting the transfer, suggests that to the extent the transfer is delayed or denied, CECONY's investment in Hudson Avenue and related costs should be excluded from rates altogether (NYC-IB, pp. 69-70). There has been no showing in these proceedings that CECONY's investment in Hudson Avenue was imprudent and should not be recovered. That there might be disagreement as to whether electric or steam customers should pay for the investment and related costs does not translate to neither should pay and CECONY should absorb any costs. The concept of "used and useful" on which NYC relies is not the only factor that qualifies a cost for rate base treatment. As explained above, the unrecovered Hudson Avenue investment is in net plant rate base as a function of the PSC's accounting (and ratemaking) rules. There is no basis to penalize CECONY because there is a dispute as to the classification of a cost as electric or steam.

Staff, WC and Assemblywoman Paulin all refer to the electric uses of the property as being too distant and not sufficiently defined to justify the transfer at this time (Staff-IB, p. 154; WC-IB, p. 30; Paulin-IB, p. 15). This criticism is not justified. Although future use property must be held under a "definite plan" under the PSC's accounting rules,[96] there is no requirement that the use be immediate or even in the near term or that the plan be described in detail. Long ago when evaluating, and approving, CECONY property held for future use, the PSC seems to have foreseen the Hudson Avenue circumstance:

> The fact that the company has not fixed a specific date for construction does not mean that it does not have a 'definite plan' for the use of the properties…Obviously in a city as crowded as New York, with-desirable locations at a premium, and with the increasing demands for electric service, the company would not be prudent in purchasing properties for future use only when a precise date for construction has been fixed. Furthermore, if the company waited until the time when a particular site is needed, the cost of such site might well be considerably more than it would have been at some previous time.

Case 24146, Con Edison – Electric Rates, *Order* (issued March 26, 1968),
8 NY PSC 1968, p. 87.

Assemblywoman Paulin's Initial Brief argues that the electric system should not subsidize the steam system (Paulin-IB, pp. 10-11). CECONY agrees and with Justice Cardozo whose wisdom Assemblywoman Paulin invokes (Paulin-IB, p. 10). CECONY is not pursuing the transfer of Hudson Avenue for that purpose. The record adequately explains why the transfer is in electric customers' interests. Assemblywoman Paulin's assertion that transfer "is the latest effort in a continuum of schemes"

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[96] Uniform System of Accounts, Account 105 (Electric Plant Held for Future Use).

to transfer costs from steam to electric and accusation that CECONY has "historically 'adjusted' facts" (Paulin-IB, pp. 11, 13) are baseless, not supported and should be given no weight. All of the matters about which Assemblywoman Paulin complains (*e.g.*, matters related to the 59th and 74th Street Steam plants and ERRP) are the result of duly considered PSC action, not unilateral action by CECONY.

Assemblywoman Paulin makes additional baseless assertions that certain elements of costs that would be charged to electric were intentionally kept hidden by CECONY until identified during hearings (Paulin-IB, pp. 11-12). Those that should have been, were included in CECONY's revenue requirement calculations and exhibits according to standard practice (1529). The additional detailed information that was requested during hearings by counsel for Assemblywoman Paulin could have been requested prior to the hearing during the discovery phase. In fact, the attempt to extract such information at the hearing for the first time, presumably for use in Assemblywoman Paulin's post-hearing brief, would have effectively denied the Company a fair opportunity to explore and challenge arguments relying on such data.

Hudson Avenue should be reflected in electric rate base as of the start of the Rate Year and the undepreciated investment in facilities and equipment amortized over 20 years as the Company proposed.

G. Customer Operations Capital Adjustments

1. Customer Service System ("CSS") Replacement Plan

Staff recommends that the Company's proposed funding for ongoing Customer Service System ("CSS") upgrades be approved, but recommends that in the Company's next electric, gas and steam or combined rate cases, the Company be required to file a comprehensive plan for the replacement of CSS that compares the costs of annual upgrades to total CSS replacement (Staff-IB, p. 156; SCPP, p. 21). UIU recommends that the Company immediately hire a consultant to conduct an independent study in consultation with Staff, UIU and other interested parties to quantify the costs and benefits of continuing to use the current CSS system versus a full system replacement (UIU-IB, p. 49).

As the Company noted in its Initial Brief, planning and other activities associated with the CSS replacement are already underway but cannot be completed in the timeframe proposed by Staff and UIU (CECONY-IB, p. 140). Planning for the replacement of CSS is a multi-year effort that requires the completion of several phases (CE-COP-R, pp. 23-25). The Company has completed the first phase of this effort with the development of a CSS risk assessment. The Company is presently commencing the next phase of this effort, which involves the development of the CSS Application Plan. The CSS Application Plan development will focus in detail on the current state and scope of Con Edison's customer service system and provide a comprehensive analysis of the various alternatives to support current and future customer system needs , and will make specific recommendations for a CSS replacement solution. This effort is expected to be completed in 2014.

The CSS Application Plan phase is a critical part of the planning process and its recommendations serve as the foundation for the CSS "Phase 0" analysis that will provide the comprehensive plan for the replacement of Con Edison's CSS. The Phase 0 analysis will deliver the detailed cost estimates associated with implementing the specific replacement solution. Detailed costs, resource requirements, cash flow impacts, implementation risks, change management, product fit-gap and use case scenarios will be developed for the recommended replacement solution. This effort will commence in 2015 following the completion of the Application phase and is estimated to take approximately 12 months to complete (CE-COP-R, pp. 23-25).

As part of the timetable for CSS replacement, the Company expects that in 2016 it will complete preparation of justifications for replacing CSS, along with a Request for Proposal ("RFP") to evaluate and select the replacement system integrator. The Company anticipates starting system development in 2017, with expected completion in three to five years. More accurate project plan costs and timeline will be available after the 2015 Phase 0 analysis is conducted on the specific CSS replacement solution. Given the complex analysis required to develop the CSS replacement plan, Staff and UIU's proposals should be rejected.

UIU also proposes that Con Edison make no investments in its existing system pending development of a CSS replacement plan (UIU-IB, p. 49). The Company explained in its Initial Brief that UIU's proposal lacks merit and should be rejected (CECONY-IB, pp. 42). UIU acknowledges in its brief that the Company's testimony detailed the necessary steps for developing a CSS replacement plan, but overlooks this explanation and suggests, without support, that the Company cease maintaining its current system pending development of a replacement plan (UIU-IB, p.49). This proposal should be rejected, as it ignores the reality that developing a robust, carefully crafted CSS replacement plan takes time. Moreover, it ignores the reality that the Company must maintain the viability of its current system, which requires the Company's proposed investments (CECONY-IB, p. 42). UIU also acknowledges, but then conveniently ignores the fact that the investments the Company is currently making to its existing CSS are not throwaway investments and will assist in transitioning into a new CSS (*Id.*). For these reasons, UIU's proposal should be rejected and, as Staff has recommended, the Company's proposed CSS projects should be approved.

2. AMR/AMI

These projects are addressed in this Brief in Section XII.E.1

H. <u>Shared Services Capital</u>

Staff's Initial Brief (pp. 157-160) claims that because CECONY has not previously expended the budgeted amount for Facilities Critical Infrastructure Projects ("FCIP"), the Company should be denied the funding level requested to complete the myriad of projects that are necessary to address needs at CECONY-owned buildings. Staff goes so far as to say "'catch up' could be paraphrased as 'Although we said that we were going to do this project before, we didn't. But believe us this time when we say going to get to it this time around'" (Staff-IB, p. 159). The Company's testimony (CE-SSP-R, pp. 35-37) and Initial Brief (pp. 143-144) explained that compliance projects can "bump" critical infrastructure work – it has occurred before and it may likely do so again. The fact that projects may be re-prioritized for more urgent projects is not a reason to decrease the requested capital expenditure level for this category.

As explained in the Shared Services O&M section earlier in this Reply Brief, the Commission has long explicitly recognized the need for Company flexibility to modify existing projects, including the priority, nature and scope of capital projects as Company needs and priorities change (See, for example, 2010 Electric Rate Order JP, p. 13; 2010 Gas Rate Order JP, p. 22; 2010 Steam Rate Order JP, p. 21). This category of expenditures is no different. Moreover, as was explained by the CE-SSP, the Company continues to attempt to undertake this work (CE-SSP-R, p. 37).

Staff's claim (Staff-IB, p. 159) that the Astoria B Outfall Project may affect the Rate Year FCIP budget is incorrect. The Rate Year budget includes the Astoria Outfall B project as a separate line item and the funding to pay for the project is not coming from the FCIP category in the Rate Year. CECONY has provided an extensive list of projects that need to be undertaken for the FCIP category for $25 million in the Rate Year. Staff has made no demonstration that these projects are unnecessary. The Company has also explained that it intends to undertake this work. As such, the funding for this category should be allowed at $25 million (Ex. 401). To reiterate a point noted in CECONY's Initial Brief (p. 144), allowing the Company to defer carrying costs for investments above $16.5 up to $25 million is appropriate if the Commission decides to limit the amount in rates for this category.

I. Finance and Law Department Capital Expenditures

J. Deferred Fuel

As with all other elements of the costs of service, the method used to project the deferred fuel cost rate base for electric and steam should be based on the method most likely to result in the most accurate forecast. CECONY has explained that the method used in recent cases to determine the deferred fuel cost rate base (*i.e.*, the "fall out" of projected fuel costs and the base cost of fuel) has proven to be unreliable because of large variations between the projected and actual deferred fuel costs (CECONY-IB, p. 146). CECONY has proposed that the rate base be the three-year average of actual deferred fuel costs because that would have the tendency to smooth variations in deferred balances over time and recognize that the difficulty in forecasting fuel prices is the reason for the fuel cost reconciliation mechanism (*Id.*).

Staff insists that the "fall out" method continue (Staff-IB, pp. 160-161). In doing so, Staff ignores the difficulty in pinpointing future fuel costs, ignores that the method has proven unreliable and makes no claim that the method will produce any better results in these proceedings or otherwise result in an accurate forecast of deferred fuel cost balances. Staff's claim on brief that adjusting the base cost of fuel for steam in these proceedings will somehow ameliorate the difficulty in pinpointing future fuel costs (Staff-IB, p. 161) has no support in the record. Staff's claim rests on the incorrect presumption that the PSC's adjustment of the cost of fuel recovered in base rates will affect the market price of fuel. The three-year average deferred fuel cost approach proposed by CECONY should be approved.

K. <u>FIT Interest Refund</u>

CECONY and Staff agree that electric rate base should include $1.506 million representing a credit given to customers for an anticipated refund of interest on Federal income taxes that did not materialize because of a change in position by the IRS (CECONY-IB, p. 147; Staff-IB, pp. 161-162). No other party has taken a position on the subject. The rate base amount should be approved.

L. <u>Mount Vernon Properties</u>

Staff acknowledges and does not dispute that the purchase by CECONY of the Mount Vernon properties to facilitate their remediation was the best option available to the Company to remediate these properties in a cost-effective manner (Staff-IB, pp. 162-163). Thus, there should be no question that the Company is entitled to recover the cost of the purchases, as well as to earn a return on its investment until the properties are sold. The only question remaining is the appropriate accounting for the purchases that would allow the Company the full recovery of costs to which it is entitled.

The Company explained that, because it is in the process of selling these remediated properties, it made no sense to charge customers for the purchase costs now and then credit them with net proceeds later (CECONY-IB, p. 48). Consequently, the Company opted to exclude these deferred SIR costs from the recovery amortization and, instead, include in rate base the unamortized costs of the properties pending their sale, at which time the net proceeds of the sale will be used to offset the costs included in rate base (Ex. 102, p. 86). Allowing the Company to earn a return on the purchase costs pending their sale by including the costs in rate base is consistent with the treatment afforded other regulatory deferrals in the determination of the revenue requirement.

For reasons that are not clear to the Company, Staff continues to oppose the Company's proposed accounting for the purchase costs of the properties, despite its conformity with long standing practice, reiterating its objection to inclusion of the costs in rate base on the ground that the properties "no longer provide any current or future use to ratepayers" (Staff-IB, p. 163). But, inexplicably, Staff's Initial Brief is silent on its preferred method of accounting for these admittedly prudently-incurred costs. If, Staff prefers that the Company include the purchase costs in the recovery amortization of deferred SIR costs, thereby reducing their rate base effect, Staff should say so explicitly, so that the Commission can determine which method of accounting is preferable. For Staff to simply say that the Commission should reject the Company's proposed accounting without providing the Company an alternative method to fully recover its prudently-incurred costs is improper and unjust. [97]

M. EB/CAP Adjustment

Staff reduced CECONY's projection of rate base by making an adjustment to the Earnings Base / Capital Adjustment to rate base to track Staff's position that SRIP costs be removed from rates. This rate base adjustment should be reversed if SRIP costs remain in rates (CECONY- IB, p. 148; Staff-IB, p. 163).

X. Reconciliations

The Company proposed to continue the deferred accounting and reconciliation mechanisms that are in effect during the current electric, gas and steam rate plans, with limited exceptions, and some with modifications; the Company also proposed several new mechanisms. The Company addressed Staff's opposition to a limited number of the proposed reconciliation mechanisms in its Initial Brief, as well as several Staff proposals to modify existing mechanisms. In this Reply Brief, we will address points not already addressed in the Company's Initial Brief.[98]

A. Net Plant

Staff continues to propose downward-only reconciliation of net plant by individual category of expenditure, in contrast to the Company's proposal to continue downward-only reconciliation using a single net plant target for each commodity.[99] The Company's Initial Brief explains why it is reasonable, and consistent with the flexibility that the Commission, Staff and other parties generally acknowledge that the Company needs to effectively manage its business, to use a single net plant target for each commodity and why Staff has not established any reasonable basis for its proposal to establish net plant reconciliation by individual category of expenditure.

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[97] Also puzzling is Staff's recommendation that "all costs (O&M, depreciation, property tax expense, etc.) associated with the properties be removed from the revenue requirement because the Company "never supported" such costs (Staff-IB, p. 163). If, as Staff concedes, the purchase of these properties was for the benefit of ratepayers, then any unavoidable costs relating to the properties, such as property taxes, are amply supported. In any event, the Company is not seeking to recover any depreciation associated with the properties, and did not include the property tax expense in the revenue requirement, opting instead to recover the taxes paid from the proceeds of the sale of the properties. Minor O&M expenses, such as telephone/security system costs, were incurred primarily during remediation and were included in the remediation costs.

[98] The Company addresses Staff's continued opposition to reconciliation of long-term debt in the Cost of Capital section of this Reply Brief.

[99] The current Electric, Gas and Steam rate plans provide for downward-only reconciliation using silos that, in some instances, reflect two or more categories of expenditures. For example, under the Steam Rate Plan, steam distribution is combined with steam municipal infrastructure support (*see* 2010 Steam Rate Order, JP p. 22).

In fact, Staff's discussion of storm hardening in its Initial Brief helps explain why reconciliation by individual category of expenditure is neither reasonable nor necessary. Specifically, Staff recognizes that capital expenditures are not always subject to simple categorization.

> Contrary to NYC's perspective, Staff recognizes that resiliency is not a separate class of infrastructure investment; storm hardening, or improving the resiliency of the electric system should not be separate and apart from making capital improvements for reliability purposes, load growth, and system reinforcement. In developing its capital projects, Con Edison should consider resiliency impacts as a component of the project. However, projects where storm hardening is the sole benefit and intent would be classified as such. (Staff-IB, p. 137)

As to Staff's proposal that projects be classified as storm hardening where "the <u>sole</u> benefit and intent would be classified as such," this objective can be satisfied without unduly and unnecessarily restricting the Company's flexibility to manage its capital expenditures and without engendering disagreement and debate as to whether the "sole" benefit and intent of certain projects is storm hardening.

Moreover, the record shows that Staff did not fully consider the interrelationship between the Company's need for flexibility in managing capital expenditures and net plant reconciliation by individual category of expenditure. For example, the Staff Electric Infrastructure Investment Panel ("SEIIP") testified that "[t]he Company should be able to manage its budget in the most efficient way in order to ensure the continued provision of safe and adequate service" (SEIIP, p. 70). While the SEIIP made this statement in the context of supporting a specific Company proposal to combine funding for three programs, the principle espoused – that "by combining the funding, if there is a need for more funding in any one program, funds from the other program(s) can be used" – is generally applicable and goes to the essence of the Company's proposal. Although there is some overlap between the members of the Staff Policy Panel (who recommends single category net plant reconciliation (SPP, pp. 36-40)) and the SEIIP, the SEIIP acknowledged during cross-examination that they did not consider the Company's proposal to continue downward-only reconciliation using a single net plant target in order to provide the Company flexibility to re-prioritize projects and modify project spending as necessary to address changed circumstances without being subject to unduly restrictive cost recovery constraints that may drive investment decisions that are not optimal for customers (2200-2201).

While the SEIIP claims that net plant reconciliation was beyond the scope of their testimony, the Commission should properly reconcile the arguably conflicting positions of the SEIIP and the Staff Policy Panel. In doing so, the Commission should also reject the Staff Policy Panel's proposal to distinguish between storm hardening and capital improvements <u>for accounting purposes only</u>, in order to "allow Staff to monitor the Company's progress on a new initiative" (Staff Policy Panel, p. 49). The

Company should not be encouraged to operate in one manner and then account for costs in a different manner.

Moreover, Staff's interest in monitoring the Company's progress on a new initiative does not compel separate accounting or downward-only reconciliation of the costs of that initiative separate from other capital programs, especially programs that have multiple indicia of hardening, reliability and other utility purposes. Staff's objective would be more properly addressed in the context of capital reporting requirements, which the Company proposed be continued. In that regard, the Company notes that current Electric reporting requirements are by category, as follows:

> The section of the report on the T&D category will be by projects and/or programs as presented in the Project/Program List. The section of the report on the Other category will report on the subcategories as follows: Electric Production by functional program; Shared Services by General Equipment, Emergency Management, Information Resources, Human Resources, Facilities, and Other; and Municipal Infrastructure Support by Lower Manhattan and All Other.[100]

The Company would not object to adding Storm Hardening as another category for reporting purposes, which would satisfy Staff's stated objective.

NYC captures the Company's position very well in its Initial Brief (p. 26):

> As for flexibility, the City agrees with Con Edison that it should be able to reallocate funds as needed to ensure that all priority projects can be completed during the Rate Year (and future years). While the City understands the reasons why Staff first proposed the segregation of capital funds into "silos," the City disagrees that the "silo" concept continues to be appropriate.[footnote omitted] Rather, with meaningful oversight by Staff, including periodic field inspections, audits, and reporting requirements imposed on Con Edison, the PSC should be able to confirm that authorized funds are properly spent and necessary projects are completed.

Finally, in arguing against a reconciliation of interference expenses, Staff asserts that the Company can manage interference costs by "tak[ing] advantage of combining municipal infrastructure work with other aspects of the Company's O&M projects and programs" (Staff-IB, p. 170). While that comment is made in the context of interference expense, it demonstrates another internal inconsistency of Staff's positions in these proceedings and contradicts Staff's proposal for net plant reconciliation by individual category of expenditure. In fact, the Company's net plant reconciliation proposal using a single net plant target is premised on the Company exercising the very discretion that Staff recommends for interference expenses, without the asymmetrical financial consequences endemic to Staff's "silos"

[100] Additional details regarding the capital reporting requirements can be found in the 2010 Electric Rate Order, JP pp. 15-17.

proposal (*i.e.*, heads (*spend less in one category*) customers win, tails (*spend more in another category*) Company loses).

The AG says that it "supports the PSC staff proposal that Con Edison's 2014 allocation for leak prone pipe removal be subject to downward reconciliation if the Company does not spend the amount allocated for this purpose" (AG-IB, pp. 17-18). The Company is not aware of any Staff proposal for downward reconciliation specific to leak prone pipe removal.[101]

NYECC proposes that the currently-effective capital spending target mechanism continue rather than expire (NYECC-IB, p. 33). The Commission should reject NYECC's proposal. There is no evidence in the record demonstrating a need for continuation of this mechanism. Moreover, NYECC's selective references to Staff testimony and the hearing transcript further demonstrate the absence of any basis for continuing this mechanism. First, NYECC notes that Staff supports continuation of downward-only reconciliation (which the Company proposed in its initial filing, with upward reconciliation in very limited circumstances, and continues to support) but neglects to mention that Staff also affirmatively supported the discontinuation of the capital spending target mechanism for a one-year rate case (SPP, p. 44). Second, NYECC cites Company witness Muccilo's acknowledgement during cross-examination that the capital spending target mechanism was established in 2009 because of Commission concerns regarding the level of Company capital expenditures. However, NYECC ignores Mr. Muccilo's tacit rejection of NYECC's suggestion that the capital spending target mechanism was responsible for capital expenditures within budgets since that time and omits any mention of explicit statements by Mr. Muccilo that it was changes in the Company's capital budget and other processes that have resulted in capital spending within budgets (1669-1671). Third, Mr. Muccilo explained in his initial testimony why this mechanism should be discontinued, which NYECC has not rebutted (CE-Muccilo/E, pp. 65-67). For the foregoing reasons, the Commission should determine that the capital spending target mechanism be discontinued for the Rate Year.

B. <u>Property Taxes</u>

Staff continues to oppose the Company's proposal for property tax reconciliation. The Company's Initial Brief explains why Staff has not provided any rational basis for the Commission to reject the Company's proposal. In fact, Staff's Initial Brief demonstrates why the Company's proposal is reasonable.

Staff recognizes the potential for the Company's NYC property taxes to be reduced by approximately $75 million effective July 1, 2013, due to reduced tax rates that are not yet confirmed

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[101] Leak prone pipe removal is subject to a performance metric.

(Staff-IB, p. 168). Staff then recommends that the Commission consider a property tax reconciliation mechanism "to capture the potential tax expenses reduction for customer benefit" if the Company does not provide to the Commission the impacts of such a reduction for consideration in this proceeding (Staff-IB, pp. 168-169).[102] This proposal not only further demonstrates the unreasonably asymmetrical approach taken by Staff in these proceedings, it also demonstrates that property taxes payable by the Company may vary materially even in the context of a single year. Moreover, it would be unreasonable to accept the need for a reconciliation mechanism to capture for customers benefit a still uncertain $75 million reduction due to an unanticipated tax rate decrease attributable to the *current* NYC fiscal year (the *first* half of the Rate Year) without recognizing that there is just as likely a possibility that property taxes for the *next* fiscal year (the *second* half of the Rate Year) could be subject to equal or greater increases above the forecasted amounts, for which reconciliation would be equally reasonable.

C. Interference

Staff continues to oppose the Company's proposal for interference reconciliation. The Company's Initial Brief explains why Staff has not provided any rational basis for the Commission to reject the Company's proposal. Certain statements in Staff's Initial Brief further demonstrate why Staff's position for this and other reconciliation mechanisms is both unreasonable and internally inconsistent.

First, Staff says that under their recommendation, "the Company will have the incentive during the rate year to manage these costs like any other O&M expense" (Staff-IB, p. 170). Plainly, interference expense is not like any other O&M expense since it is not subject to the Company's direct control. As explained by CE-MISP,

> the Company does not have the option to delay interference related projects to later years as the Company is required by municipal administrative code to support City projects as needed or be subject to significant penalties as prescribed by the administrative municipal code. (CE-MISP/R-E, p. 27)

Moreover, the currently-effective interference reconciliation mechanisms demonstrate the Commission's acceptance of the principle that these expenses are not within the Company's direct control.

Second, there is no basis in the record to conclude that the Company would not seek to mitigate its interference costs if there is a reconciliation mechanism in place (*see*, for example, MISP/E, pp. 41-

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[102] Staff makes a proposal that the Company finds confusing from a process standpoint. Staff proposes that the Commission direct the Company to provide impacts of this tax reduction in order to properly reflect such impacts in these proceedings. However, such Commission direction would presumably be part of the order establishing rates and therefore too late to reflect in rates. Notwithstanding, the Company intends to provide updated information regarding this potential change in tax rates when such information is available.

42). Accordingly, there is no basis for accepting Staff's assertion that denying reconciliation is needed to provide the Company an incentive to mitigate these expenses.

Finally, as noted above, Staff's suggestion that the Company can manage interference costs by "tak[ing] advantage of combining municipal infrastructure work with other aspects of the Company's O&M projects and programs" flies in the face of Staff's proposal for net plant reconciliation by individual category of expenditure.

D. Storms and Sandy Costs

Staff proposes several prospective changes to the electric major storm reserve and opposes the Company's proposal for a gas major storm reserve and a steam major storm reserve. The Company's Initial Brief explains why Staff's proposed changes to the electric major storm reserve should be rejected and why the Company's proposed reserves for gas and steam should be adopted. In addition, the Company and Staff briefs indicate agreement as to the recovery of Superstorm Sandy costs, subject to refund, pending further review by Staff.

In this Reply Brief, the Company responds to several statements in the briefs of Staff and NYECC that demonstrate why the Company's proposal to recover storm preparation costs for major storms that do not materialize should be adopted.

Staff and NYECC oppose the Company's request to recover *through the electric major storm reserve* storm preparation costs associated with a major storm for which the Company prepares but which does not materialize. Neither party provides a reasoned basis for rejecting this proposal.

Staff states "[t]he costs incurred to prepare for any potential storm should already be included in the Company's base rates" (Staff-IB, p. 172). While the Company agrees that recovery of such costs in base rates would also be appropriate, the costs that the Company seeks to recover through the storm reserve for the Rate Year are not already included in base rates proposed in these proceedings (*e.g.*, there are no costs for mutual aid workers or contractors for storm-related work in the historical test year). Moreover, as explained by Company witness Muccilo, the Company is proposing to modify the major storm reserve to capture storm preparation costs designed to meet heightened expectations as to Company performance in anticipation of potential major storms following Superstorm Sandy, which also occurred after the historical test year (Muccilo/R-E, pp. 16-17).

As also explained by Mr. Muccilo, the Company did incur approximately $1.3 million in storm preparation costs in advance of the major snowstorm NEMO, which ultimately did not impact the Company (Muccilo/R-E, pp. 38-39). If the Company files for new rates next year, the NEMO costs will be reflected in the historical test year and could be reflected in base rates as Staff proposes.

Accordingly, the Commission should reject Staff's assertion that the Company's proposal is intended "to eliminate all of the risks for shareholders and place them on the backs of ratepayers," since Staff acknowledges that these costs are properly recoverable in base rates, thereby making the only difference between the Company and Staff positions whether to recover these costs through base rates or through the reserve. For the same reasons, the Commission should reject NYECC's assertion that the Company is seeking to transfer risk to ratepayers.

The Commission should also ignore NYECC's baseless assertions that the Company failed to adequately prepare for Superstorm Sandy and that the Company seeks to shift the risk of penalties to customers. The Company is simply proposing to use the major storm reserve as a vehicle to recover a cost of providing service to customers, in contrast to Staff's proposal to recover such costs in base rates. The Company's proposal is not intended to (and does not) shield the Company from penalties or negative revenue adjustments. In fact, NYECC's unfounded diatribe regarding penalties evidences NYECC's apparent lack of knowledge (or decision to not acknowledge) the new and increased penalty authority bestowed on the Commission through legislation enacted earlier this year, and ignores several ongoing Commission proceedings designed to establish enhanced electric emergency response plans (Case 13-E-0198) and emergency performance metrics (Case 13-E-0140).

E. Storm Hardening Surcharge

F. New Potential Cases and Associated Costs

The Company's Initial Brief explained why Staff's opposition to Company-proposed changes and/or additions to long-standing reconciliation mechanisms applicable to changes in laws and regulations should be adopted and Staff's opposition to the Company's proposals rejected. In this brief, the Company responds to several statements in Staff's Initial Brief on these topics that demonstrate continued Staff's selectivity and internal inconsistency in responding to various Company proposals.

In response to the Company's proposal to amend the new laws provision to include both costs <u>and revenues</u>, Staff argues that "[t]he Order referred to by the Company was the result of a multi-year agreement between the Commission and another utility" and "[t]herefore the circumstances that led to the adoption of the change in that proceeding is not necessarily applicable in the context of a one year litigated proceeding" (Staff-IB, p. 180). Yet Staff apparently has no problem in referring to the <u>same order</u> as a basis for recommending changes to the Company's electric storm reserve (Staff-IB, p. 170).

Similarly, in opposing Company requests for deferred accounting treatment for potential costs associated with ongoing Commission proceedings, Staff argues that "it would be premature to recommend deferred accounting treatment until the Commission has made a determination in those proceedings as to how utilities should recover any incremental costs associated with compliance" (Staff-

IB, pp. 181-182). In contrast, with respect to the ongoing outage credits policy proceeding (Case 13-E-0061), Staff proposes that "if the Commission does not issue a generic policy in that proceeding before the start of the rate year in this case, that the Commission adopt its preferred lost revenue treatment for Con Edison in this proceeding" (SPP, p. 78).

The Company trusts that the Commission will consider the merits of the Company's proposals in this case and not be distracted by opposition that presents no substantive basis for rejecting such proposals.

G. Amortization Periods

WC urges that the amortization period for deferred Superstorm Sandy costs, other Major Storm costs and ERRP Units 1 & 2 Major Maintenance ("ERRP Maintenance") costs should be six years rather than the three years recommended by CECONY and Staff, and that the amortization period for SIR costs remain at ten years rather than be set at five years as recommended by CECONY and Staff. CECONY explained why WC's positions should be rejected and those of CECONY and Staff should be adopted (CECONY-IB, pp. 163-64). Therefore, only a limited number of statements in WC's Initial Brief on the subject will be addressed here.

WC claims that previously incurred Major Storm costs (those other than for Superstorm Sandy) should be recovered over six rather than three years because "there has been greater variability in weather predictions such that a six-year amortization period may provide a more accurate picture of significant storm damages than a three-year period" (WC-IB, p. 44). WC has no valid point here because what is at issue is not a projection of future storm costs but, rather, recovery of costs that have already been incurred.

WC claims Superstorm Sandy costs should be recovered over six rather than three years because receipt of insurance and other recoveries would impact the amount of the deferred costs (WC-IB, p. 46). CECONY witness Muccilo explained that insurance claims are expected to be outstanding for several years, which is not unusual for claims as large as those related to Superstorm Sandy (Muccilo-R/E, pp. 3-4). There is no reason to let the deferred costs accumulate interest for longer than is and increase the overall cost to customers necessary because some may ultimately be offset by insurance recoveries. This is especially so when the costs can be offset by customer credits available at this time.

With respect to SIR costs, WC disputes CECONY's assessment that changing the amortization period from ten to five years will result in only minimal bill impacts as explained and demonstrated by CECONY witness Muccilo by referring to projected SIR costs (WC-IB, pp. 57-58). WC does not say what bill impacts for SIR cost recovery would be acceptable to WC, but pointing to the projected SIR expenditures makes no case for bill impacts higher than those identified by Mr. Muccilo. That is because expenditures through the end of the Rate Year are reflected in the bill impacts identified by Mr. Muccilo (CE-AP/E, p. 120) and the bill impacts related to later expenditures will be dependent on factors in addition to expenditures, such as sales levels.

XI. Revenue Allocation/Rate Design

A. Electric

1. 2010 Electric Embedded Cost of Service Study

In their Initial Briefs, NYC, NYPA, and UIU make the same arguments they have made throughout this proceeding, critiquing various aspects of the ECOS and inputs into the ECOS as flawed or outdated. CECONY addressed these very arguments in detail in its Initial Brief, explaining why these arguments should be rejected by the Commission. A few additional points clarify further why these parties are wrong in their assertions.

i. CECONY ECOS, Class Demand, and Services Studies

NYC's position[103] that the Company should have utilized more recent data in its ECOS study and that CECONY did not comply with the 2010 Electric Rate Order in Case 09-E-0428 is simply wrong (NYC-IB, pp. 71-73). The very language NYC cites from the 2010 Electric Rate Order makes clear that a 2011 ECOS study would be needed only if CECONY delayed a whole year in filing for new rates. The Order inherently recognizes that the preparation of an ECOS study is an intensive and time-consuming process, undertaken once a full year's data[104] is available, and that an ECOS study cannot be produced on short notice. The Order states: "*For each year* the Company delays in filing for new base delivery rates . . . (*emphasis added*), *i.e.*, the Order specifically provides for a 2011 ECOS Study for a filing seeking new rates to be effective April 1, 2014. CECONY was preparing in 2012 to make a filing for new rates to be effective April 1, 2013, premised on a complete 2010 ECOS study, fully consistent with the 2010 Electric Rate Order. CECONY delayed the filing *by less than one year*, proposing new rates to be effective January 1, 2014. Accordingly, the 2010 ECOS study is fully consistent and compliant with the intent and letter of the Order.

The 2010 data was also the most current data available at the time the study was prepared and was not stale by any means. Not only does the use of 2010 data meet the requirements of the 2010 rate Order, the Company notes that the rates reflected in the 2010 ECOS study are the current rates effective in 2012 through 2013 (CECONY-IB, p. 167). As CE-DACSP testified during the hearing in response to questioning by NYC, the 2010 study is the most complete study that matches costs and cost causation that

[103] NYPA makes a similar assertion, albeit in abbreviated form (NYPA-IB, p. 9).
[104] CECONY has traditionally prepared ECOS studies based on a full calendar year of data and the Commission has consistently accepted this as the underlying time period for CECONY's cost of service studies.

could have been performed for this filing and reflects the most current rate level (2343-2344) “An electric study is a very detailed and voluminous study and given the time frame for the filing, the 2010 was the most up-to-date, current study we could have done” (2344).

Staff’s position is that the 2010 ECOS study is consistent with past methodologies used in previous ECOS studies approved by the Commission (Staff-IB, p. 188): “Based on our analysis, the methodology and results of the Company’s 2010 ECOS study are reasonable and should be utilized by the Commission.” Staff also acknowledges that the 2010 ECOS Study does not reflect stale data, in comparing the ECOS study used in the last fully litigated case in 2008 to the study used in this case, and stating, “[t]hese problems do not exist here as the Company is utilizing an updated ECOS study (2010 ECOS study). Also, the 2010 ECOS study incorporated the Company’s Load Diversity Study which was performed to address the issues of cost-of-service allocation of low tension costs. The results of the Load Diversity Study support the Company’s allocation methodology” (Staff-IB, p. 187).

NYC questions the approach used to calculate the High Tension allocator in CECONY’s Class Demand Study (NYC-IB, p. 74). This methodology is consistent with guidelines provided in the NARUC Electric Cost Allocation Manual as cited in DACSP’s rebuttal testimony (CE-DACSP-R, p. 5). CE-DACSP explained at length in its rebuttal testimony and during the hearing how the Company's methodology comports with industry-accepted utility ratemaking practice (CE-DACSP-R, pp. 5-10, 2338-2343; CECONY-IB, pp. 164-165). In doing so, CECONY addressed in detail NYC’s and NYPA’s arguments and showed them to be without merit.

NYC’s challenges to the updated services study conducted by the Company, to which NYC attributes $6 million of the identified deficiency, as potentially inaccurate and “uncertain,” are also unpersuasive (NYC-IB, pp. 78-79). Contrary to NYC’s allegations (NYC-IB, pp. 77-78), the Company has presented rational arguments as to why the 2010 services study is reliable, has better data with respect to NYPA customers than past studies in that it reflects data from sampling NYPA customers in all classes (rather than borrowing data from CECONY classes as the Company did in the 2007 study), and contains more current and updated information (CECONY-IB, pp. 165-166). NYC fails to provide any support or otherwise show why the results of this valid study should be disregarded.

In fact, NYC undermines its own positions when it makes the point on the one hand that the ECOS study should have used 2011 data rather than 2010 data it claims is not recent enough, and at the same time, argues that 2010 allocation factors, updated as they are, are not suitable and that far more dated 2007 allocation factors should be used instead, apparently because the results provide a lower deficiency for NYC (NYC-IB, pp. 71-79). NYC cannot reasonably argue in the same breath for more recent data in the ECOS study, and against data from an updated 2010 services study in favor of older

2007 data. This clearly illustrates that NYC's position on updated data is variable and self-serving. In taking these contradictory positions, NYC further undermines the credibility of its own arguments against the ECOS study.

UIU proffers its alternate approach as the best approach to rate design, essentially advocating that fixed costs incurred in building and maintaining distribution facilities be treated as variable usage-based costs and be charged accordingly. That this approach is not endorsed by any public utility practice manual nor by the Commission does not discourage UIU in its attempts to persuade that this is the fairest approach in allocating electric or gas service costs (UIU-IB, pp. 50-54, 73). Although UIU's arguments were addressed in CECONY's Initial Brief (CECONY-IB, p.166), it bears emphasis that UIU continues to misunderstand (UIU-IB, p. 79) that both the size and number of services at a location are a function of anticipated load, not the number of customers. Usage-based allocation is already factored into the Company's services study which properly reflects the fact that smaller customers have smaller anticipated connected loads than larger customers. UIU's insistence on differentiating the cost allocation for various sizes of customers within a class would result in multiple customer charges applicable to the same service class. Besides creating unnecessary complexity and customer confusion, this approach fails to recognize that customer classes are created to recognize similarly-situated customers. All service classes contain customers of varying sizes and usage to some degree but they share sufficient characteristics to be reasonably combined into a single service class. Ratemaking is necessarily not by individual customer characteristics but by class of service.

2. Revenue Allocation

The primary argument made by NYC and NYPA is around the use of broader tolerance bands (NYC-IB, pp. 80-87; NYPA-IB, pp. 9-11). NYC and NYPA contend that the ECOS study is inexact and that alleged uncertainties around the Class Demand Study and Services Study warrant the use of a 20% tolerance band or, at a minimum, a 15% tolerance band. This argument was addressed in CECONY's Initial Brief, explaining why the positions advocated should be rejected wholesale (CECONY-IB, p. 168). NYPA's complaint that the 2010 Class Demand Study data failed to reflect the full impact of rate increases assigned to NYPA customers in the last CECONY proceeding (NYPA-IB, p. 12) is without merit, as explained in CECONY's Initial Brief (CECONY-IB, p. 167). Moreover, similar circumstances would have existed for a 2011 or a 2012 study in that new rates would have been in effect for only a portion of those respective years, since the annual period for current and recent past CECONY electric rates is from April through the following March.

In addition, NYC asserts that too many service classifications fall outside the tolerance band and argues that this supports the use of a wider tolerance band (NYC-IB, pp. 81-82). However, and not surprisingly, NYC cites no industry rule to support its theory. If a class falls well outside the tolerance band, this indicates a significant surplus or deficiency that should be corrected in the revenue allocation process. The number of classes falling outside of the tolerance band, however, is not in and of itself relevant nor is it determinative of the width of the tolerance band. The ECOS study is conducted to obtain the cost indications for each class and to see where classes fall relative to those results for cost reallocation purposes. Rates have to align with and reflect costs, and are based on cost-causation principles. Widening the tolerance band so that no classes fall outside of the threshold negates the rationale for the ECOS study in the first place and leads to average ratemaking across classes.

UIU asserts that while the 10% tolerance band proposed by the Company is reasonable, the mitigation measures the Company applies are unnecessarily complex and convoluted (UIU-IB, p. 57). The Company addressed UIU's arguments in its Initial Brief (CECONY-IB, p. 169) explaining why its proposed mitigation measures with regard to surplus and deficiencies are reasonable and should be applied and why UIU's proposed "simplified methodology" is unfair to classes because it does not distinguish between classes with high surpluses or deficiencies and those that are much closer to their cost indications (*i.e.*, those with a large deviation versus a slight deviation).

NYC and NYPA also disagree with CECONY's proposed mitigation measures and argue for lower levels of mitigation measures to be applied regardless of the revenue requirement (NYC-IB, pp. 83-87; NYPA-IB, pp. 14-15). CECONY's mitigation measures, however, are based on its proposed revenue requirement and form a reasonable basis for allocating deficiencies and mitigating the impact (CECONY-IB, p. 70).

i. Rate Design

The positions of various parties on rate design issues have been addressed in the Company's Initial Brief. In this Reply Brief, the Company addresses certain additional NYC and UIU arguments set forth in their Initial Briefs.

NYC's proposal with regard to delivery rates for NYPA low tension customers was addressed in the Company's Initial Brief (CECONY-IB, p. 171). NYC's assertion that the Company failed to justify its proposed rate design modification with respect to high tension and low tension service in Rate I is belied by the ECOS study indications described in the Company's testimony (CE-ERP-R, p. 16). The underlying high and low tension indications are part of the data included in the ECOS study model and had NYC sought discovery with regard to this proposed change, the Company could have provided a summary schedule supporting the indications.[105]

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[105] NYC did not, in over five months of discovery, seek the detail it now says it needs.

Moreover, as CE-ERP testified during the hearing, CECONY designed rates for NYPA as a single customer and the shift of costs from high tension to low tension customers in the proposed Rate I charges reflects the Company's effort to better align rates with the ECOS study indications. Whether NYPA chooses to assess this differential directly on its customers is up to NYPA. The Company's rate design does not limit NYPA's flexibility to design and charge rates to its high and low tension customers, including NYC, in any way that it sees appropriate, and NYPA can mitigate the impact of such change as appropriate (2292-2293).

UIU's challenges to rate design that revolve around a recurring theme that rates should be predominantly volumetric in nature have been addressed. UIU attempts to present new data tables in support of its position on pages 61, 62, 77, and 78 of its brief. These should be disregarded because they are not part of the record and do not add any data that informs the issue. For example, the table on page 61 shows UIU's proposed rates to be lower than what UIU shows as other New York utility rates.[106] The table on page 62 includes a number of rate components that vary widely for each utility and are pass-through costs such as system benefits charge, renewable portfolio standards charge and, in the case of CECONY, a monthly adjustment clause. In addition, the table shows data for a single month and any relevant comparison should be done over a broader period of time and on a comparable basis.

UIU's proposed "move toward modestly inclining block rates" (UIU-IB, p. 65) ***does*** not address the range and magnitude of bill impacts that would result, well in excess of the impacts under the Company's proposal (CE-ERP-R, p. 21). Staff raised the same concern in opposing UIU's proposal in its Initial Brief (Staff-IB, p. 195).

UIU also complains of an increase in the on-peak charges for SC 1 Rate II but does not acknowledge the cause. The Company set the customer charge for SC I Rate II equal to the charge for Rate I, thereby lowering it and requiring that the remaining revenue requirement be recovered through the usage charges (UIU-IB, p. 65).

3. Assessing the NYPA Deficiency

4. Voluntary Time of Use Rate

Several parties submitted arguments on the Company's proposal for voluntary time of use ("VTOU") rates. These arguments have already been addressed by the Company in its Initial Brief (CECONY-IB, pp. 172-174). The following addresses a few additional assertions made by parties.

NYC advocates, yet again, a longer off-peak window, stating that Con Edison's concerns on new substation peaks are premature and not supported by the evidence in the record (NYC-IB, pp. 88-89).

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[106] The only exception, where rates are lower, are rates from two New Jersey utilities, which are subject to a completely different regulatory framework and have no bearing on this proceeding.

This is despite acknowledging that the Company included an area substation analysis that supports timing concerns on substation peaks (Ex.141).

UIU argues the Company's proposal does not go far enough and cites to an Oklahoma Gas and Electric program that used critical peak pricing that UIU asserts worked well in terms of customer participation (UIU-IB, pp. 68-69). The Company notes that UIU introduces the Oklahoma Gas and Electric for the first time in its Initial Brief, thereby removing any opportunity for the Company (or Staff or other parties) to reasonably evaluate this program and respond to UIU. Accordingly, for purposes of the record in this proceeding, the Commission should do no more than accept that the program exists.

The Company's VTOU proposal, which Staff supports (Staff-IB, p. 191), was based on a number of considerations particular to CECONY's customer base and service territory, including pricing simplicity for a *voluntary* rate; system and customer load shapes; and impacts to area substations. UIU's proposal is deficient because UIU does not show that the terms and conditions of the Oklahoma Gas and Electric program or UIU's own proposal are applicable or will work in New York City and Westchester. For example, in its description, UIU mentions a program that includes a smart programmable thermostat and claimed savings. However, UIU does not offer details on how the program works, including costs for the thermostats, supply costs during the claimed savings, any penalties for customers unable to react to pricing events, etc. Additionally, it appears that UIU does not acknowledge the Company's offerings such as those under Rider L - Direct Load Control Program, which appears to be a similar program that offers similar incentives.

Staff proposed a price guarantee that the Company does not believe will allow for appropriate price signals to be sent to customers interested in using this rate (Staff-IB, p. 191). Moreover, Staff's goal of ensuring that the proposed VTOU rate does not exceed the standard SC 1 rate (Rate I) is hampered at the outset by the incremental metering charge associated with metering required to record usage for the time periods under the proposed VTOU rate. RESA correctly points out that the effect of the price guarantee Staff proposes would be to eliminate the incremental metering charge ($4.35 more than that of SC 1 Rate I) in CECONY's new proposed VTOU rate.

EDF supports Time Variant Pricing but cites an analysis by an economist comparing electricity pricing to supermarket pricing for ground chuck and filet mignon steaks (EDF-IB, p. 5). This too should be rejected. The Company addressed EDF's arguments in its Initial Brief (CECONY-IB, pp. 173-174, 252-256), and agrees with Staff's statement in its Initial Brief that the EDF proposal is vague, does not discuss which customers should be dynamically priced, the various aspects of ratemaking and customer impacts that must be addressed, and that EDF's proposal ignores the prohibition against requiring residential customers to take real time pricing or time of use rates (Staff-IB, p. 196). For these reasons, EDF's proposal should be rejected.

5. PJM OATT Service and Other Transmission Costs

i. Prudence of PJM OATT Service

CECONY demonstrated that its decision to contract for the PJM OATT service was prudent (CECONY-IB, pp. 174-176). No party contested the prudence of that decision.

6. MAC Treatment and Cost Allocation of PJM OATT Service Costs

CECONY demonstrated that the costs of the PJM OATT service should be recovered through an adjustment mechanism (*i.e.*, MAC item 14) in lieu of recovery through base rates subject to reconciliation. With the exception of NYECC, no party contested recovery of PJM OATT charges through an adjustment mechanism. NYECC provided no support for its proposal that cost recovery be through base rates, rather than the MAC (NYECC-IB, p. 36). NYECC's Initial Brief simply reiterates its counter-intuitive position set forth in a single sentence in Mr. Bomke's direct testimony (p. 34) that the volatility of these charges provides a sound basis for recovering these charges at a set amount in base rates.

CECONY proposed that the cost of the PJM OATT service not be allocated to NYPA (CECONY-IB, pp. 177-178). Staff argued for allocation of the costs to NYPA, and NYPA opposed the allocation (Staff-IB, p. 198; NYPA-IB, pp. 15-22). CECONY will not further address the issue in this brief.

7. MSC/MAC Residual Provisions

CECONY requested that prior approval be granted in this case for the recovery, through the MAC/MSC residual provisions, of certain costs that CECONY is obligated to incur by virtue of its participation in the NYISO or pursuant to requirements imposed by the PSC or other New York State agencies (CECONY-IB, pp. 179-180). CECONY also requested that the PSC approve a process for applying the residual provisions to projects for which prior approval is not granted in this case (CE-ERP-R, pp. 50-51). The process would be initiated by a tariff filing and would deem the residual provisions applicable as of the date of cost incurrence if there is no prudence issue (*Id.*, p. 51). Any cost allocation issue would be resolved as part of the process approving the tariff filing.

Staff, the only party that addressed CECONY's request for prior approval of the NYISO Costs and New York Project Costs, opposed the request based on its summary statement that the "Commission should first determine that the costs are prudent and appropriately allocated prior to their recovery" through the MAC/MSC residual provisions (Staff-IB, p. 200). Staff fails to acknowledge that the PSC's prudence review of the NYISO Costs and New York Project Costs is limited to the prudence of

CECONY's incurrence of the costs. The reasonableness of the costs themselves is within FERC's exclusive jurisdiction.[107] Moreover, the prudence of CECONY's incurrence of the NYISO and New York Project Costs is a non-issue because the incurrence is unavoidable inasmuch as the costs are imposed pursuant to the NYISO tariff or requirements of New York State agencies, without any discretionary action by CECONY (CECONY-IB, pp. 179-180). Moreover, the allocation of NYISO Costs and New York Project Costs will likely be resolved by the NYISO, PJM or ISO-NE, or PSC, as part of the project approval process, as applicable (*Id*.).

Neither Staff, nor any other party, objected to or addressed CECONY's request for a process to apply the MAC/MSC residual provisions to projects for which prior approval is not granted in this case. Accordingly, CECONY requests that the PSC approve the proposed process in light of the lack of opposition.

8. Business Incentive Rate

9. Marginal Cost Study

B. <u>Gas</u>

In the gas proceeding, there are various issues posed for Commission determination concerning the design of interruptible and off-peak firm rates; minimum charges for interruptible and dual-fuel firm customers; oil-to-gas conversion programs, including assigning responsibility for the cost of new facilities; forecasted levels of new firm gas customers for RDM/RPC purposes; incentive rates for DG/CHP; changes to gas balancing for interruptible customers; and non-firm revenue sharing.

The proponents and opponents of these proposals are generally aligned in two camps as follows -- those fostering the interests of the Company's existing (and future) firm gas customers, who are the customers for whom the Company's gas system and gas supply portfolio is developed and maintained -- and those fostering the interests of interruptible customers and applicants for new firm gas service.

The Company made various proposals designed to foster the current and long-term interests of the Company's existing and future firm customers. For example, the Company is seeking to mitigate firm delivery rates by potentially increasing revenues from interruptible customers; increasing revenues from off-peak firm customers and power generation customers; promoting oil-to-gas conversions on a cost-effective basis; seeking minimum contributions to system costs incurred to provide service to interruptible and dual-fuel firm customers; and offering to provide firm customers an increased share of non-firm revenues derived by the Company's efforts to maximize utilization of the Company's delivery system and gas supply portfolio.

[107] *Nantahala Power and Light Company v. Thornburg*, 476 U.S. 953 (1986).

Staff and other parties oppose all or the majority of these proposals, effectively elevating the interests of interruptible customers, applicants for new firm gas service, and DG/CHP customers at the expense of firm customers. These proposals include effectively capping interruptible delivery rates at or below current levels, with the probable impact of reducing non-firm revenues used to reduce firm rates; rejecting minimum bill proposals that effectively allow interruptible and dual-fuel firm customers to continue to enjoy the benefits of the gas delivery system without reasonable responsibility for costs incurred on their behalf; promoting an oil-to-gas conversion program different from and beyond the current design which would cause existing firm customers to subsidize the costs of new facilities necessary to serve new firm customers; proposing new balancing charges for interruptible customers that expose existing firm customers to increased costs; rejecting reasonable contributions to line losses and the costs of new transmission facilities; and seeking free service to new DG and CHP customers.

For the reasons explained in testimony, during the hearing, and in post-hearing briefs, the Company's proposals strike a reasonable balance between the interests of existing firm customers and these other stakeholders. Essentially, the Company proposes to continue to provide interruptible and off-peak firm delivery service, with a quality of service close to (and often virtually the same as) firm service, at delivery rates no higher than and, in most cases, substantially below firm delivery rates. The Company proposes an oil-to-gas conversion program that provides a zero-cost option that goes well beyond the dictates of the Commission rules and those of other utilities, while avoiding causing existing firm customers to subsidize uneconomic attachments.

1. Gas Embedded Cost of Service ("ECOS") Study

UIU takes issue with the Gas ECOS study. Its position has been addressed in the Company's Initial Brief (CECONY-IB, pp.182-184). Additional arguments made in UIU's Initial Brief have already been addressed in the Electric section in XI. A. above.

2. Revenue Allocation and Rate Design

Staff generally agreed with the Company's method of revenue allocation but takes issue with the Company's rate design with respect to the SC 1 customer charge. UIU takes issue with the Company's rate design and revenue allocation. Both sets of arguments have been addressed in CECONY's Initial Brief.

However, UIU incorrectly quotes the Company when it states that "[t]he Company also insists that other factors should be given consideration in developing a fair and reasonable revenue distribution. These factors cited include historical rate relationships, ability to pay, relative risk, and demand or market condition (including the extent of competition that might exist)" (UIU-IB, pp. 75-76). Nowhere in the record does the CE-GRP state this with respect to the setting of firm gas delivery rates.

As stated earlier in the Electric section in A. above, UIU seeks to rely on tables that are not in the record, are incomplete, and mislabeled at page 77 as a comparison of delivery charges rather than of customer charges (UIU-IB, pp. 77-78). The components of these charges vary from utility to utility, thus rendering reasonable comparisons impossible, providing further reasons to disregard these tables.

Staff's argument with respect to the change in the SC 1 customer charge is premised on Staff's recommended rate decrease. Staff's proposal should be rejected because the rate decrease proposed by Staff, which the Company has explained is unwarranted, is the only basis for the change in the SC1 customer charge proposed by Staff. The Company has filed for a rate increase and on that basis, its proposal for an increase in the SC 1 customer charge is appropriate.

3. Tariff Provisions

4. Non-firm Gas Rate Changes

Staff, NYC, CPA, and NYECC each submitted initial briefs that, to one degree or another, oppose the Company's proposals relating to non-firm rates and terms of service. The Company addressed issues raised by these parties in the Company's Initial Brief. Various matters discusse din these parties' initial briefs are addressed below.[108]

Interruptible Rate Design. With respect to Rate 1 customers, "Staff acknowledges that there is no prohibition on the inclusion of a minimum volume of gas usage in a minimum charge applicable to interruptible customers, as proposed by the Company, there is also no mandate that a higher usage be included in that minimum charge" (Staff-IB, p. 206). In support of its statement, Staff cited two examples of utilities with a minimum volume of gas usage in a minimum charge that is lower than the minimum volume that the Company is proposing (*Id.*).

The Company does not dispute that there are utilities with a minimum volume of gas usage in a minimum charge that is lower than the minimum volume that the Company is proposing. However, the Company established that there are also utilities that utilize Commission-approved minimum volumes that are consistent with or higher than the minimum volume proposed by the Company (CE-GNFSP-R, p. 17). Staff attempts to discredit one of the three examples cited by the Company in support of the

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[108] Interruptible gas service is provided by the Company under SC Nos. 9 and 12. Under SC No. 9, the Company provides transportation service to customers who purchase their gas supply from a marketer. Under SC No. 12, the Company provides sales service to customers who elect to purchase their gas supply from the Company. Under both of these service classifications, customers are segregated into two groups: interruptible customers and off-peak firm customers. Interruptible customers are designated as Rate 1 customers and Rate B customers in SC Nos. 12 and 9, respectively. Off-peak firm customers are designated as Rate 2 customers and Rate C customers in SC Nos. 12 and 9, respectively. In its testimony, the Company's Non-Firm Services Panel has referred to SC No. 12 Rate 1 and SC No. 9 Rate B customers as "Rate 1 Customers" and SC No. 12 Rate 2 and SC No. 9 Rate C customers as "Rate 2 Customers." The Non-Firm Services Panel refers to these two groups together as "Interruptible Customers." The Company continues to use this terminology herein.

Company’s proposal due to the usage of the customers subject to that minimum volume (Staff-IB, pp. 206-207). However, Staff fails to address the other two examples cited by the Company (*Id.*).

The record in this proceeding demonstrates that there is a wide range of Commission-approved minimum volumes included in minimum monthly charges applicable to interruptible customers in New York State. Since no party has argued in support of, or demonstrated that there is a need for, a single approach, the Commission should base its determination on the merits of the Company’s proposal. The Company submits that no party has demonstrated that the Company's Rate 1 minimum monthly charge proposal is inappropriate for the Company's service territory. Broad assertions in opposition to this proposal (*e.g.,* that interruptible customers provide benefits to the system (Staff-IB, p. 206)) do not provide a rational basis for rejecting the Company’s proposal(s).

Regarding the Company’s Rate 2 proposals, NYC states that “[a]ccording to Con Edison, the proposed delivery rate increases to Rate 2 customers are intended to approximate the rate increases to firm delivery rates since the inception of the Rate 2 rates” (NYC-IB, p. 116). The record should be clear that this is not the basis for the Company’s proposal and that NYC mischaracterizes the Company’s position. As the Company made clear during cross-examination, the comparison to the increases in the firm rates was made only to assess the reasonableness of the Company’s proposal, it was not the basis for the Company’s proposal (292).

<u>Annual Revenue Reconciliation</u>. Staff claims that the Company’s proposal “could allow interruptible customers, who receive a lower quality of service, to have bills higher than firm customers” (Staff-IB, p. 208). Again, to clarify the record in this case, it is important to note that Staff refers to full service rates; that interruptible customers’ delivery rate is capped at the otherwise applicable firm delivery rate; that the possibility of higher full service rates for interruptible customers would only be the result of a higher commodity cost; that the Company does not mark-up the commodity portion of full service bills;[109] and that the Company continues to pursue a least-cost purchasing strategy, including for interruptible full service customers. Moreover, Staff’s arguments (Staff-IB, pp. 207-208) opposing the Company’s proposal to reconcile all Rate 1 customers on a delivery rates-only basis fail to address the fact that such customers can and many do purchase their commodity service from a third-party marketer. That is, interruptible sales customers have an alternative to the Company’s interruptible sales service: retail access service (CECONY-IB, pp. 192-193).

With regard to the Company’s proposal that no customer pay less than the minimum monthly charge (“MMC”), Staff contends that if interruptible customers “are interrupted for all of the billing

[109] NYC witness Gorman acknowledged under cross-examination that the Company passes through the cost of gas to full service interruptible customers without any mark up (540).

period, or most of the billing period with only small window to take gas service, then it may not be reasonable to charge them the MMC for that billing period" (Staff-IB, p. 209). The Company incurs costs (*e.g.*, personnel, billing, meter reading, systems) even if service is interrupted (CE-GNFSP, p. 12). The MMC is based on the costs of administering service to interruptible customers and is the minimum contribution necessary to pay for the costs to serve such customers (*Id.*, pp. 11-12). Therefore, charging an interruptible customer the MMC is reasonable, even for periods when a customer is taking little or no gas service, whether due to a customer decision to burn its alternate fuel or due to a Company-initiated interruption of service. It should also be noted that Staff's scenario, in which customers are interrupted for all or most of a billing period, is extremely unlikely given the history of Company-initiated interruptions. For example, during the last three years, interruptible customers have had gas delivery service available to them over 98 percent of the time (CE-GNFSP-R, p. 19).[110]

NYC opposes the MMC proposed by the Company because such charges are higher than comparable charges for firm customers (NYC-IB, p. 112). The comparison of the Company's proposed Rate 1 MMC to the Company's existing minimum monthly charge for firm service is inapt. The proposed Rate 1 MMC is based on costs incurred by the Company to provide interruptible service that are not incurred in the provision of firm service, such as the maintenance of more sophisticated metering required for interruptible service, system costs, and billing costs (CE-GNFSP, pp. 11-12; CE-GNFSP-R, pp. 22-23). NYC also states that "Con Edison chose not to rely on its own cost-of-service study to calculate the proposed minimum monthly charge" (NYC-IB, p. 111). NYC fails to recognize that the Company's ECOS study does not assign costs to the interruptible service classes and therefore costs associated with the proposed Rate 1 minimum monthly charge are not directly specified in the Company's ECOS study (CE-GRP, pp. 12). However, such costs are included in the rates assessed on firm customers. Interruptible revenues are credited to firm customers through a combination of the non-firm revenue imputation and sharing mechanism. Therefore the Company's proposed minimum monthly charge is necessary to assure that interruptible revenue sufficient to cover the costs of providing interruptible service is recovered from interruptible customers, for the benefit of firm customers, regardless of interruptible customer usage.

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[110] A small interruptible customer could theoretically pay more than a small firm customer for delivery on an annual basis due to the MMC. However, as described above, this circumstance is theoretical and highly unlikely and should not be a basis for rejecting an annual reconciliation that makes overall sense for the Company's firm customers.

System Benefits. Staff and NYC state throughout their respective initial briefs that the Company's proposals fail to reflect the benefits interruptible customers provide to the system and to firm customers. The Company addresses the issue of system benefits in its Initial Brief.

NYC cites several examples of purported benefits interruptible customers provide to firm customers and the gas system as a whole (NYC-IB, pp. 101-103).

First, NYC states, "Interruptible customers help maintain system reliability for the benefit of firm customers. When the system is constrained, and load needs to be reduced, Con Edison has the ability to interrupt interruptible customers" and "the existence of interruptible customers on the system improves Con Edison's ability to reliably provide firm service" (*Id.*) These assertions, repeated throughout this proceeding, continue to ignore the Company's explanation as to why interruptible customers do not provide a "benefit" to the Company's system and its firm customers at colder temperatures but simply avoid a detrimental impact. Again, no facilities or system capacities were built for the interruptible customers and they are not forgoing any rights to service by interrupting gas usage on cold days. They are simply meeting the commitments that go hand and hand with the discounted rates they pay (CECONY-IB, pp. 193-194). The Company submits that the absence of any response to the Company's explanation, which was set forth in its rebuttal testimony (CE-GNFSP, pp. 37-42), is a strong indication that the assertion that interruptible customers improve the Company's ability to reliably provide firm service has no merit.

Second, NYC asserts that "interruptible customers improve the load factor of Con Edison's gas system, thereby providing economic benefits to firm customers" and "[W]ith an improved load factor, Con Edison is able to spread its non-peak day or peak hour costs over more customers. This results in a greater or more optimal utilization of the system and a lower cost to all customers on the system" (NYC-IB, p. 102). The Company readily acknowledges that interruptible customers improve system load factor and provide benefits to firm customers. These benefits are economic (not improving reliability) and are extended to firm customers through a significant imputation of non-firm revenues in rates and by providing firm customers the majority of non-firm revenues achieved above the target. For example, under the Company's proposal, assuming the Company achieves actual non-firm revenues of $68 million in the Rate Year, firm customers will receive approximately 90% of the benefit -- $53 million as an up-front imputation in rates, and an additional $8 million in deferred credits.[111] Further, the Company's

[111] The Company notes that, in the preparation of this Reply Brief, an error was discovered in the Company's Initial Brief. On page 196 of its Initial Brief, the Company stated, "under the Company's non-firm revenue imputation, if the Company were to achieve revenues of $68 million, the customers would receive a $66 million benefit ($58 million in reduced rates plus $8 million in sharing above the target)." In fact, under the Company's non-firm

proposals would potentially enhance such benefits to firm customers through greater non-firm revenues, while still providing interruptible customers a high level of service at a reasonable rate capped by the firm delivery rate. Firm customers should not be denied these additional benefits due to general assertions as to the benefits that flow from the interruptible class. The issue is whether the Company's proposed interruptible rate setting process is reasonable.

Third, NYC asserts that interruptible customers help to reduce costs to firm customers through the avoidance of certain infrastructure projects and that Con Edison's system is not designed to serve interruptible customers during the peak periods and, in fact, its gas system lacks the capacity to serve interruptible customers on a firm basis (*Id.*). Thus, absent the ability of interruptible customers to be interrupted, Con Edison would need to undertake an expansion of its system, and a material portion of the costs of such expansion would be recovered from firm customers (*Id.*). In making this argument, however, NYC fails to acknowledge that the CE-GNFSP indicated during cross examination that, if the interruptible customers came on to firm service, they would be billed at firm rates and, on balance, they may actually provide a benefit to all customers (342). Moreover, whether and/or to what extent there would be a benefit to firm customers in such situations is tied to the resolution of proposals in this proceeding and other proceedings pending before the Commission regarding cost responsibility for customers converting to firm service. The Company submits that it is NYC, not CECONY, who is proposing a framework that unduly exposes firm customers to the risk of economic harm from interruptible customers converting to firm service.

Fourth, NYC asserts that interruptible service can be utilized to support the mutual State and City goals of encouraging distributed generation ("DG") and combined heat and power ("CHP") resources within the City (NYC-IB, p. 102). However, the City fails to demonstrate, and there is no record evidence to support, the assertion that the Company's proposals would hinder these State and City goals. Moreover, the Commission has separately established gas rates for DG purposes[112] and the fact that DG customers might elect interruptible service should not limit the Company's flexibility in setting rates for the entire universe of interruptible customers, who use interruptible service for many purposes other than DG.

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revenue imputation, if the Company were to achieve revenues of $68 million, the customers would receive a $61 million benefit ($53 million in reduced rates plus $8 million in sharing above the $58 million sharing target). The Company notified the presiding Administrative Law Judges and the parties of this error via email on September 20, 2013.

[112] E.g., Case 02-M-0515, *Order Providing for Distributed Generation Gas Service Classification* (issued February 19, 2003).

Finally, NYC asserts that Con Edison's shareholders are eligible to receive substantial financial benefits via the Sharing Mechanism and provides information regarding non-firm revenues received by the Company in the past (NYC-IB, p. 103). As noted above and in the Company's Initial Brief (p. 196), the vast majority of benefits under the non-firm revenue sharing mechanism go to customers rather than shareholders. The Company effectively receives approximately 10% of benefits achieved, as compared with 90% of the benefits going to firm customers. Moreover, NYC fails to recognize the Company's proposal to increase the customers' share of non-firm revenues in the Rate Year as compared to the mechanism currently in effect (CE-GNFSP, p. 21)

Staff and NYC also state that the Company's proposals fail to recognize (and provide appropriate incentives for) the lower quality of service taken by interruptible customers (Staff-IB, pp. 208-209; NYC-IB, p. 104). The Company disagrees. In fact, the service to interruptible customers is close to firm in light of the limited number of actual interruptions by the Company (CE-GNFSP-R, p. 19). As noted above, during the last three years, interruptible customers have had gas delivery service available to them over 98 percent of the time (*Id.*).

Studies. In support of the study that Staff is proposing in order for the Company to evaluate the value of interrupting interruptible customers, Staff points to significant changes in the oil and natural gas markets since the Commission last considered its interruptible pricing policies (Staff-IB, p. 212). More specifically, Staff suggests that the established Commission policy giving utilities flexibility in setting interruptible rates may no longer be reasonable given current differences between oil and natural gas prices (*Id.*, p. 213). Similarly, NYC cites these same changes to argue that the Commission should revisit the policies it established in Opinion No. 94-26 and change the pricing of interruptible delivery service in the Company's service territory (NYC-IB, pp. 108-109), again claiming without basis, that the Company has "unprecedented, and unchecked, power to increase delivery rates to Rate 1 customers…" (*Id.*, p. 121). As explained above, Staff and NYC ignore the ongoing limitations on the Company's pricing flexibility with respect to interruptible customers, which are not affected by a widening in the price differential for oil and gas.

As discussed in more detail in the Company's Initial Brief, the Commission's current policies related to pricing for interruptible service were established in Opinion No. 94-26 (CECONY-IB, pp. 187-188, 191). NYC recognizes that the Commission's existing policies must be changed in order for NYC's proposals to be adopted (NYC-IB, pp. 106). Similarly, Staff recognizes that the Commission's policies would need to be re-visited in order to address Staff's concern over the reasonableness of interruptible pricing (Staff-IB, pp. 212-213). Absent a demonstration that the Company's proposals are inconsistent with current policy (for which there has been no such demonstration), it would not be appropriate to make the major changes proposed by NYC in the context of a rate filing affecting a single utility. Instead, such changes, if they are to be considered, should be evaluated in a generic proceeding applicable to all New York State gas utilities. This approach is consistent with the Commission's recent efforts at promoting greater uniformity among New York State utilities with regard to utilities' interruptible gas tariff provisions.[113] Therefore, the Staff and NYC proposals are improper and should be rejected.

Gas Transmission Reinforcement Charge. Staff, NYC, and AGC all opposed in their respective Initial Briefs the Company's proposal relating to implementing a Gas Transmission Reinforcement Charge ("GTRC"). For the reasons set forth in the Company's Initial Brief (p. 198), the Company's proposed GTRC should be adopted.

5. High Efficiency CHP Units

C. Steam

1. Revenue Allocation

2. Emissions Allowances

3. SC 4 Contract Demand

The Company's Initial Brief anticipated and responded to NYC's SC 4 Contract Demand arguments (CECONY-IB, pp. 201-203; NYC-IB, pp. 125-130). Staff made similar arguments to those of the Company and concluded that the PSC should reject the NYC proposal to modify the costs recovered through the SC 4 Contract Demand Charge (Staff-IB, p. 218). Staff noted that the PSC has already considered and rejected a proposal to modify the period over which the contact demand is measured in Case 12-S-0147, *Order Denying Petition for Declaratory Ruling* (issued September 17, 2012), pp. 6-8.

Staff proposed that if the PSC is persuaded by NYC's arguments that the allocation of costs to the various SC 4 rate components should be examined, the PSC "should order the Company to perform a more comprehensive review of the cost allocations and rate design related to SC4 and to include such filing in either its next major rate filing or a separate filing within 90 days from the Commission order in this proceeding" (*Id*., p. 219). The Company and Staff agree that the NYC proposal should be rejected, but that if the PSC finds the NYC arguments to be persuasive, a comprehensive review is necessary before the PSC considers changing the allocation of costs to the various SC 4 rate components. If the PSC determines that such a review is necessary, the PSC should provide the Company with at least six months from the date of its order in this proceeding to make its filing in order provide adequate time to both perform the review and work with stakeholders.

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[113] Case 11-G-0543, *In the Matter of the Commission's Examination of the Criteria for Interruptible Gas Service*.

XII. Other Issues

A. Performance Mechanisms

1. Electric

i. Network Performance Targets

Staff's Initial Brief states that CECONY's proposed targets are "simply a manipulation of the historical data to obtain a target that would provide it with more leeway and minimize the Company's risk of revenue adjustment." CECONY's proposed targets certainly do not reflect an intent to minimize the risk of a revenue adjustment. Measured against CECONY's proposed 2.50 outages per 1,000 customers, CECONY's actual performance of 2.423 in 2009 and 2.457 in 2011 come very close to the revenue adjustment threshold (Ex. 71, p. 1). In fact, just an additional 184 network interruptions in 2009 [(2.5 – 2.423) x 2385.76)] or an additional 105 network interruptions in 2011 [(2.5 – 2.457) x 2439.565] would have resulted in a revenue adjustment. CECONY's proposed targets provide it with little "leeway."

On the other hand, Staff's proposed targets provide no leeway whatsoever and would quite likely result in revenue adjustments. As stated in CECONY's Initial Brief (pp. 206-07), under Staff's proposed targets, CECONY would have been penalized in three of five years for Network Outages per 1,000 Customers (a penalty of $4 million each year) and penalized in two of the last five years for Network Outage Duration (a penalty of $5 million each year). CECONY's proposed targets should be adopted.

Staff's Initial Brief states that a ten year average is the appropriate methodology to take variability into account in calculating system-wide metric targets (Staff-IB, p. 223). Accounting for variability is provided by the 10 or 15 percent adder to the three, five or ten year average. As pointed out in CECONY's Initial Brief, because of upgrades to the OMS, outage performance from 2003-2007 is reported differently than outage performance from 2008 to 2012, and the fewer reported interruptions from 2003 to 2007 were a function of reporting technology accuracy rather than better reliability performance (CECONY-IB, p. 207). Therefore, the most recent five-year average is the appropriate methodology in this situation. The PSC has not restricted the methodology to a set number of years. In Case 04-E-0572, Order Adopting a Three-Year Plan, March 24, 2005, the PSC approved a three-year average in setting CECONY's network system-wide interruption and duration performance thresholds for the Reliability Performance Mechanism.[114]

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[114] The Reliability Performance Mechanism in the Joint Proposal, dated December 2, 2004, approved by the PSC's March 24, 2005 order stated (pp. 38-39):

> Under these standards, the frequency of service interruptions is measured by the System Average Interruption Frequency Index ("SAIFI"), and the duration of service interruptions is measured by the Customer Average Interruption Duration Index ("CAIDI"). The minimum performance levels established

Staff's Initial Brief states that CECONY rebuttal testimony did not comment on Staff's recommendation to keep the major storm exclusion language in Con Edison's RPM as currently written (Staff-IB, p. 222). CECONY does not oppose Staff's recommendation in this regard.

CECONY's proposed Outages per 1,000 Customers target of 2.5 outages per 1,000 customers and a Network Outage Duration target of 5.0 hours should be adopted.

ii. Bulk Power Substation Security Performance Metric

Staff's Initial Brief acknowledges that CECONY encountered "challenging dilemmas" in installing security upgrades, including intrusion detection surveillance ("IDS") systems at bulk power system ("BPS") substations. But Staff's deflects CECONY's challenges by pointing out that two other electric utilities in the state "encountered similar challenges/dilemmas" and installed an operational IDS at fourteen of eighteen substations in three years (Staff-IB, p. 231). Staff's direct testimony did not cite the performance of other utilities as a reason for imposing a performance mechanism on CECONY, and this mention in Staff's Initial Brief, without citation and/or any record support and/or any opportunity for the Company to explore and rebut these assertions, does not do so either. The challenges that CECONY has encountered, discussed thoroughly in CECONY's Initial Brief, should be considered on their own merits in the PSC's determination on whether a penalty mechanism is warranted.

Staff's Initial Brief contends that "action needs to be taken by the Commission" "based on the Company's failure to install IDS at the BPS substations in a timely manner" (Staff-IB, p. 233). Staff fails to discuss the basis for Staff's belief that CECONY's plan to complete security upgrades, including IDS, by December 2015 was untimely such that the Commission should act to impose a performance mechanism. As discussed in CECONY's Initial Brief, the Rate Plan approved by the 2010 Rate Order did not specify a time for completion of the BPS security upgrades and provided only partial funding of $11.8 million for this work, which CECONY has fully expended during the Rate Plan. Staff's Initial Brief concedes that completion of the work will require at least an additional $13.484 million (Id. p. 232). CECONY's initial plan was to complete eleven substations subject to re-evaluation if the total expenditure materially exceeded $11.8 million (Ex. 70). CECONY's annual reports provide the costs incurred and discussed the reasons for slippage in completing the eleven substations (CE-EIOP, p. 93).

Lastly, to advance the asserted "need" for a performance mechanism, Staff's Initial Brief challenges CECONY's commitment to complete the security upgrades by the end of 2014 by pointing to

in those cases are set forth as certain minimum SAIFI and CAIDI values. The System-Wide Performance Targets used for purposes of the Threshold Standards metric are as set forth below. The measurement periods for the Threshold Standards are successive 12-month periods ending December 31, 2005, 2006, and 2007.

CECONY's statement that work may carry over to 2015 (Id., 232). Staff's brief gives exceeding short shrift to a lengthy and sincere explanation of CECONY's commitment despite the serious challenges that are presented by compressing the completion of twelve substations into an eighteen month timeframe. CECONY is making every effort to meet very aggressive schedules to complete six substations by the end of 2013 so that it is positioned to complete the remaining six substations by the end of 2014 (CE-EIOP-R, pp. 90-91). CECONY's recognition that completion at one or more substations could carry over into 2015 is no indication whatsoever of a lack of commitment to complete the work by the end of 2014.[115] In view of the complex and challenging actions that will be required to complete the twelve remaining BPS stations by the end of 2014, Staff's proposal to penalize CECONY if the program nonetheless slips into 2015 is unreasonable.

Staff's proposal for a revenue adjustment performance metric is unjustifiable given the CECONY's actions to date and unnecessary in view of CECONY's aggressive plan for the next fifteen months. Staff's proposal should be rejected.

iii. Over-Duty Circuit Breaker Performance Metric

The Company's Initial Brief explained why the operation of the electric system with over duty circuit breakers while conducting a retrofit program consistent with system constraints has been a sound strategy that optimally addresses risk, costs to ratepayers, and operational requirements and does not give rise to an obligation on the Company to subsidize or mitigate the costs of DG operators that would add fault duty in constrained networks. The Company's Initial Brief further stated that if the PSC determines as a policy matter that DG costs to mitigate fault current contribution should be subsidized by way of Staff's proposal, the Company's associated costs should be deferred for later recovery Company (CECONY-IB, p. 213). Staff's Initial Brief notes (p. 226) that the fault mitigation equipment would be "Company owned equipment" (Staff-IB, p. 226). This implies rate base treatment for such expenditures. The Company finds Staff's proposed cost recovery mechanism an acceptable alternative.

Although not discussed in NYC's testimony, NYC's Initial Brief contends that DG developers would not need to employ fault current mitigation equipment but for Con Edison's failure to properly maintain its infrastructure and ensure that its circuit breakers are operating within their design parameters (NYC-IB, p. 130). Contrary to NYC's contention, CECONY has properly maintained the T&D system

[115] The comment in Staff's Initial Brief that CECONY fails to recognize the need for IDS after a security breach at a CECONY substation is an unwarranted conclusion. CECONY's filing committing to complete security upgrades at all remaining substation by the end of 2014 was made in testimony filed the following month. In addition, the break in did not occur in a BPS 345 kV Yard that will be protected by IDS but rather in a nearby Report Center. Even without IDS security upgrade, all of CECONY's BPS stations have substantial existing security features to deter and detect intrusion.

infrastructure and has taken appropriate action to reasonably mitigate this condition. The potential for high fault current is the product of system design, which makes for a highly reliable network system, but also subjects circuit breakers to high fault duties. Since cost effective breakers that meet these duties have been available, Con Edison has been consistently replacing 60-80 breakers per year to mitigate this condition. However, working at a pace much faster than that would be difficult and costly, as it would require large numbers of network feeders to be scheduled out of service throughout the year, and would strain resources both within and outside the Company to provide and install the equipment (CE-EIOP-R, pp. 83-84).

NYC's Initial Brief also asserts that CECONY ignores the safety concerns with overduty breakers (NYC-IB, pp. 130-131). CE-EIOP's rebuttal discussed the extremely low likelihood of having a breaker overduty event due to low frequency of failure, type of failure, and proximity of the fault to the substation, as well as a sophisticated relay system and back-up protection (CE-EIOP, p. 79). Although NYC-IPP discussed a potential for a catastrophic breaker overduty failure to cause injury to workers, the Panel could not state that such an event ever occurred on Con Edison's system (1152).

Lastly, although not discussed in NYC's testimony, NYC claims that the fact that Con Edison plans to replace at least 60 over-duty breakers during the Rate Year demonstrates that continuation of the metric should not have any impact on the Company's operations, flexibility, or financial condition. CE-EIOP stated that the performance mechanism reduces the Company's flexibility to meet breaker replacement goals in a more optimal manner that allows a better focus on factors such as degree of over-duty, breaker age, failure history, obsolescence, degree of over-duty, and interrupting technology. A rigid end-of-the-year target can negatively influence efficient planning of work including the service outages needed to performance the replacements (CE-EIOP, p. 358). A rigid end-of-the-year target can negatively influence the negotiation of contract pricing with the limited number of qualified vendors for supply of time sensitive equipment or service.

CPA's Initial Brief claims that fault current mitigation equipment installed on the customer side does not eliminate system shorts or low voltage conditions that cause reliability and power quality issues for pumps and condensers and sensitive hospital equipment (CPA-IB, p. 15). In response, CE-EIOP explained that whatever conditions are being reported or experienced are unrelated to and are not a result of over duty circuit breakers. The normal operation of a circuit breaker in clearing a fault may result in transients being experienced at a customer's facility, depending on the proximity of the fault to the facility, but has nothing to do with whether the circuit breaker is rated to clear the maximum available fault current (CE-EIOP, p. 80).

CPA contends that CECONY has a "simple remedy of correcting overduty conditions on its distribution system" and implies that CECONY is not meeting its "public service obligation" (CPA-IB, p. 15). CECONY has explained above why the operation of the electric system with over duty circuit breakers while conducting a breaker retrofit program consistent with system constraints optimally addresses risk, costs to ratepayers, and operational requirements. CPA's "simple remedy" is not consistent with system constraints (CECONY-IB, p. 213).

NYECC's Initial Brief points to CECONY website maps of Manhattan showing an increase in fault current conditions over time as evidence of the deceleration of CECONY's support for DG (NYECC-IB, pp. 44-45). As noted in Staff's Initial Brief, breakers can and have become overduty over time (Staff-IB, p. 228)

PACE's Initial Brief argues that CECONY's proposal to eliminate the RPM will shift the costs of fault mitigation to the DG customer and the PSC should instead increase the end-of-year target to 120 over-duty breakers to encourage DG deployment and enhance the safety and reliability of the system (PACE-IB, pp. 19-20). The operation of the electric system with over duty circuit breakers, while conducting a breaker retrofit program consistent with system constraints, optimally addresses risk, costs to ratepayers, and operational requirements. Several technological solutions exist for the operation of DG in over-dutied networks. As CECONY reduces over duty breakers consistent with system constraints, CECONY supports implementation of those technologies and is not limiting the connection of DG. Currently, 14 projects > 2MW are in development representing 90 MW of potential additional generation. Because of the system constraints on retrofitting more than 60 to 80 breakers per year, as explained previously, PACE's proposal should be denied. Moving the target to 120 per year would require the funding for this program to double, increasing the capital cost of this program by $11 million per year. It would also be difficult to support this level of work due to the equipment outages that would be required and outage conflicts that would also arise in trying to coordinate this work with other initiatives being undertaken on the system.

iv. Line Loss Performance Mechanism

NYC's Initial Brief claims that it is "inexplicable" that Con Edison has no electric line loss mechanism (NYC-IB, p.141). NYC not take into account the extensive equipment already established by CECONY for the support of both the real and reactive power requirements that vary widely over the CECONY's transmission and distribution systems. Reactive compensation in the form of capacitors and shunt reactors have been and continue to be installed across the transmission and distribution systems as needed, in order to ensure proper voltage levels as required by regulatory criteria. This same effort acts to minimize losses through the reduction of the reactive component of electric power. Further, NYC fails to demonstrate why this aspect of the Company's system, as compared to other electric systems, warrants a line loss performance mechanism that, to the Company's knowledge, is non-existent for all other New York State utilities.

NYC's Initial Brief also claims that CECONY needs an incentive to investigate potential line loss reduction measures (NYC-IB, p. 142). No such incentive is needed. Contrary to NYC's contention, some of the more recent measures that CECONY has used to support voltage and incidentally mitigate line losses include:

- In 2009, installed 240 Mvar capacitor banks at Millwood 345 kV as well as 60 Mvar capacitor banks at Astor Area Station.
- In 2010, installed 60 Mvar capacitor banks at Newtown Area Station.

The NYC's Initial Brief states that CECONY failed to address the two line loss reduction techniques: phase balancing and capacitor addition (*Id.*). The Company conducts and annual load relief program that includes an analysis of the degree of load imbalance and includes correction of such imbalances in its reinforcement projects undertaken to relieve load prior to the subsequent summer. Also, as part of its stimulus smart grid program, CECONY has installed approximately 450 pole top capacitor banks (81 Mvar) on the distribution system resulting in improved Area Station power factor, thereby improving overall system power factor.

NYC's Initial Brief states, "Con Edison also complained that customers can impact the overall line loss level, but this complaint ignores that ratepayers are already required to shoulder additional cost responsibility for line losses they cause through the Reactive Power Tariff." CECONY has not "complained" that customers can impact the overall line loss level. CE-EIOP simply acknowledged that, "Another way to reduce line losses is to encourage electric customers to improve their power factors" (CE-EIOP, R, p. 99). NYC's statement that ratepayers are already required to shoulder additional cost responsibility for line losses they cause through the Reactive Power Tariff fails to acknowledge that the reactive power demand charge is applicable only to a subset of CECONY's customers, those with demands of 500 kW or greater and certain customers with induction generation equipment. In addition, the fact that certain customers are assessed a reactive power demand charge does not change the fact that losses resulting from customers' reactive power requirements are beyond the CECONY's control.

The mitigation of electric system line losses is an extremely complex technical matter that has not been examined in this proceeding. For all of the above reasons as well as those stated in CECONY's Initial Brief, NYC's proposal should be rejected.

v. Storm Resiliency Performance Mechanisms

2. Gas

Staff claims that it "has a fundamental concern with Con Edison's position that it should not strive to improve its safety performance" (Staff-IB, p. 234). Staff then states that "[t]he Company's position is troubling in that it appears to indicate that Con Edison might sacrifice potential improvements in safety performance, thus, increasing public risk, simply to maintain a current target" (*Id*., p. 235).

Staff grossly misstates the Company's position and Staff's suggestion that the Company would sacrifice safety is baseless. The Company's unquestionable commitment to safety performance is clearly demonstrated by the Company's actions. The Company has consistently met or exceeded all of its safety performance targets under the current rate plan (CE-GIOP, p. 167). Staff itself has acknowledged this performance (863). The fact that the Company questions (CE-GIOP-R, pp. 50-54) whether Staff's proposals to change performance mechanisms is in the best interests of customers is in no way inconsistent with the Company's demonstrated commitment to improving safety. Rather than squarely addressing the obvious flaws the Company identified in the incentive framework Staff is recommending, Staff offers a red herring questioning the Company's commitment to safety improvements.

Moreover, Staff makes several statements in its Initial Brief that demonstrate Staff's selective and arbitrary approach to recommending changes to performance metrics. For example, Staff states:

> To the extent Staff believes measures are inadequate to ensure public safety, we use other measures to determine targets, such as expert knowledge of the Company and its pipeline system, as well as experience with other similarly-situated utilities (*Id*.). Upon review, as is traditionally done during a rate case, recommended targets are adjusted as necessary to maximize public safety and minimize the potential for any decrease in actual achieved performance. (Staff-IB, p. 234).

Contrary to Staff's assertions, Staff offers no testimony regarding its "expert knowledge of the Company and its pipeline system" that identifies any deficiency that needs to be addressed or that compels targets materially different from similarly-situated utilities. Staff's proposals in this case are not designed to minimize the potential for a decrease in actual performance. For example, Staff's Initial Brief fails to explain why, as Staff acknowledged during cross-examination (864-865), a 4,200 year-end leak backlog target for 2014 is reasonable for Brooklyn Union[116] but maintaining a 1,350 target for Con Edison jeopardizes public safety.

Also contrary to Staff's assertions, Staff goes beyond proposing targets to minimize the potential decrease in actual achieved performance. For example, Staff is proposing a year-end leak backlog target

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[116] Case 12-G-0544, *Order Adopting Terms of a Joint Proposal* (issued June 13, 2013), JP p. 11.

of 900, which is 11% lower than the lowest level achieved by the Company in its history. Not only is Staff's proposed target totally subjective and without any underlying analysis, it is clearly contrary to Staff's assertion that "the Company has demonstrated an ability to meet our revised targets" (*Id.*),

Second, Staff states "CECONY's position that expected increases to performance targets could result in increased costs does not prevent imposing more stringent targets" (Staff-IB, p. 235). Notwithstanding Staff's apparent indifference, the Commission should not be indifferent to increased costs associated with increased safety. For example, the Company could respond to all gas leak calls virtually instantaneously and thereby arguably improve public safety if the Company were to station a qualified Company employee at every intersection in its service territory. However, this would be cost prohibitive and without any improvement in public safety that either merits such additional costs or addresses any identified public safety concerns.

Finally, by accusing the Company of failing to demonstrate any cost increases associated with Staff's proposed target modifications, Staff seeks to stand rate case practice on its head. Proponents of change have the burden to demonstrate the need for and the reasonableness of their proposals.[117] In this case, Staff has neither demonstrated any current deficiency in gas safety that changes in performance mechanisms need to address nor provided any analysis or even superficial demonstration as to why Staff's proposals do not come at a cost to customers.

Moreover, contrary to Staff claims that "the Company has not demonstrated there are any cost increases to achieve Staff's recommended targets" (Staff-IB, p. 235), the Company did, in fact, specifically identify additional costs associated with some of Staff's proposed performance targets (CECONY-IB, pp. 218, 221-222).

In the following sections, the Company addresses several additional arguments in Staff's Initial Brief regarding gas safety performance mechanisms.

i. Leak Management

The Company's Initial Brief (CECONY-IB, pp. 217-218) addresses Staff's proposal (Staff-IB, pp. 237-238) to make the Leak Management year-end backlog target more stringent than the current target.

Staff's claim (Staff-IB, p. 238) that its proposed target would entail only a marginal amount of incremental repair work is speculative and, as Staff itself recognizes, assumes that historic conditions will

[117] Case 99-C-0529, *Opinion and Order Concerning Reciprocal Compensation* (issued August 26, 1999), pp. 19-20 ("The parties advocating changes…have, at a minimum, the burden of going forward and making at least a *prima facie* case that change is needed and, even more, that their specific proposals represent reasonable responses to problems that have been identified. And, in the face of substantive responses to their *prima facie* cases, they face a substantial burden of persuasion as well." [citation omitted]).

prevail during the Rate Year. However, an unusually cold and/or wet winter could adversely affect the number of incoming leaks in the Rate Year and, thereby, impact the Company's ability to perform the incremental work that would be required to achieve Staff's proposed target.

ii. Damage Prevention

iii. Emergency Response

iv. Pipeline Safety

v. Pipe Replacement

The Company's Initial Brief (CECONY-IB, pp. 221-222) addresses Staff's proposal (Staff-IB, pp. 235-237) to increase the amount of leak-prone pipe that is replaced annually.

According to Staff, "[t]o the extent that any leak-prone pipe is removed under the Company's oil-to-gas conversion efforts, if such were allowed to count towards the leak-prone pipe replacement performance measure target, customers would be paying twice for the same pipe removal" (Staff-IB, p. 237). Staff's statement is baseless and it ignores the explanations the Company has provided regarding how the Company achieves its current target. As the Company explained in its rebuttal testimony, the Company's forecast for replacing leak-prone pipe only funds 33 miles of replacements (CE-GIOP-R, pp. 77-79). The remaining 17 miles of replacements are achieved through other programs (*Id.*). Moreover, Staff's concern is misplaced. Under the existing framework, there is an incentive for the Company to maximize efficiencies by identifying and undertaking projects that offer synergies and other multiple benefits (CECONY-IB, p. 222). Such efforts lower the Company's overall costs, which benefit the Company's firm ratepayers (*Id.*). Thus, rather than customers paying twice for the same pipe replacement, as Staff avers, customers pay for 33 miles of pipe replacement, but get 50 miles. Staff's short-sighted proposal to exclude certain pipe replacements from the annual pipe replacement target would eliminate the existing incentive framework. If Staff's proposal not to count other replacements toward the target is adopted, additional funding should be provided to achieve the difference between the adopted target and the 33 miles of funding reflected in the Company's request under this program.

3. Steam

Staff's sole basis for its proposed change to the Company's Steam performance mechanism is the bald assertion of "the important public safety considerations associated with rapid steam leak call response time" (Staff-IB, p. 246). As the Company stated in its Initial Brief, there is no basis in the record for finding that the current metrics are unreasonable or deficient in any way (CECONY-IB, p. 223).

4. Customer Operations

Staff and UIU recommend adjustments to make the existing performance metrics related to the PSC Complaint Rate and Call Answer Rate more stringent. The Company discussed its position on the Commission's ratcheting up of performance measures, and has already responded to the arguments included in Staff and UIU's Initial Briefs in detail in its rebuttal testimony and Initial Brief (CE-COP-R, pp. 34-45; CECONY-IB, pp. 203-204, 223-224). The Company addresses Staff's and UIU's proposals in this Reply Brief so that the record is clear with respect to the additional costs that the Company would incur if either of their Call Answer Rate proposals are adopted.

Staff recommends that the Call Answer Rate target range be set in consideration of the performance of peer utilities and has proposed that the Company incur negative revenue adjustments if the annual percentage of calls answered within 30 seconds is less than staged metrics of 63% to 60%, as compared to the current target's staged metrics of 56% to 54.5% (Staff-IB, p. 247; SCPP, p. 30). UIU proposes a target call answer rate of 70% based on a standard deviation of the average of the annual call answer performance from 2009, 2010, and 2011 (UIU-IB, p. 83; Collar, p. 7). The Company discussed in detail its disagreement with Staff and UIU on the need for an increased target in its Initial Brief (pp. 223-225). Neither Staff nor UIU have presented any information to demonstrate that, based on the current mechanism, the Company is not providing customers with safe and adequate service (1939; CECONY-IB, p. 224). Nor have they demonstrated that the Company's service will deteriorate if a higher performance metric is not established.

If the Commission nonetheless decides a change in the target is warranted, the Commission should recognize that achieving the higher levels proposed by Staff and UIU will require increased staffing by the Company. Staff's position that increased staffing would not be required is not based on any Staff analysis of required staffing. Rather, it is based on the continued unsupportable claim that the Company can achieve a higher target by (i) selectively excluding call answer rates achieved by the Company during certain months during an historical annual period in seeking to justify new annual targets (thereby ignoring seasonal fluctuations and skewing the analysis (CECONY-IB, pp. 223-224) and (ii) pointing to a Call Answer Rate of 77.6% in November 2012 (Staff-IB, pp. 248-249). In pointing to November 2012, Staff's brief ignores and makes no attempt to respond to clear testimony by the Company's Customer Operations Panel during the hearing that the November 2012 Call Answer Rate was achieved by the Company overrunning its O&M budget for that month by approximately $.05 million using additional staffing on overtime to respond to the increased call volumes associated with Superstorm Sandy (1950; CECONY-IB, p. 39). Additionally, Staff's claim that the Company can meet

Staff's proposed target based on an analysis that would exclude the summer months of June, July and August of 2012 from consideration ignores clear testimony during the hearings where the Company explained that it would be improper to exclude CECONY's summer performance, where there are traditionally higher call volumes, from consideration when determining the appropriate target (1947). Accordingly, there is no basis for assuming that the Company could meet higher annual targets proposed by either Staff or UIU without incurring additional overtime, or that the Company could, or reasonably should, rely on overtime on a regular basis, and throughout the year, in order to meet higher threshold targets.

Staff also suggests that the Company's planned CSS improvements requested in this case will result in efficiencies that will save time and increase representatives' ability to handle more calls (Staff-IB, p. 248). The Customer Operations Panel explained at the hearing that while those improvements may allow representatives to help customers more efficiently, increasing the Call Answer Rate target will necessarily result in representatives sitting and waiting for calls more frequently, and that this actually deteriorates productivity (1945). Staff's Brief ignores this explanation.

Staff also attempts to discredit the Company's position in opposition to higher targets by referencing a statement during hearings by the Company's Customer Operations Panel that there is no incentive to improve its call answer rate (Staff-IB, p. 247). Staff's reference disregards the context of the statement, which is that the Company is currently providing safe and adequate service, and that unnecessarily ratcheting up the call answer rate with increased costs to customers will not improve the safety or adequacy of the service that the Company is currently providing (1939). The Company expends significant effort trying to balance achieving existing targets while containing its costs to answer customer calls, and has not requested funding for additional Call Center staffing since the Company's 2007 electric rate case proceeding in spite of actual and projected increases in call volumes.[118] Therefore, Staff's attempts to discredit the Company by misinterpreting a statement at the hearings should be given no consideration.

The Company has demonstrated that it cannot meet the targets proposed by Staff and UIU without additional staffing to answer calls (CE-COP-R, pp. 42-46; CECONY-IB, p. 225). The Company has provided a simple and straightforward analysis to explain its additional staffing needs should either of the proposed targets be adopted by the Commission and has provided information on the number of additional representatives and corresponding costs that will be needed to meet the higher targets (CE-

[118] Case No. 07-E-0523, *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*.

COP-R, p. 44; CECONY-IB, p. 225).[119] Specifically, the Company estimates that it would cost approximately $1.3 million a year to meet Staff's proposed target and $2.7 million a year to meet UIU's proposed target.

For the reasons explained in the Company's Initial Brief, proposed changes to the Call Answer Rate targets should be rejected. If modifications are made, the electric and gas revenue requirements should be increased to provide for additional staffing to meet the higher target(s) adopted.

5. Other Suggested Metrics

B. <u>Electric Only Issues</u>

1. Distributed Generation

The Company addressed the arguments and proposals of NYC, Pace, and CPA[120] with respect to distribution generation in its Initial Brief (pp. 225-231) and further responds in this brief on a limited basis to certain matters raised in their initial briefs.

In arguing for wholesale standby rate review, NYC fails to acknowledge that it raised similar arguments in the recent Standby Rates Collaborative in the Company's last litigated rate case[121] and fails to raise any new or cognizable criticism of the standby rates. As cogently explained by Staff in that Collaborative, after reviewing the existing standby rate matrix, NYC's proposal, and the Company's response, there was no basis to support a change in the standby rates because "the current allocation of costs between the contract and as-used demand charges reasonably allows the Company to recover the costs created by standby customers while posing neither a barrier to, nor an unwarranted incentive for, the installation or operation of distributed generation and cogeneration facilities throughout Con Edison's service territory."[122] This determination was made only three years ago and none of the factors leading to it have altered, while robust DG adoption has continued apace.

After ignoring the Standby Rates Collaborative, NYC describes a DG collaborative claimed to have been established "to identify barriers to DG development and solutions in order to remove those barriers and expand DG opportunities" (NYC-IB, p. 132). Presumably NYC is referring to the Distributed Generation Collaborative, arising from the same rate case as the Standby Rates Collaborative,

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[119] The Company also reiterates that these staffing levels would result in excess resources during months when call volumes are lower, at customer expense (*Id*).
[120] EDF presented testimony on DG but offered no arguments regarding DG in its Initial Brief.
[121] Case 09-E-0428, *Report of the Standby Rates Collaborative*, issued September 30, 2010.
[122] *Id*. It is noted that on September 9, 2013, NYSERDA filed a petition with the Public Service Commission to provide initial capitalization for a New York bank that would provide financing for green energy installations. Case 13-M-0412.

in which the City participated.[123] Contrary to NYC's characterization of the Collaborative's mandate, the PSC assigned specific tasks to the Collaborative, including discussion of the "physical assurance requirement" of the Company's DSM program, the role of DG in the Company's long-range plan, the status of the Company's 2009 solar pilot program, alternatives for the provision of electric service to a campus facility, and the value of DG to defer infrastructure investment.[124] The Collaborative was also to develop protocols for DG's inclusion in the Company's planning process, explore mechanisms for DG where technically feasible, and revisit the 2005 rate case definition of "clean DG."[125] In fact, as its Report demonstrates, with no NYC dissent, the Collaborative completed those tasks.[126] Moreover, the Company described DG's role in its long-range plans (CE-EIOP, pp. 364-366, CE-EIOP-R, pp. 135-136) and the Company went beyond a case-by-case review of potential campus offset standby customers discussed in the Collaborative and developed a standby tariff for campus facilities (CE-EIOP, p. 366).[127]

Pace argues that the standby rates are "onerous" due to application of overly conservative assumptions about capacity and under accounting for DG benefits (Pace-IB, p. 13). This argument suggests apparent confusion concerning the principles underlying the contract demand and as-used demand components of the rate, already discussed in the Company's Initial Brief (CECONY-IB, p. 227). Deterministic and probabilistic models are unrelated with these ratemaking principles regarding recovery of investment.

As to their opposition to the Company's contract demand proposal, both NYC and Pace (NYC-IB, pp. 134-137; Pace-IB, pp. 17-18) fail to address the Commission's recent express affirmation of the Company's approval of the Contract Demand based on the amount of infrastructure dedicated to providing full back up for the customer. The Commission had originally rejected the Company's

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[123] Case 09-E-0428, *2010 Distributed Generation Collaborative Report*, ("*DG Collaborative Report*"), issued November 2, 2010.
[124] *Id*., p. 1.
[125] *Id*., pp. 1-2.
[126] *Id*. Interestingly, NYC claims that the Collaborative identified gas infrastructure costs and steam back-up rates as barriers (NYC-IB, p. 132). In fact, as the Report describes, the Collaborative discussed consideration of DG generally to include gas and steam, but the parties raising that issue expressly acknowledged that the resolution of that discussion was "outside the scope of this Collaborative." *DG Collaborative Report*, p. 9.
[127] NYC claims that the Company's discussion of its development of the campus offset tariff is "misleading" (NYC-IB, p. 134). While the development of these tariffs may not have been at the speed or precise course desired by some DG stakeholders, there can be no dispute that the Company did work to develop both the original offset tariff and the more complex campus offset tariff to meet customer needs. In fact, as discussed above, the DG Collaborative envisioned elements of the campus offset tariff. Moreover, while the Commission suggested that the Company develop guidelines for a case-by-case approach to campus offset customers (Case 11-E-0299, *Order Approving Tariff Amendments with Modifications*, (issued November 17, 2011), pp. 9-10), instead the Company worked to develop a comprehensive tariff that would apply to the entire class of eligible customers.

proposal that it approve the Contract Demand for the campus off-site tariff.[128] In response to the Company's petition for rehearing,[129] however, the Commission agreed that the Company should approve the Contract Demand because "[d]oing so balances the interest of customers and Con Edison in that Con Edison will recover the local distribution costs incurred to serve the customer's total building load."[130]

Pace[131] opposes the Company's proposed change to reflect the Company's O&M expenses in connection with DG infrastructure (Pace-IB, p. 12). The request, however, is supported by Year 2010 Electric Embedded Cost of Service Study (Ex. 464) and reflected in the testimony of the Company's Electric Rate Panel (CE-ERP, pp. 12, 66).

NYC and Pace also claim that the campus offset tariff should be expanded for multiple customers (NYC-IB, pp. 134-137; Pace-IB, pp. 17-18). The Company has already responded to these arguments (CECONY-IB, p. 229) except as to NYC's misplaced reliance on the Commission's order in Case 07-E-0802 (Burrstone).[132] This case has nothing to do with the establishment of proper standby rates and instead addresses whether a generator determined to be a Qualified Facility and exempt from regulation could serve multiple customers.[133] In fact, NYC fails to note that the Commission itself already determined this case to be inapposite to the campus offset tariff when the same case was raised during review of the Company's tariff. While the case was argued for a slightly different proposition, in rejecting its applicability, the Commission found that that case addressed "a configuration separate and apart from the campus-style tariff at issue here."[134]

Lastly, both the City and Pace demand that the Commission require the Company to file a response to NYSERDA's anticipated microgrid study with a provision for comment by the parties (NYC-IB, pp. 138-139; Pace-IB, pp. 25-28). The Company is confident that the Commission will itself determine the response it seeks from the electric utilities upon completion of the study and that the Company will respond in timely accordance therewith.

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[128] Case 11-E-0299, *Order Approving Tariff Amendments with Modifications and Granting Petition for Rehearing* ("Rehearing Order") (issued October 18, 2012), p. 3.
[129] NYC opposed the petition. *Id.*, p. 7.
[130] *Id.*, p. 20.
[131] NYC would include review of the O&M charge in a re-examination of the standby rates (NYC-IB, p. 134). The fact the Company in its draft DG Guide specifically calls out this component of the tariff so that potential customers have all the information necessary to make decisions is not a basis for claiming that the charge is unreasonable.
[132] Case 07-E-0802, *Declaratory Ruling on Exemption from Regulation*, issued August 28, 2007.
[133] *Id.*
[134] *Rehearing Order*, p. 18.

2. Line Losses

3. Aggregated Building Data

4. Lump Sum Charges for Excess Distribution Facilities

5. Service Entrance Work

C. <u>Gas Only Issues</u>

1. Transco Heaters/Odorization Surcharge

CECONY proposes to recover the costs of certain new natural gas heating and odorization equipment through the Average Cost of Gas in the Gas Cost Factor ("GCF") and through the Weighted Average Cost of Capacity ("WACOC") (CECONY-IB, pp. 233-236). CECONY demonstrated that the new equipment is necessary for system safety and reliability; that the equipment would be located at an optimal site; that the ownership and operation of the equipment by Transcontinental Gas Pipe Line Company LLC ("Transco") would facilitate operations and be consistent with existing arrangements with other pipelines; that the proposed arrangement avoids the need for the Company to acquire real property to site this equipment; that Transco's rates will be cost-based and established after review by the Federal Energy Regulatory Commission ("FERC"); and that there is no basis to assume that the Company could construct these facilities at a cost at or below Transco's projected charges, which reflect, *inter alia*, Transco's agreement to seek recovery of a portion of these costs from other customers (*Id.*). CECONY provided the estimated cost of the equipment and proposed to recover the actual cost that Transco incurs and bills to CECONY, less 30% of the heater costs that Transco will absorb (*Id.*).

Staff, the only party that opposed or addressed CECONY's proposal, argued that the question of cost recovery through base rates or the GCF and WACOC is premature because CECONY and Transco have not yet finalized a contract for the project and the actual construction costs are not yet known (Staff-IB, pp. 250-252). Staff asserted that CECONY has not provided work papers detailing the estimated project costs and argued that CECONY should not recover any costs until the contract is complete and Staff has verified CECONY's payments to Transco (Staff-IB, p. 252).[135] The Company respectfully disagrees.

The PSC should determine in this case whether CECONY's entry into a contract with Transco based on the proposed arrangements would be reasonable. The Company has provided the information

[135] The work papers mentioned by Staff are not relevant to this case because, as discussed below, the reasonableness of Transco's charges for the heating and odorization arrangements will be decided by the FERC. That notwithstanding, CECONY provided detailed work papers to Staff on August 27, 2013, that validated CECONY's prior cost estimates and addressed Staff's stated needs.

necessary to make that determination. Contrary to Staff's assertion, knowledge of Transco's actual construction costs or verification of CECONY payments should not be prerequisites to this determination. Specifically, the PSC need not and should not determine whether Transco's charges based on its actual costs will be reasonable. The PSC addressed that distinction in a corresponding situation involving the recovery of the PJM OATT service costs.[136] The *PJM Order* recognized that interstate rates filed with the FERC are binding, that state regulatory commissions cannot "trap" costs that have been approved by FERC, and that the jurisdiction of state commissions with respect to interstate services is limited to the reasonableness of the customer's decision to contract for the FERC jurisdictional service.[137]

Staff does not challenge the reasonableness of the proposed heater and odorization arrangements. CECONY provided ample support for the proposed arrangements. The new equipment is required by changed circumstances and is needed to satisfy New York State requirements and CECONY's design criteria with respect to increased gas flows (CE-GPFP, pp. 2, 4, 5, 7). Facility configurations and space limitations dictate that Transco own and operate the equipment, at Transco's Meadowlands site, as part of its interstate pipeline system (*Id.*, pp. 3-4). The proposed arrangements will capitalize on Transco's prior experience in operating equipment and will facilitate more timely responses to emergency conditions and operational needs (*Id.*, pp. 9-10). CECONY considered alternative arrangements, but rejected them as infeasible or more costly (*Id.*, pp. 8-9). Thus, the record evidence substantiates the reasonableness of the proposed arrangements and fully resolves the limited prudence concern that is subject to the PSC's oversight.

The reasonableness of Transco's charges for the ownership and operation of the heating and odorization equipment is not at issue in this case. Transco's charges will be reviewed and approved by the FERC pursuant to rate procedures in which both CECONY and the PSC may participate. Nonetheless, CECONY sponsored testimony regarding the estimated cost of the equipment, the proposed structure of Transco's charges to recover those costs, the allocation of the costs to CECONY's customers, and the application of the GCF/WACOC tariff provisions to those costs (CE-GPFP, pp. 11-18). Moreover, the facts that Transco will bear 30 percent of the heater cost and that there is a precedent for the proposed heater arrangement suggest that the proposed heating and odorizing costs will be reasonable (CE-GPFP, pp. 10-11, 13-14). In addition, the proposed arrangement will entail lower capital, real estate, and operating costs than alternative arrangements (CE-GPFP, pp. 8-9, 13).

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[136] Case 09-E-0428, *Order Denying Petition for Recovery of Charges*, issued February 14, 2013, pp. 14-15 ("*PJM Order*"); see also *Nantahala Power and Light Company v. Thornburg*, 476 U.S. 953 (1986).
[137] *Id.*

In sum, Staff's objection that CECONY's proposal is premature is preempted by FERC's jurisdiction over Transco's rates. Staff failed to address the prudence issue that is properly before the PSC -- *i.e.*, whether CECONY's agreement to the proposed arrangement would be prudent – and the substantial record evidence regarding that issue.[138] Staff provides no reasoned basis for proposing that a final contract and commencement of payments be pre-requisites to the prudence determination sought in this proceeding. Accordingly, Staff's opposition is groundless, and CECONY should be permitted to recover the cost of the proposed heating and odorizing arrangement through the GCF and WACOC as it proposed.

2. Peak Day and Incremental Capacity

3. Lost and Unaccounted For Gas

CECONY proposed to increase the percentage of the Line Lost Factor ("LLF") attributable to Generators from the current 0.1 percent to 0.5 percent (Carnavos, pp. 42-43). Astoria Generating Company, L.P. ("AGC") did not submit testimony concerning CECONY's proposal but objected to CECONY's proposal, for the first time, in its Initial Brief (AGC-IB, pp. 5-6). No other Party objected to this proposal, which Staff supports (Staff-IB, p. 252) and NYC (Arnett-Direct, p.21) affirms that it has no objection.

AGC argues that CECONY's transmission facilities and distribution facilities operate at distinct pressure levels and, therefore Generators should not be assigned an additional 0.3 percent of the LLF for the distribution system over which they have no control (AGC-IB, pp. 6-7). AGC also objects to an additional 0.3 percent contribution to the Generators LLF, which CECONY has explained is a "reasonable contribution to the total system line loss" (Carnavos, p. 43), because CECONY has provided no study or other evidence concerning the additional 0.3 percent (*Id*., pp, 7-8).[139]

AGC also acknowledges that CECONY has agreed to conduct a study of the gas transmission system to determine the appropriate contribution of generators going forward, as recommended by the SGPSP, but argues that the PSC should reject CECONY's proposal until such a study is complete (*Id*.).

The evidence in this proceeding demonstrates that the 0.5 percent contribution from Generators to the LLF would be a reasonable contribution to the total system line loss because, as explained by Company witness Carnavos, there is no segregation of high-pressure transmission facilities from the lower pressure distribution system, and therefore customers of the high pressure system benefit from the

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[138] Staff urged that CECONY should file tariff amendments to reflect the recovery of the heating and odorization costs before recovering those costs (Staff-IB, p. 252). In anticipation of such a requirement, CECONY had proposed amended tariff provisions (CE-GPFP, pp. 19-21).

[139] AGC acknowledged CECONY's study of the data relating to the 0.1 percent meter calibration estimate and the 0.1 percent heater and compressor fuel estimate that are part of the total 0.5 percent Generator LLF (AGC-IB, p. 7).

whole system (Carnavos, p. 43). The evidence also demonstrates that the study recommended by the SGPSP would be appropriate for evaluating the 0.3 percent Generator LLF contribution on a going forward basis. Therefore, since the Generators receive a benefit from the whole system, it would be inequitable for the Generators to provide no contribution in the interim while the Company completes the recommended study. As such, the Company's proposed change to the LLF for Generators should be approved.

4. Transportation Balancing Services

Staff proposes three changes to CECONY's balancing service program for interruptible customers including off-peak firm transportation customers and power generators (Staff-IB, pp. 252-253). However, Staff incorrectly states that "the Company's only objection to Staff's recommendations is with the Transco Z6 reference price for cash-outs" (Staff-IB, p. 253).

The Company reiterates its position that no changes should be made to its current balancing service program, because the evidence in this proceeding does not indicate that the existing CECONY balancing service for interruptible customers and power generators is not working appropriately or needs change (CECONY-IB, p. 237). As such, CECONY recommends rejection of Staff's proposals concerning transportation balancing services.

CECONY also sets forth in its Initial Brief its recommended modifications to Staff's proposals should the Commission determine that changes to CECONY's balancing services should be implemented (CECONY-IB, pp. 237-238). Those modifications include discussing balancing services issues in the Marketer Collaborative and with Generators or, if a decision on balancing is made in this proceeding, the Company recommended that surplus imbalances be cashed out at the reported low price index for Transco Zone 6, while deficiency imbalances should use the reported high price index for Transco Zone 6, because differentiating the surplus and deficiency imbalance pricing levels will discourage gaming of the system, especially when Transco Zone 6–NY prices are higher during peak winter periods, leading to unintended consequences that can increase costs to firm customers (CECONY-IB, p. 238; Staff-IB, p. 253).

5. Platts Subscription Services

6. Oil to Gas Conversion Program Design

The Company addressed NYC's position on oil-to-gas conversions in its Initial Brief (CECONY-IB, pp. 185-187, 240-246). However, certain assertions in NYC's Initial Brief (pp. 35-41, 146) further demonstrate why NYC's proposed metrics and penalties are not designed to promote Company compliance with Commission rules, regulations or policies, or to address any recent or historical poor

Company performance in discharging its obligations in connection with such rules, regulations, policies or tariffs. Instead, NYC seeks the imposition of new metrics by this Commission to coerce the Company to gear its operations and workforce to NYC goals and timelines associated with NYC policies and programs that go well beyond any definition of safe and adequate service to the Company's gas customers. NYC's references to the City DEP regulations to phase out the use of heavy fuel oil explain NYC's goals, but NYC fails to make a critical link to any Commission rules or regulations that the Commission needs to enforce through the use of metrics. NYC has not demonstrated CECONY's failure to comply with any of these rules, regulations, policies or tariff provisions as they stand today. CECONY should not be measured against NYC's regulations but rather with regard to compliance with the Public Service Law and the Commission's regulations – the Commission should reject any request to measure CECONY's performance under another agency's regulations. NYC's proposals to assess the Company's performance (in aiding NYC), impose metrics on and potentially penalize the Company, are inappropriate and, in any event, not properly the subject of this proceeding.

Moreover, NYC's recommendations ignore NYC's role in the delays that it attempts to lay at the Company's doorstep. As the Company has demonstrated and as NYC acknowledges (Caputo, pp. 1-9; CE-GIOP-R, pp. 79-80; CECONY-IB, pp. 240-241), the Company has worked hand in hand with NYC in the NYC Clean Heat Program to help NYC meets its goals. CECONY has, however, been unable to resolve delays *engendered by NYC* in converting new customers, despite attempts to communicate regularly with NYC regarding such delays. NYC disregards its role in rolling out its Clean Heat program, in particular with respect to the City's permitting process.

While it is true that CE-GIOP expects over time that revenues from its Area Growth Program for oil-to-gas conversions will exceed the costs of connecting new customers, this expectation arises from a careful assessment of new program terms and conditions, specific geographic areas and associated forecast of revenues, in which the revenue of anticipated participants will likely exceed the costs of financing the expansion of existing infrastructure in those areas. Thus, the assertion by NYC (NYC-IB, p. 37) that Con Edison has not assessed whether a higher conversion rate is feasible is disingenuous and untrue.[140] Indeed, NYC ignores the extensive testimony about what CECONY has done and continues to

[140] NYC makes a reference to the transcript (NYC-IB, p. 37) that misstates the testimony by implying the Company has not made improvements. What the transcript actually states when CE-GIOP was questioned about delays in conversions, is that CE-GIOP testified "We believe that we have created a process that provides timely information to the customer . . .I said that the process has been improved and that we have done it. . . The company does its best and has its best efforts not to create any delays . . . [w]ith any business, yes. It's possible that the company can be responsible for delays" (1060).

do to encourage conversions, and that CECONY relies on NYC to timely permit construction and related activities to enable conversion at the levels forecasted by the Company (CECONY-IB, pp. 240-246).

In fact, while the metrics proposed by NYC should be considered as outside the scope of this proceeding for the reasons explained above, and therefore rejected by the Commission, the Company notes that NYC's delays in the permitting process, if continued, will have a direct negative impact on the projected revenues that will form the basis of rates established in this proceeding. Such delays put the Company's revenues in jeopardy because the proposed rates are based on the Company's forecast of additional firm customers that anticipate timely conversions. This information should not be ignored in setting the gas customer/gas bill target for RDM purposes.

The scheduling metric NYC proposes (NYC-IB, pp. 37-38) suffers further from its inability to separate out NYC-caused delays, which are interwoven into the conversion process. In addition, NYC continues to advocate a penalty for not providing adequate cost information to potential applicants for conversion, notwithstanding the Company's clear testimony that it has done so (CE-GIOP-R, pp. 95-96).

The AG expresses its position on oil-to-gas conversions for the first time in its Initial Brief (AG-IB, p. 20). Although the AG makes no specific proposal on which the Commission may act, simply concluding that the Company "should do more to assist heavy oil users to convert" (AG-IB, p. 21), the Company will correct several erroneous conclusions drawn by the AG from the evidence in this proceeding.

The AG asserts that the Company made only a limited effort to secure potential new gas service customers. As explained below, the AG's assertions are contrary to the record in this proceeding and also misstate several facts. For example, as the record in this case clearly demonstrates, the Company made extensive efforts to work in tandem with NYC and its Clean Heat Program by creating a new Gas Conversion Group in July 2011, which is dedicated to focusing on marketing oil-to-gas conversions after the new DEP regulations were issued in April 2011. The formation of this group coincided with the commencement of the Historic Year. The AG's conclusion that the Company has made only a limited effort appears to be drawn from two advertising-related statements in a data response, including one from the test year. The efforts of NYC, and CECONY in partnership with NYC, had only begun in the Historic Year and were just being implemented and staffed, and therefore, this was not an appropriate time at which to gauge staffing levels for marketing or how successful the efforts of either NYC or CECONY had been. The AG's other reference is to the Company's increase from one person-year in the Historic Year to three person-years in 2013. This number, however, does not adequately capture the far larger number of employees in the sales/marketing division of the Gas Conversion Group, but rather only the portion of time various employees devote to marketing specifically to customers using only the Nos. 4

and 6 heavy heating oils. It is worth noting that it is the responsibility of the marketing/sales division of the Gas Conversion Group, to provide outreach and education and other marketing efforts to all customers in CECONY's gas service territory interested in converting to natural gas, including customers that heat with #2 oils, who make up a significant portion of the available customer base, but who are not the focus of NYC's Clean Heat Program.

In addition, the AG's conclusion that the pace of conversions is slow appears drawn from a misinterpretation of data provided in this proceeding. Contrary to the AG's assertions, the Company completed 512 heavy heating oil to gas conversions in 2012 (not 336 as the AG asserts) and is on target to complete the 700 conversions forecasted for 2013 (Ex. 591, p. 68 of 106), more than double the number the AG predicts for 2013 (AG-IB, p. 20).   Moreover, the Company has testified that it provides zero connection cost options to 85% of all gas applicants seeking to convert from oil to gas (CE-GIOP-R, pp. 91-92, 94). Only a small percentage of those, about a third, actually move forward with conversion, for a variety of reasons addressed in testimony (CE-GIOP-R, pp. 83-84). These conversions and offers of zero connection cost did not occur as a result of a "limited effort" but instead through the creation of a separate and dedicated Gas Conversion Group whose role is to see this process through from start to finish, including engineering and construction (CE-GIOP-R, pp. 81-82). The percentage of conversions associated with applicants that are offered a zero connection cost also demonstrates that factors outside the Company's control (including delays by NYC explained above) determine the ultimate rate of conversions.

7. 100 Foot Rule

NYC's arguments relating to the 100 foot rule issue are addressed in the Company's Initial Brief (CECONY-IB, p. 246). NYC's assertion at page 145 of its brief that "other utility companies in this State interpret the 100 foot rule differently …" and there is "no indication that firm customers of these utilities are inappropriately subsidizing new customers" is not supported by detail of any kind in the record and should be disregarded.

Staff's Initial Brief restates Staff's opposition to the Company's proposal with respect to the 100 foot rule as it relates to multiple dwellings (Staff-IB, pp. 254-255). In reviewing Staff's Initial Brief, the Company realized that the Company's Initial Brief did not restate the Company's proposal to modify its tariff provisions relating to gas main and service line extensions to multiple dwellings. The Company continues to support this proposal for the same reasons discussed in the Company's direct testimony (CE-GIOP, pp. 60-64). The Company notes that Staff's Initial Brief fails to substantively address the arguments in support of the Company's proposal as set forth in the Company's direct and rebuttal testimony.

8. Dual-Fuel Minimum Charge

9. Methane Leakage

While EDF's direct testimony generally discusses the issue of methane leakage and makes non-specific recommendations (Brownstein, pp. 8-13), EDF's Initial Brief for the first time makes a specific proposal for 2014 (EDF-IB, p. 32).

EDF proposes that the Company "embark on a study and pilot program to reconsider its approach to decreasing methane leakage – using actual measurement data to rapidly and cost-effectively reduce methane leakages" (EDF-IB, p. 32). EDF requests that the Commission "order the Company to develop, potentially through a collaborative process, a specific proposal for quantifying and reducing methane leakage during the 2014 rate year" (*Id.*). To the extent any costs are incurred, EDF proposes that the Company recover such costs "in their request for 2015" (*Id.*).

First, EDF fails to mention that the Company is already participating in an effort lead by Washington State University to study natural gas methane emissions (CE-GIOP-R, pp. 127-128; Ex.570). Participants in this effort include EDF, the Company, the American Gas Association and other national utilities (*Id*.). Additionally, as part of the Storm Hardening collaborative that is proceeding in parallel with the gas rate proceeding, there is an ongoing working group that is dedicated solely to addressing and reducing methane emissions. In light of these ongoing efforts, any additional study/pilot would be unnecessary and duplicative. Second, there is nothing in the record indicating that this is an issue specific or unique to the Company's gas system. Rather, methane leakage is a national issue and EDF has not established a basis for the Commission to order the Company to develop specific proposals to address this issue in the context of this rate proceeding. For the foregoing reasons, EDF's proposals related to methane leakage should be rejected. If the Commission nonetheless orders a study to be performed in 2014, the Commission should provide funding for the cost of such a study in the rates established in this proceeding.

The AG also discusses methane leakage but does not propose any particular programs for 2014. For the first time in its Initial Brief, the AG does, however, request that the Commission direct the Company "to include in its next rate request a proposal to fund a physical search for leaks in the Company's natural gas facilities, the quantification of the amount of natural gas each identified leak releases into the atmosphere, and the preparation and public distribution of the results of the search" (AG-IB, p. 18). The AG fails to provide any evidence that the measures it requests the Company undertake in its next rate filing are necessary, feasible and/or worthwhile from a cost-benefit perspective. The Company believes that any future action by the Company regarding methane emissions will be better informed by the above-described efforts that the Company is currently undertaking. Therefore, the AG's request also should be considered premature and therefore rejected.

D. Steam Only Issues

1. Steam Variance

In its Initial Brief, the Company addressed Staff and NYC proposals to modify the steam variance mechanism (CECONY-IB, pp. 248-250). Staff provides further insight as to its proposal to change the steam variance and makes several unsupported assertions (Staff-IB, pp. 255-260). NYC also continues to press its proposed changes to the steam variance (NYC-IB, pp. 148-152).

NYC states that "it is the Company's responsibility in the first instance to investigate what actions it may take to reduce steam variance …" (NYC-IB, p. 151). As explained by the Company's Steam Fuel Panel, the Company accepted and has fulfilled this responsibility (CE-SFP-R, pp. 4-5; 508). The Company explained in its Initial Brief (pp. 248-250) that the Company has undertaken significant efforts to reduce the steam variance; that the Company had entered into a collaborative with other parties to explore other cost-effective means to reduce steam losses; and that the collaborative produced no proposals or recommendations for specific projects or further studies that the Company should undertake at that time. Staff and NYC were active participants to these efforts. Nothing in Staff's or NYC's briefs identifies any new or changed circumstances that point to a reasonable opportunity or possibility that there are currently new or additional activities the Company should reasonably undertake to further reduce steam losses.

Staff asserts that because the Company achieved the most recent dead band levels, the "current dead band does not provide a sufficient incentive for keeping the variance level from increasing nor does it sufficiently incent the Company to improve the variance" (Staff-IB, p. 257). As explained above, neither Staff nor NYC has provided a reasonable basis for assuming that steam losses could be further reduced on a cost-effective basis. Nor has either party explained why the Company would not have an incentive under the existing mechanism to avoid increases in losses. Accordingly, there is no basis in the record for the Commission to modify the steam variance in order to provide the Company an incentive to further reduce steam losses or to keep the variance from increasing.

A closer reading of Staff's brief reveals that Staff's proposed changes may be designed for the Company to incur negative revenue adjustments sometime during the next several years even if the Company maintains its recent performance, which has fully met or exceeded expectations. Specifically, Staff alleges that (i) the Company has never been penalized for missing the steam variance, (ii) the Company has earned incentives in six of the eight years the mechanism has been in place; and (iii) applying Staff's proposed deadband on the last five years steam variance results, the Company would have been penalized twice, received an incentive twice and fallen within the deadband once (Staff-IB, p. 257). Staff also goes on to say that its proposal is reasonable because the Company would have an opportunity to earn an incentive for good performance and be penalized for poor performance (Staff-IB, p. 257). These statements demonstrate the punitive nature of Staff's proposal. Staff provides no evidence in either testimony, during cross-examination, or in its brief, that the Company's performance in the last five years was inadequate or in any manner constituted poor performance (SSRP, pp. 15-23; 247-249, 252-259; Staff-IB, pp. 255-259). Nor does Staff demonstrate or explain why future Company performance above Staff's proposed upper threshold of the dead band but below the upper threshold of the current dead band should be considered poor performance that warrants a negative revenue adjustment (SSRP, pp. 15-23; 247-249, 252-259; Staff-IB, pp. 255-259).

Staff opines (Staff-IB, p. 258) that there may be some synergies from other projects that may assist in lowering the steam variance. While the CE-SFP acknowledged that the Company does re-insulate steam mains, as appropriate, in connection with municipal infrastructure work, there is nothing in the record that demonstrates these activities will have a material impact on the steam variance (510). And although NYC correctly points out that the CE-SFP acknowledged that Company initiatives may yield synergistic benefits, including reduced line losses (505), there is nothing in the record that demonstrates that such synergistic efforts will further reduce line losses in the Rate Year. That said, the Company notes that the synergistic activities referred to by NYC (Ex. 141, pp. 75-76) directly refutes Staff's position that the steam variance needs to be changed in order to provide the Company an incentive to reduce steam losses.

For the foregoing reasons and the additional reasons provided by the Company in testimony and in its Initial Brief, the current steam variance should not be modified. If the Commission nonetheless determines that a modification is warranted, the incentive/penalty mechanism proposed by NYC[141] should be adopted for the reasons explained in the Company's Initial Brief, (p. 250).

2. Steam Business Development

E. Customer Ops Only Issues

1. AMR/AMI

The Company proposed to continue its saturated and strategic AMR programs, and provided detailed testimony explaining the benefits of such programs (CE-COP/E, pp. 13-20; CE-COP-R, pp. 3-5, 11-20; CECONY-IB, p. 251). UIU and EDF propose that the Company cease AMR deployments and

[141] Staff also comments (Staff-IB, p. 259) on NYC's proposal claiming that Mr. Arnett's proposal "incorrectly assumed" that the Company would retain all the savings. The Company believes that Staff misinterprets Mr. Arnett's proposal, which is different than the existing mechanism.

evaluate AMI (UIU-IB, pp. 84-86; EDF-IB, p. 36). EDF and Pace propose that the Company immediately begin AMI pilot programs to evaluate the viability of advanced metering with communications and time variant pricing for customers (EDF-IB, pp. 50-51; Pace-IB, p. 31). NYC supports the Company's pilot project to use advanced metering to assist in outage management (NYC-IB, pp. 152-153). PULP agrees with the Company that large scale AMI deployment is not warranted at this time (PULP-IB, pp. 7-8).

The Company's brief provided detailed support for its AMR projects and the many reasons that an evaluation of AMI is not necessary at this time (CECONY-IB, pp. 251-256). Only EDF and UIU suggest that these projects not move forward. Their suggestions are not based on the viability or cost-effectiveness of the Company's AMR projects; rather, EDF and UIU prefer the Company focus its attention elsewhere. They prefer AMI deployments, along with all attendant communications infrastructure, in order to enable complex dynamic or time variant pricing for customers. As the Company already addressed in its Initial Brief, neither EDF nor UIU have demonstrated that the Company's AMR projects, which have resulted in significant savings and have improved meter reading performance, should not move forward (*Id.*). Therefore, the Company should continue its deployment of AMR projects.

The Company has also explained in detail throughout this proceeding the difficulties, both in terms of cost and the ability to modify customer behavior, of deploying smart meters and the necessary communications infrastructure, both of which are required for AMI and that would be required to enable complex dynamic time variant pricing that EDF, Pace, and UIU propose (CECONY-IB, pp. 251-256). The caution expressed by the Commission in 2007 when it decided not to approve the Company's proposed AMI pilot projects, and again in its 2011 Smart Grid Policy Statement, supports the Company's actions related to AMI (CECONY-IB, pp. 252-253). The parties supporting AMI and time variant pricing continually fail to recognize that the pilots and programs previously proposed by the Company did not move forward because either the Commission or the Department of Energy did not approve them (*Id.*).

As the Company explained in its Initial Brief, despite the lack of funding provided for AMI projects, the Company continues to monitor technology, and to consider certain smart grid pilot projects that are cost effective and that provide a benefit to customers (CECONY-IB, pp. 253-254). Many of the Company's smart grid programs are focused on modernizing the grid to provide situational awareness and also to improve responsiveness to events as well as advanced metering (CE-EIOP-R, pp. 149-150). For instance, the Company is planning a pilot to use advanced AMR/AMI for outage detection purposes, which NYC supports (CECONY-IB, p. 253; NYC-IB, p. 153). Additionally, the Company has elected to deploy dual protocol AMR/AMI capable meters (currently used in AMR mode) in the East and West

Bronx projects, positioning the Company to quickly migrate to AMI in those areas if/when it is prudent to do so. The Company also explained, however, that in terms of advanced metering technology, there have not been significant advances (CECONY-IB, pp. 253-254). The Company also explained that its pilot project in Long Island City strengthened the Company's concerns related to the difficulties associated with communications infrastructure in dense urban environments, where meters are often inside and/or underground (*Id*.).[142]

EDF's contentions that the Company has been unable to articulate its current views on AMI ignore the detailed articulation of the Company's position in its rebuttal testimony (CE-COP-R, pp. 11-20). EDF repeatedly points to the Company's 2010 Electric Long Range Plan in an attempt to show that the Company is not consistent or following through on its advanced metering plans. In addition to ignoring Company testimony that the 2010 plan has been updated, the Company's position and plans with respect to AMI remain consistent (1893).[143]

Finally, the Company's Initial Brief also identified a variety of reasons why EDF's model attempting to support the "enormous savings" that comes along with time variant pricing was fatally flawed and should not be relied on for the proposition that time variant pricing will result in significant savings by reducing system peaks (CECONY-IB, pp. 254-256).

Similarly, EDF ignores that reducing the system peak can be accomplished in a variety of ways (CE-EIOP, pp. 153-160). For instance, the Company's coolNYC pilot (that uses the Modlet device) allows customers to control their room air conditioners via a computer or smart phone (*Id*.). Building management systems are incented by both Con Edison and NYSERDA under the EEPS programs, and the Con Edison and NYISO demand response programs provide incentives to reduce load at peak times, as do the Company's demand charges and VTOU programs. Finally, the Company's MHP program provides non-residential customers, including master-metered apartment buildings, with demand over 500 kW the ability to view real time interval data (*Id*.).

For the reasons explained in detail in the Company's Initial Brief, and reiterated briefly here in response to EDF's Initial Brief, the Company should continue its deployment of AMR projects.

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[142] EDF suggests that the Long Island City project did not utilize Home Area Network ("HAN") devices to allow customers to view and control energy usage. This is incorrect. The pilot did include three HAN technologies (1895). EDF incorrectly cites the hearing transcript where the Customer Operations Panel was discussing its AMR meter deployments, and not the Long Island City Project (EDF-IB, p. 42; 1903). To the contrary, the Customer Operations Panel specifically testified that the Long Island City project included an effort to "install home area networks in a number of customer residences…" (1895).

[143] EDF states that, despite repeated requests, it is unable to find the updated plan (EDF-IB, p. 43). The Company notes that the plan, titled "Integrated Long Range Plan," is available on the Company's website in the same location as the 2010 Electric Plan, and that this web address was provided during the hearings. Moreover, if EDF was unable to locate the updated plan, EDF could have reached out to the Company for assistance, but neglected to do so.

Moreover, the Commission should not require the Company to re-evaluate the viability of AMI deployments with time variant pricing.

2. Low Income Programs

The Company recognizes that the parties have taken varied positions on the continuation of its electric and gas low income programs. UIU and PULP recommend various changes that would significantly increase the costs of the programs (UIU-IB, pp. 88-101; PULP-IB, pp. 8-23). NYC recommends changes that would also increase the cost of the program, although not by as much as recommended by UIU and PULP (NYC-IB, pp. 154-159). Staff and the Company propose to maintain the current spending targets established in the Company's current electric and gas rate plans (Staff-IB, pp. 260-271; CECONY-IB, pp. 256-260). The Company explained in detail its position in its Initial Brief, and sees no need to repeat it here (CECONY-IB, pp. 256-260). The Company reiterates that it is becoming more and more concerned with the increasing size of the subsidy of the programs, which is paid for by other customers, who may also struggle to make payments.

Additionally, the Company is compelled to clarify for the record that, contrary to PULP and UIU's suggestion, the current and proposed low income programs are not capped at a specific dollar amount (UIU-IB, p. 91; PULP-IB, pp. 11, 17). As explained in the Company's Initial Brief, while a target amount of dollars is used to set the level of discounts, that target can be exceeded if participation in the program becomes higher than anticipated. While the Company has the opportunity to reduce the electric discount within established parameters, all customers that are qualified and enrolled in the low income programs receive the discount, regardless of whether the programs have exceeded the target amounts established in a rate plan (CECONY-IB, p. 256). Thus, PULP and UIU's suggestion that the current programs are capped and that "bill relief is denied entirely" is inaccurate (PULP-IB, p. 3).

Finally, the Company reiterates that it has consistently followed the requirements set forth in past and current gas and electric rate plans with respect to the administration of its low income programs. No party has demonstrated, or even alleged that the Company is not administering the programs appropriately, though PULP and UIU continue to belabor their dissatisfaction with the frequency of matches during the 2007-2009 period, which dissatisfaction is irrelevant to the matters at issue in this proceeding (PULP-IB, pp. 15-16; UIU-IB, p. 91).

3. Mandatory Hourly Pricing

In its brief, Staff criticizes the Company-sponsored KEMA Mandatory Hourly Pricing ("MHP") evaluation study and states that the Commission should give it no weight (Staff-IB, pp. 271-273). Staff goes on, however, to support the Company's position that, once the Company completes installation of reactive power metering, the Company should "provide an evaluation to the Commission regarding the state of interval meter communications and an evaluation of the expansion of MHP to customers with demands of and higher [than] 300kW" (Staff-IB, p. 274). Rather than simply rely on Staff's support to defer consideration of expansion of MHP, the Company addresses Staff's criticisms of the KEMA study here because that study provides the basis for concluding that the MHP program has not had meaningful impact on customers' demand, and therefore expansion of MHP should not be implemented at this time or immediately upon completion of reactive power metering.

Rather than accept the general conclusion of the KEMA study, and/or present its own model-based results supporting its position, Staff introduces unsubstantiated conjecture and speculation based on inapplicable statistical concepts and terms largely irrelevant to the central empirical question that was the focus of the study (*i.e.*, does the set of load data for customers that remained on MHP over the study period reveal measurable changes in energy use as a result of changes in price?). The results of the MHP study clearly demonstrate that for this set of customers, evaluated using data collected over a specific time period, statistically meaningful changes in demand, in response to changes in price, were not observed.

Staff's specific allegation that estimates derived from small sample sizes are not statistically consistent (Staff-IB, p. 272) should be disregarded because statistical "consistency," which refers to the sampling distribution of parameter estimates, was not feasible given the dataset for the study and is rarely utilized for empirical studies (it is generally reserved for theoretical exercises). Moreover, Staff's criticism of the development of data for individual customers by season, day of the week, and hour of the day combination also lacks merit (Staff-IB, p. 272). This type of data development is necessary because price sensitivity, if present in the load data, will vary over time periods, reflecting building operational schedules (*e.g.*, weekly, monthly, seasonally). Again, Staff is inappropriately fixated on the idea that small samples, by whatever undefined sample size criteria they apply, are the cause of finding no meaningful demand impacts from price in the study sample.

Staff also criticizes the study for failing to provide a pooled data set of all customers (Staff-IB, pp. 272-273). Regression studies applied to pooled data sets (sometimes called panel datasets) may be a useful estimation technique in certain applications, and with certain types of datasets, specifically, if customers in the panel dataset are similar to each other in important respects (*e.g.*, single-family households served by a certain utility, in a given geographical location). However, a pooled model was not warranted here because commercial customers are typically very heterogeneous, in terms of business type, building locations (*e.g.*, age of building, building structure), number of employees, among other factors. Applying a pooled model, even using a fixed effects specification, would yield an estimate of price responsiveness that is: 1) not easily interpretable; 2) may be biased, inconsistent or both; and 3) if the coefficient estimate is constrained across the panel, (*i.e.*, the retail customer is restricted to have the same price elasticity as a high rise office), has little validity under the economic theory of factor demands.

Staff's suggestion that the study did not take into account economic variables that may have caused changes in electricity use is factually incorrect (Staff-IB, p. 273). KEMA considered the relevance of economic conditions in this study but determined that, based on the time period(s) studied, the economy did not materially change and economic influences had minimal impact(s) on customer energy use.

For the foregoing reasons, Staff's criticisms of the KEMA Study lack merit. The Company maintains that the study demonstrated that customers do display different levels of demand responsiveness in response to changes in price signals; that is indicated by the number of customers opting out of the MHP rate. Among those customers that stayed on MHP, the data failed to reveal measurable and statistically meaningful changes in demand, in response to the price signals revealed, over the analysis period.

4. Billing Issues

i. Off-system billing update.

The Company's Initial Brief identified delays in human resource savings associated with its off-system billing project that were discussed in its update testimony (CECONY-IB, p. 261). No parties opposed the project or disputed the delays of human resource savings addressed in the Company's update testimony. Therefore, the off-system billing project should be approved.

ii. CPA Proposed Penalty Mechanism

CPA alleges that billing errors among the Company's largest accounts are "large and occur at an unacceptable frequency" (CPA-IB, p. 16). CPA proposes that "the Company develop a metric to measure the frequency of errors, and to apply an incentive based on that metric" (*Id.*). No other party expressed support for CPA's proposed mechanism. CPA's testimony described this metric and incentive as a penalty of $650,000 if the Company fails to reduce the number and amount of billing errors for all classes after the establishment of a baseline (Luthin, pp. 49-50). The Company's Initial Brief amply demonstrated that the Company has systems and procedures in place so that customers are billed accurately (CECONY-IB, pp. 261-262). There are checks and alerts built into the Company's billing system logic, and meter readings are system-tested to determine if they are consistent with prior usage (*Id.*). Moreover, CPA's list of essentially nine errors over the course of six years for five large customers on complex rates does not amount to a demonstration that the Company is not able to render accurate bills. Other than those instances, CPA provides no support for the imposition of a new penalty mechanism. Therefore, CPA's proposed penalty should be rejected.

5. MHP Charge Capacity Recovery

Con Edison indicated in its Initial Brief that it does not oppose Staff's proposal that capacity charge recovery for MHP customers be based on the customers' installed capacity ("ICAP") Tags (CECONY-IB, p. 262). However, the Company indicated that because of significant system modifications needed to implement such a change, the timeline proposed by Staff in its initial testimony for training in the spring of 2014 and full implementation in 2015 was not reasonable (CECONY-IB, p. 262). In its Initial Brief, Staff modified its proposed timeline, stating that it is in the interest of customers that training be postponed to the spring of 2015 for implementation in the spring of 2016 (Staff-IB, p. 275). Staff pointed to FERC's approval of the NYISO's proposal to create a new capacity zone as the reason that delaying implementation is warranted (*Id*.). The Company does not oppose Staff's modification.

6. Retail Access Issues

The Company indicated in its Initial Brief that an online historic bill calculator that would allow retail access customers to do a historical comparison of their prior years' ESCO bill compared to what they would have paid that year as a full service Con Edison customer, would be a beneficial informational tool for customers (CECONY-IB, p. 263). The Company urged that the most prudent course is to wait to develop such a tool until it receives direction from the Commission in the generic proceeding where this exact issue is being considered (*Id*.).[144] Staff disagreed and proposed that the Company be given $300,000 to develop the tool, which it states can be "deferred for the future benefit of ratepayers…or removed from revenue requirement…" if the Commission reaches a decision before issuing an order in this case (Staff-IB, pp. 276-277).

The Company's Initial Brief explained why it would be inappropriate to develop a tool prior to the Commission's decision in the *Retail Access Proceeding* (CECONY-IB, p. 263). RESA agrees that "it would be logical to await the outcome" of the *Retail Access Proceeding* (RESA-IB, p. 5). Staff provides no support or analysis for its position that the Company develop the calculator immediately rather than await a decision in the generic case. Staff simply states that it disagrees with the Company. Directing the Company to expend funds immediately and prior to receiving direction from the Commission would be unreasonable, especially where the parties' positions vary significantly (CECONY-IB, p. 263). Moreover, Staff's recommendation is, at best, unclear. For example, Staff's statement that money can be deferred for the future benefit of ratepayers if the Commission determines that an online tool should not

[144] Case 12-M-0476, Proceeding on Motion of the Commission to Assess Certain Aspects of the Residential and Small Non-residential Retail Energy Markets in New York State, instituted October 19, 2012 ("Retail Access Proceeding").

be offered fails to recognize that the Company would have already begun spending the money to develop the tool. Therefore, the Company should not develop a calculator until it receives direction from the Commission in the *Retail Access Proceeding*.

UIU states that the Company should develop the online tool using its existing budget and incorrectly states that the Company testified that it had a $300,000 surplus in its Outreach and Education ("O&E") Budget (UIU-IB, p. 99). UIU ignores or fails to recognize the Company's update testimony, which described a correction to its initial testimony with respect to these funds. The Company explained in its update testimony that the proposed O&E budget for the Rate Year presented in initial testimony was $300,000 more than the Historic Year and not the same as the Historic Year ($2.99 million). The additional $300,000 is needed for enhancements to the Company's mobile website and applications, online customer tools like My Energy Toolkit, and the development of its website for educational programs for children (CECONY-IB, p. 265; CE-COP-R, p. 7). Thus, the O&E budget does not have a surplus and recovery of the cost to develop the calculator, should the Commission determine such an effort is warranted, needs to be separately addressed.

UIU recommends that the Company develop an online bill calculator that would attempt to compare what a customer would pay at an ESCO's most recent available rates to what they would pay as a full service customer based on the customer's prior years' usage (UIU-IB, p. 99). The Company opposed such a proposal. UIU's proposed tool is inappropriate for the reasons articulated in the Company's Initial Brief (CECONY-IB, p. 263). Such a tool would not provide customers with meaningful price comparison information because it would compare current ESCO prices to historical utility prices. Such an "apples and oranges" comparison would fail to take into account the whole host of reasons why supply prices may vary year to year, including weather, demand, usage, and customer behavior. Therefore, UIU's recommended tool should be rejected and the online tool should compare a customer's prior years' ESCO prices to what they would have paid that year if they were a full service customer.

UIU and PULP also suggest that the Company develop an on-bill price comparison tool. Staff, RESA, and the Company disagree with this proposal (Staff-IB, pp. 276-277; RESA-IB, pp. 7-10; CECONY-IB, p. 263). On-bill comparisons could be misleading to customers and would not take into account that ESCOs often tailor pricing to individual customers (variable, fixed, or capped) and often provide value-added services that cannot be displayed or explained on customers' bills. As Staff acknowledges, "the nature of ESCO services makes it imperative to do a cost comparison over a period of time rather than on a month to month basis" (Staff-IB, pp. 276-277). Moreover, UIU incorrectly suggests that other utilities, specifically Niagara Mohawk, have implemented on-bill comparisons. In fact, after a collaborative investigated the appropriateness of on-bill comparisons, Niagara Mohawk filed a report with the Commission concluding that consensus could not be reached to move forward with on-bill comparisons, and that the parties would pursue on-bill comparisons as part of the *Retail Access Proceeding*.[145] For these reasons, the proposals to require on-bill comparisons should be rejected.

PULP also goes as far as to suggest that the Company also include the "fine print" of ESCO offers over a contract period on customers' bills (PULP-IB, p. 24). This is unrealistic and unreasonable. The Company cannot, and should not, include customer-specific ESCO contract terms and conditions on Con Edison bills. Administratively, this proposal is completely unworkable, both in terms of tracking ESCO terms and conditions and including them without unreasonably increasing the size of customer bills. Most importantly, that type of policing role is outside the scope of the utility's limited role in supporting the competitive marketplace (CECONY-IB, p. 264). Finally, the Company is not involved, and should not be involved, in the private transaction between a customer and an ESCO (RESA-IB, p. 13). PULP's proposal would lead to customer confusion and misinterpretation of these terms and conditions as being Con Edison terms and conditions. Therefore, PULP's unsupported proposal should be rejected.

PULP and UIU recommend that the Company end its ESCO referral program, PowerMove (PULP-IB, p. 24; UIU-IB, p. 101). The Company's Initial Brief demonstrated that PowerMove remains a beneficial customer program that is funded entirely by ESCOs (CECONY-IB, p. 264). Moreover, whether to continue PowerMove is appropriately being considered in the *Retail Access Proceeding* (CECONY-IB, p. 264).

UIU and PULP's proposals related to on-bill comparisons, PowerMove, and other ESCO-related concerns are simply not supported by the record in this proceeding. Moreover, these issues are currently being considered in the *Retail Access Proceeding*, with full participation by both PULP and the UIU. Neither party has raised any Con Edison-specific issue that cannot be addressed in the generic proceeding. That proceeding is the appropriate venue for the Commission to consider these generic retail access issues. Therefore, each of their proposals should be rejected.

RESA alleges that the Company's proposed VTOU rate puts ESCOs at a competitive disadvantage to Con Edison because under the Company's rate ready retail access billing, ESCOs are unable to offer similar TOU pricing to customers that receive consolidated utility billing (RESA-IB, pp.

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[145] Cases 12-E-0201and 12-G-0202, *ESCO Pricing Tools and Consumer Communications Collaborative Report*, issued June 13, 2013. The Company also notes that the conclusion in the collaborative to consider on-bill comparisons in the *Retail Access Proceeding* supports further the Company's position that it should not develop an online comparison prior to getting direction from the Commission in the *Retail Access Proceeding*.

16-17). RESA recommends that Con Edison develop a "mechanism that allows ESCOs participating in CUBS, including those provided with a TOU product, to bill all customers on a level playing field with the Company." (*Id*.). RESA further contends that this disadvantage is exacerbated because current load shapes do not differentiate between TOU customers' on-peak and off peak usage[146] when calculating and reporting to the NYISO each ESCO's hourly settlement data. RESA suggests that the Company report settlement data to the NYISO based on actual on-peak and off-peak usage (*Id*.).

RESA has provided no evidence in the record to support its assertions, provided no testimony in this case, and raises these issues for the first time in its Brief. Therefore, it is impossible for the Company to evaluate and effectively respond to the proposals. With respect to reporting load shape data to the NYISO, the Company accurately reports load shape data based on the NYISO's guidelines. There is no evidence in the record to suggest otherwise. Moreover, RESA's unsupported statements and recommendations would require significant system modifications, which the Company is not considering and are not contemplated by the Company's proposed revenue requirements. Because RESA raises these complex issues for the first time in its Brief, without any support in the record. RESA's recommendation should be rejected.

7. Outreach and Education

Staff argued in testimony that the Company should direct a portion of its $2.99 million O&E budget to inform customers of the benefits of natural gas, as well as the steps necessary to convert to natural gas, as may be required by the Commission in its generic *Gas Expansion Proceeding* (SCPP, p. 41).[147] Staff clarified in its brief that the type of outreach expected to be directed towards such efforts consists mainly of discussions at community outreach events and information on the Company's website (Staff-IB, pp. 278-279). In its Initial Brief, the Company explained that its $2.99 million O&E budget is fully accounted for with the programs and projects detailed in its direct and rebuttal testimonies (CECONY-IB, p.265; CE-COP-G, pp. 53-67; CE-COP-R, pp. 6-8, 64-70). The Company explained, however, that there are some opportunities to provide natural gas-related outreach and education within its existing activities, such as community events and website information (1921). In fact, the Company currently focuses significant attention on advertising and marketing through its specialized Gas Conversion Group (CE-GIOP, pp. 40-41). The Company also explained that it has developed a robust website providing information about natural gas and the process for converting to natural gas, that it plans on increasing education through social media, and that it meets routinely with the City's Clean Heat

[146] This is true for customers without interval metering.
[147] Case 12-G-0297, *Proceeding on Motion of the Commission To Examine Policies Regarding the Expansion of Natural Gas Service,* instituted November 30, 2012 ("*Gas Expansion Proceeding*").

marketing team, the real estate board, plumbing and contracting communities, and individual buildings to further this very goal (CE-GIOP, pp. 49-50; 1065-1066). The Company believes that these initiatives are in line with Staff's expectations in terms of outreach and education related to natural gas. To the extent, however, that the Commission orders significant, additional methods of outreach and education in the *Gas Expansion Proceeding*, such as print, radio, etc., the Company reiterates that the associated costs cannot be accommodated within the Company's existing O&E budget.

F. Earnings Sharing Mechanism for Partial Year Ending December 2013

The current electric, gas and steam rate plans each contain an earnings sharing mechanism. At issue is the rate base amount that should be used to calculate the earned ROE when applying the mechanism to the periods from the end of the third rate years of the rate plans to the beginning of the Rate Year in these proceedings – periods of nine months for electric and three months for gas and steam. CECONY has explained that the rate base amount should be one that takes into account the seasonal nature of sales revenues because the authorized twelve-month return is the result of varying monthly returns because of varying sales revenues and a single, twelve-month average rate base and the earnings sharing mechanism contemplates the same (Muccilo-R/E, pp. 48-49; CECONY-IB, p. 267). Staff says the actual average rate base for the nine and three-month periods should be used and offers in support the unexplained, vague assertion that CECONY's approach "will not balance out" over a period of less than twelve months and that nothing in the current rate plans suggests that use of CECONY's method (Staff-IB, p. 281).

CECONY's approach should be adopted. It is conceptually sound and fair to customers and the Company by avoiding the risk for each of Staff's approach of "let the chips fall" regardless of how the authorized return and earnings sharing mechanism were developed and regardless of sales revenue levels associated with whatever time of year the partial period covers. That the current rate plans are silent on how the earnings sharing mechanism should be applied during partial-year periods, argues no more against CECONY's approach than it does in support of Staff's.[148]

G. Smart Grid

CECONY and Staff agree that the surcharge approach to recovery of Smart Grid costs should cease as of the beginning of the Rate Year and base rate recovery should begin (CECONY-IB, pp. 267-68; Staff-IB, pp. 282-283). Smart Grid Investment Grant projects would be treated in the same manner as

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[148] CECONY explained in detail how it intends to apply various aspects of the current electric, gas and steam rate plans subsequent to their respective three-year terms and Staff, with the exception of application of the earnings sharing mechanism, agrees (CECONY-IB, p. 267). No other party has taken a position on the subject. CECONY's approaches to the various aspects of the rate plans should be approved.

other capital projects (*i.e.*, based on estimated cost and plant in service date) and Smart Grid Demonstration Grant expenditures as a deferred cost with amortization over five-years, which has been the recovery period under the surcharge approach (CECONY-IB, pp. 267-268). Estimated deferred Smart Grid Demonstration Grant costs as of the beginning of the Rate Year (accrued from April 1, 2013 through December 31, 2013) would be amortized over three years at $1.551 million per year (CECONY-IB, p. 268; Staff-IB p. 283). Staff's August 30 revenue requirement calculations treat Smart Grid costs in base rates as described here. No other party has taken a position on the subject. The base rate recovery approach should be approved.

Staff calls for CECONY to file, approximately 60 days after the start of the Rate Year, a report reconciling Smart Grid revenues and costs from April 1, 2013 through December 31, 2013 (Staff-IB, p. 283). That reconciliation would be consistent with the surcharge approach continuing through December 31 but as CECONY explained (CECONY-IB, p. 268), the report is unnecessary because under the existing reporting and reconciliation schedule for Smart Grid costs CECONY must file such a report in March 2014 that will include the period specified by Staff.

H. Reconciliation Report

This item relates to Smart Grid and is addressed above.

I. Use of Corporate Name

J. Rate Adjustment Clause

K. Rate Reduction Options

CECONY and Staff agree on a three-year amortization period for regulatory deferrals (with limited exception to the three-year period) with Staff noting, but not recommending, that the Commission may adjust the final revenue requirements by adjusting regulatory deferral amortization periods or, in the event of rate reductions, create a new regulatory deferral (Staff-IB, pp. 286-287). CECONY acknowledges that the Recommended Decision could include such recommendations and the PSC may propose to take such actions but CECONY reserves its rights to respond, as appropriate, to any such recommendations or actions.

L. Site Investigation and Remediation ("SIR")

M. Management Audit

NYC proposes that the PSC conduct a more in-depth review of the Management Audit and the Company's compliance with the Management Audit (NYC-IB, p. 163). NYC's proposal, raised for the first time in its Initial Brief, is premised upon its assertion that the Audit recommendations relating to long range planning, audit report savings, and resource analysis, have not been satisfactorily addressed, thereby calling into question the veracity of the Company's assertions and the compliance monitoring performed by Staff. For the reasons explained below, NYC's assertions and allegations are unfounded and thereby do not warrant the action NYC recommends.

Long Range Planning - NYC alleges that the Company has failed to consider the impact of climate change in its electric long range plans, thereby demonstrating a lack of compliance with two Audit recommendations regarding planning processes and development of an electric long range plan. NYC's allegations of non-compliance fail on multiple grounds.

First, the Company's long range plans address climate change in multiple respects. Specifically, the record in this case demonstrates that the Company's capital planning process has long considered climate change in developing its infrastructure plans. For example, the Company's Electric Infrastructure and Operations Panel ("CE-EIOP") testified to the Company's work to limit the potential impact of weather conditions is reflected in various Company activities, for example, developing a coastal storm mitigation program, sectionalizing underground equipment, changing clearances for tree trimming, over the past several years (1383-1385, 1405-1406, 1439; Ex. 186, pp. 90-92). In addition, the Company's 2010 Electric Long Range Plan specifically speaks to Company efforts related to climate change in various respects (*see*, for example, discussions of existing capital programs regarding routine installation of submersible equipment in flood prone areas (p. 130); the Company's efforts to reduce the carbon intensity of the electricity delivered to its customers (pp. 62-64); and the Company's support for the City's Clean Heat initiative (pp. 38-53)). Interestingly, despite NYC's position in brief, NYC's attorney noted "I understand you did a lot historically, and I'm not disputing that …" (1439).

Second, the Commission should reject NYC's insinuation that the Company's long range plans are non-compliant because they do not address climate change in the manner and/or with the emphasis preferred by NYC. As indicated above, the Company was and continues to integrate climate change considerations into its long range plans in terms of infrastructure and other activities. Nothing in the Audit required the Company to specify climate change, major storm response or flooding as a separate element(s) of the long range plans. Moreover, NYC's criticisms of the long range plans demonstrate an inherent shortcoming and inconsistency in NYC's positions in these rate proceedings, where NYC argues form over substance in terms of criticizing the Company for its labeling as storm hardening certain projects that the Company has pursued in the past under the banner of reliability (*See*, for example, 1377-1384). Bottom line, it is the substance of the Company's efforts that are important, not how they are labeled (1378).

Third, the Company notes that the long range plans are designed as "living documents" that call for regular updates and checking the status of "signposts" to consider whether long range plan assumptions need to be revisited.[149] In fact, the 2012 Integrated Long Range Plan ("ILRP") is itself an update of the 2010 Electric Long Range Plan and the Company plans to issue an updated ILRP in the latter part of 2014. Climate change – both adaptation efforts and mitigation efforts – will be presented as an explicit consideration in order to avoid distractions by the type of unfounded criticism levied by NYC in this case. In that respect, it bears emphasis that NYC's criticism constitutes classic 20-20 hindsight. Since the issuance of the Management Audit, the Company has provided to the Commission, Staff and interested stakeholders, including NYC, periodic updates of the Company's implementation of the Management Audit, including the long range plans developed pursuant to the Audit, in writing and through in-person presentations. The Company held regular annual meetings to receive feedback from interested stakeholders. NYC was an active participant in those meetings. To the Company's recollection, at no time, and not until the onset of these rate proceedings, has NYC criticized the Company's long range plans, in particular, with respect to the manner in which climate change is addressed. That there is currently a heightened focus on major storms in the Northeast as an element of climate change analysis is neither surprising nor peculiar to Con Edison, as is evident from the new proceedings initiated in New Jersey focusing specifically on major storm response as a result of Sandy. Moreover, the Company's storm hardening plans in these rate proceedings (including actions taken by the Company in advance of the 2013 hurricane season) place the Company well ahead of all other New York State utilities in terms of specifically addressing storm hardening in their long range infrastructure plans.

Finally, for the reasons explained in the Storm Hardening section of this Reply Brief, the Commission should reject NYC's unfounded allegation that the Company did not comply with the Audit by ignoring its capital optimization and prioritization process in developing the Company's 2013 storm hardening plans (NYC-IB, p. 23, fn 10).

Audit Report Savings – NYC criticizes the Company's Management Audit Panel for characterizing "numerous savings" as directly attributable to the Audit (NYC-IB, p. 165). NYC argues that the PSC should exclude these savings from the analysis required of the Commission under Public

[149] The Company notes that NYC mischaracterizes a presentation to the Company's Board on major storms, stating that "the presentation discussed how the Company's response to major storms and hurricanes was perceived to be 'below expectations'" [emphasis added] (NYC-IB, p. 164). That is not correct. The presentation, which was made pursuant to the Company's Enterprise Risk Management process, addressed the risk that the Company's response to a major storm or hurricane damage to our infrastructure *may be perceived* to be below expectations. While the impacts of Superstorm Sandy, the most impactful weather event experienced by the Company in its history, has prompted multiple stakeholders, including the Company, to consider storm response, hardening and resiliency under a new light, the Board presentation evidences the Company's continuing evaluation of these circumstances and the Company's ongoing capital plans reflected the necessary balancing of multiple considerations based on then current and reasonably anticipated circumstances.

Service Law § 66(19). The import of NYC's argument is unclear and provides no basis for the Commission to revisit the Company's compliance with the Audit.

First, PSL § 66(19) requires the Commission to review the "corporation's compliance with the directions and recommendations made previously by the commission, as a result of the most recently completed management and operations audit." There is nothing in the statute that compels a utility to provide or the Commission to evaluate projected savings from an Audit.

Second, the Management Audit Panel testimony to which NYC refers (CE-MAP, pp. 41, 53) speaks to savings reflected in the long range plans developed pursuant to the Audit. The CE-MAP did not testify that all savings reflected in the long range plans are a direct result of the Audit. In fact, the Company acknowledges that various activities addressed by the Audit (and reflected in the long range plans) include efforts initiated by the Company in advance of the Audit and that may have been further enhanced as a result of the Audit and the development of the long range plans.

Third, NYC mischaracterizes the testimony of Staff witness Leak, regarding retirement of the Hudson Avenue boilers having no relationship to the Audit, in stating that "Staff acknowledged this fact, and any representation to the contrary should be ignored" (NYC-IB, p. 165). In fact, Mr. Leak states:

> Q. And isn't it true that there is no recommendations in the audit related to the closure of this facility?
> A. I think that's correct.
> Q. So wouldn't you agree that these savings should not be attributed to the audit?
> A. Not necessarily (964).

Based on the foregoing, how the Company, Staff, the Commission or any other party may choose to attribute savings associated with a specific Company action is not relevant to the Company's compliance with Management Audit recommendations or the discharge of the Commission's statutory obligation to review such compliance.

Resource Analysis – NYC alleges that the Company has not complied with an Audit recommendation calling for quarterly or semi-annual comprehensive resource analysis (NYC-IB, p. 165). In support of its allegation, NYC asserts that the model used by the Company to implement this recommendation (Virtual Enterprise Modeling model or "VEMO") "seemingly neglects to account for tracking the number of contractors used, which was the very purpose of this recommendation" (NYC-IB, pp. 165-66). NYC also asserts that testimony by several Company witnesses regarding their lack of awareness of this recommendation demonstrates that the Company is not performing this analysis (NYC-IB, p. 166). NYC is wrong.

First, the fact that certain Company witnesses were not aware of this specific Management Audit recommendation does not demonstrate that the Company is not implementing this recommendation. The witnesses who were unaware of this specific Audit recommendation were not responsible for its implementation. In contrast, the Company's Shared Services Panel was questioned on this issue and responded directly and specifically how the recommendation is implemented by the Company (1616-1618).[150]

Second, NYC is in error that the very purpose of this Audit recommendation is tracking the number of contractors used by the Company. Neither the text of the original recommendation nor the Management Audit conclusions that support the original recommendation mention the value or need to track the number of contractors used by the Company (*see* Con Edison Management Audit, pp. XII 50-53, Conclusions 3, 5, 9 and 11 and Recommendation 1). While an expected outcome of better resource analysis is more efficient use of contractors, the Audit did not require the contractor tracking asserted by NYC.

The Company continues to use VEMO on a semi-annual basis to provide insight to line organizations regarding anticipated labor needs and associated anticipated retirements and attrition such that the Company can make informed decisions regarding future resource needs (1616-1618). While the Company also continues to evaluate contractor costs in varying respects and for varying purposes, these efforts are part of the Company's ongoing efforts to provide services in the most cost-efficient manner and not to comply with an Audit recommendation.

For all of the foregoing reasons, NYC's recommendations regarding a more in-depth Commission review of the Audit should be rejected.

N. East River Repowering Project ("ERRP") Allocation

The 2010 Steam Rate Order required CECONY to submit a Compliance Filing to shift the above market fuel costs for the ERRP from electric to steam customers over a seven year period.[151] Con Edison submitted the required filing on December 31, 2012 ("ERRP Filing").[152] NYC made a motion to consolidate the issues associated with the allocation of the above market ERRP fuel costs into these rate proceedings, which was denied in a May 20, 2013 Order in Case 09-S-0974.[153] However, the May 20,

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[150] The Company's Electric Infrastructure and Operations Panel also testified that they were aware of this recommendation and part of the process (1471-1473).

[151] The Company was required to submit the allocation with the Company's next rate filing or, if there was no rate filing, nine months prior to the expiration of the 2010 Steam Rate Plan, which was December 31, 2012.

[152] The Company made a Supplemental Filing on March 15, 2013 at Staff's request.

[153] In denying the motion to consolidate, the Commission noted that an allocation was required to be in effect as of October 1, 2013 (*i.e.*, the end of the third rate year under the 2010 Steam Rate Order). Therefore, a decision on this issue could not be deferred until the Commission issued its decision in this proceeding, which will be beyond the October 1, 2013 date.

2013 Order (p. 12) recognized parties' rights to revisit, in these proceedings, a change to the ERRP fuel cost allocation.

NYC's Initial Brief (pp. 167-174) requests that the Commission revisit the ERRP fuel cost allocation issue and return to the incremental method for allocating ERRP fuel costs between electric and steam customers. NYC submitted testimony demonstrating the need to re-address this allocation issue (NYC-Gorman, pp. 39-46). The Company notes that the ERRP Filing, as well as numerous documents submitted throughout Case 09-S-0974 (and other cases), explained the reasons to continue the incremental methodology.[154] While CECONY does not adopt and/or endorse all of NYC's specific points and arguments, CECONY agrees that the Commission should revisit this issue and reinstitute the incremental method for allocating the ERRP above market fuel costs.

XIII. Conclusion

Based upon Con Edison's Initial and Reply Briefs, the Company respectfully requests approval of its electric, gas, and steam rate filings consistent with the positions taken and the update provided in these proceedings.

Dated: New York, New York
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Respectfully submitted,

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[154] The incremental methodology allocates costs based on a technical evaluation of the purpose of each piece of equipment (2010 Steam Rate Order, p. 83).