STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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January 27, 2009

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

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

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

Dear Secretary Brilling:

Enclosed please find for filing in the above-captioned cases, the original and five copies of the Brief on Exceptions of the Department of Public Service Staff (Staff). Administrative Law Judges Gerald L. Lynch and Howard Jack, as well as the parties on the service list were served electronically with copies of Staff's Brief on Exceptions. Hard copies have also been served on the Administrative Law Judges and mailed to the parties.

Sincerely yours,

Steven J. Kramer
Assistant Counsel

David R. Van Ort
Assistant Counsel

Enc.

cc: ALJ Gerald L. Lynch
ALJ Howard Jack
Active Parties

STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

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STAFF BRIEF ON EXCEPTIONS

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DATED: January 27, 2009

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STATEMENT OF THE CASE

On January 7, 2009, a Recommended Decision (R.D.) of Administrative Law Judges (ALJs) Gerald L. Lynch and Howard A. Jack, was issued addressing most contested matters in the above-referenced cases. As indicated in the R.D. (Appendix I, p. 3), the evidentiary record in these cases adduced at the October 15-24, 2008 hearings is comprehensive and extensive, comprising approximately 5,000 pages of transcript and over 460 exhibits. Consistent with the briefing outline requested by the ALJs, the active parties[1] filed post-hearing briefs on principal contested issues and those issues not in dispute.

In accordance with the Commission's Rules of Procedure, and particularly 16 NYCRR §4.10, the Commission's Secretary issued a Notice of Schedule for Filing

[1] The parties who participated in the hearings and/or filed briefs included the: Consolidated Edison Company of New York, Inc. (Con Edison or Company); Department of Public Service Staff (Staff); Consumer Protection Board (CPB); New York Power Authority (NYPA); City of New York (NYC); Metropolitan Transportation Authority (MTA); Port Authority of New York and New Jersey; Consumer Power Advocates (CPA); New York Energy Consumers Council (NYECC); Pace Energy Climate Center (Pace); Retail Energy Supply Association (RESA); Small Customer Marketer Coalition (SCMC); and Joint Supporters (JS).

Exceptions that provided for briefs on exception to be submitted on January 27, 2009, and briefs opposing exceptions on February 11, 2009.

I. SUMMARY OF STAFF'S POSITION

The R.D. issued in this case recommends that Con Edison be granted a $632.447 million rate increase (R.D., p. 331, XII.1.). This equates to approximately a 17% increase on transmission and delivery rates and 6% on total bill. Overall, the R.D. demonstrates the ALJs' goal of providing the Company with as much of the requested revenue increase as possible. In fact, the R.D. noted that part of the ALJs' strategy was to:

> [m]inimize the Company's downside earnings risk in light of the poor economy, by providing for reasonable allowances on all disputed issues and incremental full reconciliation of non-income taxes and all debts (R.D., p. 331, XII.2.).

The strategy was asserted to be further geared toward ensuring reliability and service and Company recovery of costs for capital investments made (R.D., p. 331, XII.3.) and, balancing:

> [t]he more limited possibility of [Con Edison's] upside earnings potential going forward, the Company's capital needs, and the significantly higher debt costs that would result from a downgrading below S&P's "A-", and employ a productivity adjustment of only 1% as well as an allowed return on equity of 10%, a 50%/50% equity earnings sharing above a trigger of 10.5%, and an equity earnings cap of 11.0% (R.D., p. 331, XII.4).

Unfortunately, in an effort to provide Con Edison with the specific level of rate allowances recommended, the ALJs:

- ignored longstanding Commission rate setting practice in determining the return on equity (ROE) and rejecting adjustments based on historic expenditures;
- disregarded existing Commission policy on advertising;

- recommended allowances despite the lack of supporting record evidence (General Equipment);[2]
- failed to account for Company admissions of known program changes ($100 million reduction to capital expenditure budget);
- relied on information presumably gathered from somewhere outside the record (to justify adoption of the Company's recommended insurance escalation rate);
- mischaracterized and/or unfairly discounted Staff testimony and arguments in support of specific adjustments (Interference Expense, Emergency Management);
- recommended new reconciliation provisions that have not historically been allowed by the Commission in one year rate cases (Property Tax Expense Reconciliation); and
- recommendations reflect internal inconsistencies (interpretation of the 1977 Policy Statement on Test Periods).[3]

The effect of these R.D. recommendations is to provide Con Edison with a return on equity that is much higher than appropriate, particularly in light of declining risk resulting from increasing reconciliations and a level of rate relief that is unjustified and unreasonable; and, shifts the burden of proof on historic expenditure adjustments[4] from the Company to the parties advocating continuation of Commission policies and past practice.

Staff notes that the recommended rate allowances are particularly troubling in

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[2] The ALJs recommended that Con Edison receive almost 100% of the allowance requested for General Equipment in direct conflict with their ruling striking the Company's testimony.

[3] Case 26821, Statement of Policy on Test Periods in Major Rate Proceedings (issued November 23, 1977), 17 NY PSC 25-R (Statement of Policy on Test Periods).

[4] Evidence of the shift in the burden of proof can be found implicitly in the discussion of historic expenditure adjustments, cost of capital, and, is expressly memorialized on page 312 of the R.D. (fn. 475).

light of the current economy[5] and recent disclosure of criminal charges against Con Edison employees related to contracts that the Company entered into in years past (see, section: "Pending Criminal Charges and Other Matters"). This disclosure calls into question the integrity of the Company and its financial rate case presentation and representations, and the rate case projections of Staff and the other parties that were determined in reliance on Company's historical expenditures and projections.

Staff respectfully requests that the R.D. recommendations, as discussed below, be rejected.[6] Moreover, Staff recommends that the Commission consider limiting the rate increase to reflect an austerity budget, meaning that the Commission should deny funding for discretionary programs and/or initiatives that could be deferred without adversely impacting the Company's ability to provide safe and adequate service. Finally, any such rate allowance be recovered through the rate adjustment clause (RAC) subject to refund.

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5 The potential effects of the current economic situation cannot be considered from simply the Company's position, as the R.D. seems to. The Company's program, rate allowances and rate request indicate that Con Edison is not reacting to the current economic recession as would a prudent business. The non-utility business world is focused on doing more with less. However, as noted previously,

> Con Edison is not engaging in the fiscal 'belt tightening' that should be expected of businesses, and they are not paring down discretionary hiring and programs (Staff Reply Brief (RB), pp. 2-3).

Staff, therefore, continues to recommend that all such program requests (for example: State Regulatory Affairs Department, emergency child and elder care) in this case be denied by the Commission.

6 The sections in this brief correspond, to the extent possible, to the enumerated sections of the R.D.

II. SALES REVENUES

A. Company's Sales Forecast Update

The R.D. correctly recommends adopting Staff's Demand Side Management (DSM) adjustment, but it incorrectly adopts the Company's revised sales forecast, which recognizes only one of the four components Staff found to be deficient in the Company's original filed forecast (R.D., p. 22). Staff recommended that the Company's revised forecast, reflecting only employment updates, be rejected because any revision should include all four of Staff's proposed changes to the Company's models (Staff Initial Brief (IB), p. 28). The four components are the personal income variable, SC2 employment variable, cooling degree days and employment updates.

These four issues are interrelated with respect to forecasting electric sales and the R.D. ignored the fact that they must be addressed as a whole to produce an accurate forecast.

Staff concluded that the Company's original filed sales forecast numbers are acceptable, although Staff did not agree with the Company's forecast methodology. This is because the adjustments that result from correcting all four variables at once, some upward and some downward, offset, leaving a minimum impact to the sales forecast. The Company's revised forecast, which addressed only one of Staff's components, the employment variable, invalidates Staff's conclusion that the Company's original sales forecast is acceptable. Therefore, the R.D.'s recommended adoption of Con Edison's revised sales forecast should be rejected in favor of the sales forecast based on the Company's original filed forecast along with DPS Staff's proposed DSM adjustment.

IV. EXPENSES – COMPANY LABOR O&M

A. Staffing Requests

1. R.D.'s Historic Hiring Practices Adjustment

The R.D. adopted DPS Staff's historic hiring practices adjustment methodology, but recommended an adjustment of 55%, rather than Staff's 60% adjustment (R.D., p. 46). The record of this case demonstrates that Staff's 60% adjustment is appropriate (Tr. 2466-2472; Exhs. 441, 461); the R.D.'s 55% level is overly generous to Con Edison and fails to give merit to Staff's argument and explanation why its adjustment is conservative. In fact, Staff's Initial Brief (p. 46) noted that using its proposed adjustment factor calculation and the same data as in the R.D. (R.D., p. 46), produced an adjustment of 56.07% (152 ÷ 346 – 1). The historic hiring practices adjustment would be 62.43% using the hiring rate observed in August 2008 and September 2008 for the last half of the current Rate Year.

The 55% (R.D.) vis-a-vis 56.07% (Staff) adjustments are predicated on the assumption that the hiring rate in the first six months continues for the last six months of the Rate Year. The R.D. errs in that its recommendation fails to recognize that Staff's 60% adjustment reflects the decelerating rate of hiring observed in the first six months in both net filled positions and overall positions.

There is an extensive record supporting Staff's 60% historic hiring practices adjustment in this rate case. The Company filled 68 of the 80 net filled positions in the first four months; the remaining 12 net filled positions were filled in the final two months of the first half of the current Rate Year (Exh. 441). The Company filled 69 of the 101 overall positions in the first four months, with the remaining 32 overall positions being filled in the last two months of the first half of the current Rate Year (Exh. 441).

Restoration of the 60% adjustment will decrease the R.D.'s O&M labor expense by $1.388 million. Additionally, the R.D.'s full funding of the 3 distribution engineers (R.D., p. 51) and 7 programmers for the Company's Shared Service organization (R.D., p. 55) should be rejected. Staff clearly stated that the 60% adjustment is a global adjustment (Exh. 461, Testimony, p. 11).

Staff's hiring practices adjustment was developed based on observations of a large cross-section of the Company's hiring plans (346 positions in numerous functions). Staff recognized that developing adjustment factors for each specific program change proposal would be unworkable. Therefore, Staff developed a global adjustment factor based on the actual hiring pattern for all 346 positions. The R.D.'s selective funding of positions known to be filled diminishes the intent and effect of Staff's global approach. Consistent application of the R.D. approach would require denial of funding for all positions that are known to be unfilled at this time.

Staff's global hiring practice adjustment factor was properly developed and supported and should be adopted to properly forecast the level of labor expense that the Company can reasonably expect to incur in the Rate Year. To the extent that the Commission elects to fund certain labor program changes for known filled positions, the historic hiring practices global adjustment should be recalculated to exclude the effect of those programs. Otherwise, the global adjustment will be understated and the Company will over-recover reasonable expected Rate Year labor costs.

2. DPS Staff's Department-Specific Adjustments

(d) Enhanced Project Planning

The R.D.'s recommendation to fund new positions to enhance project planning initiatives, subject to a 55% downward adjustment due to the Company's historic hiring practices (R.D., p. 52) should be rejected. The ALJs attempted to support a 45% allowance by stating it is difficult for the Company to prove that the additional $1.5 million for personnel will not duplicate existing work. The ALJs ignored Staff's recommendation to disallow the increase (over the $7.834 million Test Year expenditure level) because the Company was unable to explain why existing staffing are unable to perform the work of the proposed new hires and/or why there is a shortage in manpower (Exh. 169); thus, Con Edison has not demonstrated that the new employees will provide any added benefits (Staff IB, pp. 111-112). The Company is obligated to justify its need for funding in rates, which it has filed to do. Therefore, the R.D.'s recommendation should be rejected and Staff's $1.5 adjustment should be adopted by the Commission.

(i) State Regulatory Affairs

Staff does not support the R.D.'s proposed 45% funding of the Company's request for a State Regulatory Affairs Department (SRAD). Con Edison did not provide any substantive documentation to support its request (Staff IB, pp. 54-55). Staff disputes the R.D. position that the Company's testimony is well supported, including its contention that "the proposed group is being developed in response to feedback DPS gave the Company" (R.D., p. 60). No documentation has been provided by the Company confirming that Staff provided such informal feedback, including the Office of Industry and Government Relations. Staff, obviously, cannot prove the absence of discussions with the Company. Staff, therefore, reaffirms its position that no funding should be allowed for SRAD based on the lack of this factual documentation and because the SRAD is one of the discretionary programs that could be deferred without impacting safe and adequate service.

j. Municipal Infrastructure Support

The R.D. erroneously implied that Staff first proposed on brief a $21.648 million reduction ($78.223-$56.585 million) to the Company's Rate Year forecast of interference expense for projects outside Lower Manhattan (R.D., p. 107). Staff testified to the $21.648 million adjustment (Tr. 2507); it was not first proposed on brief. The Company's Municipal Infrastructure Support Panel (MISP) indicated its Rate Year forecast of interference expense was $88.853 million ($74.4 million for outside Lower Manhattan and $17.8 million for Lower Manhattan) and addressed the error made by the Company's Accounting Panel (AP) (Tr. 609-610),. However, Con Edison's updated revenue requirement exhibit reflected an expense level of $93.466 million, $78.233 million outside Lower Manhattan and $15.233 million for Lower Manhattan. Staff's Rate Year forecast of $56.6 million for outside Lower Manhattan remains unchanged. Staff's forecast represents a $21.648 million reduction from the level reflected in the Company's revenue requirement presentation.

Staff excepts to the ALJs' recommendation to adopt the Company's Rate Year forecast of interference expense for outside Lower Manhattan. Even though the R.D.'s one-way downward reconciliation recommendation protects ratepayers in the long run, the adoption of the Company's interference forecast ignores the immediate rate impact to ratepayers under the current harsh economic conditions.

The Commission is also urged to adopt Staff's Rate Year interference forecast for other reasons. First, the ALJs ignore some important observations underlying Staff's adjustment.

As summarized in the R.D. (p. 109), NYC actual infrastructure expenditures in the categories affecting Con Edison interference expense increased only by 1.6% from 2003 to 2007. During the same period, Con Edison's actual interference expense outside Lower Manhattan increased by an average of 0.45%. In sharp contrast to reality, the Company's Rate Year forecast of $74.4 million represents a 46% increase over the historic year actual expense of $51 million. Given the actual increase of NYC's expenditures in 2003 to 2007 of 1.6%, it is unreasonable to expect a more than 40% increase in City expenditures, particularly in light of the economic downturn. The Mayor's May 1, 2008 press release clearly indicated that the City is going to reduce its capital budget by 20% for the period 2009 to 2012 (Tr. 2512). A subsequent Budget Note released by the New York City Council on November 17, 2008 (Attachment 1) summarized the reduction in each category for the period 2009 to 2012. The four year capital commitments for the Sewer category were reduced by $327.5 million (30%); Water Mains, Sources and Treatment category were reduced by $157.9 million (5%); Highway Bridges were reduced by $332.5 million (19%); and, the Highways by $153.8 million, (9%). Staff's approach, using the City's average in 2003 through 2007, plus general inflation, is conservative in light of the economic downturn. The ALJs side with the Company, stating that the economic downturn could decrease the City's expenditures and it could increase them (R.D., p. 116). Both the Company's argument and the conclusions in the R.D. are speculative and unsupported by the evidence.

Second, Staff's Rate Year interference forecast is supported by the Company's actual experience. In testimony, Staff estimated Con Edison's 2008 interference expense to be $59.6 million (Tr. 2516). The Company did not agree, citing its internal budget of $69.963 million (Tr. 612-613). A recent report Staff received (Financial Highlights) from the Company indicates a variance between actual and budget interference expense for the 12 months ended

December 31, 2008 of $12.517 million, or $9.388 million to electric operations (75% of total Company). The actual 2008 electric interference expense was calculated at $60.57 million. It's not a coincidence that Staff's $59.96 million expense level is so close to the Company's actual expense, but rather an indication that Staff's forecast approach is more accurate than the Company's.

Third, at the October hearings, the Company provided the City's actual ($667 million) expenditures for fiscal year ended June 30, 2008 (Exh. 360). The Company's forecast methodology results in estimated NYC expenditures of $800 million for 2008, for the same categories (Exh. 330). This variance alone contributes to a $12 million difference in Rate Year interference expense using the Company's methodology (Staff IB, p. 94). At a minimum, the R.D.'s recommended Rate Year forecast should be reduced by $12 million. As discussed above and in briefs, Staff's methodology more accurately forecasts Con Edison's interference expense and is conservative in light of the economic downturn.

Staff's forecast should be adopted and the R.D.'s recommendation, relying on the Company's forecast, should be rejected. Should the Commission decide to adopt the Company's forecasting methodology, the City's actual expenditures in its fiscal year 2008 should be used to replace the Company's forecast. In addition, the NYC fiscal year 2009 expenditures should be updated using the City's January 2009 capital commitment plan, as recommended by the ALJs (R.D., p. 116). The January 2009 plan will better reflect the City's commitments for fiscal year 2009 than those reflected a year ago in the January 2008 plan.

k. Emergency Management Program

The R.D. recommendation, against Staff's proposed adjustment to reduce funding for the Emergency Management program, mischaracterized Staff's primary concern related to incremental expense and under estimates the potential impact. As noted in the R.D., while the need for the program is supported by Staff, Staff maintains that ratepayers should be asked to fund only actual incremental costs (R.D., pp. 62-63, 191). The conclusion in the R.D. that, "[g]iven the progress the Company has made, it is reasonable to conclude that positions are likely to be filled by the beginning of the Rate Year", is not supported by the record and Con Edison's progress to date. The ALJ's concern regarding the lack of information on the extent that positions have been backfilled, as contained in footnote 107 of the R.D. (p. 66), is at the heart of Staff's concern about funding only the incremental costs. It bears repeating that the Company's witness acknowledged that it would be grossly unfair for the Company to accept funding for positions not filled by the end of the Rate Year (Tr. 256).

To the extent that Emergency Management positions are filled via internal transfer, incremental costs are mitigated, if incurred at all. Even if all 16 positions are filled for Emergency Management, if the items are not backfilled, the program costs cannot be considered incremental because the overall Staffing level would remain unchanged. This effect also holds true for the emergency management program non-labor expenses. The Company witness also concurred with Staff that the associated support cost should not be provided or not be funded if those positions were not to be filled (Tr. 260).

The R.D.'s position should be rejected; and since the Company's attempt at demonstrating the actual number of incremental employees hired as of the Reply Brief is lacking in sufficient information to make a reasonable determination as to the actual incremental number of employees hired, Staff's recommendation to allow funding for only 3 incremental employees should be adopted by the Commission.[7]

1. GOLD Program[8] Costs

The ALJ's recommended against Staff's proposal of using a six-month average attrition rate of 9%, which was based on Company provided historical data (Tr. 2468-2469, Exh. 358). The R.D. stated that an attrition rate of 14% over a 12 month period, based on a five-year average, should be used to reflect the attrition rate for the GOLD program (R.D., p. 67). The R.D. also falsely concluded that "Staff clearly cherry-picked the two highest years' available data in developing its own attrition rate" (R.D., p. 67). The R.D. recommendation is incorrect because there is no record basis for selecting a five-year average; the data provided by Con Edison only incorporates four year's of GOLD program classes that have actually completed the program (Exh. 358). Furthermore, Staff simply used the most recent and consistent data available.[9] As the evidentiary record clearly shows, the attrition rates from class years 2003 and 2004 were excluded because they were inconsistent with the most recent attrition rates (Exh. 358). The data provided in Exh. 358, for class year 2004, reveals an attrition rate of 6.5% among 31 total hires. This rate is clearly an outlier given that it is significantly less than the rates experienced in 2003 and in each of the following years (2005-2007) on average.

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[7] If the Commission rejects Staff's argument and elects to allow all 16 employees, Staff's global 60% hiring adjustment should be applied to this program as well.

[8] The Gold Program is an 18-month rotational program designed to develop newly-hired recent graduates into future Con Edison leaders. Con Edison projected it will hire 72 additional employees in June 2009 at a cost of $1.8 million.

[9] Staff is dismayed that the ALJs would resort to disparaging remarks, such as "Staff clearly cherry-picked the two highest years' available data in developing its own attrition rate" (R.D., p. 67) and "[s]uch argument [regarding Staff's use of five-year historic data to project an electric production expense allowance] seems beneath Staff" (R.D., p. 283, fn. 434). Should the R.D. be adopted "as modified" by the Commission, which Staff does not support, the Commission should direct that all such remarks directed to Staff and any other parties be redacted.

Therefore, Staff's application of a six-month average attrition rate of 9% is the most accurate calculation for projecting attrition in the GOLD program. The 9% attrition rate excludes outliers that skew the average and thus misrepresent reality, and instead reflects more consistent data provided by the Company from the representative calendar years 2005, 2006, and 2007 (Exh. 358). Based on this data, Staff's recommended adjustment of $727,275 should be adopted by the Commission.

B. Productivity Adjustments

The ALJs agree that Staff's historic hiring practices adjustment differs entirely from Staff's proposed increase to the Company's productivity imputation (R.D., p. 78). However, the R.D. erroneously recommends that the current, minimal productivity imputation of 1% be continued, rather than using the 2% imputation recommended by Staff. The R.D. reasons that "the Company has sufficiently explained on the record how expected savings from its capital and O&M programs in the Rate Year have been identified and quantified to the extent practical, as well as why opportunities for additional material productivity increases beyond the 1% imputation are not likely from its new programs" (R.D., pp. 78-79). However, as Staff clearly explained on the record, the Company has not identified or quantified potential savings associated with its capital and O&M programs (Tr. 3055). In fact, the Company agreed (Tr. 4157) and only generally described the projects' benefits as reducing failures and maintenance, improving operational response, or improving efficiency. The Company further agreed that its "filing does not specifically identify and quantify productivity savings in most circumstances..." (Tr. 4161). In its original filing, the Company referred to projects and programs which it characterizes as "productivity and process change," that have or are intended to increase operational efficiencies (Tr. 3680-3682).

The R.D. further incorrectly concludes that "most of the productivity gains realized from program expenditures over the last five years would be captured in Test Year spending levels" (R.D., p. 79). Yet, at the same time, the R.D. states that an increased level of productivity gains are unlikely to occur over the course of the Rate Year, and further notes that it would be "doubtful" if savings are captured in the Test Year of the Company's next rate case (R.D., p. 80). When asked to specifically identify any associated cost savings from its projects and programs, Con Edison responded that there will be no direct cost savings or any cost savings realized during the next few years (Tr. 3055). This clearly supports Staff's argument that there is an insufficient level of productivity savings in the Test Year data to reflect the significant recent historic and proposed levels of investment in the Company's electric system infrastructure (Tr. 3054-3056). Staff based its increase on the fact that such "continual, substantial investments to upgrade and reinforce its electrical system will not only provide for increased reliability, enhanced customer service, but produce increased operational efficiencies, as well" (Tr. 3054). Staff clearly reasoned that because "the Company's electric system is reinforced and operated under less stressful conditions, the likelihood of unforeseen events will be reduced, as will the necessity to make costly reactionary repairs" (Tr. 3054). This, in turn, would lead to increased operational productivity and efficiencies (Tr. 3054), most of which are not reflected in the Test Year data in this proceeding and, thus, lends support to Staff's proposed increase to the productivity imputation.

The evidentiary record clearly shows, as Staff points out, that the Company has made significant investments in its electric system infrastructure during the past five years and that the Company's current proposal essentially maintains this high level of infrastructure investment during the ensuing five years, as well (Tr. 3054). As the Company's electric system is reinforced and operated under less stressful conditions, the likelihood of unforeseen events will be reduced, as will the necessity to make costly reactionary repairs (Tr. 3054). These circumstances clearly support an increase to the Company's productivity imputation.

Productivity adjustments have historically been used to capture all types of savings, specific enhancements resulting in operational efficiencies, as well as cost reductions that can not be specifically foreseen or quantified at the time rates are set (Tr. 3055). The current 1% imputation may have been reasonable during times of more limited (or normal) infrastructure investment, but are now not sufficient to reflect the productivity savings that should be expected as a result of the substantial increases in both capital and O&M project and program expenditures the Company has incurred in the recent past and proposes for the foreseeable future.

Staff's 2% productivity level is justified and reasonable, and should be adopted by the Commission.

1. Staff's 2% Productivity Imputation

The R.D. claims that Staff "abandoned" its proposed 2% productivity adjustment in our initial brief and expresses "disappointment" that Staff undermined its role as "...the party to the ratemaking process that can consistently be expected to be the most objective" (R.D., p. 76, Fn. 127). Staff is at a loss as to why the R.D. concluded we "abandoned" our conservative productivity adjustment proposal and "undermined" our role in rate proceedings.

First, Staff indicated that we supported our adjustment and that it should be adopted, indicating that it was conservative, but should be sufficient to "...capture the Company's as yet unacknowledged operational efficiencies related to all aspects of the Company's business, including its significant investment in capital and O&M projects and programs, and encourage the Company to continually seek to operate in the most cost effective and efficient manner possible" (Staff IB, pp. 69-70; Tr. 3056). Regarding the other proposals for a higher productivity imputation (proposed by CPB, NYC, COW), Staff noted that, while we support our proposal, the Commission could consider the more aggressive proposals (Staff IB, pp. 70-71).

Staff presented and defended a conservative proposal which would be appropriate. While Staff did not actively oppose the proposal offered by the other parties, we did afford the Commission the opportunity to consider more than one option (or, perhaps better stated, more than a choice between the status quo and 2%).

E. Variable Pay

Despite the determination in the R.D. that Con Edison's variable pay plan should be funded by shareholders and not customers (R.D., pp. 98-99), Staff takes exception to two points made by the R.D. First, the R.D. indicates that it is "illogical" and "unreasonable" that a variable compensation plan must be justified by specific, quantifiable productivity-associated savings that are reflected in the Company's cost of electric delivery service. Despite the fact that this is the Commission's policy, the R.D. apparently considers the productivity imputation as a mechanism to capture cost efficiencies that are inherently difficult to quantify (R.D., p. 97).[10] The second problem with the R.D.'s recommendation is its apparent invitation to the Company to modify its variable compensation plan so that it focus predominantly on the goals or targets that will benefit customers "more directly" if it wants them to bear the costs (R.D., p. 99). As

[10] Case 02-E-0198, et al., Rochester Gas & Electric Corporation – Rates, Order Adopting Recommended Decision with Modifications (issued March 7, 2003), pp. 13-14; Case 90-G-0734, et al., National Fuel Gas – Rates, Opinion 91-16 (issued July 19, 1991).

explained below, both of these positions are problematic and should be rejected by the Commission.

The Commission's policy requires quantifiable benefits to flow to customers as a result of variable compensation. The rationale for this is that such variable compensation plans are generally tools used by management to increase shareholder returns—they provide an incentive to employees to find ways of cutting costs and being more efficient. Such cost cutting and efficiency measures do not necessarily benefit customers. For instance, a utility's profitability can be positively impacted by cutting back on maintenance and other expenses, which while benefiting shareholders in the short term, may actually result in negative service and financial impacts to customers in the longer term. Such "productivity" is not the sort of productivity that a productivity imputation is intended to capture. It is for this reason that the Commission stated that where the goals of a variable compensation:

> are related to financial parameters, it is only reasonable to expect that, if those goals are met, there will be cost savings, which have not been reflected in the revenue requirement. In that case, the savings would offset the costs of the plan, and the plan would be self-supporting. Failure to reflect those savings would provide the Company a windfall at the ratepayer expense.[11]

The variable compensation plan in this case presents the same trouble that concerns the Commission. As noted by the R.D., the Company's variable pay program is structured so that unless Con Edison achieves 90% of its annual net income target, no incentive is paid out and, therefore, net income dominates all other aspects of the plan (R.D., pp. 97-98). Clearly, the variable pay plan provides an incentive to eligible employees to improve the financial performance of the Company, and these employee efforts may not enure to the benefit of customers, but may actually be counter to customer interests. To ask customers to fund in

[11] Case 90-G-0734, et al., supra., p.

rates such a variable pay plan would be improper and the Commission has correctly applied a logical and reasonable policy to such plans. Therefore, the Commission should not fund the Company's variable compensation plan.

Furthermore, the Commission should reject the R.D.'s apparent invitation to Con Edison to modify its variable compensation plan so that it focus predominantly on the goals or targets that will benefit customers "more directly" if it wants them to bear the costs (R.D., p. 99). While the Company is fee to do so in its next rate filing, it should not be afforded the opportunity to do so in this proceeding. Allowing the Company to change the plan at this point in the proceeding would place the parties at a disadvantage because we could not test the plan through interrogatories and cross-examination at an evidentiary hearing. Nor could parties file testimony addressing issues they might have regarding the revised variable compensation plan. In short parties' due process rights would be violated. Thus, should the Company attempt to avail itself of the R.D.'s offer, the Commission should reject the attempt and uphold the R.D.'s determination that the current plan must be funded by shareholders.

G. Directors' Compensation

On page 103, the R.D. recommended disallowance of certain Director's Compensation and suggests that Con Edison is free to redesign Director's Compensation in some other form that is neutral to the interests of shareholders or addresses ratepayer's interest more directly. Staff supports the conclusion that Director's Compensation expenses should be disallowed. However, while the Company is free to redesign is Director's Compensation plan, it should not be afforded such opportunity in this proceeding because it places other parties at a disadvantage late in the proceeding and shows undue bias in favor of the Company and its Directors.

V. EXPENSES – OTHER O&M

C. T&D Non-Labor Program Expenses

1. Five Year Underground Inspection Program

The ALJs claimed that Staff's Initial Brief was not entirely clear in explaining why Con Edison should not be entitled to the additional funding for additional inspections, flushes, and repairs. Staff disagrees with the R.D. conclusion and recommendation.

Con Edison also requested an additional $16.7 million to perform additional inspections and flushes in order to comply with the Five Year Underground Inspection program. The additional funding should be disallowed because the Company poorly managed its program by not planning appropriately and did little to address a problematic issue with its inspection tracking database since the inception of the Commission's Order on Safety Standard.[12] Con Edison was clearly aware of the time frame for the completion of the first cycle of underground inspection, but chose not to aggressively pursue the underground inspections until 2006; one year

[12] Staff reiterated in its Initial Brief (p. 105) that the increased number of inspections did not surface for the first time in the current rate case. In fact, regarding the Company's requested additional funds in the last case (07-E-0523) to cover the approximate 75,000 inspections it asserted were needed in each of the next two years to complete the five-year inspection program requirements, the Commission stated:

> [d]espite the confusion caused by the Company's testimony on interrogatory response, it does appear that approximately 75,000 inspections must be conducted in each of the two next years. Due to the importance of this program for ensuring public safety, we will adopt the Company's proposed number of 75,447 inspections. Whether the increased number of inspections for the rate year resulted from poor planning, as Staff has suggested, cannot be concluded from the record before us but may be considered in a subsequent proceeding.

The 75,000 number of inspections in the Rate Year (ending March 31, 2010) has now increased to 94,000 inspections needed, with a request for associated increase in funding.

after the Safety Standard Order[13] was issued. This further delayed the Company in adequately tracking inspections, and created an untimely situation to reconcile two databases for which both required manual intervention. Furthermore, the Commission allowed additional funding in the last rate case for Con Edison to hire 108 mechanics to address the remaining inspections.

Should the seemingly ever-changing – and escalating – number of yearly inspections, Con Edison claims necessary, provide inadequate concern for the Commission the requested additional funding, the Commission should consider the fact that Con Edison did not hire any of the 108 mechanics funded in the last case. Instead, Con Edison hired contractors to perform the inspections, but not related repairs.

The Commission should reject the additional funding for inspections and adopt Staff's recommended adjustment.

3. Structural Integrity/Station Betterment

The Company seeks $2.475 million in the Rate Year for the Structural Integrity/Station Betterment (Exh. 48). To develop Staff's recommended $0.765 million reduction for the Rate Year, Staff relied on the Company's discovery response (Exh. 169; pp. 867-870), which reflects estimates for specific projects over the three years totaling $4.690 million. In its update/rebuttal testimony, the Company simply stated that it did not agree with Staff's adjustment, but provided no evidence contrary to that provided in Exh. 169 (Tr. 4024 - 4026). The R.D. incorrectly recommended an allowance of $375,000 more than Staff's recommended allowance based on the supporting evidence in the record (R.D., p. 125).

As the record shows and is noted in the R.D., Exh. 169 lists a number of work items that Con Edison would like to complete. The Company, however, offered no cost

[13] Case 04-M-0159, Electric Transmission and Distribution Safety, Order Adopting Changes to Electric Safety Standards (issued December 15, 2008).

estimates for those projects. The exhibit (Exh. 169) noted that facility maintenance and repair work is continually being identified and additional projects will be identified during the Rate Year. Clearly, the Statement of Policy on Test Periods requires cost projections that are readily verifiable. The Statement of Policy on Test Periods provides that:

> All 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. Our staff and other parties in rate cases should be able to retrace projections back to their historical source. All assumptions, escalation factors, contingency provisions and changes in activity levels should be quantified and properly supported.[14]

Granting a rate allowance for a project or projects with no cost estimate or estimates that may be developed some time in the future, after rates are set by the Commission, is clearly not the intent of the Statement of Policy on Test Periods. Because the Company failed to provide cost estimates or properly identify known changes for this program - leaving the record devoid of any supporting information - the R.D.'s recommendation should be rejected and Staff's proposed adjustment of $0.765 million for Structural Integrity/Station Betterment for the Rate Year should be adopted.

4. Mobile Stray Voltage Testing

The R.D. rejected Staff's $0.414 million adjustment to Con Edison's proposed $9 million increase over its historic program costs (R.D., pp. 126-127). Staff supported its adjustment by pointing out that it was derived from an average cost per month based on actual expenditures for the first five months of 2008, and then extrapolating that value over an annual interval (Exh. 432; Staff I.B., p. 113). The R.D. states "Staff does not credibly counter the Company's criticism that Staff's estimated Rate Year cost fails to account for monthly variations

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[14] Id., p. 8.

in the number of vehicles required for each scan" (R.D., p. 127). Staff's average inherently accounts for the monthly variations since, on average, by definition an average represents the general significance of a set of unequal values. Staff does not dispute the fact that the number of vehicles required to complete the scans will vary from month to month, if not week to week, dependent on many factor, and the Company's need to have flexibility to deploy the vehicles is recognized.

For these reasons, Staff's adjustments should be adopted.

18. Maintenance Associated with Capital Work

The R.D. errors in stating that Staff did not brief two O&M programs: Annual Stray Voltage Testing, and Maintenance Associated with Capital Work (R.D., p. 135, p. 138). Staff's adjustments were based on historical spending levels, historic hiring rates, or both. Staff briefed these issues at length, on pages 39 and 216 of our Initial Brief. Staff did not separately identify in its brief the numerous projects that were adjusted on these bases. However, the record does contain Staff's exhibits, which identify the individual projects and associated adjustments (Exhs. 171 and 173).

E. Shared Services Non-Labor Program Expenses

1. West 28th Street

Con Edison claims that it may have to relocate from its West 28th Street property Work-Out Services Center as a result of a New Jersey Transit plan to construct two rail tunnels. The Company requested a $6.828 million rent increase as a place holder for possible relocation from its 28th Street facilities and indicated it would seek compensation for its costs from the New Jersey Transit. In opposition, Staff argued that this proposal was premature given the fact that the New Jersey Transit project was too speculative at this time (Tr. 2795, Staff IB, pp. 120-122).

Moreover, Staff argued that allowing rate recovery would not properly incent Con Edison to pursue its rental and relocation costs from the New Jersey Transit.

The R.D. recommends "adoption of the Company's request for a $6.828 million allowance, subject to deferral of all reimbursements for the benefit of ratepayers" (R.D., p. 146). The R.D. recommendation is deficient and should be rejected. First, it is possible that the Company may not actually incur the rent expense due to project delay or change in scope. The R.D. recommendation fails to require the Company to defer the rate allowance in the event that the expense is not incurred. Moreover, the R.D. does not provide an incentive or an obligation to the Company to actively pursue reimbursement from the New Jersey Transit.[15] Thus, the recommendation fails to provide adequate protections to ratepayers.

This project may not materialize in the Rate Year and, if it does, Con Edison may not be required to relocate the entire facility, as evidenced by the modification in the footprint of the project stated in the Final Environmental Impact Statement (Staff RB., p. 50).

There is insufficient evidence that this project will progress or will affect the Company as it projected, despite the ALJs' finding to the contrary (R.D., p 145). Staff continues to recommend disallowance of this expense. However, if the Commission decides to allow this expense in rates, full reconciliation of the rate allowance to the actual costs (net of any reimbursement) would be appropriate. As noted in the R.D., even the Company "argues the associated costs should be reflected in its revenue requirement subject to full reconciliation" (R.D., pp. 144-145). In addition, the Commission should require the Company to aggressively pursue proper reimbursement of its costs from New Jersey Transit.

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[15] The absence of such a requirement to pursue reimbursement concerns Staff given the Company expressed claim that the Commission's last rate order did not expressly require the Company to actually hire the 346 incremental positions the Commission authorized recovery of in current rates.

G. Informational and Institutional Advertising

Con Edison proposed an informational advertising program totaling $17.5 million (R.D., p. 154). As summarized in the R.D. (pp. 155-156), Con Edison also argued that the Policy Statement on Advertising Expenses[16] should either not be applied or be modified to exempt programmatic advertising in areas that are important to the Commission. Staff explained that the Advertising Policy Statement generally allows between 1/25 and 1/10 of 1% (between 0.04% and 0.10%) of revenues to be directed to informational advertising. Consistent with this range, Staff proposed to reduce the informational advertising allowance to $6.7 million (R.D., p. 156).

The R.D. recommends funding informational advertising at the level of $12.9 million. In a complete departure from the Commission's Advertising Policy Statement, the R.D. not only awards a sum significantly above the range that the Advertising Policy Statement formula would allow, but arrives at the amount by a programmatic review of the four basic themes of the Company's proposed campaign (R.D., pp. 159-160), an approach which is eschewed by the Advertising Policy Statement. In fact, the Advertising Policy Statement was specifically designed to "end the vexing and essentially arbitrary process our Staff now engages in of reviewing all informational and other institutional advertising."[17]

In testimony, Staff offered guidance, without specific recommendations, regarding the relative priority that should be assigned to advertising areas (Tr. 4711-4712); however, the R.D. takes Staff to task for failing to "identify specific cuts they recommend for this program or explain why such cuts would be reasonable" (R.D., p. 160). The R.D. states that emergency preparedness is an advertising theme that Staff "suggests deserves increased

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[16] 17 NY PSC 1R, Statement of Policy on Advertising and Promotional Practices of Public Utilities (issued February 25, 1977) (Advertising Policy Statement).

[17] Id.

funding... but no suggestions are made about how that ought to be done" (R.D., p. 160). The R.D. repeats and apparently relies on a claim that Con Edison made on rebuttal -- one that it was forced to retract on cross examination (Tr. 1311-1314).

With respect to energy conservation tips, the R.D. finds that "the only substantive reason offered [for Staff's proposed cut] is that it costs too much" (R.D., p. 159). Obviously, this finding ignores the evidentiary record, in which Staff testified that "it would do more to support the state's energy conservation goals to focus on marketing specific energy efficiency programs" (Tr. 4712). The R.D. also ignores Staff's admonition to its detriment. While the R.D. grants Con Edison the full $8.8 million requested for this program area, it cautions that "we have no information about whether any of the Company's planned expenditures on energy [*sic*] would be duplicative of those being considered in [the Emergency Efficiency Portfolio Standard case][18] EEPS" (R.D., p. 160). Recommending such an allowance while disregarding the EEPS case is unwarranted to say the least.

Incredibly, the R.D. goes even further by disallowing only Con Edison's proposed expenditures for infrastructure advertising (R.D., p. 160) – one of the areas that the Advertising Policy Statement allows for funding in rates. Among the topics specifically listed in the Advertising Policy Statement as a legitimate advertising expense is new capacity additions, and (relevant to criticisms of the Company in the wake of the Long Island City outages) it states that "[i]t is unreasonable not to afford utility managements under attack an opportunity to explain and justify themselves."[19] In sum, the R.D. departs from the Advertising Policy Statement at an angle approaching 180 degrees.

[18] Case 07-M-0548, Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard.

[19] Id.

For all of these reasons, the Commission should reject the R.D.'s proposed resolution of informational advertising issues, and adopt Staff's recommended $6.7 million allowance.

J. Insurance

1. Directors and Officers (D&O) Liability Insurance

The ALJs concluded that Con Edison should be allowed to recover in rates 90% of the electric system costs for $200 million of D&O insurance coverage, the allowance estimated to be about $2.404 million (R.D., pp. 172-173). According to the ALJs, Staff's proposal, in part, focuses too much on the possibility that a covered act might be so close to fraudulent or illegal that ratepayers shouldn't pay the costs for such insurance premiums (R.D., p. 172).

Staff disagrees with the R.D.'s determination that a wrongful act would need to be very close to illegal or fraudulent to be considered imprudent (R.D., p. 172). If a court of law determines that a wrongful act (breach of duty, neglect, error, misstatement, misleading statement) was committed by a Director or Officer and a large judgment was awarded to the plaintiffs, the act need not be illegal or fraudulent to be found imprudent. The Commission has initiated prudence investigations, decided prudence cases and made determinations in such cases where there were no alleged illegal or fraudulent acts on the part of utility Directors or Officers.[20] Staff submits that it would be unreasonable for the Commission to require customers to pay for a court

[20] Case 06-E-00894, Proceeding on Motion of the Commission to Investigate the Electric Power Outages in Consolidated Edison Company of New York, Inc.'s Long Island City Electric Network – Prudence Phase; Case 00-E-0612, Proceeding on Motion of the Commission to Investigate the Forced Outage at Consolidated Edison Company of New York, Inc.'s Indian Point No. 2 Nuclear Generating Facility; and Case 08-S-0153, supra.

ordered legal judgment as the result of a wrongful act determined to be committed by Directors and/or Officers. And, if the financial impacts of wrongful acts should not be paid for by customers in the normal course of ratemaking, insurance protecting against wrongful acts should, likewise, not be paid for by customers. Therefore, the R.D. findings and conclusions should be rejected, and Staff's proposal to partially disallow recovery of Directors and Officers Insurance should be adopted by the Commission.

2. Property Insurance Escalation

Staff takes exception to several R.D. conclusions related to the insurance escalation rate. As stated by the ALJs:

> We disagree with DPS Staff's suggestion that the absence of hurricanes for three years would lead insurers to ignore the risk of hurricanes in the future. With so much focus on global warming and the concomitant probability of increased hurricane heat potential in equatorial Atlantic waters, DPS Staff's contention is counterintuitive.
>
> Meanwhile, the basis for the Company's projections are explained in sworn testimony that is on the record. Among other things, it accounts for the current financial situation of the insurance industry and historic loss experience. We recommend the Company's escalation rate. (R.D., p. 174.)

It is not Staff's primary argument that the absence of major hurricanes in the past three years was its basis for recommending inflation as an escalation factor.[21] Staff was merely responding in its Reply Brief to one of the points the Company used to justify such a large escalation rate. Staff never stated, nor suggested, that "insurers should ignore the risk of hurricanes in the future." That is a gross mischaracterization of Staff's position. The point Staff made was that the industry experienced a large increase in insurance premiums in the year following Hurricanes Katrina and Rita. Since that year, insurance expenses have decreased each

[21] The R.D. identifies the five elements that comprise Staff's primary argument.

year. Hurricane risk is already factored into insurance rates, and a large increase in insurance premiums is not expected to occur next year due to the insurance industry under estimating the risks of hurricanes.

Staff also takes exception to the ALJs' bold attempt to introduce new evidence into the record (R.D., p. 174). Global warming, particularly as it might relate to insurance escalation, was not an issue discussed as part of the evidentiary record by any party to the rate case. The R.D. reasons that Staff's arguments are counterintuitive because of "global warming and the concomitant probability of increased hurricane heat potential in equatorial Atlantic waters" (R.D., p. 174). Setting aside the problem of the ALJs introducing this "evidence" into the record, global warming and its effects on hurricanes is not a new phenomenon. The insurance industry is no doubt well aware of the risks related to global warming, and it most assuredly has already priced this phenomenon into risk assumptions and premium calculations.

In addition, Property Insurance only represents about 9% of the total insurance costs for Con Edison. The other 91% of the insurance costs are for Excess Liability Insurance, Bond Insurance, D&O Insurance, Insurance on Company Employees and Workers Compensation. Thus, even if one allows for the presumptive assumption that insurers have underestimated the risk of hurricanes in their current property insurance rates, the risk of hurricanes has no impact on the other forms of insurance costs.

The R.D. also erroneously relies heavily on the Company's statement on historic loss experience to justify the 5% escalation rate (R.D., p. 174). The large historic loss rate the Company experienced was related to the steam incident. The losses were related to the Company's Excess Liability Insurance, which has been capped in this case as directed by the

Commission in its Order Adopting a Joint Proposal in Case 08-S-0153.[22] It is perplexing why the R.D. recommends that the historic losses, which were isolated by the cap on Excess Liability Insurance established by the Steam Pipe Rupture Order, should also be applied to all of the other forms of insurance in the escalation rate.

The R.D. reasons that the "Company projections are explained in sworn testimony that is on the record" (R.D., p. 174). If properly supporting escalating cost items such as insurance can be satisfied by the Company's broad statements about the AIG situation, historic losses which have been capped, and the effects of hurricanes that is sworn to in testimony, parties could save a lot of time and effort in setting rates by simply adopting the Company's Direct Testimony, and not performing any critical review or analysis. As Staff pointed out, Con Edison based its forecast on "discussions with the Company's Risk Management Department" and provided no empirical evidence, or analysis to support it (Tr. 2322, Staff IB, pp. 137-138). Furthermore, as Staff testified, Con Edison's insurance expense has actually decreased each year for the last three years (Tr. 2715). Staff found no compelling reason to deviate from using the latest known insurance rates, plus inflation to escalate this expense, which is also the escalation factor applied to almost all other O&M expense items.

The Commission should reject the R.D.'s recommendation on this expense item and adopt Staff's 2.7% gross domestic product insurance escalation recommendation.

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[22] Case 08-S-0153, Prudence of Consolidated Edison in Relation to the Steam Pipe Rupture of July 18, 2007 at East 41st Street and Lexington Avenue, New York, Order Adopting the Joint Proposal (issued November 13, 2008)(Steam Pipe Rupture Order).

K. Research and Development (R&D)

1. Capitalization Adjustment

The R.D. found that the record with respect to Staff's recommendation that $2.731 million of R&D expenses be capitalized, is too cryptic and decided that "in the absence of any firm ground on which to make a recommendation, we decline to do so" (R.D., p. 178). Accounting rules require that certain R&D costs for successful projects be capitalized.[23] The Commission has accepted this accounting practice in setting rates.[24] It is impossible to know beforehand which R&D projects will ultimately be successful and how much of those costs will be capitalized; thus, an estimate is required.

The Company claimed that "there is no basis for again applying a capitalization adjustment to the same projects, as this would, by definition, overstate any potential capitalization of these projects" (CE R.B., p. 89). Staff does not dispute the fact that the Commission applied a capitalization adjustment in the 2008 Rate Order. In this case, however, the Commission is setting rates for the Rate Year ending March 31, 2010 (or longer if the Company does not file a rate case for new rates to take effect on April 1, 2010). Con Edison's Rate Year R&D request of $20.25 million is far greater than the level the Company historically expensed. In fact, the Company's Rate Year request is close to twice the historic year gross expenditure level of $10.8 million (Exh. 5, Schedule 1, p. 3). In light of the substantially higher budget request, it is reasonable to anticipate higher levels of capitalized expenditure for successes in the Rate Year. In developing the estimated amount to be capitalized in this case, since all of the Company's current R&D projects are the same as those addressed in the last

[23] Financial Accounting Standards Board (FASB), Statement of Financial Accounting Standards No. 2 – Accounting for Research and Development Costs.

[24] 2008 Rate Order, p. 59.

electric rate case, Staff recommends that the capitalization ratio the Commission used in that case be applied in this proceeding as well.

O. Regulatory Commission Expense

As indicated on page 187 of the R.D., the ALJs recommended against using Staff's adjustment to normalize out $1.1 million of costs associated with the emergency preparedness audit included in the three-year historic average of regulatory commission expense. The ALJs concluded that the costs such as those associated with the comprehensive management audit will replace those costs in the Rate Year. This conclusion is flawed in light of the fact that the Commission authorized a special recovery mechanism, outside of base rates, for management audit costs. Con Edison is permitted to recover the actual cost of the comprehensive management audit, not to exceed $1.36 million on an as incurred basis through the Company's Monthly Adjustment Clause.[25] Therefore, the non-recurring costs associated with the emergency preparedness audit should be normalized out of the three-year historic average.

R. Energy Efficiency Related Programs

The R.D. rejected Staff's proposed adjustment removing from recovery in the Rate Year approximately $2.7 million of O&M expenses (R.D., p. 189), including $0.4 million of R&D expenditures (R.D., p. 175), and capital projects totaling $2.3 million in 2009 and $1.3 million in 2010 associated with the Company's administration and implementation of energy efficiency programs (R.D., p. 263). Staff excepts to the R.D. position.

First, the Commission has an ongoing proceeding in which Con Edison's energy efficiency programs and associated expenditures are being evaluated.[26] Staff proposed that the

[25] This was also memorialized in a May 21, 2008 letter (Case 08-M-0152) from the Commission's Secretary to Con Edison Senior Vice-President Luther Tai.

[26] Case 07-M-0548, Energy Efficiency Portfolio Standard (EEPS).

Company seek recovery of these administrative costs in that proceeding since it is that proceeding that its energy efficiency programs will be determined (Staff IB, p. 154; Tr. 2708). Given the ongoing EEPS proceeding, none of the underlying EEPS program costs have been reviewed by Staff in the instant rate case.

It should be noted that the Commission recently authorized and directed Con Edison to implement EEPS "Fast Track" utility administrated electric energy efficiency programs as modified and in the manner described in its Fast Track Order.[27] It is unclear to what degree, if any, the administrative costs the R.D. proposes to reflect in base rates have been considered and addressed in the EEPS proceeding. Moreover, allowing for base rate recovery of these costs, as the R.D. proposes, will impede the comprehensive measurement of EPPS program costs and related benefits targeted in the Fast Track Order.

In summary, the R.D. proposal regarding EEPS program costs departs from the Commission's treatment of these costs in the EEPS proceeding. Allowing these program costs in base rates may lead to a double recovery of these costs and difficulty in the measurement of energy savings to particular programs. The costs have yet to be reviewed. All these facts support Staff's recommendation that the recovery of these program costs be evaluated in the EEPS proceeding. Accordingly, the R.D. resolution should be rejected.

[27] Case 08-E-1007, et al., Con Edison EEPS – Fast Track, Order Approving "Fast Track" Utility-Administered Electric Energy Efficiency Programs With Modifications (issued January 16, 2009)(Fast Track Order).

VI. TAXES OTHER THAN INCOME TAXES

A. Property Tax Expense Level

The R.D. is in error in stating that:

> In the last contested case the Commission indicated only that the "best estimate" should be used in rate setting. No party apparently raised before the Commission the issue of whether rate year property tax rates must be set on the basis of unadjusted five year averages or may be subject to adjustment in light of changing circumstances, and the Commission did not, in fact, address that issue one way or the other (R.D., p. 201).

The use of the five year average was, in fact, litigated in the 2008 electric rate case, and the Commission adopted Staff's use of a historic five year average.[28]

The part of the 2008 Rate Order that discusses using "best estimate" is in the section related to property tax reconciliations. In the 2008 Rate Order the Commission determined that the best estimate for determining property tax rates was in fact the use of an unadjusted five-year average. Staff recommended consistent use of this forecast approach.

Con Edison acknowledged that property tax rate changes are extremely difficult to forecast. In fact, their property tax witness testified: "[t]he only thing I know for certain about tax rates is that I can't predict them with any certainty" (Tr. 1584-1585). The Commission has historically used the five year average to project property tax rates for Con Edison. In this case, Staff advocated the continued use of the five-year average to determine property tax rates as it provides symmetry over time, when consistently applied. Any property tax rate increase or decrease that taxing authorities authorize after the final update in this case will be included in the five-year average in future rate cases. The R.D., however, asserts that this is a "bare assertion" by Staff, and "disingenuous" (R.D., p. 201). The R.D. did not properly characterize Staff's

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[28] The 2008 Rate Order adopted the January 8, 2008 Recommended Decision to the extent not modified by the Order. The property tax rate allowance was not modified by the 2008 Rate Order.

position. For example, if a taxing authority increases tax rates by 4% in this upcoming year, that 4% tax increase would be included in the five-year average for the next five years and the Company would be materially made whole over time for the tax rate increase. Conversely, customers would be made materially whole for tax rate decreases over time. This self-correcting benefit is lost when the forecasting method is not consistently applied. The Commission should, therefore, reject the R.D.'s recommendation to selectively adjust the average based on Company judgment and maintain the practice of using a five-year average to determine the Rate Year property tax allowance for Con Edison.

B. Reconciliation of Property Taxes

Staff opposes the R.D. recommendation to reconcile Con Edison's property tax expense. According to the ALJs:

> ...the current state of economic upheaval calls for reconciliation even if it is an atypical approach. Given the unusual level of uncertainty over how long the current volatile economic conditions will last and how municipalities will cope with the consequent fiscal stress and given our overall objective of reasonably minimizing some downside risk and earnings potential above its cost of capital, [the ALJs] recommend that the Commission adopt a two-way reconciliation mechanism for property tax expense (R.D., p. 203).

Staff's primary position in recommending no reconciliation of property taxes in a one-year case is that much of the information in the Rate Year is known and reconciling this item offers no incentive for the Company to take action to minimize the impact of this very large expense. The R.D. recognizes this disincentive as it relates to municipal infrastructure work, noting:

> [a] big negative associated with such an option, however, is that it reduces or eliminates the Company's incentive to minimize the costs associated with essential municipal infrastructure work. For that reason, and because it is recommended that property taxes and debt costs be added to those

> costs to be subject to full reconciliation, we are not recommending full reconciliation of municipal infrastructure costs (R.D., p. 185).

There is no reason why these two items should be treated differently, particularly when property taxes represent approximately 29% of customer bills (R.D., p. 3). Clearly, the Commission needs to provide the Company with a strong incentive to minimize these costs, which the R.D. does not offer. Therefore, the recommended two-way reconciliation of the Company's Rate Year property tax expense should be rejected.

VIII. COST OF CAPITAL

A. Cost of Common Equity

2. General Issues

Based on recent market data, primarily for the three months ending November 2008, the R.D. found the Company's average Rate Year cost of common equity to be at least 10.35%. While the R.D. reached reasonable conclusions on many of the important general issues, there are a number of instances in which its conclusions appear to be based on either a misunderstanding of the issue or an inconsistent or illogical interpretation of the facts presented in this proceeding. More troubling, however, is the R.D.'s unabashed disregard of Commission precedent, irrespective of how these very same arguments have consistently and correctly been decided by the Commission in a multitude of prior cases, including the 2008 Rate Order. In essence this flawed approach taken by the R.D. effectively rewards the Company's intransigence at the expense of well-reasoned and consistent Commission practice. Together with its illogical and inconsistent conclusions, the R.D.'s determinations that ignore Commission precedent should be rejected.

3. Discounted Cash Flow (DCF) Model Issues

The R.D. correctly recognized that the appropriate proxy group to estimate the Company's cost of equity is the one employed by both Staff and CPB. However, in applying its DCF analysis to the Staff/CPB proxy group, the R.D. reveals a misunderstanding of the fundamental nature of the Staff approach, an approach that has been consistently adopted and applied by the Commission in all litigated cases for at least the past fourteen years.[29] Specifically, in reference to Staff's DCF methodology, the R.D. states that "Staff calculated a dividend yield using share prices over the six-months ending on June 2008…" (R.D., p. 220).

In fact, nowhere does Staff calculate a dividend yield. After a careful reading of the R.D., the reason for this misrepresentation of Staff's methodology is abundantly clear: the R.D. erroneously confuses Staff's model with the so called "standard annual form" of the DCF model. Rather than determining the cost of equity by combining an annual dividend yield with an estimated constant rate of dividend growth, as called for in the plain vanilla "standard annual form" of the DCF model as practiced by Company witness Morin, Staff employed a model that explicitly recognizes that short-term growth expectations do not necessarily equal long-term growth expectations. Consequently, Staff employed a two-stage DCF methodology which uses short- and long-term dividend growth estimates to estimate the future dividend payments that investors expect. Finally, as explained in the Staff Finance Panel's direct testimony, the rates of return that investors expect for each of the companies in the proxy group is simply the discount rate required to turn the forecasted string of expected dividend payments into the six-month average price of each company (Tr. 3338).

[29] The Commission has also repeatedly relied on the Staff methodology to establish the reasonableness of the agreed-upon ROE in a myriad of multi-year joint proposals.

In what can only be described as a strange observation, the R.D. bemoans the fact that there is no information on the record why a 20 day average of stock prices was not used to determine the DCF yield calculation (R.D., p. 220). Such an observation not only confirms the R.D.'s general misunderstanding of Staff's methodology, it also indicates a complete unfamiliarity with recent case history, as the Commission has not relied on 20 day average prices for over fifteen years and has, in fact, consistently adopted Staff's DCF methodology, which (among other well-reasoned features) utilizes six-months of share price data. The R.D. does, however, correctly observe that the desirability of this approach lies in the fact that it smoothes out noise associated with daily stock price movements, and that the time-frame covered by the price data largely coincides with the period from which the model's growth rate estimates were provided (R.D., p. 220).

In light of the "markedly changed circumstances in the financial markets and uncertainty about the future," the R.D. asserts that reliance on six months of data does not seem reasonable – presumably because it would average in share price data prior to the inception of the financial turmoil that roiled the financial markets in mid-September 2008 (R.D., p. 220). Based upon this view, the R.D. calculated its DCF cost of equity utilizing three months of stock price data, for the period ending November 2008, and recommended, likewise, that the Commission employ the three months ending in February 2009.

Staff is generally indifferent to this recommendation, but is not convinced that recent events warrant overturning a convention that has been consistently applied, and thus is undoubtedly incorporated into the return requirements of investors in New York utilities. On the other hand, Staff does not believe that the use of three months of stock price data necessarily constitutes a radical shift; further, the use of three months of stock price data might even be preferred as the growth estimates utilized in Staff's model are also updated every three months (Staff IB, p. 177). We note that the effect of this approach is largely *de minimus*, increasing our updated DCF cost of equity from 9.91% to 9.94%.[30]

Epitomizing its misunderstanding of Staff's DCF methodology, the R.D. invites the Company to provide, in its brief on exceptions, the alleged impact of reflecting quarterly dividends on the DCF cost of equity calculation (R.D., p. 221). It recommends adoption of the Company's approach because dividends are actually paid quarterly and because it was not satisfied, without further elaboration, with Staff's argument that this flawed approach has long been eschewed by the Commission. First of all, the R.D.'s recommendation fails to recognize the impracticality of applying such an adjustment to a DCF model that is not a "standard form" DCF model, and particularly one that relies on stock prices over many months as opposed to a spot price.

With respect to the R.D.'s invitation for further evidence as to why such an adjustment is unwarranted, in Opinion No. 81-3 the Commission stated: "The quarterly dividend DCF model calculates the annual return that an investor can earn by reinvesting dividends at a return equal to the cost of equity. It has been accepted by the Commission that investors can indeed earn those higher returns, but it has been proven to be incorrect and unnecessary to allow that return in the rate of return allowance because the added return is attained by the investor re-investing dividends, not by raising rates to provide that return without regard to whether or not

[30] The principal reason that the shift to three months of price data has a minimal impact on our DCF cost of equity estimate is because we use the median return for the proxy group as opposed to the average return, in order to marginalize the effects of 'outlying" individual estimates. Present circumstances are such that while the median ROE of the proxy group increases marginally, from 9.91% to 9.94%, the average ROE increases from 9.73% to 9.96%.

the dividends are reinvested."[31] Accordingly, the R.D.'s recommendation that the DCF cost of equity be adjusted to reflect the quarterly payment of dividends should be rejected.

Turning to the appropriate growth rate estimates to be employed in the DCF cost of equity calculation, the R.D. correctly concludes that "there is no proof that the Company's earnings growth estimates for the next five years are sustainable in the infinite future." Unfortunately, however, the R.D. also concludes that Staff's long-run or "sustainable" growth rate should be adjusted upward from 5.3% to 5.6%, apparently on the grounds that Staff has no good argument to refute the Company's allegations of circularity in its DCF calculation (R.D., p. 222). As a result, the R.D. accepted the Company's arguments that Staff's "sustainable" growth rate was understated because investors should expect real growth equal to the 3.4% annual growth rate in real Gross Domestic Product (GDP) for the period 1929 through 2007, in addition to current annual inflation estimates of about 2.2% (R.D., p. 222).

Although the circularity issue is addressed more fully in this brief's discussion regarding the proper weighting of the DCF and CAPM, Staff questions the underlying logic of using such a conclusion to support the use of a long-run growth rate estimate that exceeds current long-run growth estimates by as much as 80 basis points.[32] As Staff clearly explained, the 5.3% growth rate cited by the R.D. is actually a fall-out growth rate based upon Staff's methodology (Tr. 3339). And as Staff pointed out, its fall-out sustainable growth rate should be viewed as robust, as it exceeds the most recent long-range forecast of the growth in Nominal GDP (Tr. 3339).

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[31] Cases 27651 and 27710, New York Telephone Company – Rates, Opinion 81-3 (issued January 19, 1981).

[32] As explained in the Staff Finance Panel's testimony, the consensus long-run growth rate in the Nominal GDP growth rate is 4.8% for the period 2015-2019. The 4.8% rate itself is the product of long-run growth in GDP of only 2.7% and an inflation rate of 2.1% (Tr. 3339).

Staff is also perplexed as to why the R.D. is willing to rely on historic data for the period 1929 through to 2007 as a basis for increasing Staff's sustainable growth rate, while simultaneously rejecting the use of the Company's 7.1% historical risk premium, which is based upon economic data from the exact same time period, in its CAPM cost of equity determination. The R.D. offers no reasonable basis for augmenting Staff's already-generous long-run growth rate estimate. In summary, the R.D.'s numerous flawed adjustments to Staff's DCF methodology result in an overstatement in the proxy group's cost of equity of at least 35 basis points (10.29% versus Staff's updated DCF estimate of 9.94% if three months of stock price data is used). We recommend that the Commission, as it has done for at least the past fourteen years, adopt the Staff approach.

4. Capital Asset Pricing Model (CAPM) Issues

The R.D. generally adopted Staff's CAPM methodology, which upon update results in a CAPM-based ROE estimate of 10.79%. However, its determinations did depart somewhat from the Staff approach, particularly with respect to the beta and risk-free rate components. These adjustments resulted in a slightly higher CAPM estimate of 10.86% (R.D., p. 224). Given that the R.D. utilized the Staff/CPB proxy group in its DCF analysis, it concluded the simple average (.81) of the Staff (.80) and CPB (.81) beta determinations for the proxy group to be the appropriate beta to employ in its CAPM cost of equity calculation (R.D., pp. 222-223). As correctly noted by the R.D., Staff used the median beta of the proxy group, while CPB used the average beta of the proxy group.

As explained in the Staff Finance Panel's testimony, Staff recommends use of the proxy group median beta for the same reason that the median return is used in our DCF analysis in order to diminish the undue influence of any outlying individual results (Tr. 3347-3348). It should be noted that in the update of our methodology requested by the ALJs, the median beta of the proxy group remains at .80, while the average beta of the proxy group has fallen to .77. Thus, according to the simple averaging approach advocated by the R.D., it should have employed a beta of .79 in its CAPM analysis, rather than .81. In any event, Staff recommends that the Commission use the median beta of the proxy group utilizing market data available through February 2009.

In its determination of the risk-free rate, the R.D.'s CAPM methodology also departed from Staff's approach by adopting the Company's use of only the yields on 30-year Treasuries, as opposed to our approach which uses a six-month average of the yields on 10-year and 30-year Treasury securities (R.D., p. 223). Conceptually speaking, Staff does not oppose the sole reliance on long-term rates to determine the risk premium, as over time in different environments, either approach will variably result in higher or lower returns. However, given that the Commission has consistently adopted Staff's approach for at least the past fourteen years, we believe it should continue to do so here in order to insure results that are unbiased over time.

6. Weighting of the Results

In perhaps it's most ill-conceived conclusion regarding the cost of common equity, the R.D. applied an equal weighting to the results of its DCF and CAPM analyses and determined the cost of equity for the Staff/CPB proxy group to be 10.58% (R.D., pp. 225-226). In other words, rather than applying the weighting (2/3 DCF and 1/3 CAPM) advocated by Staff and consistently applied by the Commission over the past fourteen years, the R.D. instead accorded each methodology equal weighting, apparently on the grounds that "the Company is correct to contend that all three methods presented in this case involve the use of some subjective judgment."

The R.D. correctly noted that among the principal reasons for Staff's preference for the DCF methodology, and why Staff has consistently recommended that the DCF result be given twice the weight of the CAPM approach, is that it has been the principal equity costing approach of regulators throughout the country (including New York for many years), and because *objective* estimates of investors' immediate return requirements are readily available, in the form of current stock prices and dividends. The Staff Finance Panel explained the primary challenge of the methodology is determining the growth rate in future dividends that investors expect. The Panel further explained that arriving at those growth estimates, while difficult, isn't necessarily all that daunting considering that rational investors expect growth in dividends largely as a result of productivity gains and inflation, and because of the relatively stable nature of the utility industry (Tr. 3336 and 3337). While Staff readily agrees with the R.D. that all three cost of equity methodologies presented in this case involve some subjective judgment, what the R.D. woefully fails to acknowledge is the *degree* of that subjectivity. As the Staff Finance Panel explained in its testimony "of all the cost of equity methodologies available, the DCF and CAPM are by far the least flawed and, between those two, the DCF is clearly superior (Tr. 3327).

In its discussion of the growth estimates Staff employed in its DCF methodology, the R.D. described the Company's criticisms of Staff's approach, particularly its contention that our long-run (sustainable) growth rate is circular because "one has to assume a cost of equity to estimate retention growth in order to estimate the cost of equity" (R.D., p 221). The R.D. incorrectly concluded that Staff offered no good response to this criticism. To begin with, the R.D.'s conclusion misses the point, as inherent in virtually all forward-looking DCF analyses, including Dr. Morin's, is an element of logical circularity, since analysts' estimates of future earnings and dividends necessarily reflect assumptions regarding anticipated regulatory action. Second, the R.D. failed to acknowledge that Staff did indeed present evidence that clearly demonstrates that, not only is it not unreasonable for investors to expect the future earned returns of holding companies to be higher than the allowed ROEs of their utility subsidiaries, such has been the actual experience in the industry over the past several years. Specifically, during cross-examination, Company witness Morin conceded that virtually all of the proxy group companies are holding companies with varying degrees of investment in riskier non-regulated activities, that the recent capitalizations of those holding companies typically employ greater leverage than their underlying utility operations, and as a result, whose consolidated ROEs have also been consistently and appreciably greater than the ROEs of the regulated utilities (Tr. 3259-3264).

The R.D. also correctly noted some of Staff's reservations with the CAPM methodology (R.D., pp. 223-224). First, it acknowledged our view that its use of an historic beta may not be a good indicator of future volatility if the systematic risk of a firm or industry changes. Second, it also reiterated our belief that historic market risk premiums (such as utilized in Dr. Morin's CAPM analyses), may not represent the future and that a forward-looking market risk premium (utilized in both the Staff and Company CAPM analyses) involves a significant amount of subjective judgment.

The R.D. appears to have been swayed by some of the same faulty arguments that the Company has repeatedly put forth in its campaign to discredit the DCF methodology. For instance, as was argued in the last electric rate proceeding, Company witness Morin contended that "it is well-known that application of the DCF model to utility stocks understates the investor's expected return when the Market-to-Book ratio exceeds unity" (Tr. 3211). In the 2008

Rate Order, the Commission flatly rejected the Company's argument saying "We are satisfied that the DCF method remains a valid and proper method in these circumstances and we are not inclined to modify it for the reasons presented here by Con Edison."[33]

The reasons for rejecting the Company's arguments are even more compelling in this case. Based on stock prices for the three months ending November 2008, the average market-to-book ratio of the proxy group is about 1.4 times. Thus, according to the Company's argument, relative to other methodologies, the DCF methodology ought to continue to understate investors' expected returns. In fact, net of flotation costs, both the Company's updated CAPM (9.2%) and Risk Premium (9.1%) approaches yield ROE estimates much lower than its updated DCF estimate (12.7%), and even appreciably lower than our updated DCF estimate (9.91%). Therefore, the Company's contention that the DCF understates the cost of equity when market-to-book ratios exceed unity is not even supported by the results of its own flawed methodologies. As the R.D.'s weighting determination was clearly influenced by this baseless argument, it should be rejected.

Returning to the Company's ROE update, it is also worth noting that despite all the efforts that the Company has made to portray the current financial crisis as *increasing* its ROE requirements, its 10.6% updated ROE is actually 40 basis points *lower* than its 11.0% pre-filed ROE, largely because its flawed CAPM and Risk Premium estimates have fallen by 170 and 90 basis points, respectively. In fact, the Company itself now acknowledges the flaws in its CAPM approach, as the Supplemental Statement by Company witness Morin served on the ALJs and parties on December 26, 2008 (Supplemental Statement), explaining the Company's updated ROE results states about the CAPM approach that "much less weight should be accorded to this

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[33] 2008 Rate Order, p. 123.

methodology at present." Thus the Company's own tacit recognition of the DCF producing the most reliable results should put to rest any consideration of granting the CAPM equal status with the DCF methodology, and Staff's recommended weighting should be adopted by the Commission, just as it has been for at least the past fourteen years.

One final point to consider, clearly illuminating the poorly conceived and inconsistent nature of the R.D.'s overall conclusions regarding the cost of equity, is that if the R.D. relied upon same 1929 to 2007 historical data in its CAPM conclusion as it used to inflate Staff's sustainable growth rate in its DCF conclusion (and thus substituted the Company's CAPM results in place of its Staff-modified result), its return on equity conclusion would be considerably *lower* than Staff's updated cost of equity estimate of 9.7%. As explained above, Staff's updated proxy group cost of equity (before credit quality and common equity issuance expense adjustments) is 10.20%, based upon a 2/3 weighting of our 9.91% DCF result and a 1/3 weighting of our 10.79% CAPM determination. Thus, had the R.D. consistently relied upon historical data in *both* its DCF *and* CAPM conclusions, its unadjusted cost of equity for the proxy group would have been approximately 9.75% (as opposed to 10.58%) or roughly 45 basis points lower than Staff's conclusion (based upon a ½ weighting of its 10.29% DCF result and a ½ weighting of the Company's 9.2% CAPM result, net of flotation costs).

7. Credit Quality Adjustment

With respect to adjusting the proxy group's cost of equity to reflect the Company's stronger credit profile vis-à-vis the proxy group, the R.D. took a guarded approach; although generally concurring with Staff that a credit quality adjustment is warranted, noting "it continues to make sense that equity costs for a firm will generally go up and down with debt costs" (R.D., p. 229). Regrettably, it also indicated that it opted to apply only one half of Staff's

53 basis point adjustment because of uncertainty as to the validity of arguments made by the Company which asserted that "there is no correlation between debt cost and earned equity returns" (R.D., p. 229).

The R.D. correctly acknowledged one of fundamental tenets of financial theory, specifically that the return on an investment is directly related to the perceived risk of that investment. And, as noted in Company witness Morin's own testimony, "these differences in risk are translated by the capital markets into price differences.... The important point is that market prices of debt capital and equity capital are set by supply and demand, and both are influenced by the relationship between the risk and return expected for the respective securities and the risks expected from the overall menu of available securities" (Tr. 3131). Thus, the Company's arguments against *any* credit quality adjustment are not only counter to one of the basic tenets of financial theory, but also to its own testimony.

The R.D. erred, however, to the extent that its reduction of Staff's credit quality adjustment was influenced by the Company's assertions regarding the alleged lack of correlation between debt cost and earned (historical) equity returns. The Company's argument, of course, is a false one, as there is no caveat in financial theory stating that investors' prospective return requirements need to account for any past relationship between a company's achieved returns and its debt costs.

There is one interesting aspect of the Company's narrative about credit quality that the R.D. did not accept. The Company has consistently portrayed the financial crisis as a call to arms to preserve its credit ratings, while simultaneously, and disingenuously, arguing that its effects on credit quality should not be reflected in the Company's ROE. Just as Staff has pointed out, and as very recently noted by Company witness Morin in his Supplemental

Statement, "The debt markets have witnessed record high yield spreads and a more severe differentiation between spreads charged to companies with different credit ratings." Further, according to Dr. Morin, "These market conditions have led to an increased value for higher credit ratings and for conservative capital structures."

Dr. Morin is absolutely right on both counts. As he also notes in his Supplemental Statement, stock prices in general, including utility stocks, have fallen dramatically since April. In fact, since the Company's last electric rate decision on March 28, 2008, the Dow Jones Utility Index (DJU) has fallen 23.5%, although not as much as the Dow Jones Industrial Average (DJI) decline of 34.9%. However, it is a much steeper decline when compared to the 0.1% gain in Consolidated Edison Inc.'s (CEI) stock price.[34] Just as Dr. Morin pointed out, common equity investors have noted the relative safety of Con Edison, even versus other utility stocks. In other words, one does not need to rely on Staff's arguments as to the appropriateness of a credit quality adjustment; the Company's own investors have demonstrated that Con Edison is considerably less risky than its utility peers.

As a final word on credit quality, Staff pointed out in our initial brief that because of the turmoil in the financial markets, the Commission may have to exercise additional judgment in determining the appropriate level of a credit quality adjustment for Con Edison. Specifically, Staff suggested that the Commission may want to consider examining longer term historical spreads to assess the differential between Con Edison and the proxy group (Staff IB, p. 202). Staff's credit quality adjustment, based upon long-term spread differentials, such as those referred to in Staff's analysis of credit conditions over the past 20 years, would be approximately

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[34] Based upon data from Yahoo Finance, the DJU has fallen from 473.43 on March 28, 2008 to 362.14 on January 20, 2009; for those same dates the DJI fell from 12,216.40 to 7,949.08, and Con Edison Inc. rose from 39.45 to 39.50.

21 basis points, or 32 basis points lower than our updated 53 basis point credit quality adjustment, which is based upon current market conditions. While equity costing methodologies are long-term in nature, it is also true that they incorporate inputs that change quickly with new market data (such as stock prices in the DCF model and the estimated market return employed in the CAPM); consequently given the great disparity between current credit spreads (which may or may not persist for a long time into the future) and those that have existed on average over the past 20 years, it would not be unreasonable to conclude a credit quality adjustment for Con Edison somewhere between 21 and 53 basis points.

9. Reasonableness of Results

With respect to the Commission's adoption of an RDM in the 2008 Rate Order, the R.D. concludes that "the Company's upside earnings potential is less than what it used to be and the Commission's deliberations should carefully account for this" (R.D., p. 8, bullet 5). Staff infers from this determination that the ALJs believe that an upward adjustment or some other enhancement to the Company's cash flow is warranted. The R.D. displays a penchant for ignoring conclusions reached by the Commission in the 2008 Rate Order. In that Order, the Commission correctly noted that, rather than a risk-increasing attribute as implied by the R.D., the "revenue decoupling mechanism reduces earnings volatility and necessitates a 10 basis point downward adjustment in the return on equity...."[35] With respect to the return on equity implications of the RDM in this proceeding, Staff noted that "Con Edison's credit ratings, used in our credit quality adjustment, now reflect the effects of the RDM on the Company's risk profile, and thus an explicit RDM adjustment is no longer necessary" (Tr. 3359-3360).

[35] 2008 Rate Order, p. 125.

IX. RATE BASE

A. Lower Allowances for Infrastructure

1. Transmission and Distribution (T&D)

(b) DPS Staff's Historic Spending Adjustment

The R.D. mischaracterizes Staff's use of historic spending levels as a means to forecast the Company's proposed T&D projects and programs and further incorrectly states that Staff's proposal departs from the Statement of Policy on Test Periods[36] (R.D., p. 266).

Staff strongly objects to the ALJ's conclusion. Historic cost analysis has been a principal evaluation tool accepted by the New York Commission and other Commissions for many years. Denying parties the opportunity to evaluate, draw conclusions, and advance recommendations based on historic utility performance seriously handicaps parties and imposes an unfair bias in favor of utilities.

The ALJs' conclusion is entirely inconsistent with other recommendations in this case. For example, the R.D. supports Staff's labor program change slippage adjustment which is entirely based on the Company's historic hiring practices. Staff observed similar slippage in actual versus budgeted capital expenditures. Staff recommended specific adjustments to the Company's capital program based on consistent patterns of under spending. The ALJs failure to recognize Staff's adjustments is problematic in light of the fact that Con Edison under spent it 2008 electric operations capital budget by over $100 million.

The ability to examine historic performance relative to plans is a fundamental evaluation approach that must be available to Staff and other parties for purposes of assessing the reasonableness of a utility's rate request. The Policy Statement on Test Periods explicitly

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[36] supra.

provides that forecasts be developed from a historical base, and that parties in rate cases should be able to retrace projections back to their historical source. The ALJ's interpretation of the Policy Statement on Test Periods would limit parties' review of Con Edison's projections without historic context.

Recommendations based on historic observations are entirely consistent with the Commission's Policy Statement and should be adopted.

Staff takes exception to the R.D.'s mischaracterization of the Company's $100 million reduction to its 2009 capital budget for T&D infrastructure investment as an "update to a forecast" that should not be considered late in the case (R.D., p. 265). As the Company describes in footnote 11, on page 11 of its initial brief, the $100 million reduction is a material known change in the Company's 2009 capital budget and not a change in estimate as characterized by the R.D. Moreover, based on the data contained in the Company's 2008 Financial Results - Monthly Variance Report (Attachment 2 (which Staff has asked the Company to confirm in DPS-629 that it is an accurate reflection of the Company's actual 2008 capital expenditures and the Company's budgeted 2008 capital expenditures), the Company has under-spent its 2008 Electric Operations budget by $100 million and its 2008 Common Operations budget by $49 million. The impact of this significant under spending on the net plant that is used to set rates for the Rate Year in this case should be recognized and included by the Commission in its final rate determination. Therefore, the Commission should recognize these reductions to ensure that the rates it ultimately approves reflect the most likely level of expenditures. Not doing so would provide Con Edison with potentially higher rates than necessary.

Staff's recommended plant level adjustments reflect its view of Con Edison's expected spending levels, no matter how much the Company has budgeted for its various projects, and the level of plant in service that is most appropriate for the Commission to set rates upon (Tr. 2988). As Staff explained, the Company is entitled to spend at levels it deems appropriate to provide safe and adequate service (Tr. 2988).

The objective of Staff's proposal was to urge the Commission to "set rates that recover, as closely as possible, the reasonable costs of capital and O&M programs that Con Edison is likely to execute during the Rate Year. The historical relationship between budgeted and actual expenditures provides a reasonable guide as to what the Company will likely expend on its capital and O&M projects and programs going forward rather than relying strictly on its budget forecast" (Tr. 3008). The R.D. erroneously suggests that Staff made its recommendations "based solely on an analysis of historic expenditures (R.D., p. 266). Contrary to the ALJs' claim, the record shows that Staff investigated each capital and O&M project and program proposed by Con Edison (Tr. 2998), and the review of each of those projects and programs led to the adjustments to the Company's forecasted net plant accounts and its proposed O&M spending (Tr. 3003).

The R.D. also incorrectly correlates Staff's agreement on the need for the T&D projects to be an acceptance that those projects will actually be completed in the Rate Year at the cost levels presented by the Company. This leap is misguided. The record demonstrates that Staff conducted an extensive analysis of Con Edison's T&D projects and programs. While historical budgets were compared to historical expenditures, Staff's adjustments were made to reflect its forecasted expense levels for each line item, not merely a reliance on historic spending levels (Tr. 3007). There are many projects that Staff agrees need to be accomplished; but the record shows that the Company has historically not spent the amount budgeted, even for needed projects.

The Company's budgets are forecasts of construction/program schedules and their costs; the comparison of historical budgeted expenses and actual expenses provide a measurement of how well the Company executes its capital and O&M programs.

Based on historical performance, Con Edison's budget, unadjusted, could result in ratepayers paying in excess of what the Company only partially expends. The Company admits that such a condition would be grossly unfair to ratepayers (Tr. 256). If the R.D. recommendation is adopted, that condition will exist. Therefore, the ALJs' recommendation should be rejected and Staff's recommendations adopted.

(1) General Arguments

Staff takes exception in the R.D. that "[t]he related adjustment to O&M is $40 million for T&D alone" when referring to Staff's proposed adjustments to T&D capital dollars (R.D., p. 242). As noted by Staff, (Tr. 2991), Con Edison proposed T&D O&M program changes that increase its annual O&M expense by $40 million for the Rate Year ending March 31, 2010. Staff's adjustment to these proposed O&M expenses is $22.528 million (Tr. 2991).

In the discussion of New York City's and Westchester County's proposals calling for overall percentage reductions to the Company's capital program and operations and maintenance expense expenditure requests, the R.D. errs in its comparison to Con Edison's last rate case (p. 271). The RD concludes that the Company's mitigated rate request distinguishes this case from the last. This conclusion is flawed as a matter of fact.

The so called mitigation or amelioration of the Company's rate request from $1.08 billion to $654 million, or by $427 million, was achieved by seven measures (Staff IB, pp.

10-11).[37] Staff explained that with the exception of the use of unbilled revenues, Staff does not consider the list of measures as rate moderators since they are all reflected in Con Edison's current rates (Tr. 2629). Con Edison did not refute Staff's position. The Company's reserved acceptance in this case of mitigation measures that the Commission imposed in the last rate case is not something that Con Edison should be given credit for. Continuance of Commission action in this case does not distinguish this case from the last.

The ALJs reluctance to consider in any substantive manner the 8-15% reductions in the Company's capital programs proposed by New York City and Westchester County is ironic in light of the fact that the Company itself has acknowledged a $100 million reduction in its 2009 capital budget (R.D., p. 265). If the Commission fails to reflect the $100 million reduction as a known change it should consider the adjustments proposed by New York City and Westchester County. In consideration of the current economic conditions, rate impacts on customers and the Company's Infrastructure Investment Panel's acknowledgement that more than 8% of the work it plans is discretionary, across the board reductions in approved capital spending should be considered. Austerity budgets are in place for most businesses in this country, why should Con Edison be any different?

(2) Specific Programmatic Adjustments

Advanced Technology and Storm Hardening and Response Reconciliation

The R.D.'s recommendation against the implementation of a category specific reconciliation of Advanced Technology and Storm Hardening and Response should be rejected. The recommendation was based on the ALJs' view that Staff had not provided an explanation on why a separate reconciliation is needed (R.D., p. 293). To the contrary, Staff stated that this

[37] Rate request numbers cited are from the Company's original filing.

reconciliation is needed to encourage Con Edison to properly allocate funding to Advanced Technology and Storm Hardening and Response as noted by Staff, the T&D total reconciliation - by itself - does not promote the correct level of spending in the much needed Advanced Technology and Storm Hardening and Response category. Both of those categories have programs that can help minimize the likelihood of events such as the Long Island City network and Westchester storm outages of 2006. Therefore, the Commission should adopt a specific down-ward reconciliation of the Advanced Technology and Storm Hardening and Response forecasted expenditures.

Work Management Systems

Staff takes exception to the ALJs' proposed rejection of Staff's adjustment to the Work Management System. The ALJs attempt to support this recommendation by concluding that Staff's basis for the adjustment - that the work could be delayed without significantly hindering daily work tasks - "amounts to improper micromanagement of the Company" (R.D., p. 269). This conclusion is not supported and is potentially harmful to the overall ratemaking process. One of Staff's main objectives during rate case investigations is to seek information that will allow it to recommend a reasonable level of rate recovery for proposed projects and programs, and that should and must include its conclusions of what projects or programs can be delayed. As Staff testified, this adjustment allows for the continuation of work on the program while helping to reduce the impact of rate increases to customer, all while the company's existing work management system remains operational (R.D., p. 264). For these reasons, the Commission should adopt Staff's adjustment to this program.

Transmission Capital – Emergent Transmission Reliability

Staff disagrees with the R.D.'s proposal (p. 267) regarding the Emergent Transmission Reliability capital program. As Staff pointed out, this program is not amenable to using a historic average because it does not have a consistent history of expenditure levels (Staff IB, p. 225). In fact, no expenditures have been made since at least 2004 (Exh. 169 (SIIP-1, p. 18)). When situations arise between budgeting cycles, necessitating capital expenditures to ensure transmission reliability, the Company should expend the capital needed to ensure safe and adequate service, assign it to the proper plant account(s); and such expenditure(s) would then be subject to review for recovery in a subsequent rate case (Tr. 3021-3022). Therefore, the Commission should adopt Staff's proposal to provide no funding for this program.

2. General Equipment

After articulating several reasons why General Equipment capital expenditures should be excluded from the Company's rate base, the R.D. recommends the Company be allowed rate recovery for its general equipment expenditures (R.D., p. 279). The R.D. states that "a disallowance of all the costs of general equipment seems unreasonable, particularly in the absence of any information suggesting that Company does not need vehicles, computers, and the like to provide reasonable delivery service in the rate year." (R.D., p. 279) It is not Staff's burden to prove that the Company will not need general equipment in the Rate Year — that burden is the Company's.[38] Furthermore, Con Edison failed to properly support its request in its direct testimony, but improperly provided support in its rebuttal testimony. Staff moved to strike the improper rebuttal and the ALJs determined that Staff's motion "should be and is granted"

[38] 16 NYCRR Part 61.

and that the improper rebuttal is excluded from the evidence in this proceeding, but would be considered an "offer of proof".[39]

Before stating a recommendation, the R.D. indicating support for Staff's proposed disallowance for general equipment. First, the R.D. correctly concludes that the overriding goal of ratemaking is to project as reasonably as possible the Company's Rate Year cost of electric delivery service based solely on information presented timely and in a procedurally correct manner (R.D., p. 277). Second, the R.D. correctly recommends the Commission relieve Staff and the other parties of any obligation to use the discovery process to help a utility flesh out those aspects of its direct case that do not meet even the general standards set forth in the Policy Statement on Test Periods (R.D., p. 277-278). Third, the R.D. correctly characterizes the general equipment expenditure levels as material and that the Policy Statement on Test Periods standards adopted by the Commission should apply. Fourth, the R.D. questions whether the Company's request for general equipment should be allowed despite the procedural problems stating that "something needs to be done that will cause the Company specifically, and other utilities generally, to take responsibility for presenting all of the necessary supporting information at the time of their tariff filings" (R.D., p. 279). Finally, the R.D. made the following observation:

> "A Commission decision providing a general equipment allowance for the current Rate Year does not, in the absence of adequate proof in this case, foreclose the Commission from disallowing prospectively the carrying costs on general equipment projected to be purchased during the Linking Period or Rate Year in this case. It would be a prospective denial of costs the Company did not prove to be reasonable in this case." (R.D., p. 279)

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[39] Case 08-E-0539, et al., supra, Ruling on Motion to Strike (issued November 4, 2008), p. 13.

Based on the foregoing discussion, it appears that the R.D. analysis completely supports the notion of disallowing general equipment, but instead recommended that Con Edison be allowed virtually their entire request.

The Company's proposed capital additions associated with the common plant General Equipment were included in its plant-in-service model in the amounts of $76.916 million in 2009, $74.048 million in 2010, $74.059 million in 2011 and $74.059 million in 2012 (Exh. 413). The Company did not, however, address or justify General Equipment in its testimony or exhibits (Tr. 2460); the Company's response to Exhibit 190 (Staff IR DPS-318), which sought justification from the Company for these projects, was unresponsive. Con Edison admitted during cross examination that it did not address General Equipment projects in its pre-filed testimony or exhibits (Tr. 489). As a result of the Ruling on Motion to Strike there is no evidence in the record, other than a possible offer of proof, that the Company needs to purchase general equipment during the Rate Year, nor the types of and uses for the general equipment being proposed. More importantly, because there was no opportunity for Staff or the parties to investigate the nature of the cost of the general equipment in question, there has been no opportunity to test the proposed costs, justification, or any analysis of whether the ratepayers are being asked to fund equipment that is actually needed to provide the safe and adequate service.

The R.D. states that "a disallowance of all the costs of general equipment seems unreasonable, particularly in the absence of any information suggesting the Company does not need vehicles, computers, and the like to provide reasonable delivery service in the Rate Year" (R.D., p. 279). As noted above, the R.D. attempts to shift the burden of proof from the Company to Staff and also fails to mention that there in no information on the record that supports these costs. There is no evidence that the Company purchases vehicles annually and not bi-annually or in longer intervals. There is no evidence that ensures the types of vehicles being included in general equipment are reasonable and cost justified. The same is true for computers and all other general equipment. Therefore, based on the absence of any justification for the need, timing and cost associated with common plant General Equipment, Staff recommends that the amounts proposed by Con Edison to be added to plant in service be eliminated (Tr. 2462).

3. Electric Production

The R.D. recommends against Staff's proposed $5.428 million adjustment to the Company's electric production capital expenditure levels. The R.D. reasons that the Statement of Policy on Test Periods[40] contains no specification of the extent to which the cost forecast should be refined or finalized. The R.D. further states that Staff did not respond to the Company's argument for using three years of data instead of five. In doing so, the R.D. completely mischaracterizes Staff's proposal for using five years of historic data in lieu of a seven-year historic period. The R.D. erroneously states Staff suggested that "its proposal using five years of historic data is reasonable because it declined to use a seven-year historic period and recommend an even larger adjustment" (R.D., p. 283).

As clearly articulated by Staff, a five-year period appropriately reflects periods of various spending levels (Staff IB, p. 248); it was not selected because it provided a lower average (Tr. 2830). In fact, use of a seven-year period would have included periods during which the Company was in the process of building the East River Repowering Project (ERRP) and would have resulted in a lower average capital spending amount (Tr. 2831-2832). Staff, therefore, rejected the use of seven years as inappropriate because of the Company's ERRP construction

[40] supra.

during that time period. Staff made no suggestion or implication that its five-year proposal was reasonable because it declined to use a seven-year historic period.

Regarding the ALJs' suggestion that Staff is looking for more refined or finalized data (R.D., p. 282), the R.D. completely ignores the record and sides with the Company's unsupported, undocumented cost and timing estimates. As this rate case record demonstrates, when Staff questioned the timing and cost of the Company's proposed programs, Con Edison responded with little evidence supporting the projections used in developing its electric production capital budget (Tr. 2813-2814). Many of the Company's electric production capital projects are currently in the process of conceptual design, and work scope development and the timing and cost information is uncertain and subject to change (Tr. 2821-2822). Because of that uncertainty, it would be unreasonable to fully recover carrying charges from customers based on the Company's claim that it will move forward with those projects (Tr. 2822). As Staff testified, "customers should not be expected to fund projects that may not be completed or projects that have little evidence supporting the associated cost projections" (Tr. 2814).

Staff's $5.428 million adjustment reflects the level of capital additions the Company has supported, and that the level of plant in service that is most appropriate to use in setting rates (Tr. 2812). This adjustment should be adopted and the recommendation in the R.D. be rejected.

5. Facilities (including 125th Street)

(a) West 125th Street Property

The R.D. (p. 287) offered no recommendation and directed the parties to provide clarity of their positions in the post-R.D. briefs. Staff opposed the Company's true-up proposal regarding the new facility to because the difference between costs of what is reflected in rates and what should be reflected in rates (as a result of the Order in Case 08-M-0930[41]) is *de minimis* and under Con Edison's proposed true-up, it would have no incentive to control capital spending associated with the replacement facility. Furthermore, the Company's true-up proposal is not consistent with the Commission's determination in Case 08-M-0930 regarding the accounting for the net gain expected to result from the transfer of the 125th Street property.

The Company's update included $3.3 million for capital improvements for total company with an expected in-service date of December 2009. The electric allocation rate of 83% resulted in $2.739 million in capital which $.796 million is included in rate base. The supplemental joint petition estimated $6.752 million (Tr. 481) of capital expenditures relating to the renovations of the replacement facility for the total company with an estimated in-service date of February 2010. The electric portion to be included in rate base would be $.700 million. The revenue requirement impact resulting from the change in rate base is a decrease of $10,000.

The Company also claimed that the only incremental O&M cost in the rate year would be the annual lease expense of $330,000 (applicable to electric 83% and gas 17%). The monthly rent expense allocated to the electric would be $22,825 per month ($330,000 ÷ 12 months = $27,500 per month x 83% electric allocate rate = $22,825). The Company did not have to commit to the lease option until January 2009 and the lease agreement allowed four months of free rent to the Company. The Company has not provided the Commission the closing date of the sale or the date that the lease option was signed. The O&M costs (rent expense) associated with the replacement facility will be an increase of $228,250, which results in an increase to the revenue requirement of $234,946. The total potential revenue requirement

[41] Case 08-M-0930, Con Edison and Village Academies Network, Inc. – Transfer of 125th Street Property, Order Approving Property Transfer (issued October 28, 2008).

impact of \$.225 million (\$234,946 - \$10,000 = \$224,946) subject to deferral is *de minimus* for a utility the size of Con Edison.[42] Thus, for the reasons stated above, the Commission should not adopt the Company's true-up proposal.

B. Capital Expenditure Cap/Reconciliation and Capital Expenditure Reporting/Rate Case Demonstration

Staff takes exception to the R.D.'s recommendation to reject Staff's capital expenditure reporting requirements and rate case demonstration. The ALJs reasoning, that "investors could become wary if they conclude that the risk is going up that large portions of the Company's rate base expansion will necessarily be subject to review and a possible future disallowance" (R.D., p. 302), is disturbing. Staff's recommendation focuses on actual expenditures that vary more than 10% from forecast and new capital projects the Company develops that have not been presented to the Commission in a rate case proceeding, as well as projects that were abandoned or materially altered in terms of scope. As Staff testified, the Company in its rate filings should include a complete justification of the then-current book cost of plant which forms the basis of the rate request (Tr. 2557). This information would be paramount to the Commission and Staff making a determination as to the reasonableness of the Company's actual book cost of plant at that time and determining whether or not an adjustment is warranted (Staff I.B., p. 314). A utility's rate base expansion is always subject to review and possible future disallowance by the Commission. Therefore, investors expected risk would not be affected simply as a result of Staff's capital expenditure reporting recommendations.

As Staff stated in brief, the Company has the burden of proof to justify the plant in service upon which it requests rates to provide a return-on and return-of that investment (Staff

[42] Staff notes that the \$0.225 million is not the incremental revenue requirement effect since the revenue requirement in this case includes costs that will be avoided once the 125th Street property is transferred.

I.B., p. 318). The R.D. fails to recognize that it is unreasonable for the Company to request rate recovery for new plant that it added beyond that which was previously requested and approved by the Commission, without any discussion of such in a future rate filing.

The R.D. reasons that such a demonstration would cause the Company to devote more resources to preparing its presentation and increase costs to be recovered from ratepayers without any record basis (R.D., p. 302). Given the extraordinary high level of capital expenditures upon which Con Edison is embarking, it is inconceivable how the R.D. could conclude that Staff's recommendation would be too costly for the protection of ratepayers. And, as indicated in this brief's later discussion regarding "Pending Criminal Charges and Other Matters," requiring additional reporting and rate case demonstration of capital (as well as site investigation and remediation) expenditures would provide greater oversight of these costs. Not doing so could be very costly if the Company includes dollars in its plant-in-service for projects that were unnecessary, way over budget, overcharged or never completed; and, ratepayers are saddled with the associated carrying costs for many years to come. For these reasons, Staff's quarterly reporting and rate case demonstration proposals should be adopted.

Staff also takes exception to the R.D.'s recommendation to reject a modification to the one-way reconciliation approach to exclude the effects of cost of removal. The R.D. states that "actual costs of removal can reasonably be expected to differ from forecasts, just as the actual costs of equipment and materials can differ from forecasts" and therefore such a modification is not recommend (R.D., p. 303). The ALJs fail to recognize that not isolating the cost of removal from the downward reconciliation mechanism provides Con Edison with an upward reconciliation on the cost of removal. Net plant, which the one-way reconciliation would apply to, is calculated by subtracting the accrued depreciation from the book cost of plant. Since the cost of removal is included in the accrued depreciation, situations could arise where the actual book cost of plant is lower than the forecast; but at the same time the cost of removal is more than the forecast, resulting in a net plant level that is equal to the target and no reconciliation is recorded. Staff's recommended modification ensures that the intent of one-way reconciliation, that is to capture for ratepayer benefit the carrying costs associated with under spending on capital budgets, and not an upward reconciliation on the cost of removal, is properly reflected in the calculation. The Commission should reject the R.D. proposal and adopt Staff's position.

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

The R.D. rejected Staff's proposal to allow the Company to accrue carrying charges on the deferred net of tax balance for overhaul and Local Law 11 expenditures at the Commission authorized other customer capital rate (R.D., p. 312). The ALJs asserted that the effect of Staff's proposal is to confiscate utility property (R.D., p. 312). The ALJs proposed to reflect the estimated average Rate Year balance in rate base. Staff excepts.

The R.D.'s conclusion that Staff's proposal is confiscatory is erroneous. First, the costs at issue have yet to be incurred, and may not be at the level projected. Moreover, the cost at issue does not center on its recoverability, but rather on carrying charges related thereto. The historic practice of applying carrying charges between rate proceedings is reflective of the common practice of financing such costs with short-term instruments.

Staff's proposed accounting treatment is consistent with past accounting and ratemaking practice. Traditionally, only known and verified costs are afforded rate base treatment. For costs that are unknown and subject to reconciliation, the standard treatment has been the accrual of carrying charges at the other customer provided capital rate. For example, in its recent Con Edison Steam Rate Order the Commission authorized the accounting proposed by Staff here for Local Law 11 and certain water treatment expenditures.[43]

The Commission has routinely relied on past practice as an indicator of accounting and ratemaking treatment prospectively. Staff's proposal is wholly consistent with the accounting and ratemaking afforded to Con Edison for similar, if not identical, costs in the past. The Company has offered no credible argument for departing from past practice. Staff's recommendation in this case is reasonable and should be adopted.

X. REVENUE ALLOCATION/RATE DESIGN

A. 2005 ECOS, Revenue Allocation and Tolerance Bands

The R.D. recommends that the Commission-determined electric delivery service revenue requirement be allocated on an across-the-board equal percentage basis, net of fuel and purchased power (R.D., p. 314). It further recommended that any alternative revenue allocation or rate design based on a review of the arguments that remain pending, once adopted, should apply solely on a prospective basis (Id.).

Absent a final decision on revenue allocation and rate design issues, Staff takes exception to the R.D. recommendation to allocate the final electric delivery service revenue requirement on an across-the-board equal percentage basis, net of fuel and purchased power. While it is true that the across-the-board approach would continue existing cost-rate relationships, those cost rate relationships reflect deficiencies and surpluses that should be corrected without delay.

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[43] Case 07-S-1315, Consolidated Edison Company of New York,Inc. – Steam Rates, Order Establishing Rate Plan (issued September 22, 2008).

In its 2008 Rate Order, the Commission adopted the Company's 2005 ECOS and recognized one half of the $30 million deficiency exhibited in that study by the NYPA class.[44] The Commission acknowledged that the 2005 ECOS was not materially altered in its methodology and parameters from those ECOS used in prior cases, which the Commission previously found to be acceptable.

In this rate case, Staff proposed to apply a 15% tolerance band to the Company's 2005 ECOS study, which was again presented in this case without modification, and to recognize the resulting NYPA class deficiency of $6.7 million (after taking into account the $15.101 million NYPA deficiency adopted by the Commission in the last rate case) (Tr. 4528). Adoption of a 15 % tolerance band in this case would, as Staff testified, recognize that the ECOS study in the last case is based on a more dated demand class study, and that it does not reflect significant capital investments that the Company has made over the last three years (Tr. 4529). Adoption of Staff's approach now, given the uncertainty as to when and if any recommendation and/or decision would be issued on revenue allocation and rate design, would result in a fair revenue allocation and avoid customer confusion associated with adopting an across-the-board approach initially and some other revenue allocation later. Therefore, Staff's recommendations should be adopted by the Commission.

XI. OTHER ISSUES

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

The R.D. proposes a full reconciliation of non-income taxes; however, the R.D. fails to define non-income taxes. As discussed within, the R.D. called for a full reconciliation of

[44] 2008 Rate Order, p. 134.

property tax expense. But, no discussion was provided with respect to reconciling other non-income taxes such as revenue taxes and payroll taxes. In fact, there is no record evidence requesting reconciliation by any party of these other non-income taxes. Accordingly, the R.D. calls for a reconciliation of these other non-income taxes is unfounded and should be rejected by the Commission.

The R.D. also proposes to allow the Company to offset deferred debits against deferred credits in the context of a single Rate Year. The R.D. states, in support of its recommendation, that no arguments have been offered concerning why deferred debits and credits should not be offset automatically against one another. That is simply not true. In Brief, it was stated that although netting regulatory deferrals may simplify the Company's accounting for financial purposes, it makes it more difficult for Staff to monitor the Company's accounting of deferrals for regulatory purposes (Staff RB, p. 101). Staff does not believe this is an outcome the Commission would support. Thus, the R.D.'s proposal concerning an unauthorized netting of regulatory deferrals should be rejected.

F. Retail Access Issues

1. Outreach and Education

Con Edison proposed to "normalize out" expenses of approximately $1.6 million for its outreach and education (O&E) program related to retail access, known as Power Your Way. Staff supported this proposal, noting that the Company would nevertheless continue various educational activities related to retail access. RESA and SCMC opposed the Company's proposal, and proposed instead to establish a separate budget for O&E activities related to retail access (R.D., p. 319).

Staff noted that a recent Commission Order appears to direct exactly the opposite, and precisely what Con Edison proposes (Staff RB, p. 102). In relevant part, the Order states that "[u]tilities are also required to continue to provide objective outreach and education (O&E) information on the availability of retail access. Expenditures on the dissemination of such objective information would fall within the ambit of usual utility O&E budgets for customer education purposes."[45]

Notwithstanding the Commission's recent and clear enunciation of policy in this regard, the R.D. recommends "that $730,000 of the $1.622 million be restored in order to cover the costs of a Green Power Campaign ($650,000), a Green Power bill insert ($72,000), and the Company's maintenance of an up-to-date list of retail electric energy suppliers ($8,000)" (R.D., p. 320).

The R.D. departs from the facts of the case as well as the Commission's explicit policy in this regard. No witnesses offered testimony to suggest that Con Edison's approach to informing customers about the availability of choice in energy suppliers was insufficient or improper, and, no party offered testimony or argued on briefs that funding for a Green Power campaign should be continued – indeed, it is not even clear from the record that there will be a Green Power campaign in the Rate Year. Finally, it seems almost reflexive that the maintenance of an up-to-date list of retail electric energy suppliers will be among the objective information on the availability of retail access that will be continued and funded out of the Company's usual utility O&E budget. Among other things, Con Edison testified that it will continue to furnish customers with online tools to choose an energy supplier (Tr. 1225). It is difficult to imagine how this would be accomplished without furnishing customers with a list of suppliers from

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

which they may choose. In any event, there is no record basis for a determination that funding must be separately identified and added to the Company's revenue requirement for this, or any other education purpose related to retail access; and, to do so clearly contravenes Commission policy. The R.D.'s recommendation should be rejected.

G. Estimated Billing/Use of AMR

2. Strategic Installation of AMR

Con Edison proposes strategic installation of AMR at locations (outside of Westchester) that the meters are hard to read. The sum of $500,000 is proposed to replace existing but obsolete remote meter reading devices, and $1.3 million is proposed for AMR devices at new hard to read locations. It proposes an additional $1.3 million to install AMR meters on selected projects where the Company believes meter reading efficiencies can be gained through the use of AMR (R.D., pp. 320-321). Staff did not support the Company's proposals for strategic AMR investments because they do not provide labor savings comparable to those produced by the Westchester AMR project, and because they could potentially become stranded investments if the Commission authorizes implementation of the Company's advanced metering infrastructure (AMI) proposal (Tr. 4692-4693, Staff I.B., pp. 330-332).

The R.D. recommends the Commission allow the full amount ($3.1 million per calendar year of investment and incremental O&M of $34,000 in the Rate Year) requested by the Company for strategic AMR, subject to the caveat that such funds be used exclusively for accelerated replacement of existing remote reading devices[46] (R.D., p. 324).

There is no record basis for this recommendation and the R.D. directs expenditures that no party proposed. In particular, there is no evidence that the Company has

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[46] The R.D. mistakenly refers to these as "obsolete AMR devices."

either the need or the ability to replace existing remote reading devices at a rate that would expend $3.1 million in the Rate Year. This recommendation should be rejected in its entirety; or at the most, allow only the expenditure of $500,000 proposed by Con Edison for replacement of existing devices.

L. Section 185 Clean Air Act Fees And RGGI Costs

2. Regional Greenhouse Gas Initiative (RGGI)

Staff takes exception to the ALJs' position on the issue of RGGI costs recovery (R.D., p. 326). The R.D. does not address Staff's concern that given the current uncertainty of the extent to which Con Edison will be responsible for RGGI costs and the potential cost to ratepayers, Staff believes it is premature to recommend use of the Market Supply Charge/Monthly Adjustment Clause (MSC/MAC) as a "blank check" to cover assigned RGGI costs (Staff IB, p. 340). Instead, the R.D. makes general statements regarding full and timely costs recovery apparently based on general knowledge of the Department's support of RGGI to help reduce CO2 emissions and the use of auction proceeds to foster energy efficiency and clean energy technologies. A recommended decision on a specific cost recovery mechanism was not provided (R.D., p. 326). Staff recommends that the Commission allow the use of the MSC/MAC recovery mechanism for those RGGI costs related to Con Edison's retained generation only. Cost recovery of any additional RGGI costs related to contracts for outside generation, which are currently unknown, should be determined by the Commission after the Company demonstrates the certainty and the magnitude of any such costs (Staff IB, p. 339). Should the Company ultimately incur costs for the outside generation, the Commission can then determine the appropriate recovery mechanism for those costs at that time (Staff IB, p. 340).

M. Business Incentive Rate (BIR) Lost Revenue

As discussed on page 326 to 327 of the R.D., Staff proposes to remove the $3.339 million in rate base related to the BIR lost revenue between November 2003 and May 2004. Con Edison accepts Staff's adjustment without waiving its right to future recovery of the amount. The ALJs recommend that, if feasible, the review of the issue be completed in time so that the final outcome, whatever it is, can be reflected in the Commission's rate order. Circumstances around this issue indicate that such a review and final determination before the Commission's rate order is unlikely.

In Con Edison's last electric rate case,[47] Staff requested the Company provide proof of Commission authorization to establish the basis of the lost revenue (retention vs. new load) and to defer the BIR lost revenue for future recovery. The Company did not provide any. On page 117 of the R.D. in Case 07-E-0523, the ALJs recommended adopting Staff's adjustment, stating that "if Con Edison is unable to demonstrate the basis for any BIR discount to receive deferral treatment, there is no basis for including them in rate base providing the Company a return on the balance". It has been a year since the R.D. was issued in Case 07-E-0523. The Company still has not provided any documentation or filings to further the review. Staff can not accelerate such a review and make a determination when the Company is not able to meet its burden of proof in a timely manner. Thus, a review will have to take place outside of the instant rate case, assuming the Company provides documentation to facilitate Staff's review.

Q. Pending Criminal Charges and Other Matters

The R.D. indicates that a portion of Con Edison's revenues are allowed on a temporary basis subject to refund and that parties may propose draft language that would

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

continue the current level of temporary rate revenues in their Brief's on Exception (R.D., p. 331). It appears necessary to offer some clarification on this issue and suggest that the Commission might consider augmentation of the level of revenues subject to this treatment in light of recent events.

Staff presumes the ALJs' reference to "temporary rates" relates to the Commission's resolve in the 2008 Rate Order (Case 07-E-0523) regarding capital overspending that occurred during the term of the rate plan in Case 04-E-0572.[48] In Case 07-E-0523, Con Edison sought to include in rate base $1.6 billion of capital expenditures that were in excess of targets established in the rate plan established in Case 04-E-0572. The quality of Con Edison's expenditures, planning and management controls for the construction program were called into question in Case 07-E-0523. The Commission determined that, pending an investigation of the construction expenditures, the revenue requirement associated with the overspend amounts would be recovered through an adjustment clause mechanism. The Commission ordered Con Edison to file tariff revisions to effectuate an adjustment clause mechanism to recover the $236.7 million of revenue requirement associated with the overspend amounts.[49] Moreover, the Commission ordered that the tariff language specify that this portion of the revenue requirement be subject to further Commission audit and review and continue in this manner until such time as the Commission determine otherwise.[50]

The R.D. erred as a matter of fact and law in characterizing a portion of Con Edison's current rates as temporary and in concluding that ordering language is necessary in this

[48] The R.D. discusses the current temporary rate issue without relevant context.

[49] 2008 Rate Order, p.178.

[50] The Order stated that the tariff provision would not become effective on a permanent basis until approved by the Commission. The Commission approved Con Edison's tariff filing in December 2008.

proceeding to continue the current recovery method and refund provisions. While it is true that a portion of Con Edison's current revenue requirement is subject to review and potential refund, that portion is recovered via an adjustment clause mechanism, referred to as the Rate Adjustment Clause (RAC), not temporary rates. The Commission's audit and review of the underlying costs is ongoing. The Commission has not determined that the Company has met its burden of proof regarding the expenditures, nor has the Commission determined that a disallowance and refund is appropriate. Pursuant to the Commission's 2008 Rate Order and the tariffs filed in compliance with that order, the recovery method will continue until such time that the Commission determines otherwise.

Although no ordering language is necessary to continue the current recovery method, the Commission should consider augmenting the level of Company revenues recovered via the RAC and subject to refund in light of recent events. On January 14, 2009, the U.S. Department of Justice (DOJ) disclosed in a press release that ten current employees and one recently retired Con Edison employee were arrested and charged with soliciting and receiving more than $1,000,000 in kick-backs since 2004[51] from a contractor with Con Edison construction contracts covering the Boroughs of Manhattan, Queens and Bronx, and, Westchester County. Information contained in the Affidavits suggests that the Con Edison employees extended contracts for work outside the bidding process; substantially inflated contract pricing after the contract was awarded and authorized payment for work not performed and not needed; backdated bills and prepared additional paperwork to support additional contractor payments; and, supplied contract bidding specifications to a contractor in advance of the request for bid

[51] Information in at least one Affidavit in Support of Arrest Warrant (Affidavit) indicates that such payments for favorable treatment of invoices submitted occurred as early as 2000 or 2001.

proposals. The positions held by these employees, in the Company's electric and gas construction project management and project payment review and approval processes, include high level supervisory positions with final approval authority for project payment.

Although the DOJ press release states that the pending charges only relate to projects with one contractor, information submitted in support of the charges indicates that there may be a number of other contractors and projects implicated in kick back schemes. As the DOJ press release states, the investigation is continuing. In light of these allegations, Staff cannot attest to the accuracy of Con Edison's historic and proforma financial presentation in this proceeding. Specifically, these allegations, at a minimum, call into question the Company's historical and forecasted capital expenditures, removal costs of retired plant, interference expenditures (expense and capital) as well as site investigation and remediation costs. The Commission should require a complete and thorough investigation of the impact of these employees' actions and the appropriate ratemaking consequences. To protect customer's interests and preserve all ratemaking options, the Commission should significantly increase the level of rates recovered via the RAC.

Given the timing of the disclosure of these alleged acts, Staff can offer little guidance as to the level of rates that should be established subject to refund. Information provided to Staff indicates that the Company paid the contractor in question over $250 million dollars since 2004. Staff has issued discovery seeking the actual amounts and nature of the work that was allegedly performed by the contractor for Con Edison. In light of the potential impacts on major components of the Company's rate base including plant-in-service, depreciation, costs of removal, property taxes and O&M expenses, the Commission should be conservative and limit any increase to an austerity budget level with such revenues recoverable though the current RAC.

CONCLUSION

For the reasons stated herein, Staff's exceptions to the Recommended Decision should be adopted and the Commission should issue a comprehensive order determining revenue requirement and other issues in this proceeding and not adopt the Recommended Decision in whole or in part.

Respectfully submitted,

Steven J. Kramer

David R. Van Ort

Dated: January 27, 2009

New York City Council

BUDGET NOTE

Finance Division | November 17, 2008

Hon. Christine C. Quinn
Speaker

Preston Niblack, Director
Jeffrey Rodus, First Deputy Director

Hon. David I. Weprin
Chair, Committee on Finance

FY 2009 NOVEMBER FINANCIAL PLAN

The Mayor released the FY 2009 first quarter financial plan modification, as required by the Financial Emergency Act and City Charter, on November 5, 2008. The FY 2009 Adopted Capital Commitment Plan was released at the same time. Because of the crisis in the financial markets and the widening national recession, the November Plan – usually consisting of technical modifications and corrections to the Adopted Plan – contained a substantial program of agency cuts, savings and non-tax revenue increases; and proposed repealing the 7% Real Property Tax (RPT) cut effective January 1, 2009 – six months earlier than anticipated in the June Plan – and rescinding the $400 property tax rebate.

This Budget Note reviews first the Expense Budget Plan and then the Capital Commitment Plan.

Expense Budget

Overview

The FY 2009 Adopted Financial Plan projected gaps of $2.3 billion in FY 2010, and $5.1 billion in subsequent years. The FY 2010 gap was smaller due to actions taken in prior years, including the anticipated roll of $1.8 billion from FY 2009, and the retirement in FY 2008 of debt due in FY 2010.

The November Financial Plan projects tax revenues declining by $285 million in the current year relative to the June projection, and $1.2 billion in FY 2010. Coupled with small changes in non-tax revenues and spending, the November Plan projects a gap of $300 million for FY 2009 and $3.7 billion in FY 2010. The Finance Division's own revenue forecast is largely consistent with that of the Office of Management and Budget (see accompanying Revenue Note).

To address this combined $4.0 billion gap, the Mayor's November Plan proposes actions in three broad categories. First, a PEG program resulting in $462 million in savings and new non-tax revenues in FY 2009 and $1.1 billion in FY 2010. Second, a repeal of the 7% cut in property tax rates—enacted by the Council in FY 2008—effective January 1, 2009, raising $576 million in FY 2009. (This would not raise additional revenue in FY 2010, since the Adopted Financial Plan had already assumed the Council would approve an increase in property tax rates in FY 2010). Finally, the Mayor also proposed rescinding the $400 property tax rebate, beginning with the FY 2008 rebate, due to be mailed to homeowners this fall, for annual savings of $256 million. The sum of these proposed actions is $2.6 billion, leaving a projected gap of $1.3 billion for FY 2010. Because of the decline in projected tax revenues, the outyear gaps remain at around $5 billion, despite recurring savings projected from the PEG program of $1 billion annually, and permanent rescindment of the rebate.

NOVEMBER FINANCIAL PLAN OVERVIEW (millions of dollars)	FY 2009	FY 2010	FY 2011	FY 2012
Gap as of June 08 Financial Plan	**$ --**	**($2,344)**	**($5,158)**	**($5,108)**
Change in Tax Revenue Forecast	($285)	($1,272)	($1,105)	($1,025)
All Other Changes, Net	(18)	(51)	(52)	(35)
Revised Gap, Nov. 08 Plan	**($303)**	**($3,667)**	**($6,315)**	**($6,168)**
November Gap Closing Plan				
Agency Program	$462	$1,083	$1,032	$991
Mid-Year Property Tax Increase	576	--	--	--
Rescind $400 Property Tax Rebate	256	256	256	256
Total Gap-Closing Program	**$1,294**	**$1,339**	**$1,288**	**$1,247**
Prepay FY 2010 Expenses	($991)	$991	--	--
Gap to be Closed, Nov. 08 Plan	**$ --**	**($1,337)**	**($5,027)**	**($4,921)**

Forecast Risks and Offsets

Whereas in past downturns it has often been possible for the City to address its budget gaps with assistance from other levels of government, the circumstances this year preclude much optimism on that score. The State faces tremendous deficits, as do the Metropolitan Transportation Authority, the Health and Hospitals Corporation, and the Housing Authority (NYCHA). The problems faced by the City and its partners are compounded by continued significant risks of further revenue downturns, as discussed in the accompanying *Revenue Note*, and losses suffered by the City's pensions funds.

State Budget. Governor Paterson has submitted a package of proposals to cut the State budget deficit this year and next by $5.2 billion. The Legislature will consider the Governor's proposal at a special session called for November 18. The State Division of the Budget estimates an impact on the City of $330 million (including $255 million in School Aid) – none of which has yet been reflected in the Mayor's Financial Plan. Even with the cuts proposed by the Governor, the State still projects an $8.8 billion deficit for SFY 09-10.

The Governor has announced his intention to submit next year's budget in mid-December. Additional cuts will undoubtedly be made that will affect City programs and services, especially since the Governor has continually emphasized his reluctance to raise taxes. Even so, tax increases seem likely. Increases in taxes that overlap with City taxes, such as the personal income tax, the sales tax, or business income taxes, will constrain the City's revenue options.

Pension Liabilities. The November Plan begins to take into account the over $20 billion in losses recently suffered by the City's Pension Funds. These losses must be made up over time, with a phase-in beginning in FY 2011. To offset these costs – totaling $1.1 billion over the next three years – the Mayor proposes drawing down balances in the Retiree Health Benefit Trust Fund (RHBTF, or the Trust Fund).

A second issue, and one with potentially more immediate impact, is the possibility of a change in the assumed return on pension investments used by the City Actuary in calculating needed contributions to the funds. Reducing the current assumption of an 8% annual return to 7% would cost as much as $1 billion per year, beginning in FY 2010.

Additional Resources. The November Plan does not yet recognize certain resources that are likely to become available in FY 2009 which could be used to help further reduce the FY 2010 gap, including the $300 million General Reserve, and the write-off of reserves for bills due from prior years (prior-year payables). Together, these should yield at least $600 million in additional funds in FY 2009 which could be used to pre-pay FY 2010 expenditures, and hedge against the substantial downside risks that have yet to be quantified and reflected in the budget.

Program to Eliminate the Gap

In order to address the projected FY 2010 gap, the Mayor in September directed agencies to submit budget cuts equivalent to 2.5% of their adjusted City funds budget for FY 2009, or approximately $500 million, and 5% for FY 2010 – approximately $1 billion.* PEGs, or Programs to Eliminate the Gap, are actions that reduce the City's budget gap by either reducing an agency's City Tax-Levy Expense Budget or increasing City revenues. The PEG program presented in the Financial Plan was $461.6 million for FY 2009, and $1.08 billion for FY 2010 (including non-tax revenue proposals).

The Finance Division's analysis classifies PEGs in one of 5 categories: (1) Cuts – reductions in spending that reduce total resources available and used by the agency, and which may impact service delivery; (2) Revenue PEGs – increases in non-tax revenues proposed by agencies in lieu of reductions in spending; (3) Funding Swaps, in which non-City funds such as State or Federal grants are substituted for budgeted City funds (usually with no overall loss in resources); (4) Re-estimates of budgeted spending needs; and, (5) Vacancies and Accruals, which represent surplus funding levels, elimination of budgeted but vacant positions, and the like. A preliminary estimate of totals by category are summarized in the table below.

In both years, spending cuts constitute the majority of PEG proposals, constituting 58% of the value of the PEG program. Revenue PEGs add another 15% in FY 2009 and 18% in FY 2010.

NOVEMBER PLAN PEGS BY TYPE
(millions of dollars)

	FY 2009	Percent of total	FY 2010	Percent of total
Cuts	$265.4	58%	$625.9	58%
Revenue PEGs	$68.8	15%	$200.2	18%
Funding Swaps	$38.8	8%	$39.2	4%
Re-estimates	$31.4	7%	$105.8	10%
Vacancies and Accruals	$57.1	12%	$112.0	10%
TOTAL	**$461.6**	**100%**	**$1,083.1**	**100%**

NOTE: Revenue PEGs are presented net of any associated spending increases necessary to produce the revenues, which are contained in agency expense PEG programs. For example, in order to raise approximately $74 million in FY 2010 from "block-the-box" traffic violations, the City proposes hiring 234 new traffic enforcement agents at a cost of $14 million. We carry the value of this initiative as a Revenue PEG of $60 million.

* The base against which PEGs are measured is City funds less "uncontrollable" or "non-discretionary" costs, which include pensions and fringe benefits, debt service, Medicaid, and other costs. See Office of Management and Budget, November 2008 Plan: Budget Summary, pp. 36-39.

Among some of the more prominent cuts for FY 2009 are the following:

- A 1.3% reduction of OTPS spending in schools, to be determined by principals: $103.6 million in FY 2009 and $265.1 million in FY 2010. Other DOE cuts total $76.9 million this year and $129.2 million next year.
- A delay in the Police recruit class scheduled to begin in January 2009 would save $36.1 million this fiscal year and $80.6 million next year. A reduction of 292 vacant Police Department civilian positions would save $5.3 million this year and $14.2 million next year.
- Over $15 million in cuts to the Administration for Children's Services that potentially impact children in foster care or adoption services.

A number of cut proposals would not take effect until FY 2010, such as:

- A citywide fleet reduction initiative (a proposal also put forward by the City Council): $20 million.
- Elimination of some DOHMH mental health contracts: $4.4 million; and closing of Dental Health clinics ($2.5 million).

Revenue proposals include:

- Hire 234 new traffic enforcement agents to enforce "block-the-box" violations: $60 million net in FY 2010.
- Charge a 5 cent fee for consumer plastic bags: $16 million. This will likely require State approval.
- Eliminate the fee exemption for Fire Department inspections of not-for-profit and charitable organizations: $3.0 million.
- Double the fire insurance premium tax from 2% to 4%: $21.0 million.
- Sale of advertising space on Department of Sanitation vehicles and wastebaskets (an idea proposed by the Council): $2.0 million

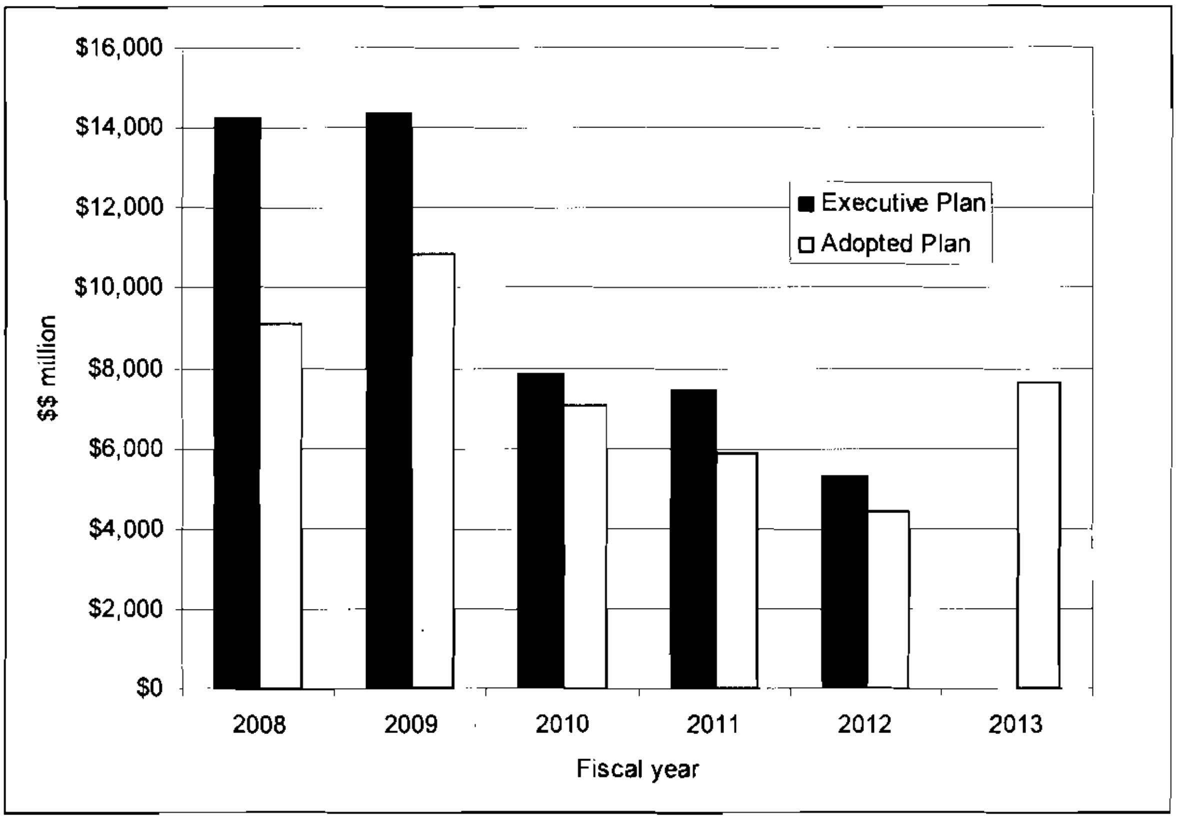
The full PEG program will be reviewed in oversight hearings and between the Council and Administration during the coming weeks. The Finance Division will work with Members and staff to continue development of alternative cuts and savings to propose in lieu of Administration-proposed cuts that the Council finds undermine core services and priorities.

Capital Plan

In his Executive Budget, the Mayor proposed a "stretch-out" of the Capital Plan – in essence, taking the four-year plan for FY 2009–2012 and spreading it over five years, FY 2009-2013. This would reduce annual capital commitments by an average of 20 percent. However, no details were released, and the Council approved the FY 2009 Capital Budget with the understanding that changes to the Adopted Capital Commitment Plan would be reviewed by the Council and subject to change, once the Plan was released.

Excluding the "roll" of planned but uncommitted funds from FY 2008, planned commitments for FY 2009 – 2012 are down by 19 percent (Fig. 1 on next page). A more detailed table by project type is included in the Appendix.

Fig. 1—Comparison of FY 2009 Executive Budget Capital Commitment Plan and Adopted Plan



NOTE: FY 2008 Adopted Plan figure represents preliminary actual commitments. FY 2009 Adopted Plan commitments exclude estimated $5.15 billion "roll" of uncommitted funds from FY 2008.

Unfortunately, any debt service savings resulting from the stretch-out in the short term are likely to be swamped by the rise in the City's borrowing costs in the last several weeks as a result of the freeze-up in credit markets, which has affected even highly-rated borrowers like the City.

Appendix

Comparison of Executive and Adopted Capital Commitment Plans

Agency	FY 08 Roll	FY09-12 May	FY09-12 Nov	FY09-12 Variance	FY09-13 May	FY09-13 Nov	FY09-13 Variance
Environmental Protection							
Equipment	47.6	682.8	573.1	(109.7)	968.6	627.0	(341.5)
Sewers	37.3	1,082.5	755.0	(327.5)	1,552.3	1,042.0	(510.3)
Water Supply	(1.4)	765.3	1,058.3	293.0	1,310.0	1,498.4	188.4
Water Mains, Sources & Treatment	181.8	3,080.5	2,922.6	(157.9)	3,965.3	3,336.3	(629.0)
Water Pollution Control	111.7	3,844.9	2,885.0	(959.9)	6,103.6	3,328.0	(2,775.6)
Subtotal	**$377.0**	**$9,455.9**	**$8,193.8**	**($1,262.1)**	**$13,899.7**	**$9,831.8**	**($4,068.0)**
Transportation							
Waterway Bridges	(28.8)	447.6	318.5	(129.1)	536.4	354.6	(181.8)
Ferries	40.1	116.7	109.9	(6.8)	129.0	140.2	11.2
Highway Bridges	41.3	1,714.5	1,382.0	(332.5)	2,399.9	1,891.7	(508.2)
Highways	122.2	1,752.1	1,593.7	(158.3)	2,350.4	1,910.0	(440.5)
Equipment	35.8	35.5	80.9	45.4	40.3	85.7	45.4
Traffic	23.1	299.5	190.1	(109.4)	362.4	212.8	(149.6)
MTA Bus	28.4	7.8	36.2	28.4	7.8	36.2	28.4
MTA-NYCTA	34.1	320.8	272.0	(48.8)	389.3	351.4	(37.9)
MTA-SIRTOA	3.6	1.9	3.8	1.9	2.4	4.3	1.9
Subtotal	**$299.8**	**$4,696.5**	**$3,987.3**	**($709.2)**	**$6,218.1**	**$4,986.9**	**($1,231.1)**
Education							
DOE	(62.6)	5,097.6	4,140.2	(957.4)	6,470.1	5,175.2	(1,294.8)
CUNY	169.4	168.1	269.4	101.3	173.0	316.9	144.0
Subtotal	**$106.7**	**$5,265.7**	**$4,409.6**	**($856.1)**	**$6,643.0**	**$5,492.2**	**($1,150.9)**
Housing & Econ. Development							
HPD	325.0	1,488.8	1,423.6	(65.2)	1,795.5	1,797.1	1.5
NYCHA	75.3	126.2	124.8	(1.3)	138.3	156.0	17.8
Economic Development	1,045.8	1,096.3	1,547.5	451.3	1,160.6	1,905.1	744.5
Subtotal	**$1,446.1**	**$2,711.2**	**$3,096.0**	**$384.8**	**$3,094.4**	**$3,858.2**	**$763.9**
Administration of Justice							
Correction	42.2	1,281.7	1,089.6	(192.1)	1,321.1	1,353.3	32.2
Courts	170.0	515.1	516.2	1.1	526.3	645.2	119.0
Police	124.8	1,548.6	1,319.3	(229.2)	1,651.7	1,668.8	17.1
Subtotal	**$337.0**	**$3,345.4**	**$2,925.2**	**($420.2)**	**$3,499.0**	**$3,667.3**	**$168.2**

Cont'd …

Agency	FY 08 Roll	FY09-12 May	FY09-13 Nov	Agency	FY 08 Roll	FY09-12 May	FY09-13 Nov
Health & Human Services							
Children's Services	61.8	70.4	98.4	28.0	80.7	123.0	42.3
DFTA	29.4	11.9	15.2	3.3	15.3	19.0	3.6
Health & Mental Hygiene	135.7	330.7	331.5	0.8	344.3	412.3	68.0
HHC	365.4	462.3	641.9	179.6	530.0	802.4	272.4
Homeless Services	35.8	94.6	101.3	6.7	120.1	126.6	6.5
HRA	34.1	75.2	74.2	(1.0)	76.5	92.0	15.6
Juvenile Justice	3.5	12.4	12.7	0.3	13.6	15.9	2.2
Subtotal	**$665.7**	**$1,057.5**	**$1,275.2**	**$217.7**	**$1,180.5**	**$1,591.2**	**$410.6**
City Operations & Facilities							
Cultural Affairs	239.5	609.6	664.3	54.6	635.1	851.8	216.7
NYPL-Research	32.6	3.7	20.2	16.5	3.7	23.8	20.2
New York Public Library	65.9	15.8	54.8	39.0	17.1	60.7	43.6
Brooklyn Public Library	10.7	33.0	33.9	0.8	34.1	40.1	6.0
Queens Borough Public Library	32.9	17.5	24.8	7.3	18.6	30.2	11.6
DCAS - Buildings	235.8	867.2	812.1	(55.1)	868.0	1,067.3	199.3
DCAS - Equipment	252.9	904.4	924.0	19.6	904.4	1,155.0	250.6
DCAS - Real Property	5.0	22.0	12.5	(9.6)	27.7	15.1	(12.5)
DOITT	357.7	1,032.5	1,112.2	79.7	1,032.5	1,390.2	357.7
Fire	114.5	582.7	555.4	(27.3)	663.1	695.0	31.9
Parks & Recreation	501.4	1,684.1	1,569.0	(115.2)	1,851.7	1,933.6	81.9
Sanitation	69.1	1,808.5	1,591.0	(217.5)	1,808.5	1,878.1	69.6
Subtotal	**$1,918.1**	**$7,581.0**	**$7,374.0**	**($207.0)**	**$7,864.3**	**$9,140.8**	**$1,276.5**
TOTAL	**$5,150.3**	**$34,113.3**	**$31,261.1**	**($2,852.2)**	**$42,399.0**	**$38,568.3**	**($3,830.7)**

FINANCIAL RESULTS
DECEMBER 2008

CECONY EPS	EARNINGS PER SHARE		VARIANCE FROM BUDGET		VARIANCE FROM 2007	
DECEMBER 2008	$	0.21	$	(0.03)	$	0.03
TWELVE MONTHS ENDED DECEMBER 31, 2008	$	2.87	$	(0.03)	$	(0.30)

CECONY RETURN ON COMMON EQUITY	12 MONTHS ENDED DECEMBER 2008	12 MONTHS ENDED NOVEMBER 2008	12 MONTHS ENDED DECEMBER 2007
ELECTRIC	9.4%	9.4%	11.1%
GAS	11.0%	10.7%	13.0%
STEAM	5.3%	5.0%	7.8%
Total	9.2%	9.2%	11.1%

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC
OPERATING INCOME
(THOUSANDS OF DOLLARS)

	Month of December			Twelve Months Ended December 31			Twelve Months Ended December 31		
	2008	2007	Variance	2008	2007	Variance	2008	2007	Variance
ELECTRIC									
Operating Revenues									
Sales Revenues	$ 516,442	$ 509,160	$ 7,282	$ 7,133,257	$ 6,545,045	$ 588,212	$ 7,133,257	$ 6,545,045	$ 588,212
Delivery Charges to NYPA	31,359	22,204	9,155	378,463	309,203	69,260	378,463	309,203	69,260
Economic Development	(566)	968	(1,534)	20,180	17,482	2,698	20,180	17,482	2,698
Other Operating Revenues	(15,070)	46,876	(61,946)	416,235	632,161	(215,926)	416,235	632,161	(215,926)
Total Operating Revenues	532,165	579,206	(47,043)	7,948,135	7,503,891	444,244	7,948,135	7,503,691	444,244
Operating Expenses									
Fuel	35,100	27,625	7,475	375,780	323,510	52,270	375,780	323,510	52,270
Purchased Power	183,744	232,187	(48,443)	3,149,562	2,980,916	168,666	3,149,582	2,980,916	168,666
Other Production Expenses	10,161	9,215	946	136,633	128,211	8,422	136,633	128,211	8,422
Transmission and Distribution	53,774	48,479	5,295	643,538	596,176	47,362	643,538	596,176	47,362
Other O&M	76,887	103,332	(26,445)	814,654	771,004	43,650	814,654	771,004	43,650
Depreciation and Amortization	46,206	38,531	7,675	520,908	448,063	72,845	520,908	448,063	72,845
Taxes, Other Than Income Taxes	83,214	85,622	(2,408)	1,036,992	1,018,305	18,687	1,036,992	1,018,305	18,687
State Income Tax	(2,822)	(211)	(2,611)	68,879	62,306	6,573	68,879	62,306	6,573
Federal Income Tax	1,764	(932)	2,696	226,275	208,283	17,992	228,275	208,283	17,992
Total Operating Revenue Deductions	488,028	543,648	(55,820)	6,973,241	6,536,774	436,467	6,973,241	6,536,774	436,467
Operating Income	$ 44,137	$ 35,360	$ 8,777	$ 974,894	$ 967,117	$ 7,777	$ 974,894	$ 967,117	$ 7,777
GAS									
Operating Revenues									
Sales Revenues	$ 235,487	$ 217,130	$ 18,357	$ 1,788,283	$ 1,693,671	$ 74,812	$ 1,768,283	$ 1,693,671	$ 74,612
Other Operating Revenues	5,094	2,641	2,453	75,226	70,307	4,919	75,226	70,307	4,919
Total Operating Revenues	240,581	219,771	20,810	1,843,509	1,763,978	79,531	1,843,509	1,763,978	79,531
Operating Expenses									
Gas Purchased for Resale	135,858	132,839	3,019	998,848	978,158	20,690	998,648	978,158	20,690
Other Production Expenses	412	416	(4)	4,262	3,512	750	4,262	3,512	750
Transmission and Distribution	11,532	8,837	2,695	133,810	111,796	22,014	133,810	111,796	22,014
Other O&M	11,967	9,827	2,140	122,598	108,495	16,103	122,598	106,495	16,103
Depreciation and Amortization	7,793	7,248	545	90,500	85,137	5,363	90,500	85,137	5,363
Taxes, Other Than Income Taxes	17,954	16,794	1,160	187,109	166,576	20,533	187,109	186,576	20,533
State Income Tax	4,085	2,877	1,208	19,604	20,284	(680)	19,604	20,284	(680)
Federal Income Tax	15,668	11,518	4,150	71,172	73,753	(2,581)	71,172	73,753	(2,581)
Total Operating Revenue Deductions	205,269	190,356	14,913	1,627,903	1,545,711	82,192	1,627,903	1,545,711	82,192
Operating Income	$ 35,312	$ 29,415	$ 5,897	$ 215,606	$ 218,267	$ (2,661)	$ 215,606	$ 218,267	$ (2,661)
STEAM									
Operating Revenues									
Sales Revenues	$ 101,627	$ 79,413	$ 22,214	$ 676,074	$ 653,476	$ 22,598	$ 676,074	$ 653,476	$ 22,598
Other Operating Revenues	6,669	10,550	(3,881)	105,387	109,835	(4,448)	105,387	109,835	(4,448)
Total Operating Revenues	108,296	89,963	18,333	781,461	763,311	18,150	781,461	763,311	18,150
Operating Expenses									
Fuel	40,763	26,627	14,136	284,207	264,581	19,626	284,207	284,581	19,626
Purchased Power	7,550	9,347	(1,797)	93,895	85,566	8,329	93,895	85,566	8,329
Other Production Expenses	8,885	7,515	1,370	93,302	86,886	6,436	93,302	86,866	6,438
Distribution Expenses	2,255	488	1,787	35,984	23,937	12,047	35,984	23,937	12,047
Other O&M	3,048	3,596	(548)	43,033	45,330	(2,297)	43,033	45,330	(2,297)
Depreciation and Amortization	4,721	5,096	(375)	60,614	60,169	445	60,614	60,169	445
Taxes, Other Than Income Taxes	8,019	6,968	1,051	80,351	77,902	2,449	80,351	77,902	2,449
State Income Tax	2,481	2,548	(67)	3,984	7,023	(3,039)	3,984	7,023	(3,039)
Federal Income Tax	8,409	8,062	347	5,910	20,022	(14,112)	5,910	20,022	(14,112)
Total Operating Revenue Deductions	86,131	70,247	15,884	701,280	671,396	29,884	701,280	671,396	29,884
Operating Income	$ 22,165	$ 19,716	$ 2,449	$ 80,181	$ 91,915	$ (11,734)	$ 80,181	$ 91,915	$ (11,734)

* Excludes Non -Utility Opereting Income.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
OPERATION AND MAINTENANCE EXPENSES

Operation and maintenance expenses (excluding fuel and purchased power) were $170.7 million for the month of December and $1,917.0 million for the twelve-month period. Departmental expenses were the same as budget for the month and under budget by $37.1 million for the period. Corporate expenses were under budget by $1.8 million for the month and over budget by $8.6 million for the period.

Significant variation in departmental expenses for the month of December and the twelve-month period were as follows:

	(Thousands of Dollars) Dec-08	Y-T-D
Customer Operations The variation for the month and year to date is mainly due to the impact of the economy on Uncollectibles. This challenging economic environment has contributed to higher account balances and reduced recovery rates. UB for the month is $3.4 million over budget while UB for the period is $13.9 of the over budget. The over run for the month is partially offset by increased theft of service discoveries ($0.3 million). The year to date UB variation is partially offset by under runs with Outreach Gas and Electric Educational charges, lower expenses associated with Telecom Applications projects and changes in the scope of facilities projects ($1.9 million).	$ 3,146	$ 11,958
Environmental, Health and Safety Period under run is due to lower New York State Department of Environmental Conservation fees, human resources under budget, and lower associated project expense.	240	(1,041)
Electric Operations Electric Operations Month and YTD major variations are; Storm Contingency ($5.0 million under) due to favorable weather for the year; Transformer inspection and repairs ($1.2 million under); Credits for CATV related work ($1.7 million); and Stray Voltage Testing Program ($0.5 million under) due to favorable weather for the year.	(4,555)	(8,474)
Central Engineering Period under run driven by human resources below budgeted levels and lower outside services and studies.	329	(436)
Steam Operations The under run for the period is due to Generation with lower Water Treatment, lower maintenance/overhaul activity expense and Services with lower business development vendor support and advertising. The under run is partially offset by higher Steam Incident Action Plan (i.e. mandated rain patrol, incremental trap replacements, and infrastructure improvements) costs.	23	(287)
S&TO Month over run is primarily due to overhead line programs and also licensing/maintenance agreements and computer support. Period under run driven by deferred coating refurbishment work and lower labor costs.	1,508	(447)
Substation Operations Month over run is driven by the timing of rate case programs and an increase in labor expense and more work than anticipated on O&M projects. Period under run is driven by a shift of labor and accounts payable to higher priority capital (i.e. new substations, transformer banks, retrofits) and less than ancitipated corrective maintenance.	1,130	(691)
Interference Month and period under runs are driven by lower than expected expenditures on various electric projects in all areas due to delays in City projects.	(662)	(12,517)

<u>Gas Operations</u> The underrun for the month can be attributed to a shift to capital activites, clearing of manhour balances and expenditures associated with Senior V.P. and Staff. 'For the period the underrun can be attributed to a shift to capital activities related to accelerated leak-prone main replacement work (gas rate case program). Gas Operations replaced approximately 348,000 feet of leak-prone gas mains compared to a budget of 211,000 feet. In addition, Gas Engineering's expenditures associated with the hurricane preparedness, transmission main drip pot, and public awareness were lower than anticpated. Also, Gas Operations operated below our budgeted human resource levels.	(1,623)	(3,313)
<u>Business Shared Services</u> Period under run is primarily due to Purchasing and Shared Services Admin with lower than budgeted staffing cost.	(125)	(1,088)
<u>Enterprise Shared Services</u> Month over run is driven by Facilities with the settlement of invoices associated with various project completions. Period under run is driven by Facilities with lower restacking charges at 4IP and lower R&D due to delays associated with the Hydra project and delays in obtaining road opening permits for several gas projects.	1,588	(5,268)
<u>Finance</u> Under run is due to lower staffing levels ($1,825), Insurance Premiums ($2,551), timing of PC Software/Systems ($512), Consultants ($697), Registrar Fees ($78), Bank Service Fees ($108), and Misc. $206.	98	(5,565)
<u>Public Affairs</u> The overrun for the month is due to scheduling of strategic partnerships and communications programs. The underrun for YTD is due to lower than budgeted staffing cost.	903	(86)
<u>Contingency not spent</u>	(1,901)	(8,714)
<u>Other</u>	(94)	(1,164)
Total budget variation	$ 5	$ (37,133)

Prepared by: ______________________
Checked by: ______________________
Reviewed and Approved: ______________________

$ 5 $ (37,133)

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
OPERATION AND MAINTENANCE EXPENSES - CORPORATE EXPENSES
(THOUSANDS OF DOLLARS)

	Month of December					Twelve Months Ended December 31				
	Actual	Budget	Actual	Variance		Actual	Budget	Actual	Variance	
	2008	2008	2007	Budget	2007	2008	2008	2007	Budget	2007
Corporate Expenses										
Pensions - Actuarial	$ 11,460	$ 10,654	$ 9,217	$ 806	$ 2,243	$ 129,433	$ 127,590	$ 110,628	$ 1,843	$ 18,805
- Supplemental, SRIP & DIP	2,091	63	1,464	2,028	627	17,514	745	(4,537)	16,769	22,051
- Regulatory Accounting	(3,080)	(3,545)	(8,340)	465	5,260	(61,621)	(54,957)	(111,927)	(6,664)	50,306
Other Post Employment Benefits	6,223	6,042	5,985	181	238	72,657	72,346	71,816	311	841
Capitalized and Billed to NYPA	(9,345)	(5,748)	(6,724)	(3,597)	(2,621)	(81,369)	(68,674)	(63,202)	(12,695)	(18,167)
Net	7,349	7,466	1,602	(117)	5,747	76,614	77,050	2,778	(436)	73,836
Health Insurance & Group Life Insurance	10,562	11,320	7,454	(758)	3,108	114,340	134,139	118,737	(19,799)	(4,397)
Health & Group Life Insurance Capitalized	(4,496)	(3,908)	(3,171)	(588)	(1,325)	(42,430)	(46,321)	(41,560)	3,891	(870)
Net	6,066	7,412	4,283	(1,346)	1,783	71,910	87,818	77,177	(15,908)	(5,267)
Other Employee Benefits										
Thrift Savings Plans	1,612	1,610	1,457	2	155	19,153	19,928	18,754	(775)	399
Other	728	1,812	(293)	(1,084)	1,021	4,067	16,043	18,802	(11,976)	(14,735)
Injuries and Damages	9,186	6,802	5,617	2,384	3,569	96,814	79,885	84,132	16,929	12,682
Vested Vacation and Accrued Wages	(2,422)	(1,875)	(8,773)	(547)	6,351	448	940	428	(492)	20
Rents	5,011	5,451	4,811	(440)	200	59,209	58,715	57,446	494	1,763
Regulatory Commission Expenses (Excl. Legal)	4,507	3,402	2,833	1,105	1,674	43,994	40,478	40,493	3,516	3,501
Regulatory Accounting	1,726	1,240	(255)	486	1,981	9,607	11,877	(5,469)	(2,270)	15,075
RPS	7,290	7,290	7,290	(0)	-	87,477	87,480	87,477	(3)	-
SBC	2,939	2,939	2,201	0	738	28,626	28,626	20,336	0	8,291
DSM	3,758	8,441	11,358	(4,683)	(7,600)	71,067	94,187	95,181	(23,120)	(24,114)
Loss on Obsolete Material and Supplies	576	560	(131)	16	707	10,263	6,700	5,644	3,563	4,619
Change in Allowance for Uncollectibles	2,384	-	1,464	2,384	920	8,935	-	2,900	8,935	6,035
Transferred Expenses	(2,318)	(2,036)	(2,306)	(282)	(12)	(23,100)	(22,000)	(22,027)	(1,100)	(1,073)
A & G Capitalized	(4,316)	(3,815)	(3,918)	(501)	(398)	(48,641)	(46,415)	(37,864)	(2,226)	(10,777)
Stock Based Compensation	(1,020)	846	1,237	(1,866)	(2,257)	8,733	8,568	7,329	165	1,404
Electric, Water and Chemicals	3,902	2,828	2,719	1,074	1,183	28,057	25,468	22,572	2,589	5,485
Revenues included in Departmental Expenses	1,490	1,124	2,172	366	(682)	25,735	20,168	23,139	5,567	2,596
LIC Reserve	(945)	-	-	(945)	(945)	15,694	-	-	15,694	15,694
Steam Settlement	-	-	-	-	-	12,370	-	-	12,370	12,370
All Other	9,133	6,961	50,659	2,172	(41,526)	49,593	52,509	94,965	(2,916)	(45,372)
Total Corporate Expenses	$ 56,636	$ 58,458	$ 84,027	$ (1,822)	$ (27,391)	$ 656,625	$ 648,025	594,193	$ 8,600	$ 62,432

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
OPERATION AND MAINTENANCE EXPENSES - DEPARTMENTAL EXPENSES
(THOUSANDS OF DOLLARS)

	Month of December					Twelve Months Ended December 31				
	Actual 2008	Budget 2008	Actual 2007	Variance Budget	Variance 2007	Actual 2008	Budget 2008	Actual 2007	Variance Budget	Variance 2007
Operations										
President & Chief Operating Officer	89	1,138	77	(1,049)	12	855	4,895	980	(4,040)	(125)
Customer Operations										
Customer Operations	15,393	15,221	15,264	172	129	168,192	169,904	161,317	(1,712)	6,875
Uncollectibles	7,422	4,000	4,351	3,422	3,071	66,891	53,000	55,150	13,891	11,741
Theft of Service Billings	(940)	(492)	(1,275)	(448)	335	(9,021)	(8,800)	(9,281)	(221)	260
Total - Customer Operations	21,875	18,729	18,340	3,146	3,535	226,062	214,104	207,186	11,958	18,876
Environment, Health and Safety	1,404	1,164	1,259	240	145	14,489	15,530	13,835	(1,041)	654
Electric Operations										
Distribution Field Operations	14,044	16,769	17,244	(2,725)	(3,200)	221,244	220,700	219,355	544	1,889
Engineering Services	4,631	6,593	2,961	(1,962)	1,670	43,553	51,069	39,365	(7,516)	4,188
Energy Efficiency	777	580	224	197	553	5,642	6,013	3,598	(371)	2,044
Energy Services	865	930	931	(65)	(66)	9,507	10,638	9,338	(1,131)	169
Total - Electric Operations	20,317	24,872	21,360	(4,555)	(1,043)	279,946	288,420	271,656	(8,474)	8,290
Central Operations										
Senior Vice President & Staff	83	935	68	(852)	15	886	5,560	898	(4,674)	(12)
Central Engineering	889	560	2,805	329	(1,916)	6,071	6,507	6,052	(436)	19
Maintenance & Construction Services	632	657	757	(25)	(125)	7,272	7,506	7,397	(234)	(125)
System & Transmission Operations	5,686	4,178	3,995	1,508	1,691	51,217	51,664	45,728	(447)	5,489
Steam Operations	10,149	10,126	7,777	23	2,372	127,731	128,018	121,012	(287)	6,719
Substation Operations	9,268	8,138	7,701	1,130	1,567	94,863	95,554	86,783	(691)	8,080
Sub-Total - Central Operations	26,707	24,594	23,103	2,113	3,604	288,040	294,809	267,870	(6,769)	20,170
Interference	8,343	9,005	5,683	(662)	2,660	94,117	106,634	77,580	(12,517)	16,537
Total - Central Operations	35,050	33,599	28,786	1,451	6,264	382,157	401,443	345,450	(19,286)	36,707
Gas Operations										
Senior Vice President & Staff	639	1,498	356	(859)	283	6,683	7,067	5,272	(384)	1,411
Central Groups	1,111	854	1,066	257	45	16,923	17,293	14,244	(370)	2,679
Area Gas Operations	2,846	3,680	3,424	(834)	(578)	49,934	49,936	46,996	(2)	2,938
Engineering	492	678	321	(186)	171	4,541	6,500	3,447	(1,959)	1,094
Environment, Health and Safety	270	206	162	64	108	2,168	2,270	1,890	(102)	278
Gas Control	160	152	102	8	58	1,707	1,796	1,458	(89)	249
Emergency Response Center	258	331	305	(73)	(47)	3,083	3,490	2,994	(407)	89
New York Facilities	0	0	0	0	0	0	0	0	0	0
Total - Gas Operations	5,776	7,399	5,736	(1,623)	40	85,039	88,352	76,301	(3,313)	8,738
Total Operations	84,511	86,901	75,558	(2,390)	8,953	988,548	1,012,744	915,408	(24,196)	73,140

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
OPERATION AND MAINTENANCE EXPENSES - DEPARTMENTAL EXPENSES
(THOUSANDS OF DOLLARS)

	Month of December					Twelve Months Ended December 31				
	Actual 2008	Budget 2008	Actual 2007	Variance Budget	Variance 2007	Actual 2008	Budget 2008	Actual 2007	Variance Budget	Variance 2007
Business Shared Services										
Senior Vice President and Staff	41	68	35	(27)	6	638	808	508	(170)	130
Energy Management	-	-	-	0	0	-	-	-	0	0
Information Resources	3,305	3,301	3,269	4	36	41,640	41,760	41,469	(120)	171
Shared Services Administration	134	130	124	4	10	1,429	1,596	1,327	(167)	102
Purchasing	588	687	671	(99)	(83)	7,331	7,806	7,527	(475)	(196)
Central Field Services	176	183	186	(7)	(10)	2,081	2,237	1,990	(156)	91
Total Business Shared Services	4,244	4,369	4,285	(125)	(41)	53,119	54,207	52,821	(1,088)	298
Enterprise Shared Services										
Senior Vice President and Staff	110	125	35	(15)	75	1,328	1,491	748	(163)	580
Energy Management	1,001	789	875	212	126	9,880	9,918	10,136	(38)	(256)
Services	155	84	115	71	40	745	811	627	(66)	118
Human Resources	3,847	3,496	3,281	351	566	40,949	41,049	36,624	(100)	4,325
Facilities	3,064	2,097	384	967	2,680	17,151	20,529	9,378	(3,378)	7,773
Research & Development	4,215	4,425	2,447	(210)	1,768	21,602	22,932	14,239	(1,330)	7,363
Emergency Management	433	294	124	139	309	2,558	2,700	1,199	(142)	1,359
Security Services	311	240	197	71	114	2,971	2,978	2,151	(7)	820
EE0	77	75	132	2	(55)	910	954	870	(44)	40
Total Enterprise Shared Services	13,213	11,625	7,590	1,588	5,623	98,094	103,362	75,972	(5,268)	22,122
Law										
Law Department	1,684	1,606	1,554	78	130	19,199	19,509	17,823	(310)	1,376
Outside Legal Services	33	112	85	(79)	(52)	1,156	1,300	1,945	(144)	(789)
Secretary	92	97	125	(5)	(33)	1,627	1,739	1,479	(112)	148
Total Law	1,809	1,815	1,764	(6)	45	21,982	22,548	21,247	(566)	735
Finance										
Senior Vice President and Staff	524	454	601	70	(77)	3,426	4,087	3,424	(661)	2
Corporate Accounting	1,630	1,495	1,429	135	201	17,809	17,906	16,261	(97)	1,548
Treasury	653	614	405	39	248	6,977	7,706	6,386	(729)	591
Rate Engineering	310	320	349	(10)	(39)	3,811	3,871	3,880	(60)	(69)
Corporate Planning	314	243	65	71	249	1,547	2,797	736	(1,250)	811
Tax	347	285	195	62	152	3,103	3,326	2,488	(223)	615
Insurance Premiums	2,620	2,889	2,390	(269)	230	21,947	24,492	21,330	(2,545)	617
Total Finance	6,398	6,300	5,434	98	964	58,620	64,185	54,505	(5,565)	4,115
Public Affairs	2,706	1,803	2,715	903	(9)	26,012	26,098	34,485	(86)	(8,473)
O&R Support of Shared Services										
Energy Markets Policy Group	92	95	87	(3)	5	1,051	1,100	1,002	(49)	49
Regulatory Services	374	376	345	(2)	29	4,370	4,406	4,214	(36)	156
Total O&R Support of Shared Services	466	471	432	(5)	34	5,421	5,506	5,216	(85)	205
General Auditor	502	527	544	(25)	(42)	6,261	6,430	6,077	(169)	184
Chairman and Staff	187	220	170	(33)	17	2,310	2,420	1,935	(110)	375
Total Departmental Expenses	$ 114,036	$ 114,031	$ 98,492	$ 5	$ 15,544	$ 1,260,367	$ 1,297,500	$ 1,167,666	$ (37,133)	$ 92,701

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
CAPITAL EXPENDITURES
DECEMBER 2008

Capital expenditures were $256.1 Million for the month and $2,202.4 Million for the period. Expenditures were over budget by $16.6 Million for the month and under budget $149.9 Million for the period.

Significant variations for the month of DECEMBER were as follows:	Over (Under) Budget (Millions of Dollars) Month	Period
Electric		
Transmission The under run for the month and the period is primarily attributed to the revised schedule due to deferral of M29's service date ($33.4M for period), deferral of Overhead Transmission Projects ($3.3M for month, $6.5M for period), Feeder 18001/18002 ($3.9M for month, $5.0M for period), Feeder M51 ($1.0M for month; $4.7M for period), minimal feeder failures to date ($4.6M for period), portion of funding not required this year in Emergent Transmission Reliability ($3.2M for period), revised scope for Feeder 38M72 ($3.6M for month, $2.8M for period) and the cancelation of M-Line Tower Relocation ($1.5M for month, $1.5M for period).	($13.1)	($65.7)
Substation The under run for the month and the period is attributed to the later start of transmission and civil work coupled with anticipated progress payment for York ($11.7M for month, $55.7M for period), delays due to scope changes for Elmsford ($2.7M for month, $25.9M for period), lower costs for Parkview ($1.9M for month, $19.9M for period), delay in transmission construction permits for Woodrow ($1.5M for month, $9.2M for period), the deferral of Land for Gateway ($2.0M for month, $5.0M for period) and Astoria East ($1.5M for month, $4.0M for period), later start than originally budgeted for: High Voltage Test Sets ($5.0M for period), environmental programs: Corona Pumping Plant #1 and Millwood Risk ($4.9M for period) and various substation reliability projects ($3.0M for period).	($21.5)	($134.1)
Distribution The over run for the month and period is primarily attributed due to accelerated work in New Business and higher costs as a result of increased length of service sections and associated primary & secondary work ($3.5M for month, $41.2M for period), Transformer & Meter Purchases ($17.1M for month, $40.1M for period), additional primary sections, trench feet of conduit & structures in primary feeder relief for System Reinforcement ($14.4M for month, $18.1M for period), and increased Burnouts due to additional primary sections, poles, wires & secondary spans ($3.3M for month).	$38.2	$97.8
Total Electric	$3.6	($102.0)
Gas The under run for the month and period is attributed to delays in several Gas Supply & Main Projects ($14.4M for period), the installation of 24" High Pressure Mains ($5.5M for period), and the slow-down in work schedules for Corroded Steel Mains ($4.7M for month, $3.6M for period); partially offset by the over runs in GD11- 4" Small Diameter Cast Iron main replacement ($16.2M for period),	($4.5)	($8.0)
Steam The over run for the month and period is primarily attributed to costs related to water treatment trailers at 74th St, ER and various DEC Compliance projects to ensure water quality due to a change in City water supply ($5.1M for month, $4.1M for period), the additional purchases of Steam Manhole covers with costs related to Flange removals & Expansion Joint replacements ($2.1M for month, $5.2M for the period), the delivery of ERRP spare transformer ($1.4M for month) and ER U6 Turbine Repairs ($2.7M for period); partially offset by the delays in various EP projects: ER 71 BFP Switchgear replacement/ER Fan Switchgear ($3.9M for period).	$9.4	$8.7
Common The over run for the month is primarily attributed to Irving Place Renovation ($2.0M), Mobile equipment ($2.0M), the expediting of several Customer Ops Projects ($2.3M), and various IR XC consultant charges ($1.0M). The under run for the period is primarily attributed to the delays in: AMR's ($11.0M), Irving Place Renovation Project ($9.0M), various IT projects ($8.0M), IR XC Projects ($4.5M), Property Records: Power Plant Project ($4.0M), Management Data Metering System ($2.0M), the Energy Management Risk System ($2.0M), slippage of program for Off System Billing ($1.7M) and delay in the Bill Design Project ($1.4M).	$8.0	($48.6)
Grand Total	**$16.6**	**($149.9)**

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
CAPITAL BUDGET STATUS REPORT
CAPITAL EXPENDITURES - ACTUAL VS. BUDGET
(THOUSANDS OF DOLLARS)

	DECEMBER			ORIGINAL	YEAR TO DATE		
	ACTUAL	BUDGET	VARIANCE	BUD 1/08	ACTUAL	BUDGET	VARIANCE
ELECTRIC OPERATIONS	162,183	158,538	3,645	1,862,092	1,570,268	1,671,036	(100,768)
GAS OPERATIONS	26,609	31,085	(4,476)	302,253	294,248	302,254	(8,006)
STEAM OPERATIONS	22,990	13,558	9,432	117,120	125,883	117,120	8,763
COMMON OPERATIONS	44,288	36,339	7,949	314,759	212,003	261,871	(49,868)
GRAND TOTAL	256,070	239,520	16,550	2,596,224	2,202,401	2,352,281	(149,880)

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
CAPITAL BUDGET STATUS REPORT
CAPITAL EXPENDITURES - ACTUAL VS. BUDGET
(THOUSANDS OF DOLLARS)

		DECEMBER			ORIGINAL	YEAR TO DATE		
		ACTUAL	BUDGET	VARIANCE	BUD 1/08	ACTUAL	BUDGET	VARIANCE
ELECTRIC OPERATIONS								
ELECTRIC TRANSMISSION								
ETR02	SYS OPS - NEW EMS	1,378	544	834	8,200	8,180	8,200	(20)
ETR03	SYS OPS - WORK MGMT SYSTEMS	219	90	129	700	447	700	(253)
ETR04	SYS OPS - CONTINUANCE	0	0	0	0	0	0	0
ETR05	SYS OPS - OPERATIONS REQUIREMENTS	99	175	(76)	2,000	304	2,000	(1,696)
ETR06	SYS OPS - DISTRICT OPERATIONS IMPROVE	287	80	207	900	693	900	(207)
ETR07	SYS OPS - BULK POWER IMPROVEMENTS	0	0	0	0	0	0	0
ETR08	SYS OPS - FACILITIES/UTILITIES IMPROVE	862	700	162	3,100	3,123	3,100	23
ETR09	FAILURES	(6)	400	(406)	5,000	363	5,000	(4,637)
ETR10	LOAD RELIEF	18,970	18,955	15	37,400	110,261	144,000	(33,739)
ETR11	ENVIRONMENTAL	(21)	100	(121)	1,750	898	1,750	(852)
ETR12	RELIABILITY AND FEEDER REPLACEMENT	1,309	12,511	(11,202)	176,500	11,942	33,500	(21,558)
ETR14	OTHER	(0)	1,050	(1,050)	2,100	739	2,100	(1,361)
ETR15	ALTERNATE ENERGY CONTROL CENTER	(80)	0	(80)	0	10	0	10
ETR16	TRANSMISSION INTERFERENCE	(2)	1,500	(1,502)	1,500	61	1,500	(1,439)
	TOTAL ELECTRIC TRANSMISSION	**23,014**	**36,105**	**(13,091)**	**239,150**	**137,021**	**202,750**	**(65,729)**
SUBSTATION								
ESU03	SUBSTATION OPERATIONS	0	0	0	0	0	0	0
ESU06	ELECTRIC OPERATION - DISTRIBUTION	2,794	7,220	(4,426)	15,940	11,308	13,940	(2,632)
ESU09	SUBSTATION OPERATIONS-SMALL CAPITAL	1	223	(222)	6,000	2,488	6,000	(3,512)
ESU11	SECURITY	368	1,000	(632)	6,100	3,740	6,100	(2,360)
ESU12	LOAD RELIEF	18,942	36,100	(17,158)	428,264	236,072	328,150	(92,078)
ESU13	RELIABILITY	14,055	14,204	(149)	125,385	92,268	125,385	(33,117)
ESU15	ENVIRONMENTAL	2,846	900	1,946	13,500	11,219	13,500	(2,281)
ESU16	FAILURES	2,603	1,850	753	22,700	29,389	22,700	6,689
ESU17	SUBSTATION-OTHER	146	210	(64)	4,910	2,379	4,910	(2,531)
ESU18	GENERATION INTERCONNECTION	(4)	1,500	(1,504)	5,000	2,690	5,000	(2,310)
	TOTAL SUBSTATION	**41,750**	**63,207**	**(21,457)**	**627,799**	**391,554**	**525,685**	**(134,131)**

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
CAPITAL BUDGET STATUS REPORT
CAPITAL EXPENDITURES - ACTUAL VS. BUDGET
(THOUSANDS OF DOLLARS)

		DECEMBER			ORIGINAL	YEAR TO DATE		
		ACTUAL	BUDGET	VARIANCE	BUD 1/08	ACTUAL	BUDGET	VARIANCE
ELECTRIC DISTRIBUTION								
CTP03	TELECOM PROJECTS	0	69	(69)	820	70	820	(750)
EDI00	ELECTRIC DISTRIBUTION ANNUALS	(3)	0	(3)	0	(471)	0	(471)
EDI03	NEW BUSINESS	14,747	11,828	2,919	125,000	178,739	137,000	41,739
EDI06	BURNOUTS	12,794	9,463	3,331	98,388	140,783	134,379	6,404
EDI09	INTERFERENCES	2,913	2,992	(79)	43,500	36,695	43,500	(6,805)
EDI12	SYSTEM REINFORCEMENTS	43,953	29,513	14,440	550,487	487,910	469,779	18,131
EDI16	TRANSFORMER INSTALLATIONS	0	0	0	0	0	0	0
EDI17	METER INSTALLATIONS	2,148	1,562	586	19,320	19,027	19,564	(537)
EDI18	TRANSFORMER N/W PROTECTOR	18,852	2,882	15,970	143,648	166,658	125,592	41,066
EDI21	METERS & METER DEVICES	2,013	917	1,096	11,967	11,025	11,967	(942)
EDI24	INTELLIGENT LAYOUT	0	0	0	0	0	0	0
EDI27	TELECOM RELAYS	(0)	0	(0)	2,013	0	0	0
wtco1	LOWER MANHATTAN RESTORATION	3	0	3	0	1,257	0	1,257
	TOTAL ELECTRIC DISTRIBUTION	**97,419**	**59,226**	**38,193**	**995,143**	**1,041,693**	**942,601**	**99,092**
	TOTAL ELECTRIC OPERATIONS	**162,183**	**158,538**	**3,645**	**1,862,092**	**1,570,268**	**1,671,036**	**(100,768)**

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
CAPITAL BUDGET STATUS REPORT
CAPITAL EXPENDITURES - ACTUAL VS. BUDGET
(THOUSANDS OF DOLLARS)

		DECEMBER			ORIGINAL	YEAR TO DATE		
		ACTUAL	BUDGET	VARIANCE	BUD 1/08	ACTUAL	BUDGET	VARIANCE
GAS OPERATIONS								
GAS DISTRIBUTION								
GD100	GAS ANNUALS	(0)	0	(0)	0	1	0	1
GD103	NEW BUSINESS	3,995	2,434	1,561	41,000	40,563	41,000	(437)
GD106	INTERFERENCE	2,896	2,220	676	35,000	32,056	35,000	(2,944)
GD109	SYSTEM REINFORCEMENT	3,960	6,024	(2,064)	40,510	53,547	40,510	13,037
GD111	LOW PRESSURE CAST IRON	1,614	3,320	(1,706)	22,142	25,297	22,142	3,155
GD112	METER INSTALLATIONS	1,410	474	936	7,900	11,067	7,900	3,167
GD113	WINTER LOAD RELIEF	0	0	0	0	0	0	0
GD115	LEAKING SERVICES	2,049	1,428	621	23,799	21,847	23,799	(1,952)
GD121	ACCELERATE MAIN REPLACEMENT	(0)	0	(0)	0	28	0	28
GD125	REPLACE CORRODED STEEL MAINS	2,772	7,488	(4,716)	49,922	46,279	49,922	(3,643)
GD126	CATHODIC PROTECTION STEEL MAINS	166	126	40	375	702	376	326
GD127	REPLACE MEDIUM PRESSURE CAST IRON MAINS	(0)	0	(0)	0	17	0	17
GD129	HP Coupling Removal Program	0	0	0	0	0	0	0
	TOTAL GAS DISTRIBUTION	**18,862**	**23,514**	**(4,652)**	**220,648**	**231,404**	**220,649**	**10,755**
GAS SUPPLY MAINS AND TUNNELS								
GCM10	GAS CENTRAL METER - LOAD RELIEF	1,201	200	1,001	4,650	7,039	4,650	2,389
GCT30	GAS CENTRAL TUNNEL - RELIABILITY	222	125	97	2,216	1,899	2,216	(317)
GLN12	GAS LNG - RELIABILITY	1,058	0	1,058	10,380	2,196	10,380	(8,184)
GPC11	GAS PRESSURE CONTROL - RELIABILITY	279	160	119	3,550	2,476	3,550	(1,074)
GSM03	SUPPLY MAINS & TUNNELS	1,527	1,517	10	16,557	11,063	16,557	(5,494)
GSM04	SUPPLY & MAINS RELIABILITY	1,935	4,235	(2,300)	27,098	12,652	27,098	(14,446)
GSM05	SUPPLY & MAINS ENVIRONMENTAL	0	0	0	0	0	0	0
GSS06	SECURITY	(0)	0	(0)	0	0	0	0
	TOTAL GAS SUPPLY MAINS AND TUNNELS	**6,222**	**6,237**	**(15)**	**64,451**	**37,325**	**64,451**	**(27,126)**
GAS GENERATION								
GGP40	GAS GENERATION - LOAD RELIEF	1,525	834	691	15,804	25,558	15,804	9,754
GGP41	GAS GENERATION - RELIABILITY	(1)	500	(501)	1,350	(39)	1,350	(1,389)
	TOTAL GAS GENERATION	**1,525**	**1,334**	**191**	**17,154**	**25,518**	**17,154**	**8,364**
	TOTAL GAS OPERATIONS	**26,609**	**31,085**	**(4,476)**	**302,253**	**294,248**	**302,254**	**(8,006)**

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
CAPITAL BUDGET STATUS REPORT
CAPITAL EXPENDITURES - ACTUAL VS. BUDGET
(THOUSANDS OF DOLLARS)

		DECEMBER			ORIGINAL	YEAR TO DATE		
		ACTUAL	BUDGET	VARIANCE	BUD 1/08	ACTUAL	BUDGET	VARIANCE
STEAM OPERATIONS								
ELECTRIC PRODUCTION								
EPR03	PRODUCTION - STEAM/ELECTRIC MAJOR	0	0	0	0	0	0	0
EPR04	ENVIRONMENTAL	0	0	0	0	0	0	0
EPR05	CAPACITY	0	0	0	0	0	0	0
EPR07	RELIABILITY	0	0	0	0	0	0	0
EPR08	REGULATORY	1,534	0	1,534	0	1,534	0	1,534
EPR09	SMALL CAPITAL	0	0	0	0	0	0	0
EPR10	SECURITY	994	0	994	1,250	1,666	1,250	416
EPR11	EH&S	468	1,600	(1,132)	3,000	1,473	3,000	(1,527)
EPR12	CONTROL SYSTEMS	1,839	2,600	(761)	15,325	12,145	15,325	(3,180)
EPR13	BOILERS	(1)	0	(1)	0	49	0	49
EPR14	MECHANICAL EQUIPMENT	1,287	350	937	5,950	8,857	5,950	2,907
EPR15	ELECTRIC EQUIPMENT	249	100	149	4,300	383	4,300	(3,917)
EPR16	STEAM TURBINE	614	1,000	(386)	1,000	2,726	1,000	1,726
EPR17	STRUCTURES	(446)	300	(746)	4,500	5,808	4,500	1,308
EPR18	WATERFRONT	(7)	0	(7)	0	366	0	366
EPR19	ROOFS	214	0	214	700	1,191	700	491
	TOTAL ELECTRIC PRODUCTION	**6,746**	**5,950**	**796**	**36,025**	**36,200**	**36,025**	**175**
STEAM DISTRIBUTION								
SD102	NEW BUSINESS	(71)	540	(611)	2,650	2,322	2,650	(328)
SD103	DISTRIBUTION & METERS	0	0	0	0	0	0	0
SD106	INTERFERENCES	127	75	52	3,400	1,395	3,400	(2,005)
SD109	SYSTEM REINFORCEMENT	4,877	1,845	3,032	18,750	25,667	18,750	6,917
SD112	STEAM METER INSTALLATIONS	49	178	(129)	3,400	3,506	3,400	106
SD115	SD2 METER PURCHASE	45	250	(205)	1,725	1,178	1,725	(547)
	TOTAL STEAM DISTRIBUTION	**5,026**	**2,888**	**2,138**	**29,925**	**34,067**	**29,925**	**4,142**

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
CAPITAL BUDGET STATUS REPORT
CAPITAL EXPENDITURES - ACTUAL VS. BUDGET
(THOUSANDS OF DOLLARS)

		DECEMBER			ORIGINAL	YEAR TO DATE		
		ACTUAL	BUDGET	VARIANCE	BUD 1/08	ACTUAL	BUDGET	VARIANCE
STEAM PRODUCTION								
SPR03	PRODUCTION - CONSTRUCTION	0	0	0	0	0	0	0
SPR04	ENVIRONMENTAL	0	0	0	0	0	0	0
SPR05	CAPACITY	0	0	0	0	0	0	0
SPR07	RELIABILITY	0	0	0	0	0	0	0
SPR08	REGULATORY	0	0	0	0	0	0	0
SPR09	SMALL CAPITAL			0	2,350			0
SPR10	SECURITY	128	0	128	400	842	2,350	(1,508)
SPR11	EH&S	1,816	100	1,716	7,945	3,449	400	3,049
SPR12	CONTROL SYSTEMS	1,271	995	276	3,400	8,221	7,945	276
SPR13	BOILERS	1,535	0	1,535	29,150	4,516	3,400	1,116
SPR14	MECHANICAL EQUIPMENT	1,959	2,400	(441)	2,425	26,665	29,150	(2,485)
SPR15	ELECTRIC EQUIPMENT	3,853	225	3,628	0	8,010	2,425	5,585
SPR16	STEAM TURBINES	0	0	0	0	0	0	0
SPR17	STRUCTURES	57	1,000	(943)	2,500	1,639	2,500	(861)
SPR18	WATERFRONT	592	0	592	3,000	1,362	3,000	(1,638)
SPR19	ROOFS	7	0	7	0	912	0	912
	TOTAL STEAM PRODUCTION	**11,218**	**4,720**	**6,498**	**51,170**	**55,616**	**51,170**	**4,446**
	TOTAL STEAM OPERATIONS	**22,990**	**13,558**	**9,432**	**117,120**	**125,883**	**117,120**	**8,763**

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
CAPITAL BUDGET STATUS REPORT
CAPITAL EXPENDITURES - ACTUAL VS. BUDGET
(THOUSANDS OF DOLLARS)

	DECEMBER			ORIGINAL	YEAR TO DATE		
	ACTUAL	BUDGET	VARIANCE	BUD 1/08	ACTUAL	BUDGET	VARIANCE
COMMON							
GENERAL EQUIPMENT							
ENTERPRISE							
FACILITIES MANAGEMENT							
XM1 OFFICE FURNITURE AND EQUIPMENT	60	1,195	(1,135)	2,022	1,267	2,022	(755)
XM7 MISCELLANEOUS EQUIPMENT	571	777	(206)	2,385	2,572	2,385	187
TOTAL XM DETAIL	**632**	**1,972**	**(1,340)**	4,407	**3,839**	**4,407**	**(568)**
FACILITIES PROJECTS - ENTERPRISE	10,026	7,881	2,145	51,803	33,582	51,803	(18,221)
HUMAN RESOURCES	1,305	1,601	(296)	19,922	18,481	19,422	(941)
ENERGY MANAGEMENT	(133)	157	(290)	2,693	636	2,693	(2,057)
SECURITY	72	0	72	500	244	500	(256)
COM 12 TOTAL ENTERPRISE SHARED SERVICE	**11,902**	**11,611**	**291**	**79,325**	**56,782**	**78,825**	**(22,043)**
BUSINESS							
TRANS. AND STORES XM DETAIL							
XM2/13 MOBILE EQUIPMENT	10,526	8,683	1,843	55,441	52,165	55,441	(3,276)
XM3 STORES EQUIPMENT	119	56	63	818	491	818	(327)
XM5/15 TECHNICAL SERVICES LAB	2,111	298	1,813	7,086	7,524	7,086	438
XM6 TOOLS & WORK EQUIPMENT	1,840	482	1,358	7,137	7,211	7,137	74
TOTAL XM DETAIL	**14,596**	**9,519**	**5,077**	**70,482**	**67,391**	**70,482**	**(3,091)**
INFORMATION RESOURCES							
XM8 COMMUNICATION EQUIPMENT	1,084	1,049	35	5,159	5,608	5,159	449
XM10 COMPUTER EQUIPMENT	4,070	7,533	(3,463)	18,276	21,452	18,276	3,176
TOTAL XM DETAIL	**5,154**	**8,582**	**(3,428)**	**23,435**	**27,060**	**23,435**	**3,625**
IR PROJECTS (XC FACILITIES)	2,195	1,156	1,039	11,857	7,831	12,357	(4,526)
TOTAL INFORMATION RESOURCES	**7,349**	**9,738**	**(2,389)**	**35,292**	**34,891**	**35,792**	**(901)**

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
CAPITAL BUDGET STATUS REPORT
CAPITAL EXPENDITURES - ACTUAL VS. BUDGET
(THOUSANDS OF DOLLARS)

		DECEMBER			ORIGINAL	YEAR TO DATE		
		ACTUAL	BUDGET	VARIANCE	BUD 1/08	ACTUAL	BUDGET	VARIANCE
	TRANSPORTATION, STORES, & TECH SERVICES							
	BUILDING AND YARDS	46	100	(54)	1,200	332	1,200	(868)
	GENERAL EQUIPMENT			0	0			0
	TOTAL TRANSPORTATION, STORES, & TECH SERVICES	**46**	**100**	**(54)**	**1,200**	**332**	**1,200**	**(868)**
	PURCHASING	1,404	575	829	3,150	4,011	3,150	861
	LAW			0	0			0
COM 09	**TOTAL BUSINESS SHARED SERVICE**	**23,396**	**19,932**	**3,464**	**110,124**	**106,625**	**110,624**	**(3,999)**
	TOTAL SHARED SERVICES	**35,298**	**31,543**	**3,755**	**189,449**	**163,407**	**189,449**	**(26,042)**
STRATEGIC INITIATIVES								
COM03	CENTRAL OPERATIONS COMMON	1,096	186	910	4,790	4,277	4,790	(513)
COM13	ELECTRIC OPERATIONS - GENERAL EQUIPMENT	1,802	964	838	19,919	6,593	10,969	(4,376)
COM15	CORPORATE	969	825	144	9,250	5,180	9,250	(4,070)
COM18	CUSTOMER OPERATIONS COMMON	5,012	2,741	2,271	90,351	31,577	46,413	(14,836)
	TOTAL STRATEGIC INITIATIVES	**8,880**	**4,716**	**4,164**	**124,310**	**47,627**	**71,422**	**(23,795)**
FACILITIES PROJECTS								
COM21	EH&S COMMON	110	80	30	1,000	958	1,000	(42)
COM24	GAS OPERATIONS SPECIAL PROJECTS	0	0	0	0	11	0	11
MPA06	VISION	0	0	0	0	0	0	0
	TOTAL FACILITIES PROJECTS	**110**	**80**	**30**	**1,000**	**969**	**1,000**	**(31)**
	TOTAL COMMON OPERATIONS	**44,288**	**36,339**	**7,949**	**314,759**	**212,003**	**261,871**	**(49,868)**

CECONY COMMON CAPITAL BUDGET PERFORMANCE
Thru December 2008
$000's

	Month			YTD		
	Actual	Budget	Variation	Actual	Budget	Variation
Facilities						
Third Avenue Yard	0	0	0	0	0	0
All Other Facilities Projects	9,950	7,881	2,069	33,506	51,803	(18,297)
Total Facilities	**$9,950**	**$7,881**	**$2,069**	**$33,506**	**$51,803**	**($18,297)**
Strategic IT Projects						
Electric Operations IT Projects	1,802	964	838	6,593	10,969	(4,376)
Customer Operations IT Projects	5,012	2,741	2,271	31,577	46,413	(14,836)
Gas Operations IT Projects	0	0	0	11	0	11
Central Operations IT Projects	1,054	66	988	3,633	4,050	(417)
EH&S IT Projects	110	80	30	958	1,000	(42)
Finance IT Projects	1,006	825	181	5,217	9,250	(4,033)
Business Shared Services IT Projects	3,715	1,831	1,884	12,244	16,707	(4,463)
Enterprise Shared Services IT Projects	1,326	1,758	(432)	19,442	22,615	(3,173)
Total Strategic IT Projects	**$14,027**	**$8,265**	**$5,762**	**$79,675**	**$111,004**	**($31,329)**
General Equipment						
XM1 - Furniture, Partitions	60	1,195	(1,135)	1,267	2,022	(755)
XM2/13 - Vehicles	10,526	8,683	1,843	52,165	55,441	(3,276)
XM3 - Stores Equipment	119	56	63	491	818	(327)
XM4 - Shop Equipment	42	120	(78)	644	740	(96)
XM5/15 - Lab & Test Equipment	2,111	298	1,813	7,524	7,086	438
XM6 - Tools	1,840	482	1,358	7,211	7,137	74
XM7 - Miscellaneous (AC's, VCR's, etc.)	571	777	(206)	2,572	2,385	187
XM8 - Telecommunications	1,084	1,049	35	5,608	5,159	449
XM10 - Computers	4,070	7,533	(3,463)	21,452	18,276	3,176
Total XM's	**$20,423**	**$20,193**	**$230**	**$98,935**	**$99,064**	**($129)**
Lower Manhattan Restoration	$2.6	$0.0	$2.6	$1,257	$0.0	$1,257
Total CECONY Common Capital	**$44,403**	**$36,339**	**$8,064**	**$213,372**	**$261,871**	**($48,499)**