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Andrew J. Spano
County Executive

Office of the County Attorney

Charlene M. Indelicato
County Attorney

By: E-Mail & Fed Ex:
November 21, 2008

Hon. Jaclyn A. Brilling, Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Case No. 08-E-0539 -Proceeding on the Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. For Electric Service:

Dear Secretary Brilling:

Enclosed for filing in the above captioned proceeding are an original and five copies of the Initial Brief of the County of Westchester.

If you have any questions, or require further information, please do not hesitate to contact me at (914) 995-3143 or at smg4@westchestergov.com.

Respectfully submitted,

Stewart M. Glass

Stewart M. Glass
Senior Assistant County Attorney

SMG:me
Encls.

cc: Hon. Jaclyn Brilling by Fed Ex & E-mail
Gerald L. Lynch, Administrative Law Judge by Fed Ex & E-mail
Howard A. Jack, Administrative Law Judge by Fed Ex & E-mail
Marc Richter, Esq. by Fed Ex & E-mail
Active Parties by E-mail.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Case No. 08-E-0539 Proceeding on the Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. For Electric Service:

INITIAL POST-HEARING BRIEF OF THE COUNTY OF WESTCHESTER

Stewart M. Glass
Senior Assistant County Attorney
County of Westchester
148 Martine Avenue
White Plains, New York 10601

Telephone: (914) 995-3143
Telefax: (914) 995-2495
E-Mail: smg4@westchestergov.com

Dated: November 21, 2008
White Plains, New York

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Case No. 08-E-0539 Proceeding on the Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. For Electric Service:

INITIAL POST-HEARING BRIEF OF THE COUNTY OF WESTCHESTER.

I. PRELIMINARY STATEMENT

The County of Westchester ("County" or "Westchester") intervened in this rate case to represent the interest of the ratepayers of the County of Westchester. No other party in this proceeding claims to or has an interest in solely representing their interests. Several parties have very limited or specific interests such as those that represents generators or groups of large customers. Others have broad based responsibilities such as the Staff of the Commission or the Consumer Protection Board. The City of New York represents the largest group of customers but its interests are parochial and must be tempered by what is reasonable for all customers served by Con Edison.

The record in this proceeding has shown that the rate increase proposed by Con Edison is largely driven by its plans to invest in a massive construction program. The enormity of this program is startling given that the Company's load growth is modest at best, its reliability levels are superior to any other utility in the Country, its customer service record has improved greatly over the years, and no other crisis has arisen that could account for the extraordinary growth in plant investment. In its rush to spend billions of dollars to replace existing plant and expand beyond the needs for currently projected customer growth, the Company has literally destroyed the delicate balance between providing safe and adequate service and the legal requirement to charge rates that are just and reasonable. The County reviewed Con Edison's filing and made recommended modifications to the proposed revenue requirement and rate design. Con Edison is proposing a one year rate increase of over $830 million and it proposes further increases in the ensuing two years amounting to an additional $900 million. The first year rate increase alone, if granted, would result in an increase of over 11% in total electric bills. Since the cost of the energy supply is, for the most part, beyond the control of the Company, a more accurate description of the proposed rate increase is that it represents a 20% increase in delivery rates during year one and approximately a 42% increase in delivery rates over the proposed three year rate plan. This proposed three-year rate increase comes on top of the increase of approximately 16% in delivery rates authorized in the Company's last electric rate case (Case 07-E-0523). Should the Company's proposal be adopted in this case, delivery rates will increase by approximately 65% over a four year period. This is almost five times the actual rate of inflation over the last four years.[1] This level of increase, being so severely disproportionate compared to inflation levels will create an extraordinary burden on customers in the Company's service area and seriously upsets the balance between reliable service and reasonable rates.

It is important to concentrate on the delivery portion of the rate given the fact that the costs of electricity, the commodity, are changing independently from the costs of delivery. In fact, the volatility in the market cost of electricity only exacerbates the condition of ratepayers. For a customer in NYC, the cost of energy through the NY ISO

[1] Inflation Rate from Nov 2004 to October 2008 was 13.39% Source: InflationData.com

in July 2007 was less than 8 cents per kWh. In July 2008 it was over 14 cents per kWh – an increase of about 75%. The cost burden of electricity to Con Edison's customers is real and substantial.

It is the Commission's responsibility to place reasonable constraints on the delivery rate increases sought by the Company. In traditional rate cases, where a utility proposes delivery charge increases at or near the rate of inflation, the Commission usually accepts those utility planned budgetary capital and expenses that are proven to be prudent and in the public interest. In this case, the Company seems willing to burden its ratepayers by seeking authorization to go forward with a multi-billion dollar program limited only by the Company's ability to spend. The proper approach under these circumstances is for the Commission to provide a clear and strong signal to the Company that its penchant for spending capital is ill advised and contrary to public policy and that it must live within reasonable parameters as imposed by the regulators. Consequently, Westchester urges the Commission to act in the ratepayers' best interests by adopting the constraints and other ratepayer-oriented recommendations made herein.

In Con Edison's last rate case the County made similar arguments after noting that very little, if any, consideration was given by the Company to balancing the needs of customers for reliable service with their just as important need for reasonable rates. In that case Westchester proposed a series of mitigation measures to reduce the Company's proposed rate increase of over $1.2 billion. The Company appears to have heeded some of the County's concerns and has claimed to have implemented some mitigation measures in this case. Without mitigation the Company reports that its rate increase would have been approximately $1.1 billion, almost as large an increase as was rejected in the last rate case by the Commission. Nevertheless, additional mitigation measures are needed to help assure that rates are just and reasonable.

Another matter of concern is the amount of the rate increase that is being driven by events taking place solely within New York City the cost burden of which is being borne by customers in Westchester. For example, based on the Company's presentation of its revenue requirements as shown on AP-9, Schedule 4, the amount of money that has to be paid to the City in the rate year for property taxes is $954 million or almost 20% of the delivery charge.[2] This tax forecast represents a 50% increase above test year tax amounts and represents 35% of the total rate increase. It does not seem appropriate that rates to customers in the County should rise because taxes in New York City are soaring.

Another example familiar to the participants in this proceeding is the continued and unwarranted subsidy of Con Edison's Steam Department by its Electric Department. The most stalwart defender of this subsidy is the Steam Department's largest customer, New York City. Since Westchester pays a proportionate share of all Electric Department costs, it is burdened with paying a share of this subsidy, which share is estimated to be approximately $12 million per year. The Commission has indicated this subsidy is of concern and has ordered that this issue be studied further. This is just another example of the need for geographic equity as discussed later.

The County examined the Company's filing in detail and provided seven recommendations that, if adopted by the Commission, will continue to balance rates that are just and reasonable with the opportunity for shareholders to earn a fair rate of return

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[2] In fact, an additional $65 million increase in NYC property tax was projected to result if the New York City real estate tax rebate were eliminated. Mayor Bloomberg announced on November 20, 2008 that there will be no property tax rebates this year. This only further shifts the burden of NYC taxes on Westchester ratepayers.

on their investment. Overall, the County proposes a $297 million reduction in the Company's requested rate increase for the first year. This would reduce the requested increase for the first year from $830 million to $543 million. This reduction can be accomplished without harm to the Company, its ratepayers, or the reliability of the system, while preserving the economic vitality of the region, thereby providing safe and adequate service at just and reasonable rates.

The three year rate plan should be rejected. The County believes that the Company's ratepayers and the Company itself would be better served with a one year rate case in light of the current turbulent economic conditions. Developing and designing rate levels for more than one year is far better suited to a settlement process than a litigated case given the heightened uncertainties in forecasting beyond one year. As such, in each instance, the effect on the "rate year" refers to only the 12 month period ended March 31, 2010. The County's recommendations are as follows:

1) Limit the return on equity to 9.1% thereby reducing the Company's proposed rate increase by $107 million;
2) Impute a Productivity and O&M Performance Adjustment of $75 million. The Company's rates of return in each year of the last three year rate case (Case 04-E-0572) were above that allowed in the settlement agreement. Clearly, the Company has the ability to control its costs to a large degree and has done so to the benefit of its shareholders. The company's ratepayers should share in the Company's ability to improve its productivity and performance.
3) Remove negative net salvage from depreciation rates and implement the practice of expensing negative net salvage for the transmission and distribution accounts hereby saving ratepayers $70 million during the rate year;
4) Reduce the Company's proposed capital program to reflect a program more consistent with the need to balance ratepayer and shareholders interests This adjustment reduces rate year revenue requirement by $45 million; and
5) Reject as premature the Company's proposal to allocate an additional $15 million in delivery revenues to NYPA delivery service customers.
6) Allocate to all customers net congestion revenues including both congestion rents, and TCC auction proceeds. These represent offsets to the cost of the

transmission system. They should be allocated to all customers in proportion to the costs paid for the transmission system. This allocation must reflect the congestion costs paid by customers as well. The "surplus" (i.e., the congestion revenues minus congestion costs) should be allocated to all customers in proportion to their allocation of the overall costs of the system.

7) Geographic Equity requires that certain costs peculiar to New York City be paid by New York City ratepayers and not imposed on Westchester ratepayers.

In sum, these first six adjustments total $297 million and result in a rate increase of $543 million rather than the $830 million proposed by the Company. The level of rate increase proposed by the Company in the overall bill for the rate year – about 11.2% -- is nearly 4 times the projected inflation rate. In fact, it appears that the Country is now experiencing a period of disinflation and economic distress that will only be further compounded by such a large rate increase. If the Commission were to adopt the County's adjustment ratepayers would still face a 13 % increase in delivery rates or approximately 7.5% of the total bill. Accordingly, additional adjustments, as outlined by the Staff are still required.

IV. EXPENSES -- COMPANY LABOR

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

3. Westchester – Additional Imputation

The County reviewed the Company's rate year O&M expense levels. The purpose was not to find individual items of imprudence or to ascertain the limit of the Company's capability of actually spending at the forecast levels. Rather, it compared the total expense levels to the net earnings over the past several years with the earnings allowed by the Commission in previous rate cases. To the extent that the Company was able to earn in excess of what was allowed, it should attribute that over earnings to either more efficient management or productivity than forecast in those cases or an underestimate of forecast sales. An examination of past performance is a more reliable indicator of earnings than making a pure forecast.

For the most recent calendar years – 2005, 2006, and 2007 as shown on the following table

Year	Settlement Forecast ($ Million)				Actual ($ Million)		
	Revenues	O&M	Net		Revenues	O&M	Net
2005	$6,483	$4,439	$2,044		$7,002	$4,700	$2,302
2006	$6,520	$4,466	$2,054		$7,113	$4,667	$2,446
2007	$6,565	$4,516	$2,050		$7,503	$4,799	$2,704

For historic calendar year closest to the rate year ending on March 31st following the year shown)

As shown above, Con Edison's actual net income exceeded its forecast in the rate case for all three years. This enabled the Company to over earn on the 10.3% return on equity that was implicit in the settlement of Case 04-E-0572. Specifically, the Company earned an 11.4% return on equity for the rate year ended March 31, 2006; a 10.76% return on equity for the rate year ended March 31, 2007 and a 10.96% return on equity for the rate year ended March 31, 2008. (Exhibit 231). Based on the Company's equity level of $8.1 billion as of December 31, 2007, including tax effects, this over earning equates to $100 million per year in each year of the recently completed three year rate plan.

While there are many factors that go into why a Company over earns when compared to a forecast including productivity improvements and efficiency gains by the utility and underforcasting of revenues, the Commission should take into account the

Company's ability to achieve greater earnings through better overall performance. While the Commission does try to be as efficient as possible when reviewing forecasts, models and input data, this review is not perfect. This seems to be especially true for Con Edison who earned so lavishly following the last three year rate case. Traditionally, the Commission uses a 1% productivity imputation as a means to reflect additional efficiency gains that may not have been captured in the normal regulatory review process. This 1% productivity imputation has been generally only applied to labor but it is intended to encompass all aspects of productivity and efficiency improvements. Given that the Company's labor costs are forecast to be $570 million in the rate year a 1% productivity imputation would equate to only $5.7 million. This amount pales in comparison to the over earning of $100 million per year that the Company was able to actually achieve during the above reference three year period. Clearly a much larger adjustment is warranted to capture for ratepayers the ability of the Company to exceed its forecast net earning. The goal is not to remove the incentive for the Company to be aggressive in seeking cost reductions or revenue enhancements. Therefore, a sharing between the stockholders and the ratepayers of this overearning potential is appropriate.

To address this overearning, the County proposed a Productivity and O&M Performance Adjustment (PPA) to permit ratepayers to share in cost savings that the Company has been able to achieve over the last three years and likely to be achieved during the rate year in this case. First, the PPA imputation should be applied against all levels of non-fuel operation and maintenance expense. The non-fuel O&M level forecast for the rate year by the Company in this case is $1.7 billion. Second, the PPA imputation should approach but not exceed that achieved by the Company in the past. As mentioned earlier, there should be some incentive for the utility to find efficiency gains. The Commission has used a wide variety of sharing mechanisms for various expense factors in the past. For example, incentives for savings in fuel were shared on an 80% ratepayer and 20% shareholder basis for many utilities when these mechanisms were in place to augment a utility's Fuel Adjustment Clause. In Case 04-E-0572 a 75/25 ratepayer/shareholder sharing level for earnings above 13% was adopted by the Commission. A similar 75/25 sharing provides a reasonable balance between the competing interest of stockholder and ratepayer given the consistency with which the Company was able to over earn in past years and it should be used here. Applying the sharing mechanism to the $100 million overearning level results in a $75 million PPA adjustment to O&M expenses for purposes of setting rates in this case.

The Company has claimed in its rebuttal testimony that the past over earnings it achieved was simply a matter of the retail sales forecast being understated and that new revenue decoupling mechanisms ("RDM") would eliminate the observed over earning behavior in the future (Accounting Panel Rebuttal Page 109). While the Company provided no evidence to support this claim, if it is assumed to be true then the County's adjustment has even more validity as it shows that the Company's meager sales growth is seriously understated.

VII. DEPRECIATION

A. Net Salvage/PAYGO ($70.0 Million)

The Company has presented a depreciation mortality study and offered traditional adjustments to plant service lives and net salvage values. It also calculated a depreciation reserve deficiency of $502 million for the rate year.

As part of its mitigation efforts in this case the Company has foregone recovery of its $502 million of under recovered depreciation reserve. Generally, the existence of deficiencies in depreciation reserves means that existing depreciation rates have been too low. Our review of the Company's filing shows that negative net salvage is the driving force behind the Company's large depreciation reserve deficiency.

Net Salvage is the gross salvage value of equipment when retired less the cost of removing and/or retiring it. Net salvage becomes negative when the expected cost of removal exceeds the expected salvage value of equipment being retired. In the case of Con Edison, with its large underground network, the cost of removing underground equipment is very large relative to any salvage value obtained. For example, between 1983 and 2007, Con Edison retired $64 million of underground services. The net salvage cost to the utility associated with these retirements was $196 million or three (3) times the original cost of the services. Similarly, for Con Edison's largest Transmission & Distribution Account 367 (Underground Conductors), the utility has experienced negative net salvage values of over 135% of original cost for the last ten years.

The way the Company recovers negative net salvage is to add it to the depreciation rate and recover the money over the life of the new equipment. The thinking behind this approach is that the customers who are using the equipment and benefiting from the service it provides should be the customers who pay for its eventual removal. Since negative net salvage is an integral part of the depreciation rate, it is also included in the calculation of the theoretical reserve.

This method of accumulating depreciation funds has been commonly accepted by the Commission in prior rate cases. Generally, when rate increases are modest compared to inflation, the Commission has not sought out alternative depreciation methods. In this case, the rate increase being sought is substantial and combined with the last rate increase and the Company's proposal for the next two years, ratepayers could see an increase in delivery charges of 65% over a four year period or almost five times the rate of inflation over the last four years. This level of increase is stunning and places a heavy burden on the company's ratepayers. The Company's approach to depreciation is no longer tenable and the Commission should consider alternative methods of collecting depreciation funds that help to mitigate these huge rate increases.

An alternative approach would benefit ratepayers now. For example, had there been no negative salvage in the case of Account 367 (Underground Conductors) the depreciation expense for this account would be reduced from $41.7 million to $33.3 million for a savings of $8.4 million. The theoretical reserve would be adjusted to $374 million thereby resulting in an excess reserve of $120 million. If this excess were amortized over ten (10) years, the revenue requirement would be reduced by another $12 million. Thus, for this one account, depreciation expense would be reduced by $20.4 million. Net salvage would be expensed currently based on actual experience for this type of plant.

Given the extraordinary rate increase that the utility is requesting in this case, the Commission should consider this alternative in order to aggressively reduce costs. The Commission should therefore adopt this alternative; proven method of funding negative net salvage by expensing current net salvage costs. Pennsylvania and New Jersey expense negative net salvage. Con Edison's sister utility, Orange & Rockland, has operating divisions in these states and should be quite familiar with the mechanics and accounting for this approach. In addition, Con Edison's Gas Division has used this approach in the past. This approach would involve the removal of the net salvage values from both the deprecation expense and depreciation reserve calculations. In its place, negative net salvage would be treated as an amortization and expensed currently. The amortization amount set in rates would be the average amount spent on negative net salvage over the last ten years. Any differences between actual spending and the amortization amount would be tracked with any differences added to the amortization amount the next time rates are re-set. In this way, the Company's stockholders are made whole for the Company's depreciation expenses and the ratepayer receives the benefit of an immediate cost savings. This approach also makes the theoretical depreciation reserve on Transmission and Distribution accounts larger than the actual reserve thus showing a surplus. This surplus should be amortized over ten years. Applying this methodology to all T&D accounts, including the amortization of the reserve surplus and expensing negative net salvage, will decrease rate year revenue requirement by $70 million. (Testimony of Radigan & Liberty, Page 8, 18)

In rebuttal testimony, the Company claimed it found numerous shortcomings in the PayGo methodology that New York City Witness Arnett is proposing, which is similar to the one we are proposing in this case. No such failing were claimed to have been found by the Company in the County proposal. Rather Mr. Hutcheson lists how many of the disagreements that he has with Mr. Arnett's proposal are present in the County proposal (Hutchenson Rebuttal pages 54-56). To be sure Mr. Hutchenson does list a series of issues that he has with both proposals that are generic in nature to <u>any</u> change in the Company's current depreciation methodology (Hutchenson Rebuttal pages

30-31). However, the Company's proposal to defer recovery of the calculated deficiency in depreciation reserve as a rate mitigation measure suffers from the same list of issues Mr. Hutcheson cites in his testimony, including issue of intergenerational equity.

An extraordinary rate increase must be addressed and the Commission should embrace appropriate measures, as proposed above. The County's proposal to expense negative net salvage, while not innovative, is a solid way to help reduce the proposed rate increase to more moderate levels without causing harm to the company's stockholders.

VII. COST OF CAPITAL

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

4. Westchester

In the current case, the Company is asking for a 10.0% return on equity, while the Staff indicates that its formulaic approach should result in an ROE of 9.5%. This is substantially in excess of Commission determinations in other rate cases. In Case 07-E-0949 involving Orange & Rockland, Con Edison's sister electric utility, the Commission granted a return on equity of 9.4% (which included a 0.3% three-year stay out premium (Order page 42). In the most recently concluded case for Con Edison's Electric Division, Case 07-E-0523, the return on equity authorized was 9.1%, consistent with the Orange & Rockland decision. It is also instructive to look at recent cases involving other utilities decided by the Commission. In the recently completed KeySpan/National Grid merger, which involves a five year rate plan, the utilities agreed to a return on equity for KeySpan's Gas Divisions (KeySpan's Energy Delivery of New York Division and KeySpan Energy Delivery of Long Island Division) of 9.7% and 9.6% respectively. Naturally this return on equity entailed a significant stay out premium for the long length of the rate plan. Based on this recent history, for both Con Edison and other major utilities in New York, a more consistent rate of return on equity of 9.1% is advocated by the County when developing a total revenue requirement in this case.

Con Edison argues that the Commission is out of step with the position taken in other states and predicts economic ruination for Con Edison if such a rate of return is adopted. The Company has made this claim before, in fact, as recently as the last Con Edison Electric Rate Case (Case 07-E-0523). In fact, the same witness, Mr. Hoglund, predicted dire consequences for Con Edison if the Commission did not approve all of Con Edison's requested rate increases, including an ROE of 11.5% He stated that if Con Edison received a lower ROE than requested it would lead to a major downgrade of the Company's credit rating and substantial additional costs to the Company and ratepayers. However, he now admits that the downgrade that resulted from the last rate case "might have modestly increased [Con Edison's] financing costs" (Hoglund Supplemental Testimony, P. 5) and in fact it had only a very modest impact.

The Commission has no choice but to take judicial note of the current economic climate that is facing our area, state, country and in fact the world. The Company claims that the present state of the economy requires it to receive a higher ROE. However, it fails to take into account in this case the impact its actions will have in this economic climate on the ratepayers; the businesses that are attempting to survive in this economy and the individual ratepayers. Accordingly, the Commission must be cautious before imposing any additional costs that would further injure our economy. In fact, the Company recently acknowledged in another case that increased costs should be considered before action is taken to impose additional costs on ratepayers. "This significant increased cost is being considered in the midst of a momentous economic crisis, the effects of which are yet to be determined." (Case 03-E-0188, Comments of Con Edison, p. 5, November 17, 2008)

Con Edison makes it appear that it is the only entity that is suffering in the current economy. However, in fact, Con Edison is weathering this storm comparatively better than most other entities. It has done better over the last year than the Standard & Poor Index, better than the NASDAQ (National Association of Securities Dealers Automated Quotations) and the Dow (Dow Jones Indexes). (Exhibits 392, 393, 394) Some analysts are recommending that in this time of uncertainty that electric utilities and Con Edison in particular, would be good investments in these difficult times. In fact, Con Edison was recommended as one of the highest yielding electric utility stocks. (Exhibit 391) (See also Exhibit 433).

The Company is further insulated from the economic vagaries, including reduced electric demand, by the adoption of the RDM. Accordingly, the Company's risk has decreased substantially. This decreased risk should be reflected in a lower ROE.

Con Edison states that a 100 basis point differential in return on equity results in a change of revenue requirement of $119 million. As such, the additional 90 basis point requested by the Company results in an additional rate year revenue requirement of $107 million.

IX. RATE BASE

A. Lower Allowances for Infrastructure ($24.5 Million)

1. Transmission & Distribution

The growth in the Company's rate base from the last case is largely attributed to additions to T&D plant. While net T&D plant additions increased about $700 million per year over the last four years in the current case, the Company has proposed to increase net T&D plant $1.37 billion per year over the three rate years – nearly twice the spending level of the recent past.

With a goal of limiting the amount spent to balance the gain in reliability with the potential increase in rates, in the last Electric Rate case the County evaluated the overall growth in net T&D plant over the recent past to determine a reasonable level for that element of rate year rate base. This analysis was to propose a rate base growth amount that was more consistent with recent history in order to help contain what would otherwise be a devastating rate increase to the Company's ratepayers. The County's proposal was meant to be adopted without affecting the Company's high level of reliability and satisfactory customer service.

Like the last rate case, the Company has again proposed an enormous construction program that, when coupled with many other elements in its filing, amounts to a burdensome rate increase for its customers. While the Company has claimed to have "mitigated" the increase by cutting its construction program, there is little evidence that those "cuts" were made solely to reduce rate impacts (as opposed to a reaction to the current economic slowdown that would naturally affect construction spending) or that they were sufficient to provide a better balance between supplying adequate (not perfect) service with having reasonable rate levels. In order to maintain a proper balance between spending levels and rate levels, it is necessary to reduce spending and that includes the capital program, accordingly the capital construction program be reduced by $273 million out of a total program of $1.756 billion or 15.5%.

A review of each of the Major Construction Programs: substations, transmission, electric operations, and systems operations (Exhibit 232) and the priority that the Company assigned to each of the specific projects to determine a reasonable way to reduce the capital program. All projects denoted as high priority and most of those labeled as medium priority were retained within a reduced budget. Eliminating these lower priority projects does not mean that they should necessarily be eliminated from the capital program either current or future. Rather, the Commission should establish a lower budgetary target for capital construction to help moderate an extraordinarily high rate increase while still leaving the Company with the flexibility to reorder all of its projects to fit within the new budgetary constraint.

Each program should be adjusted as follows:

Program 2009	Budgeted Amount $(000)	Adjustment $(000)	Percentage
Substations	535,715	84,227	15.7%
Transmission	207,194	18,550	8.9%
Distribution	996.038	161,676	16.2%
System Operations	16,810	8,405	50.0%
TOTAL	1,755,757	272,903	15.5%

A 15.5% adjustment to the capital program starting in 2009 would result in an adjustment to rate base for the 12 months ended 3/31/2010 of $222 million. Applying a revenue requirement factor of 20% (including depreciation and O&M expenses) to this amount results in an adjustment to the Company's revenue requirement of approximately $45 million.

The Commission has the authority, and in this case the obligation, to adopt measures that would bring any rate increase to more reasonable levels. In the Company's last rate case, the Commission made an adjustment to the capital program to reflect an historic inability of the Company to achieve the spending levels it proposed. The Company does not have sufficient motivation to give serious consideration to the rate impact of its programs of expansion. In fact, just the reverse is true, the more capital the Company has invested, the more it earns. In fact, the Company in its Report to the Financial Community stated that one of the ways to grow revenues is by placing additional infrastructure into the ground. The Company therefore has little incentive to keep its capital spending under control or to balance the need for reliable service with just and reasonable rates. Commission policy and the law do not require perfect reliability, only that it be "adequate." Reducing the construction budget by about 15% will still result in reliability that will be adequate but will benefit ratepayers by reducing the required rate increase to a more modest level.

X. REVENUE ALLOCATION/RATE DESIGN

A. 2005 ECOS, Revenue Allocation and Tolerance Bands

Based on a review of the record in this case and the Commission's Opinion in the last case, it is obvious that no re-allocation of revenues amongst service classes should be made at this time. There are several reasons for this which individually and collectively dictate that any additional reallocation await the results of the ongoing 2007 cost of service study.

First and foremost there is no directive from the Commission that any alleged deficiency be eliminated in this case. As noted by the Commission in the last case:

> We find that the judges' recommendation to implement only one-half the indicated NYPA deficiency at this time is justified by the amount of rate increase all customers will experience and the need to avoid abrupt rate changes. Gradualism is warranted here.[3]

The year 2005 was the year from which costs and load data were obtained as inputs to the last cost of service study used in the last electric rate case and introduced by the Company in this case as well. In the current case, the Commission is setting rates for the rate year ending March 31, 2010 – a period of five years since the last study and a period during which the Company has engaged in an enormous construction program.

The 2005 study is still being used by the Company in an attempt to justify another increase in revenue allocation to NYPA. There is no new evidence to justify any further shifting of costs to NYPA customers.

If the Commission wanted to reallocate revenues again in this case it had ample opportunity in its last rate order to indicate such a procedure because NYPA asked the Commission to address the matter. The Commission ruled without equivocation on the issue. "As to NYPA's request that we address cost of service study matters for the period beyond the rate year, it is not proper to do so in this case. Our ratemaking actions pertain directly to the upcoming rate year and without prejudice to subsequent rate periods.[4]" The Commission made no mention of any phase-in of a perceived larger revenue shift. It is clear from its Order that the Commission dispensed with the revenue re-allocation

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[3] Case 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, Order Establishing Rates for Electric Service, issued and effective March 25, 2008, page 134)

[4] Ibid.

issue in that case and it would have to evaluate new evidence such as another cost study to determine if any further allocation adjustments should be made.

Second, since 2005, Con Edison has added over $3.0 billion in non-production plant additions. The Company forecasts more than $3.0 billion more in non-production plant additions for 2008 and 2009. Thus, in the short time span of four years the Company will have an increase in non-production plant of $6 billion or 40%. The majority of these plant additions are for underground distribution plant. According to the 2005 Con Edison cost of service study, NYPA's customers were only responsible for 8.9% of such underground facilities. Since NYPA's customers represent 10% of total T&D revenues, an across the board increase will likely result in NYPA paying more than its fair share of the increase in plant and conversely the rest of Con Edison's customers will pay less. All other things being equal, this addition to plant will result in an increase in the rate of return provided by NYPA customers.

Third, the County of Westchester is a NYPA customer and Con Edison is responsible for delivery of that electricity and the reading of the meters serving County facilities. It is uncontroverted that Con Edison has been estimating approximately 30% of the meters serving County facilities. It is believed this is not an isolated problem affecting just the County, but a substantial proportion of NYPA customers, including those of other municipalities in Westchester and NYC. This estimating of bills has been going on for quite some time and at least as far back as the early 2000s, which includes the period covered by the 2005 cost of service study. It is unclear what impact or bias the use of estimated bills has had on the cost of service study but it definitely had some affect, enough to raise serious questions about the validity of that study. If the estimation process overstates the bill or billing determinants then NYPA's customers will be allocated an inordinate share of costs making it appear that NYPA's customers are not providing their fair share of revenues. It appears that the number of estimated meter readings of County facilities has been dramatically reduced. Therefore, the upcoming 2007 Cost of Service study may provide cost allocations factors that are more accurate than the 2005 study. Consequently, for the immediate future, any revenue increase should be applied proportionately between Con Edison's and NYPA's customers.

B. TCC Treatment vis-à-vis NYPA

1. Revenue Allocation Treatment Resulting From Change in Imputed TCC Revenues

The Company's Accounting Panel explains in their testimony that the revenue requirement assumes $150 million in projected auction proceeds from the sale of Transmission Congestion Contracts (TCCs)[5]. This value reflects a credit to the revenue requirement with any difference between the forecasted amounts and actual proceeds flowed through the MAC. This treatment results in an unfair allocation of revenue requirement to NYPA customers.

In Case 07-E-0523 the Commission specifically excluded NYPA participation in TCC auction proceeds. In that case the Commission reversed the recommendation of the Administrative Law Judges and accepted a Con Edison argument that the transmission system used to serve NYPA is "not related to" the transmission system used to serve Con Edison Native Load customers. Further, the Commission found that since NYPA was compensated for its congestion costs any further participation in TCC auction proceeds

[5] A TCC represents the right to collect, or the obligation to pay, the Day-Ahead Market congestion rents associated with 1 MW of transmission between a specified Point of Injection and a specified Point of Withdrawal.

would be unfair to Native Load Customers. This issue was not adjudicated during the proceeding but was rather brought up in briefs and there was no opportunity to engage in discovery, develop testimony, or cross examine witnesses. In this case no firm evidence was presented by the Company to justify its position to deny NYPA and its customers their proper share of TCC revenues.

When the NYISO was formed, Con Edison was granted a set of TCCs that were thought to be sufficient to hedge the congestion costs of its Native Load customers. NYPA was also given a set of TCCs when the ISO was formed. Per an agreement between NYPA and Con Edison that was signed in 2000, NYPA assigned its TCCs to Con Edison. Per the terms of the 2000 Agreement Con Edison reimburses NYPA for its congestion costs. Prior to this most recent decision, NYPA received a share of the first $60 million in TCC revenues. The share was proportional -- i.e. NYPA's load in proportion to the total system load. The agreement is silent on the ratemaking treatment of the surplus Con Edison retains.

It is unrefuted that Con Edison's bulk transmission system is itself integrated and operated as a single unit and this transmission system is itself integrated within the NY ISO. If the "NYPA system" was separate and distinct, it would have its own Open Access Transmission Tariff ("OATT") rate on file with the Federal Energy Regulatory Commission and the appropriate cost allocation would be a direct assignment of the costs of that system, rather than an allocation of a share of the costs of the total system. The fact is that Con Edison has one OATT rate that it charges for use of its whole integrated transmission system. As the system is integrated NYPA should be permitted to share in any surplus auction proceeds (i.e. auction proceeds that exceed Native Load congestion costs) and any surplus congestion rents (i.e. congestion rents from NYPA transferred TCCs that exceed NYPA's congestion costs). In fact, NYPA customers are just asking to be treated like any other non Con Edison customers that use the transmission system. ESCOs receive TCC credits. These credits are applied to all delivery charges whether the customer's energy is supplied by Con Edison or an ESCO. Accordingly, the Commission should adopt the recommendations of NYPA on this issue.

G. **Geography-Based Delivery Rates**

Westchester believes that it is time to study whether Geographic Equity should be applied to certain costs recovered from ratepayers by the Company. The concept of Geographic Equity is not a new concept. "In the EEPS proceeding, the Administrative Law Judges stated that one of the 'outstanding policy issues' for which they will issue a briefing schedule is 'Geographic Equity." (Comments of Consolidated Edison Company of New York and Orange & Rockland Utilities, page 6, Nov. 17, 2008) In fact, both Con Edison and New York City are strong proponents of geographic equity as expressed in their recent filings Regarding a Retail Renewable Portfolio Standards. As stated by the Company: "New York City parties have raised the issue of disparity between SBC [system benefits charge], RPS and potentially EEPS collections from New York City ratepayers and corresponding benefits." (Ibid. page 6). In arguing for separate RPS criteria aimed specifically to benefit New York City, the City advanced a series of arguments for Geographic Equity.

In order to advance their cause that off-shore windmills should be built to serve the City (Comments by the City of New York, p. 10) along with other "City specific" projects under the control of the City, they argue that "New York City-based entities, including the City itself and Con Edison as the City's only electric utility, should properly have a prominent and productive role in procurement of RPS resources in the City." "The mechanism to do this could, for example, take the form of a City-specific tier or target" (Comments by the City of New York, p. 10) The City goes to great pains to point out the percentage they contribute to fund the RPS and therefore argue they should make sure that they receive a fair proportion of those projects and should have a say in which of those projects are built in and to serve New York City.

Unfortunately, the City does not express a similar view as it relates to the County when projects are being built specifically to serve New York City. In addition to the East River Repowering Project ("ERRP") and the proposed off-shore windmills, the City wants Westchester to further fund the Steam System under the guise of the need for a joint steam-electric facility at Hudson Avenue. The Company had already studied the issue and concluded that Hudson Avenue should be rebuilt with a steam only facility. However, after the City's success with ERRP, it now is attempting to have the Company build a similar facility, no matter what the cost, so that the Electric System can further subsidy the cost of steam production. In addition, with possibly the same results, the City is also advocating for a joint steam-electric system to serve Hudson Yards.

Westchester is not arguing that every dollar should or will be applied equitably but certain actions/activities and unique facilities designed to serve one area of the service territory should be paid by that service territory and when certain costs, such as taxes, become so disproportionate as to result in the ratepayers of one section of the service territory subsidizing the taxpayers in another section, that must be addressed.

As noted above, the tax burden imposed by New York City is disproportionately higher than that imposed by the County. In addition, the Steam System is unique to New York City and does not serve any portion of Westchester. Accordingly, the costs of ERRP and any similarly proposed facility should be allocated to the City. And a monumental project, such as a generation facility as proposed by LIPA and New York City to serve Long Island and New York City should be paid for by those who directly benefit. Arguments can always be made that any improvement or reinforcement to a system benefits the system as a whole, but no one is proposing that Orange & Rockland pay for the benefits of these "system enhancements" nor are there arguments put forth that utilities in Connecticut or New Jersey, including Con Edison affiliates, should help absorb those costs.

Even the most casual review of the rate case clearly demonstrates that a substantial portion of the proposed increase in delivery rates is being driven by the policies of New York City. There is no reason to believe that this will change, and in fact, New York City has clearly indicated that it wants additional projects undertaken for its sole benefit. As discussed above, the Company's presentation of revenue requirement (Exhibit 9, Schedule 4) clearly shows that the amount of money that the Company projects it will have to pay the City in the rate year for property taxes is $954 million, which could increase due to the recent cancellation by the City of its real estate rebate.

For years the County has been fighting against the unwarranted subsidy of the Steam Department by the Electric Department. The most stalwart defender of this subsidy is the Steam Department's largest customer, New York City. In the most recently completed Steam rate case the idea that the Con Edison Steam Department should build an electric/steam cogeneration facility at Hudson Avenue was advanced by the City even though the utility had already studied and rejected the idea as uneconomic. After testimony was filed in this rate case, the idea that Con Edison would build wind turbines in the middle of the ocean was advanced by the City[6] [7]. Neither the County nor its residents ever voted for additional subsidization of the steam system, massively expensive wind turbines to serve the City or Mayor Bloomberg. There is no reason why the City has unilateral rights in dictating electric pricing and policy for this utility and ultimately ratepayers located in Westchester. It is for this reason that the County argues for consideration of geographic equity.

CONCLUSION

For the above stated reasons, Consolidated Edison's requested rate increase should be reduced for the first year from $830 million to $543 million; in light of current economic conditions the Commission should only consider a one year rate case, and the Commission should consider the issue of Geographic Equity in the Consolidated Edison service territory.

Respectfully submitted,

Stewart M. Glass
Senior Assistant County Attorney
County of Westchester
148 Martine Avenue
White Plains, New York 10601
Telephone: (914) 995-3143
Telefax: (914) 995-2495
E-Mail: smg4@westchestergov.com

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[6]http://www.nytimes.com/2008/08/20/nyregion/20windmill.html?_r=1&scp=1&sq=bloomberg%20wind%20turbine&st=cse&oref=slogin

[7] http://www.nytimes.com/2008/09/24/nyregion/24wind.html

cc: Hon. Jaclyn Brilling by Fed Ex & E-mail
Gerald L. Lynch, Administrative Law Judge by Fed Ex & E-mail
Howard A. Jack, Administrative Law Judge by Fed Ex & E-mail
Marc Richter, Esq. by Fed Ex & E-mail
Active Parties by E-mail.