Case 13-E-0030 – Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service.

Case 13-G-0031 – Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Gas Service.

Case 13-S-0032 – Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Steam Service.

STAFF REPLY BRIEF

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STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

I. Overview

Department of Public Service Staff (Staff) respectfully submits this reply brief to the Administrative Law Judges in the Con Edison electric, gas and steam rate cases. On August 30, 2013, initial briefs were filed in these proceedings by numerous active parties.[1] An extensive record was generated in these proceedings covering a multitude of issues presented by the parties, and the parties' positions were presented in their initial briefs.

Our reply brief will not discuss each litigated issue presented in the parties' initial briefs. This should not be construed as a concession, in whole or in part, of those issues not presented herein. Staff's silence in this brief on issues in contention merely indicates that we believe that the record is complete and that we have adequately addressed the parties' arguments and evidence in our initial brief.

In the interests of brevity, we have generally addressed in each section of this reply brief the veracity of comments contained in the parties' briefs. In addition, we have endeavored to: indicate instances of and clarify issues "muddied" by a party; indicate instances where a party attempts to introduce non-record "evidence" in its initial brief; and,

[1] The following active parties filed initial briefs: Consolidated Edison Company of New York, Inc. (Con Edison or Company); the Utility Intervention Unit of the Department of State (UIU); the City of New York (City or NYC); the New York Power Authority (NYPA); New York Energy Consumers Council (NYECC); Pace Energy and Climate Center (PACE); United States General Services Administration (GSA); County of Westchester (Westchester or COW); Utility Workers of America, Local 1 & 2 (Union); Astoria Generating Company, LP (Astoria); Consumer Power Advocates (CPA); Environmental Defense Fund (EDF); Natural Resources Defense Council (NRDC); Public Utility Law Project (PULP); Retail Energy Supply Association (RESA); Assemblywoman Amy Paulin; and, Staff.

indicate instances where the parties have misconstrued or misrepresented our testimony and positions in these proceedings.

As our testimony demonstrates, and our initial brief and this reply brief confirm, the record in these proceedings supports the Commission determining negative revenue requirements for the Company's electric ($146.359 million), gas ($95.255 million) and steam ($10.156 million) businesses.

II. Sales Revenues

a. Electric

ii. Models and Forecasts for Electric Deliveries

In its initial brief, Con Edison denies all the flaws of its forecast that Staff pointed out in testimony. Con Edison also attempts to discredit Staff's electric forecast on several grounds, including criticizing our use of alternative functional forms for the first time in this case (CE IB, pp. 5-10). We will show that our electric sales forecast is reasonable and that the Company's arguments are off base and/or have no merit.

In previous electric rate cases, Dr. Liu has identified problems with the forecasting models that Con Edison used, ranging from missing economic variables to incorrect price deflators (Direct testimony of Dr. Liu in Cases 07-E-0523, 08-E-0539, and 09-E-0428). While Con Edison subsequently made changes to address some of those problems in previous electric proceedings, and agreed to utilize the 10-year average weather normalization approach recommended by Dr. Liu in this case, the Company's models continue to suffer from significant flaws. In particular, Con Edison's initial brief did not address its incorrect use of a dummy variable in the SC 9 and sendout models in its attempt to account for the impact of Superstorm Sandy (Tr. 404-409).

Unfortunately, as a result of the Company's statements in its initial brief, the record regarding the differences between Staff's and the Company's positions on electric sales has become muddled with confusing econometric technicalities. In this brief, we will attempt to clarify the differences between the two positions on electric sales.

First and foremost, notwithstanding the methodology used, Staff produced a sales forecast which takes into account the 2% average growth rate over the historical pre-economic downturn period of 1997-2007 (Exh. 291, p. 3). Barring any late-breaking news regarding a sudden, unexpected slowing of the economic recovery, a reasonable forecast of sales should not be too far below this trend. In this light, the Company's forecasted growth rate of a mere 0.1% for 2012-2014 is unreasonably pessimistic and inconsistent with the long term relationship between sales and economic growth. In contrast, our forecasted annual growth rate of 0.9% is more consistent with the long term relationship between sales and economic growth. For this reason alone, Dr. Liu's forecast should be adopted.

Con Edison's forecast of a continuation of essentially zero growth in sales, or at a meager 0.1% annual rate, begs the question whether the Company's models, although estimated on a sampling period of 25 years, have reasonably reflected the long term natural relationships between sales and the economy of its service territory. Indeed, the record provides a negative answer: the Company's forecast is overly sensitive to near term temporary impacts, such as Superstorm Sandy. The Company's models are so sensitive that the Company was compelled to resort to using a dummy variable to prevent its sales forecast from being "unusually low" (Tr. 405-406).

Finally, since both Staff and the Company use essentially the same modeling inputs, the record has necessarily focused on the dissimilarities in the functional forms of Staff's and the Company's models. In simplest terms, our models relate the levels of electric deliveries to the levels of economic and weather variables (“level” model) and the Company’s models relate the yearly differences in electric deliveries to the yearly differences in economic and weather variables (“difference” model) (Liu Direct, p. 24). Excluding 60 GWh of DSM savings, the differences in functional forms result in a 540 GWh difference between the Staff and Company forecasts. The causes of this difference can further be narrowed down to issues with the missing intercepts, the implicit time trend variable, and the dummy variable of the Company’s models that result from its differencing methodology. However, in attempting to address every minute detail, we should not lose sight of the forest for the trees, and keep in mind the reasonableness of the forecast. In view of the relationship between sales and economic growth as discussed above, Staff’s forecast is more reasonable.

Staff’s Use of Alternative Forecasting Models Is Justified

In responding to the Company’s critique that Staff switched to a different forecasting model, we note that the Commission has not prescribed one unique econometric model or a particular functional form for sales forecasting. Neither has the Commission approved a sales forecast simply because the same forecasting model was adopted in previous cases. Both the integrity of a forecasting model and the reasonableness of the forecast produced by the model must be evaluated on a case by case basis.

In addition, advances in econometric research have emerged over time. In this case, we found there is enough recent research to justify moving to our “level” forecasting models. As Dr. Liu explained, as long as the autoregressive residuals are factored in the models, Staff’s forecasting models are correctly specified (Tr. 442-443). Even the earlier econometric literature that Con Edison uses to support its model warns against regarding the Company’s preferred approach as a “universal sure-fire solution” (Exh. 64, p. 8). The authors of that article suggest that both Staff's "level" models and the Company's "difference" models should be used, and one should "interpret the combined results so obtained" (Id.). In addition, as we discuss below, such "level" regression models have also been used by the Company. Therefore, our use of alternative forecasting models is justified.

"Level" Models Were Also Used by Con Edison in This Case

Con Edison in fact used "level" forecasting models in this case. The commercial portion of Con Edison's peak forecast is converted from a commercial sales forecast, and the commercial sales forecast was developed from a level regression model that has precisely the same functional form as Staff's sales "level" forecasting models (Exh. 286, pp. 8-14). It relates the level of commercial GWh to levels of economic and weather variables, including employment (Exh. 286, pp. 8-14). In addition, for the steam case, the Company adopted a "level" function form to develop its steam demand elasticity model for the steam sales forecast (Exh. 746, pp. 10-12).

The Company asserts that its peak load forecast cannot be compared to its delivery forecast, arguing that the two differ in inputs, purpose, and methodologies (CE IB, pp 8-9). Con Edison nevertheless uses similar economic variables for its demand forecast and delivery forecast (Liu Direct, p. 21; Exh. 286, p. 12). The forecasts of these economic variables further are provided by the same source (Id.). More importantly, as mentioned earlier, Con Edison's commercial peak forecast was converted from a commercial sales forecast that was developed by an econometric forecasting model (Exh. 286, pp. 8-14). With little change in load factors in recent years, as Dr. Liu explained, the simple conversion formula leads to a conclusion that the forecasted growth in peaks must come from the forecasted growth in deliveries for the commercial sector, the major contributor to the annual peaks (Liu Direct, p. 22).

Staff's use of Con Edison's peak forecast to check the reasonableness of is delivery forecast is valid.

Staff's Weather Normalization Method Is Correct

In its initial brief, Con Edison claims that Dr. Liu made errors in using the 10-year weather normalization approach when comparing the Company's forecast with the actual deliveries (CE IB, p. 8).

Con Edison is wrong. Dr. Liu's analysis of actual deliveries is consistent with his weather normalization recommendation. That is, weather normalization based on the 10-year averages of historical CDDs and HDDs should be used when forecasting deliveries as well as weather normalizing actual deliveries. Dr. Liu's analysis is correct. In fact, as previously noted, the Company switched to a 10-year average when it updated its forecast on rebuttal. Furthermore, to correctly account for Standby Service deliveries, a comparison should be made between the actual deliveries and the forecast, both under the assumption of the 10-year average based weather normalization, as performed by Dr. Liu.

Staff's Analysis of Growth Rates Has Merit

Con Edison attempts to use the slightly slower forecast for personal income growth for 2012-2014, rather than the growth rate for 2009-2012, to invalidate Dr. Liu's analysis of the Company's forecast as too pessimistic (Id.). It suggests that the slower growth in personal income would cancel out a higher forecast for employment so that "it is reasonable to expect similar growth rates in sales for the two periods (Id.)."

Based on the record in these proceedings, Con Edison's argument has no merit. First, the personal income variable has impact only on the forecast for SC 1 deliveries, which accounts for less than 31% of total deliveries for Con Edison customers (Exh. 59, p. 1). Thus, the economic impact on SC 1 of slower growth in personal income is not enough to cancel out the impact on the rest of the classes of higher employment growth. Second, Con Edison's updated forecast for SC 1 is revised upward by more than 1% above its initial forecast for SC 1, compared with only a 0.5% upward revision for the rest of the customers (Exh. 59, p. 1; Exh. 448, p.3). Evidently, the Company's forecasts for non-SC 1 customers do not reflect the forecast for the improved economy of its service territory.

Dr. Liu's Testimony on Modeling Specification Is Mis-characterized

Con Edison mis-characterizes Dr. Liu's testimony on modeling specifications, and reached a false conclusion that "he accepted that his statement is not true (CE IB, p. 9)." Dr. Liu has argued against the mis-specification of Con Edison's models, as we point out in our initial brief (Staff IB, p. 5). Dr. Liu only accepted that the estimates of an over-specified model may be unbiased and his statements about the Company's mis-specified models are still correct (Tr. 440-441). The Company also made some illogical arguments for the estimation of efficiency losses. Nevertheless, Con Edison did not show that the conditions of efficiency losses are inapplicable to its models (CE IB, p. 9).

Finally, the characterizations of dissimilarity of Staff's and the Company's model specifications go beyond whether a "difference" model includes an intercept term that stands for a linear time trend. In fact, an intercept term was only included in six of the 11 Company models (Exhs. 55 and 455). Staff and Company models are also dissimilar in specifications of other non-differencing autoregressive integrated moving average (ARIMA) terms, although this is not addressed extensively on the record (Id.). Unfortunately, it is technically difficult to identify what portion of the overall 540 GWh difference between the Company's and Staff's forecasts is related to different model ARIMA specifications.

<u>Con Edison's Claim of Spurious Regression Has No Basis</u>

Finally, the Company claims that Dr. Liu's forecasting models are subject to "spurious regression" because the levels of electric deliveries and economic variables are non-stationary over time (CE IB, p. 9).

The spurious regression issue does not apply to Staff's model. Spurious regression refers to regression that tends to accept a false relationship sought by the investigator by using flawed regression schemes. The relationships that we estimated in this case are the commonly accepted natural relationships between the levels of electric deliveries and personal income and employment. Electricity is used by consumers through electric appliances and equipment, and the purchase and usage of the appliances and equipment are directly related to consumer well being and activity levels, which are best measured by personal income for residential consumers and employment for commercial consumers. These relationships are not the result of spurious correlations produced by Staff's estimated models, but are long established, reflecting economic and engineering principles.

As for the issue of regression on non-stationary time series, Dr. Liu believes that his models have taken care of the autocorrelation of the residuals and, based on recent economic literature, that he has appropriately analyzed the relationship between electric deliveries and economic variables (Tr. 442-443). Furthermore, as we pointed out earlier, in forecasting the commercial peak, Con Edison also uses a "level" model that relates the level of electric deliveries to level of employment, both being non-stationary time series variables. In addition, the Company's steam demand elasticity estimates are also developed from "level" regression models (Exh. 746, pp. 10-12). The Company's claim that Staff's level regression models are spurious has no basis.

b. Gas

Con Edison claims that Staff’s sales forecast is not statistically sound because it relies solely on the R-Squared (R2) statistic as the arbiter of model validity (CE IB, pp. 12-13). It claims that sub-setting information into arbitrary time-frames and selecting among them in an attempt to reach a targeted R2 runs counter to acceptable statistical practice (Id.). Specifically, the Company claims that Staff’s regression analysis assumes bills will continue to increase in a linear fashion and that Staff incorrectly uses different time periods in an attempt to meet its targeted “best fit,” an R2 greater than 90% (Id.).

The Company’s arguments are unfounded. Regression analysis is an accepted practice and has regularly been used before the Commission for the purpose of predicting future trends (See e.g., Cases 09-G-0761 and 09-G-0718). It should also be noted that this method was used by Staff in the last Con Edison gas rate case (Case 09-G-0795). Interestingly, the Company's Steam Sales Forecasting Panel relied on simple linear regression in preparing its forecast for these proceedings (CE Steam Sales Forecast Panel Direct, p. 6).

Regarding the Company’s argument that Staff should have looked at the same time periods for each regression and not simply used data ranges solely based on R2 (CE IB, p. 13), the Company mischaracterizes our analysis. Staff did not simply pick and choose data ranges based solely on R2. If Staff had only looked at R2, as the Company claims, then we would have picked data with the highest R2 value. We did not. The Company acknowledges this fact noting that if Staff had chosen 27-months worth of data (15 observations of 12-month rolling data) for SC 3 (1-4 dwelling units) it would have produced an R2 value of 99%, instead of 30-months worth of data (18 observations of 12-month rolling data) which produced an R2 value of 91% (Id.).

The reason Staff did not look at the same time periods for each regression is because each service class (SC) has distinct customer bill and gas usage characteristics. Staff is not seeking to establish a relationship among the various SCs, but rather to establish the future sales trend in the respective SCs. Using one time period across all SCs is unreasonable because all SCs are independent of each other. For example, the oil-to-gas conversion customers are categorized as either SC 2 Heating or SC 3 (greater than four units)(Staff Sales Forecast Panel Direct, pp. 8-11).

The Company further argues that applying a linear regression precludes the possibility that bill counts may move up or down in sync with economic cycles (CE IB, p. 12). Staff's prediction that the number of bills would continue to increase in a linear fashion was based on modeling recent historic actual data (Staff Sales Forecast Panel Direct, pp. 8-11). Staff relied on all factors that affected historic actual data, but also discretely accounted for any new factors such as oil-to-gas conversions in our sales forecast methodology as explained in our initial brief (Id.). We do acknowledge, however, that the most recent data ending December 2012 was applied to all SCs because we believed that incorporating this most recent historic data was critical to producing the best indicator of future sales (Tr. 455).

Moreover, the Company's attempt at discrediting Staff's SC 2 Rate 1 forecast is misplaced (CE IB, p. 12). A comparison of Staff's forecast with the actual monthly bills from January 2013 to June 2013 demonstrates only minor variations (Exhs. 794, 795; Tr. 462-463). This comparison is illustrated in the following table:

MONTHS	STAFF FORECAST BILLS	ACTUAL BILLS	PERCENTAGE DIFFERENCE
Jan-2013	65,314	64,716	0.92%
Feb-2013	62,508	62,944	-0.69%
Mar-2013	62,924	61,511	2.29%
Apr-2013	59,991	60,162	-0.28%
May-2013	60,135	60,387	-0.41%
June-2013	62,700	62,758	-0.09%

Moreover, the Company’s claim that Staff's sales forecast did not consider the impact of the Staff Gas Infrastructure Investment Panel's adjustment to capital related to its oil-to-gas conversion program is also misplaced (CE IB, p. 14). The Company implies that with a reduced budget, it may not be able to connect all of the customers that want to connect, and, therefore, the sales forecast should be reduced. This is a red-herring, Staff’s adjustment does not reduce the forecasted number of customers but instead sets the proper cost level, therefore, allowing the Company with the necessary cost recovery to add the forecasted number of new customers. In addition, for any incremental customers added beyond the forecast, the Company is provided with incremental revenue through the Revenue Decoupling Mechanism. Accordingly, there should be no reason at all for the Company not to connect new gas customers.

Finally, the Company claims that there should be a downward adjustment to the sales forecast based on potential changes to the interruptible customer service classes (CE IB, p. 14). Not only does the Company fail to provide any record support for such an adjustment, it is premature before the Commission has considered the proposed changes to those SCs. For the foregoing reasons the Company’s arguments in its initial brief should be dismissed and Staff’s sales forecast should be adopted.

d. Steam

i. Weather Normalization Clause

Con Edison states that using a 10-year normal will not necessarily result in a more accurate steam sales forecast (CE IB, pp. 23-24). The Company attempts to prove this by showing that anomalous weather during a particular year has a more dramatic impact on a 10-year normal than if a 30-year normal was used (Id.). As Staff witness Dr. Liu testified; however, it is more important to have a forecast that accurately captures observed weather trends than to have a stable forecast that is less likely to be accurate (Liu Direct, p. 7). With observed climate trends, a 30-year average should not be used as it improperly discounts recent weather trends (Id.). Using the 10-year normal weather results in a sales forecast that is more reflective of recent weather trends, thereby making it less likely that the Company's actual sales will vary from the forecast.

The Company claims that allocating more costs to Steam demand charges will not reduce or eliminate the need for a WNC, absent any change to how Steam demand charges are established for the Rate Year (CE IB, p. 24). If the Commission determines that the Company is in need of increased revenue certainty; however, it could require the percentage of fixed costs recovered through demand rates to be increased. The Company could also be required to examine expanding the applicability of demand rates to customers with less than the current threshold of 14,000 Mlb of annual usage (Staff Policy Panel Direct, p. 64). Either of these alternatives could be made effective at the start of the Rate Year.

For these reasons, the Company's request for a steam weather normalization clause should be rejected by the Commission.

III. Other Operating Revenues

a. POR Discount Revenues

Subsequent to hearings, Staff and the Company resolved the issue associated with the Rate Year level of electric and gas Purchase of Receivable (POR) discount revenues. Though the Company initially argued that an offsetting adjustment to credit and collection (C&C) cost recovery through the Merchant Function Charge (MFC) should be made, the Company now agrees that such an adjustment is not necessary. The adjustment is unnecessary because the total C&C recoveries reflected in the MFC for full service customers, and in the POR for ESCO customers, do not exceed the historic targets. The Company continues to maintain, however, that an offsetting adjustment to increase Rate Year uncollectible accounts expense is necessary to account for the forecast of higher POR discount revenues (CE IB, p. 25).

The Company argues that Staff's revenue requirement calculations improperly reflect base rate decreases caused by Staff disconnecting its forecast of POR discount revenues and its forecast of POR uncollectible accounts expense (CE IB, p. 25). It correctly notes Staff forecasted increases to POR discount revenues, but reduced related uncollectible accounts expense. The Company criticizes Staff for not explaining this result: uncollectible expense recoveries increase when included in Staff's forecast of higher POR revenues, but the uncollectible accounts expense that are intended to offset those revenues decrease (CE IB, p. 25).

The Company mistakenly views the uncollectible portion of the POR discount rate being charged ESCO's as a reasonable proxy for its costs that should be reflected as the rate allowance in the Rate Year (Staff IB, p. 66). Rather, the rate allowance should be based on Con Edison's actual uncollectible write-off experience, which represents the Company's true uncollectible costs associated with the POR program (Id.).

Staff's forecast of POR uncollectible expense is the result of multiplying the latest AR by the average POR uncollectible rate of 0.63% (Staff Accounting Panel Direct, pp. 107 and 111). The 0.63% POR uncollectible ratio is backed by 44-months of undisputed actual data from July 1, 2009 through February 28, 2013 (Staff Accounting Panel Direct, p. 107). The Company has provided no argument that Staff miscalculated its actual POR uncollectible write-offs (Staff IB, p. 66). For these reasons, Staff's forecast of POR uncollectible expense should be adopted.

c. John Street

The Company asserts that "…once the [John Street] property was transferred to a non-utility account, it was shareholders not customers who bore the risk for any increase or decrease in the property's fair market value" (CE IB, p. 27). However, the Company is omitting the well-established rule that benefit follows burden.[2] Ratepayers supported the John Street property in rates for over thirty years and continued to pay the property taxes and operating and maintenance expenses on the property subsequent to it being reclassified. Further, ratepayers were also at risk for any increase or decrease in the property's fair market value since the Company never compensated ratepayers for the appreciation in the value of the property over the thirty years it was supported in base rates. Since ratepayers bore the majority of the risk and burden related to the property, they are entitled to a corresponding greater share of the gain.[3]

In addition, to support its proposal for allocating the gain, Con Edison references a prior case where it petitioned

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[2] In the Matter of New York Telephone Company v. Pub. Serv. Commn. of the State of New York, et al., 95 NY2d 40, 731 NE2d 1113, 710 NYS2d 305 (2000).

[3] Id. at 51, 731 NE2d 1118, 710 NYS2d 310.

the Commission for authorization to correct an accounting error that had led to an overstatement of deferred income tax expense (CE IB, p. 26). The Company is asking the Commission to apply a prior Commission Order related to rectifying an accounting error to the appropriate method to be used for the disposition of a gain on a sale of property. These are two completely different concepts, and the cited Order should not be considered precedent-setting for this unrelated issue. Staff's method of disposition of the gain from the property sale is fully described in our initial brief (Staff IB, p. 22). Staff's recommendation is fair and equitable, and rightfully compensates ratepayers who carried the burden of the risk, as well as the majority of the costs associated with the property both before and after it was reclassified.

The Company in fact admits to mischarging ratepayers with operation and maintenance (O&M) expenses related to the property. The Company states, "[a] small portion of the expenses (for landscaping and upkeep) were erroneously charged to customers until the end of 2010" (CE IB, p. 26). Even if the Company's assertion is true that it corrected its accounting in 2010, it is irrelevant since the O&M charges are embedded in the Company's existing base rates (Case 09-E-0428). Therefore, ratepayers have continued to bear these O&M costs and will continue to do so until base rates are reset in this proceeding.

The Company created confusion when it improperly invoked the Uniform System of Accounts (USOA). The Company states that Staff's proposal to dispose the gain from the John Street sale would "ignore the requirements of the USOA" (CE IB, p. 27). This is simply untrue and inapplicable. The Commission's USOA does not prescribe the disposition of such gains, but rather such disposition is solely at the discretion of the Commission. Further, due to its improper accounting which led to charging customers for costs that should have been recorded below the line, the Company, not Staff, ignored the requirements of the USOA for over fifteen years.[4]

Finally, the Company speculated what the Commission might do if the sale of the property had resulted in a loss. The Company stated, "There can be no question that, had the sale price of the property been less than the net market value of the property in 1996, when the property was transferred to a non-plant utility account, shareholders, not ratepayers would have been required to bear the entire loss in the value of the property…" (CE IB, p. 27, n. 28). Despite this assertion, the Company does not know how the Commission would have acted if the sale price of the property had been less than the net market value of the property. The Company provided no support or basis for its specious statement, and it should be ignored.

Based on the foregoing, Staff continues to support its recommended disposition of the gains from the sale of the John Street property as detailed in its initial brief (p. 22).

d. Spent Nuclear Fuel

The Company continues to seek recovery of past spent nuclear fuel (SNF) litigation costs through electric rates (CE IB, p. 28-29). The Company argues that because Staff made a recommendation in its pre-filed testimony in Con Edison's prior electric rate case (Case 09-E-0428) related to these costs, Con Edison should be entitled to recovery in this proceeding (CE IB, p. 28). However, the 2010 Electric Rate Order, which adopted the Joint Proposal (JP) in Case 09-E-0428 did not include a provision for the deferral of SNF litigation costs (Staff IB, p. 22). The Commission has not authorized deferral accounting of SNF litigation costs (Staff IB, p. 23); nor has the Company deferred any such costs on its books, so there is nothing to

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[4] The Commission should consider an enforcement action against Con Edison for violation of the USOA, subject to penalties under PSL §25(2).

recover (Staff IB, p. 23). Based on the foregoing, Staff recommends that the Commission reject the Company's proposal. Approval of the request would lead to an inappropriate enhancement of the Company's earnings in the Rate Year since there are no book costs to amortize.

f. 59th Street Gas Conversion

The Company argues it should recover the charges related to its 59th Street gas conversion project because ratepayers have begun to realize the benefit of the fuel conversion project through fuel cost savings, which outweigh the requested carrying charges (CE IB, p. 31). However, the Company has only provided estimated fuel savings in support of this claim. Even though ratepayers may be receiving a small benefit, this does not change the fact that the Company lacks Commission authorization to defer/recover the carrying charges. The Company does not dispute that it never received Commission authority. The Company presented this issue to the Commission and was directed to seek recovery in its next traditional steam filing (Staff IB, p. 25). Contrary to the Commission Order, the Company is seeking to recover carrying charges associated with its investment prior to its inclusion in rate base in this proceeding. Without authorization from the Commission, the Company should not be allowed to recover these charges.

Furthermore, Con Edison's steam operations earned a 10.04% return on equity for the twelve months ended June 2013, or 44 basis points above its 9.60% allowed return on equity.[5] If the Company should continue to earn above its allowed return on equity there would be no basis for deferred accounting

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[5] The earnings for the twelve months ended June 2013 were reported by Robert Hoglund SVP & CFO of Con Edison Inc at the Barclays Capital 2013 CEO Energy Power Conference. The entire presentation can be found on Con Edison's website, available at http://phx.corporate-ir.net/phoenix.zhtml?c=61493&p=irol-presentations [accessed Sept. 16, 2013].

treatment; the Company's earnings would not be materially impacted and would be sufficient to cover the costs associated with the fuel conversion project.

Additionally, in its own defense the Company speculates, "[c]learly, Staff would not argue, and the PSC would not find, that a credit otherwise due customers should not be applied simply because CECONY failed to defer such amount on its books" (CE IB, p. 32). The Company does not know how Staff would act, nor does it know what the Commission would determine had the circumstances been different. The Company provided no support or basis for its comment; it is pure speculation and should be ignored.

IV. Expenses and Credits

a. Labor Expense / Staffing

i. Employee Level

The Company states that Staff deviated from its past practice and Commission guidance when Staff made its labor expense recommendation (CE IB, p. 33). As was detailed in our initial brief, Staff did not use the historic test year (HTY) average number of employees due to the multi-year decline in employee headcount (Staff IB, p. 27). The use of the average HTY would significantly overstate the forecast of labor expense in the Rate Year since it would not accurately reflect the Company's current employee headcount. Our forecast is based on the Company's headcount as of December 2012, and takes into consideration the Company's request for various program change positions. Staff's recommendation is conservative, since it does not extrapolate the historic downward trend in employee headcount into the Rate Year forecast. In fact, Staff's recommendation is reasonable given the Company's demonstrated work force requirements and should be accepted.

The Company points out that the December 2012 headcount average used by Staff is low. The Company states, "the average employee level for June 2013 was 13,400 – 141 employees more than the December 2012 level" (CE IB, p. 33). However, the Company requested a total of 13,815 employees, including program changes (HTY 13,716 + program changes 99) (CE IB, p. 33). In comparison, the Company's requested employee count of 13,815 would significantly overstate the Rate Year employee count and provide the Company with funding for 415 additional employees that do not exist and are not expected to exist in the Rate Year.

v. Staffing-level issues

The Union also takes issue with Staff's Rate Year forecast of labor expense. The Union asserts, "[t]he last thing that the Commission should be doing in this proceeding is encouraging the Company to scale back even further its depleted in-house workforce, which would be the consequence of including a low staffing number in rates" (Union, IB, p. 7). The Union's assertion is misguided. Staff is not recommending the Company scale back on staffing; we recommend that the Rate Year forecast of labor expense be based on current headcount (Staff IB, p. 29). In addition, to support its position the Union claims we did not take into consideration the adequacy of the employee levels to make certain that safe, reliable and high quality service is provided. (Union IB, p. 8) The Union's argument is baseless. As Staff testified, the Company indicated it is using outside contractors, redeploying existing employees, and utilizing employee overtime to manage the workload with a reduced workforce (Exh. 313). Further, since the Company has met the Commission's safety, performance, and reliability targets over the last several years, despite a reduced workforce, there is no evidence to suggest that safety, performance, or reliability have been an issue for the Company.[6]

[6] See, e.g., numerous reliability and performance measures reports for E/G/S services, including: Case 09-E-0428, Con

Finally, the Union makes several requests for the Commission to initiate new proceedings or condition any rate relief based on new requirements (Union, pp. 43-45). The Commission recently addressed this issue and reaffirmed the standard regulatory practice in major rate proceedings which has been to avoid interference in the collective bargaining process and in matters that are best addressed by management and the unions.[7] Staff recommends the Commission continue to adhere to this approach and deny the Union's requests.

b. Management Variable Pay

Con Edison reiterates its claim that the Commission's primary objective in conducting a total compensation study is to maintain the consistency of peer groups. The Company claims that, in Case 11-E-0408 (Orange and Rockland), "the PSC recommended that utilities address Staff recommendations which included the use of a consistent peer group" (CE IB, p. 44). In that case, Staff recommended that consistent peer groups be used; however, this Staff recommendation was made in light of the vast dissimilarities of the peer groups presented. Moreover, this recommendation was never formally adopted by the Commission, and the Commission never defined what a consistent

Edison – Electric Rates, Report on 2010 Performance under Electric Service Reliability Performance Mechanism (filed March 31, 2011); Report on 2011 Performance under Electric Service Reliability Performance Mechanism (filed March 31, 2012); Report on 2012 Performance under Electric Service Reliability Performance Mechanism (filed April 1, 2013); Case 09-G-0795, Con Edison – Gas Rates, Gas Safety Performance Measures for 2010 (filed Feb. 25, 2011); Gas Safety Performance Measures for 2011 (filed Feb. 29, 2012); Gas Safety Performance Measures for 2012 (filed Feb. 26, 2013); Case 09-S-0794, Con Edison – Steam Rates, Steam Safety Performance Metrics Report for 2011 (filed Jan. 24, 2012); Steam Safety Performance Metrics Report for 2012 (filed Feb. 15, 2013).

[7] Case 07-E-0523, Con Edison – Electric Rates, Recommended Decision (issued January 8, 2008), pp.205-206.

peer group means. The Commission has never required the use of exactly the same peer groups, as opposed to reasonably similar peer groups, in a compensation study, contrary to the Company's assertions.

Con Edison seems to believe that the quality of the benchmarked positions is the most important facet of a total compensation study (CE IB, pp. 43-44). It claims that benchmarking nearly 30% of positions is sufficient because it is "a standard recognized within the industry," despite witness Paul Schafer testifying for Orange and Rockland Utilities, Inc. in Case 11-E-0408 that benchmarking at least 50% of positions is typical market practice (Case 11-E-0408, Schafer Rebuttal, p. 2).

While we believe that the quality of the benchmarked positions is very important, we also believe that the quantity of benchmarked positions is also important. The goal of a total compensation study should be to achieve a reasonable balance of quality and quantity of positions benchmarked in order to ensure that the benchmarked positions are reasonably representative of the overall employee population. If the Company only benchmarks a small percentage of its positions, regardless of the quality of the benchmarking, it can't be reasonably certain that those positions are an accurate representation of its employee population as a whole. Requiring the Company to benchmark a minimum of 50% of its positions, while at the same time maximizing the quality of positions matched, increases the certainty of the reasonableness, comprehensiveness, and accuracy of the benchmarking process relative to the overall employee population. It would be short-sighted to conclude from the language of the Orders in Case 11-E-0408 (Orange and Rockland) that the Commission demands absolute consistency in positions matched, and would not accept reasonably, if not perfectly, consistent peer group data in certain situations, such as when only 30% of positions would otherwise be benchmarked.

Regarding the procedure that National Grid used to match positions for its total compensation study in Case 12-E-0201, its clear that the Company does not understand National Grid's methodology (Case 12-E-0201, Exhibit ___ (SAP-3), pp. 390-417, 554-638). The Company states that it was able to match 100% of positions when it applied National Grid's "broader salary band approach" to its own data (CE IB, p. 45). National Grid in fact did not use the "broader salary band approach" as described by Con Edison. Con Edison only achieved 100% matching because it used an inappropriate position matching methodology.

For these reasons, the Commission should accept the compensation study provided by Con Edison in these cases, but clarify its standards so as to require in the future that such studies benchmark a minimum of 50% of positions, as recommended by Staff.

c. Pension/OPEB Expense Level

The Company supports funding the Supplemental Retirement Income Plan (SRIP) through rates, stating that benefits under the SRIP are tax deductible when paid, and since payments are made automatically, they are not discretionary as alleged by Staff (CE IB, p. 47).

However, the Company never addressed Staff's primary concern that Con Edison failed to provide any rationale why ratepayers should be required to pay for an additional retirement plan over and above its base qualified plan. The Company states that "Staff did not claim that SRIP, or any other aspect of CECONY's pension and OPEB plan is unreasonable" (CE IB, p. 47). Staff could not make a proper determination due to the Company's failure to provide any support for the plan. Con Edison excluded its SRIP from the compensation study, and without its inclusion, Staff cannot determine whether this plan is reasonable (Staff IB, p. 39). Further, the Company never provided any rationale as to why ratepayers should be required to support the plan. The Company failed to meet its burden, and should not be permitted to charge ratepayers for this additional retirement plan.

The Company's asserts that SRIP is not discretionary because Con Edison payments are automatic and the Company "cannot pick and chose which employees are eligible" (CE IB, p. 47). The Company misunderstands Staff's concern and did not address it. As detailed in Staff's initial brief, SRIP is a non-qualified plan that is provided to a very few highly compensated individuals whose full benefits exceed the limit imposed by the Internal Revenue Service for tax purposes (Staff IB, p. 39). Although the Company states it cannot decide who is eligible for its supplemental retirement package, it appears to be based on salary. If the Company determines its employees' salaries, it then also determines who is eligible for this additional retirement plan.

The Company also misunderstood Staff when we explained the SRIP exceeds the limit imposed by the IRS for tax deduction purposes (Staff IB, p. 39). The Company interpreted this to mean that the benefits under SRIP are not tax deductible (CE IB, p. 47). Rather, Staff meant that since the benefits provided by the SRIP exceed federal limits, the Company's annual expenses for the plan are not deductible for income tax purposes.

Based on the fact that the Company failed to demonstrate the reasonableness of its supplemental retirement plan, and the fact that the SRIP appears discretionary, the Company's request to have customers fund the plan through rates should be denied.

d. Municipal Infrastructure

i. **Forecasting Methodology (O&M and Capital)**

Con Edison's presentation in its initial brief confirms that its proposed methodology for forecasting municipal interference O&M expense and capital expenditures contains too many variables and is based, in large part, on unverifiable judgment. For example, the Company explains that its forecast related to "preliminary projects with undefined scopes" is based on an "extrapolation of expenditure trends from similar completed projects" (CE IB, p. 48). This one explanatory sentence has three rather inexact variables, "extrapolation," "expenditure trends" and "similar" projects. The Company has not provided a basis to adequately test these three variables for each project. Even if the Company had provided such a basis, the review would have been overly cumbersome and without any guarantee that the projects reviewed would ultimately be undertaken, and thus impact Company spending during the Rate Year.[8]

Furthermore, while the Company faults our methodology for supposedly not recognizing changing circumstances, the Company's proposed methodology also fails to do so. The Company's forecasting model, predicated on the City's capital commitment plans, does not capture changes in completion dates for City projects. (CE IB, p. 51 n. 55). The completion dates that the City provides to Con Edison, and presumably that the Company uses to develop its forecasts, are often "not the actual completion dates for the projects in question" (Id.; Tr. 82-83). The Company also admits that the City does not provide updated completion dates for projects (Tr. 82-83). In addition, we note that the Company misstates Staff's forecast of Interference O&M

[8] See our initial brief, page 43, in which we discuss the ever changing New York City Capital Commitment Plans, which underlie the Company's entire forecast.

expense. Staff’s forecast is $89.294 million. For these reasons, and those stated in our initial brief, the Commission should not rely on the Company’s forecasts and should instead rely on Staff’s recommended forecasts of municipal interference O&M expense and capital expenditures.

ii. Interference Overheads

The Company continues to assert that an adjustment increasing Rate Year interference expense for additional construction overheads is necessary to account for its forecasted increased spending for interference O&M expense (CE IB, p. 52). The Company claims that the forecasted increased in O&M expense caused a change in the spending levels for O&M and capital interference work requiring for a greater portion of overhead costs to be expensed and a smaller portion to be capitalized (Id.). Con Edison did not provide support that showed a breakdown of construction overheads that it seeks to reallocate from capital to expense (Staff IB, p. 46.). The Company was also unsure of the nature of the overheads and was unable to explain if they represented overheads for the entire construction management department or just those associated with the Company’s oversight of interference work (Id.). Further, the amounts used by the Company’s Accounting Panel to allocate the overheads are inconsistent with the O&M expense reflected in the historic period as well as the Company’s Municipal Infrastructure Support Panel’s forecast of interference expense (Id.). Without providing verifiable support for the proposed change, the Company failed to meet its burden of proof (Id.).

e. Electric Non-Labor Expense Adjustments

i. Underground Five Year Facility Inspection Program

The Company explains that at the completion of the current inspection cycle in 2014, a return to primarily ad hoc inspection mode is projected to decrease program expenses by approximately $27.6 million to Historical Year levels in 2015 and 2016 (CE IB, p. 53). That reduction is based on the Company's initial request of $36.97 million for this program. The Company clarified that the total cost is now projected to be $34.5 million based on adjustments to reflect recent Commission orders on inspections (CE IB, p. 55). While Staff agrees with this revised cost estimate for 2014 (Staff IB, p. 50), we recommend that the revenue requirement associated with the Underground Five Year Facility Inspection Program be calculated using the average life cycle cost of the program to reflect the fact that the program cost is expected to decrease significantly in 2015 and 2016. Not doing so would result in customers overpaying for the program. Therefore, based on the historical average expenditures in 2010, 2011, 2012 of $7.2, $10.4 and $23.8 million per year, respectively, and expected expenditures of $42.1 and $34.5 million per year for 2013 and 2014 (Exh. 242, response to DPS-392, p. 279), the revenue requirement should reflect the average five year life cycle cost of $23.6 million for this program. By using this approach, the Commission will avoid setting rates at the peak level for this program.

f. Gas Non-Labor Expense Adjustments

i. Global Adjustment

The Company claims that the methodology we used to forecast O&M expenses is inconsistent with the methodology Staff used in prior rate cases (CE IB, p. 58). Moreover, it claims that the Company's 2011 and 2012 Productivity Reports that we rely on do not provide a "complete picture" of its O&M expense for the Historic Year and should not be used for establishing its Rate Year O&M expense (Id., p. 59).

Con Edison's arguments are misleading. First, Staff's use of a different methodology to forecast O&M expense for the Rate Year in this case is not dispositive. Rather, if Staff's methodology is reasonable and supported by record evidence, then the adjustment is sound and should be adopted. As explained in

Staff's initial brief, our adjustment is reasonable and supported by record evidence (Staff IB, pp. 52-53). Second, the Company did not justify its increased expense level over the Historic Year, but instead claims that its Productivity Reports do not provide a complete picture. This explanation should be viewed with caution. These Productivity Reports, maintained by the Company, should be accurate and have a verifiable link to the Rate Year forecast. However, despite the alleged inaccuracy, Staff asked the Company to reconcile its Productivity Reports with its forecast, but the Company failed to provide any additional information in response to this request (Exh. 591). Therefore, our adjustment should be adopted.

i. Employee Benefit Expenses

i. Health Care Escalation

The Company argues that other factors outside the general rate of inflation are driving the need for an increased rate allowance for health insurance costs (CE IB, p. 64). As stated in our initial brief, Staff's Rate Year forecast of health insurance costs includes additional increases in costs not captured by inflation that were supported by Company-provided data, such as those attributed to the Patient Protection and Affordable Care Act of 2010 (Staff IB, p.60). Although the Company suggests that a portion of the increase in health care costs is due "to causes not reflected in the general inflation factor" (CE IB, p. 64), Con Edison failed to provide any evidence to support this claim. The Company never produced any data to demonstrate that these costs are not included in the GDP deflator index, which is used to calculate the growth rate, which we used to forecast Rate Year health insurance costs.

Staff agrees that Con Edison's health care costs increased from 2009 to 2013. However, ratepayers will bear the cost of those increases since they are embedded in the most recent premiums (CE IB, p. 65). It is these premiums that Staff used to base its Rate Year calculations, and therefore these health care cost increases are reflected in Staff's forecast.

In addition, the Company alleges it does not dispute the Commission's long established policy to escalate health care costs using the GDP deflator index, despite the fact that it is increasing health care costs at a rate greater than inflation (CE IB, p. 64). Staff's recommendation is consistent with Commission policy of forecasting known health care costs with a general inflation factor and should be adopted (Staff IB, p. 59).

ii. Enrollment Levels

Staff and the Company disagree over employee enrollment levels that should be used to forecast Rate Year health insurance costs. The Company asserts that it demonstrated the reasonability of its forecast in response to Staff's recommendation for an adjustment reducing enrollment levels to latest known levels (CE IB, pp. 65-66). Con Edison claims that due to changes made to its health care plans in 2012, employees were required to enroll in one of several new health care options for 2013, and based on the number of complaints received, a majority of the employees had mistakenly waived coverage (Id.). The Company also argues that enrollment levels would be no less than actual 2012 enrollment levels, the year before the Company completely changed the nature of its health care plan (CE IB, p. 66).

The Company has provided no evidence to support its speculative claims that higher enrollments will occur in the Rate Year, or that the enrollment level will at a minimum be equivalent to the 2012 levels (Id.). In fact, the Company point outs that despite an extensive communication effort which made it clear that employees needed to enroll in one of the new health care plans, over 1,000 employees did not reenroll or waived coverage (Id.). This evidence alone demonstrates the Company's employees were informed and waived coverage. The Company's claims contradict the only evidence available, and should be rejected.

As discussed in our initial brief, the plan changes that the Company implemented increased costs to its employees through higher deductibles, co-insurance, or co-pays. Therefore, it cannot be simply assumed, as the Company proposes, that employees that waived coverage for 2013 will enroll into one of the Company's health care plans for 2014 (Staff IB, p. 61). Consistent with past Commission practice, Staff's Rate Year forecast of health insurance costs reflects the use of the Company's latest known enrollment numbers. Staff's recommendation is based in fact, not speculation. It represents the best forecast that can be made based on known data. As such, Staff's forecast of health insurance costs is reasonable and should be adopted.

j. Insurance

At issue are the effects of reforms to New York Workers' Compensation insurance laws that were included in the state budget passed earlier this year. Among other goals, these reforms are intended to cut costs for employers, but the actual impact remains unclear. Though the Company contends that it provided information to us depicting the impact of the legislation (CE IB, p. 66), we cannot know the actual effects of the new laws until the Workers' Compensation Board (Board) announces additional details about the new assessment methodology and assessment charges. The Board is expected to make these announcements by October 1, 2013.[9] The Company should

[9] New York State Workers Compensation Board, "2013-14 NYS Budget Includes Significant Changes to the Workers' Compensation Law," available at http://www.wcb.ny.gov/content/main/SubjectNos/sn046_520.jsp

be required by the ALJs to submit information regarding the impact of the new Workers Compensation laws on its Rate Year costs. The Company has provided no rationale why it will not wait and react properly to any changes resulting from legislation. Rather, Con Edison's argument is to accept speculation that the law will not impact costs. This runs counter to established practice of forecasting based on latest known information, and should be denied.

m. Consultant and Regulatory Commission Expense

The Company proposes to include the costs of two consultants (CRA and KPMG) in base rates (CE IB, p. 70). Staff continues to object, noting that these costs are related to a forensic audit and prudence investigation, and are thus related to ongoing Commission proceedings. Within these separate proceedings, the Commission has yet to determine that these costs were prudently incurred and should be borne by ratepayers. In fact, the forensic audit resulted from the Company's deficient internal controls.[10] Staff will not recommend prejudging the Commission's determination as to whether the costs of these audits should be borne by ratepayers.

o. Project One Savings Imputation

The Company contends that any reliance Staff placed in savings resulting from Project One (the Company's new financial system) did not warrant mention in Staff's Statement in Support of the Project in Case 09-E-0428 (CE IB, p. 71).[11] This is untrue. Within its Statement in Support, Staff wrote, "The Company lobbied extensively for a funding allowance for the Enterprise Resource Project, or 'general ledger system.' This

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[10] 09-M-0243, Comprehensive Investigative Accounting and Examination of Con Edison, Report Prepared by Charles Rivers Associates, (October 14, 2010) pp.2-3

[11] Case 09-E-0428, supra, Staff Statement in Support of the Joint Proposal, (December 17, 2009).

system is designed to modernize Con Edison's finance and supply chain infrastructure and improve the reliability, timeliness, and transparency of its finance and supply chain information.”[12] Staff and the Commission relied on expectations provided to them when the project was proposed, and now expect that customers should see the savings from the investment.

The Company also asserts that Con Edison’s Statement in Support did not mention savings as a justification for the project (CE IB, p. 71). However, the Company omits that its Statement in Support cited numerous benefits from the Project, including: reduced financial reporting risk, enhanced cost management practices, and increased efficiencies of finance and supply chain processes. The Company’s Statement in Support states these benefits will be derived through the automation of manual processes, the standardization of account structure and business process across the Company, enhanced planning, budgeting and forecasting capabilities, more efficient and robust management reporting and enhanced ability to analyze cost data.[13] A more efficient, automated, and modern system was surely intended to create long-term savings. When the Company proposed Project One, it advocated that benefits would result that logically would equate to savings for ratepayers.

The Company argues that we rely too heavily on savings commencing upon implementation of the project (CE IB, p. 71). However, if not after implementation, when will the Company share the realized savings with the ratepayers? Project One was supposed to eliminate many manual processes and replace them with technology. When Project One was initiated, the Company should experience a number of cost savings as a direct result of the implementation of the project. Therefore, ratepayers should

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[12] Id., 18, n.34.

[13] Case 09-E-0428, supra, Con Edison Statement in Support of Joint Proposal (December 17, 2009), p. 19.

receive a benefit from their investment upon implementation, when the savings were realized.

Finally, the Company argues that Staff's proposed savings imputation is overly aggressive and unsupported (Id.). The Company contends that Staff's quantification of savings includes qualitative benefits despite it being noted that many of the qualitative benefits are based on future events that may or not occur (CE IB, p. 72). What the Company fails to mention is that Staff's quantification also takes into consideration on-going support costs which offset the expected savings and these support costs are now being reflected in the Company's revenue requirements in these cases (Staff Accounting Panel Direct, p. 113).

In its initial brief, the Company agrees to report on its capital and O&M expenses associated with Project One, but not on the benefit aspect of the project (CE IB, p. 72). Staff maintains that this information is necessary to determine whether the project had the intended impact on rates through savings. We want the data to determine whether ratepayers receive the savings associated with the Company's investment. The Company cites to Staff's reporting request that asks, if no net benefits were realized, to explain why; from this request, the Company suggests that Staff recognizes that benefits may not yet be realized (CE IB, p. 72). This is untrue. If the Company claims no benefits have been realized, Staff is seeking an in-depth response so it may conduct a deeper investigation.

It should be noted that Exhibit 313 states that "[i]n order to maximize the amount of benefits that are actually realized, the implementation phase project management team will be responsible for both tracking the benefits that were described in the 'Qualitative Benefits' section of the business case as well as continuing to pursue the additional benefits described in the table above" (Exh. 313, p. 130). If Con Edison is already tracking savings from its investment, Staff does not understand the Company’s reluctance to share that information.

p. Austerity Reversal

Con Edison continues to argue that Rate Year O&M expense should be increased by the level of austerity reflected in its current electric, gas and steam rate plans. The Company claims that there can be no doubt that the austerity imputations resulted in expense cuts during the rate plans, including during the historic year, making base level expenses for forecasting Rate Year expenses lower than they would have been absent the austerity imputations (CE IB, p. 73). Despite its claim, the Company has not provided any evidence in support of its proposed imputation to increase Rate Year O&M expense for austerity (Staff AP, p. 69).

The Company also maintains that excluding the reversal of the austerity imputations in their entirety would fail to recognize that Rate Year expenses do not fully reflect the terminations of the imputations (CE IB, p. 73). Nothing could be further from the truth. Commission Policy requires that there be a verifiable link between actual costs incurred by a utility in a historic period and the forecasted costs in the Rate Year (Staff IB, pp. 68-69). Absent justification for the need or nature of the rate allowances requested, there is no way for the Commission to determine if the cost request is just and reasonable (Staff IB, p. 69). Accordingly, the Company’s request for unidentified and unsupported expenditures must be rejected.

V. Taxes Other Than Income Taxes

a. Property Taxes

Con Edison notes that the property tax forecasts in these proceedings do not reflect tentative tax rates for NYC’s July 2013 through June 2014 fiscal year (CE IB, p. 75). Whether those tentative rates become the final rates is not known until

November 2013 (CE IB, p. 75). The estimated reduction to the Rate Year forecasts of property tax expense may be significant (Staff IB, pp. 70-71).

We recommend that the Company provide the impacts to the Commission so they may be reflected in the Commission rate Order in these proceedings (Staff IB, p. 71). Con Edison does not object to the final rates being reflected in the final revenue requirements when they become available (CE IB, p.75). As such, the Company should provide the Commission an update to the Rate Year forecast when final rates for NYC's 2013/14 fiscal year are known.

c. Subsidiary Capital Tax

The difference in the Rate Year forecast between Company's Update and Rebuttal forecast and Staff's recommendation is $322,000 ($261,000 Electric, $43,000 Gas and $18,000 Steam).

Con Edison argues that Staff's recommended forecast did not reflect certain adjustments to the Company's capitalization, reflects ratemaking approaches that are not applicable, and limits the capitalization to an amount equal to rate base (CE IB, p. 76). However, Staff's Rate Year forecast of Subsidiary Capital Tax did in fact reflect the adjustments to capitalization the Company argues need to be made, as reflected in Staff's updated revenue requirements.

The Company's other arguments are without merit. Ratepayers should only be paying tax on the capital base devoted to utility purposes, and Staff's recommendation aligning the subsidiary capital tax base to the forecasted rate bases makes that connection. Under the Company's proposal, ratepayers will also pay tax on capital devoted to non-utility purposes (i.e., non-utility plant) because those assets are also supported by the same capital base. We are not limiting the capitalization to an amount equal to rate base, but rather aligning the

Company's forecasted rate base and capitalization for Subsidiary Capital Tax purposes.

VI. Depreciation

In its initial brief, Con Edison seeks to discredit Staff's depreciation recommendations; however, as described below, the Company's attacks miss the mark. Furthermore, the Company failed to support the reasonableness of its own position, aside from a few cursory statements.

a. Average Service Lives

On page 79 of its initial brief, Con Edison discusses additional factors that it states Staff failed to consider in our recommendations for average service lives (ASLs) and survivor curves. However, the Company fails to identify situations where the record supports a different outcome based on the application of some specific factor. Moreover, the Company does not explain how it utilized these factors in reaching its proposed ASLs and survivor curves.

Con Edison provides an example in which it claims a T-cut should have been employed to truncate the data for account 364 (CE IB, p. 80; CE Property Tax and Depreciation Panel R/U, pp. 115-122). The Company asserts that Staff, in failing to make this T-cut, places too much emphasis on the portion of the historic data that the Company would ignore. However, the Company makes its proposed T-cut in a manner expressly warned against in the NARUC manual (Exh. 765).[14] Thus, in one of the only examples in which the Company actually identifies a judgment it utilized, its judgment was, at best, ill advised.

Additionally, the Company complains that our recommendations "ignores [sic] the fact that many of CECONY's currently authorized ASLs are already as long or longer than the

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[14] This is the NARUC Manual that the Company refers to as being "authoritative" (CE IB, p. 79; CE Property Tax and Depreciation Panel R/U, p. 63-64).

longest life in a typical utility industry range" (CE IB, p. 80). This assertion is irrelevant. First, "typical utility industry range" means some form of an average. In other words, some utilities likely use ASLs longer than the average. Second, looking at account 365, which was cited by the Company, there is ample experience with the Company's own plant from which to develop an ASL. Accordingly, there is no need to devalue such evidence and instead defer to industry averages. Third, the Company also proposed extensions of ASLs for accounts that approached or went beyond the industry average. Thus, the Company's protestations should fall on deaf ears.

Further, Con Edison decries as "overly aggressive," our recommendation to increase the ASLs "by as much as 15 years" over the currently employed ASLs (CE IB, p. 80).[15] First, we recommend 15 year increases to the ASLs of only four accounts.[16] For each of those four accounts, the Company has acknowledged the need for longer ASLs, as it proposed increases for two of those accounts of 10 years, and two of five years (Exh. 237, p. 3). Thus, Staff merely built on the proposals made by the Company and recommended further increases. Third, in Case 10-E-0050, the Commission approved 15 year increases in ASLs.[17]

The Company implies that depreciation rates, specifically electric depreciation rates, were reset in 2010 in

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[15] Though the Company seems to attack all of staff's ASL recommendations with its statements, most of Staff's recommendations extend ASLs by only five or ten years. As an example, for four electric production accounts and six LNG gas accounts, Staff recommended increasing existing service lives by five years and the Company did not rebut or address these recommendations in its rebuttal testimony or initial brief.

[16] Accounts 354 (Transmission Towers and Fixtures); 356 (Transmission Conductors and Devices); 364 (Distribution Poles); and 373100 (OH Streetlighting).

[17] Case 10-E-0050, Niagara Mohawk Power Corporation, d/b/a National Grid – Electric Rates, Order Establishing Rates for Electric Service (issued January 24, 2011).

Case 09-E-0428 (CE IB, p. 80). However, this is misleading. As explained in Staff's direct testimony, in Cases 08-E-0539 and 09-E-0428, "no changes were made other than with regard to solid state meters. The changes made in Case 07-E-0523 were based on mortality data from 2002 and 2005" (Staff Depreciation Panel, p. 25). Thus, a significant amount of time has elapsed since depreciation rates for Con Edison have been revised.

Staff's approach is balanced, lengthening the ASLs where data and facts supported lengthening the ASLs, and shortening them where supported as well. The Company has failed to make an effective attack on Staff's recommendations. Instead, it seeks only to muddy the waters and does not support its own proposals.

b. Net Salvage

Contrary to the assertion of Con Edison, Staff's recommended salvage rates will protect intergenerational equities. Staff disagrees with the Company's assertion that Staff's recommendation will result in deferring costs that should be borne by today's customers to future customers (CE IB, p. 81, n. 91). The so-called analysis underlying the Company's statement includes zero growth in plant balances, a situation that will not occur (CE Property Tax and Depreciation Panel R/U, p. 88, Fig. 4). It is indisputable that for almost all of Con Edison's plant accounts, when the Company removes old plant, it replaces it with new, more expensive plant. Thus, the Company's plant balances continue to grow, the accruals, as percentages of those plant balances, also continue to grow. Thus, Staff's recommended salvage rates need not result in intergenerational equities. Indeed, it is possible that the Company's proposals could result in current customers paying more than an equitable portion of the removal costs (Staff Depreciation Panel, p. 18).

The Company also asserts that Staff's recommended net salvage methodology is "acknowledged, but not endorsed in the

NARUC Manual…" (CE IB, p. 81, n. 89). The Company's statement implies that its proposed net salvage methodology is endorsed by the NARUC Manual. However, the Company has not shown, and cannot show, where its proposed methodology is endorsed by the NARUC Manual.

Finally, the Company describes Staff's methodology as "PAYGO," which Con Edison defines as "'pay-as-you-go' meaning that there is no depreciation accrual for net salvage but it is treated as an O&M expense" (CE IB, p. 81, n. 89). By the Company's own definition, Staff does not propose "PAYGO." Instead, Staff recommends using current costs as a means to determine a more accurate forecast of accrual rates.

c. Reserve Variation

On page 84 of its initial brief, Con Edison makes a not-before-seen proposal that, should the Commission adopt Staff's depreciation recommendations, the Commission should do so only on a "prospective basis." This appears to be a plea for the Company to continue collecting existing depreciation amortizations, even though Staff's analysis shows those amortizations are no longer necessary. Of course, the new depreciation rates adopted by the Commission in this case would only be applied on a going forward basis. However, the adoption of new depreciation rates does not imply that previous rates were necessarily unreasonable as suggested by the Company (CE IB, p. 84). Over time, conditions change and ASLs, curve shapes and salvage rates change. When new depreciation rates are put in place, the new theoretical reserve should be calculated using the new parameters. The book reserve merely reflects what has actually happened in the past. In past cases, a comparison of the theoretical reserve and book reserve for the Company's electric plant depreciation has shown a deficiency of more than 10%, necessitating an amortization of the excess. Presently, however, the deficiency is less than 10%, thus no amortization is required. Special machinations should not be employed to allow the Company to continue unnecessary amortizations from prior cases. Staff's recommended changes in ASLs and net salvage rates do not change this fact. Moreover, when the Commission adopted depreciation rates for Central Hudson and National Grid, similar to Staff's recommendations in this case, the Commission created no special rules to protect previously needed, but no longer necessary amortizations.[18]

VIII. Cost of Capital

a. Capital Structure

i. Equity Ratio

Staff and the Company continue to advocate for different approaches to determine the appropriate capital structure. While Staff recommends a 48.0% common equity ratio, the Company promotes 50.06%. This difference is significant not only because the cost of equity is much higher than the cost of debt (8.7% versus 5.1%), but also because ratepayers have to support an allowance for income taxes on the additional equity, effectively increasing the cost of any incremental common equity to 14.4% (Staff CSP, p. 31). In support of its proposed common equity ratio of 50.06%, the Company states that its figure is "well within the range of proxy group operating company results" (CE IB, p. 89).

Staff is not seeking a capital structure that is simply within a range obtained through a proxy group. Rather, Staff's methodology seeks the optimal cost of capital and ensures that ratepayers will not subsidize Con Edison's parent company's riskier, non-utility businesses (Staff IB, p. 83). To achieve an optimal capital structure, Staff first assures that

[18] Cases 08-E-0887 and 08-G-0888, Central Hudson Gas & Electric Corporation – Electric & Gas Rates, Order Adopting Recommended Decision With Modifications (issued June 22, 2009); Case 10-E-0050, supra.

Con Edison's affiliated unregulated businesses have been supported by adequate levels of common equity. Staff concluded that, over the past three years, that was the case (Staff CSP, p. 27). Secondly, as noted by Moody's, "transmission and distribution utilities like CECONY have lower business risk than vertically integrated utilities…" (Exh. 972, p. 3). Based on its lower risk, Con Edison does not require as high of a common equity ratio as it contends.

In support of its proposal the Company should have demonstrated why the added layer of common equity it seeks is necessary. Additionally, Con Edison should have provided assurances that its proposed capitalization is cost-effective. It did neither. Given common equity is far more costly than debt, the Company's proposal should have demonstrated a need for the additional expensive burden.

Staff's consolidated approach on the other hand, uses the Commission's time-tested approach to ensure that ratepayers will not subsidize Con Edison's parent company's riskier, non-utility businesses. Staff also finds that maintaining the same 48.0% common equity ratio that the Commission has authorized the Company over the past decade would produce cash flows consistent with those of its recent history. Thus, our recommended capitalization would not only result in a lower, and more advantageous overall cost of capital for ratepayers, but just as importantly, it would also enable the Company to continue to attract capital on the same favorable terms that it has enjoyed over the past ten years (Staff IB, pp. 84, 85).

The Company argues that we did not provide any evidence demonstrating that a common equity ratio of 48.0% is optimal. The Company fails to acknowledge Staff's considerations noted above, and further detailed in Staff's initial brief. The Company is a low risk utility (Staff CSP, p. 32). A 48.0% common equity ratio will be sufficient for the

Company to maintain its current S&P (A-) and Moody's (A3) senior unsecured debt ratings (Staff CSP, p. 32), and the Company's ratios will remain stable (Staff CSP, p. 33). Moreover, the recommended common equity ratio meets the expectations of analysts and investors (Staff CSP, pp. 33-34). Lastly, there is a substantial cost associated with asking ratepayers to support an increase in the Company's authorized common equity ratio from 48.0% to 50.06%; and as explained above, Staff also demonstrated that such an increase is unnecessary for purposes of attracting capital on favorable terms.

The Company compares Staff's recommended common equity ratio to those of other electric utility operating companies (operating companies) and complains that our recommendation is low (CE IB, p. 89). However, the Company fails to take into account the Company's favorable business position. The Commission should consider that there are multiple reasons why Con Edison does not require as high of a common equity ratio as many other operating companies. First, unlike many other operating companies, its affiliated unregulated businesses present much less of a credit drag, because, at least over the past three years, these riskier businesses have been supported by adequate levels of common equity (Staff CSP, p. 27). Second, as noted by Moody's, transmission and distribution utilities like Con Edison have lower business risk than vertically integrated utilities (Exh. 972, p .3). As the Company itself points out, companies with greater business risk need to have larger common equity cushions than similar companies with less business risk (CE IB, p. 91). Con Edison is not a utility whose risk profile requires a larger common equity cushion.

The Company suggests that Staff did not take into account various Staff proposals that may elevate Con Edison's risk profile (CE IB, p. 91, n. 104). However, the Company is focusing on relatively minor incremental changes to performance-related measures and to other Staff proposals, all of which are commonplace in the ratemaking process. Specifically, because our proposals in these proceedings vary little from previous Staff recommendations, Staff does not need to review and assess the impact of each and every Staff proposal to ascertain their effect on the Company's overall risk. (Tr. 191-192).

Con Edison further insinuates that it faces increased regulatory risk beyond the scope of these rate proceedings. In particular, the Company cites the proposed Scorecard (Case 13-E-0140), customer outage credit policies (Case 13-M-0061), and enforcement language of PSL §25(a) as presenting additional risk (CE IB, p. 91). However, recent evidence suggests that, if anything, the Company's overall business risk appears to be decreasing rather than increasing. As noted at the hearings, on April 16, 2013 Regulatory Research Associates raised its evaluation of New York State's regulatory environment (Exh. 781). More recently, on July 31, 2013, Moody's raised from "Baa" to "A" the explicit letter grade ratings associated with its assessment of the Company's regulatory framework, and also observed that "the regulatory scheme in New York State has been consistent and mostly credit-positive"(Exh. 972).

Based on the foregoing, we maintain thatour recommended 48.0% common equity ratio is reasonable. Staff has demonstrated that its recommended ratio is more cost-effective than the Company's proposal. The Company has not shown any need for an increase in costly common equity, nor has it identified a significant elevation in risk upon Con Edison.

ii. Cost of Debt

The Company continues to argue that the Company's entire cost of debt be trued-up because "volatility in the interest rate markets has remained elevated in the period after the financial crisis of 2007-2008 (CE IB, p. 93)". In support of its position, the Company alleges that Staff's testimony with respect to future interest rates is contradictory. Specifically, we stated, "Interest rates on long-term debt securities have stabilized considerably over the past couple of years and these rates can be projected with somewhat relative certainty" (CE IB, p. 93, citing, Staff CSP, p. 45). According to the Company, this statement is at odds with another Staff observation stating "When the Federal Policy does inevitably change, we can logically expect rates to go higher" (Staff CSP, p. 44). The Company mistakenly adopts this statement which refers specifically to the actions of the Federal Reserve holding short term interest rates artificially low, and infers that we believe the same to be true for long-term interest rates. The Company's interpretation represents a complete misunderstanding of Staff's statement.

The Company asserts that there is recent volatility in the interest rate market (CE IB, pp. 88, 93). First, the Company argues without any support that "investors remain skittish" (CE IB, p. 88). This unfounded assertion was used to demonstrate that the market is volatile, but if anything, "skittish" investors may be more likely to purchase utility securities.

Second, the Company suggests that Staff acknowledges the interest rate environment will remain uncertain (CE IB, p. 89). However, Staff testified that "[i]t's anyone's guess as to when the [interest] rates may increase. It may be a year from now, no telling that it's going to be anytime soon" (Tr. 185). In other words, no one is able to predict interest rates a year from now. This statement does not imply any volatility.

Third, the Company insinuates that volatility exists in the market because during a three-month time frame, there was an increase in interest rates (CE IB, p. 89). However, a rise in interest rates over a three month time frame does not necessarily equate to increased interest rate volatility.

The Company pointed out that federal policy is presently holding rates low (CE IB, p. 93). When the federal policy does inevitably change, we can logically expect the current rates to increase (Staff CSP, p. 44). This does not equate to volatility as the Company may suggest. Rather, any investor would acknowledge a logical expectation of an increase from an all-time low interest rate. Such an increase would not create volatility, but would suggest a stable market following the logical expectations of the participants.

b. Cost of Equity

The Company argues that if our 8.7% ROE is adopted, it would threaten Con Edison’s credit ratings. Staff’s pro forma cash flow analysis demonstrates that our 48.0% common equity ratio, 8.7% ROE and recommended depreciation and amortization amounts will afford the Company the opportunity to achieve credit metrics that are generally consistent with its recent past (Exh. 266). Furthermore, the fact that Moody’s raised its outlook for the Company’s debt obligations from “Stable” to “positive” on July 31, 2013, two months after Staff’s testimony in these proceedings was filed, should put to rest any notion of the Company’s alleged “deleterious impact” (CE IB, p. 94) from Staff’s recommendations in these proceedings (Exh. 972).

In an effort to demonstrate that Staff’s recommendation is unnecessarily low, the Company points to a past Recommended Decision (RD) from an Orange and Rockland rate case.[19] Within the RD, the ALJ recommended that “there should be a well quantified and transparent explanation for the difference between the level of ROE authorized in New York and the average nationally”.[20] Though the Company read the RD, it failed to review the Commission’s Order in this matter. On June 17, 2011,

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[19] Case 10-E-0362, O&R – Electric Rates, Recommended Decision, (issued April 4, 2011).

[20] Id., pp. 110-111.

the Commission authorized Orange and Rockland a 9.2% ROE employing the same methodology proposed by Staff witness Henry.[21] Further, the Commission was not persuaded by the concern raised in the RD, finding it to be "purely dictum." (O&R Rate Order, p. 64). Instead, the Commission agreed with Staff, observing that "allowed returns should be commensurate with the risk inherent in the rates we establish…" (O&R Rate Order, p. 67).

Next, the Company attempts to discredit Mr. Henry's analysis in Exhibit 272 which contrasts the average median earned ROE of 109 electric operating companies with annual average authorized ROEs (CE IB, p. 103). The Company argues that it should instead compare them with their subsequently earned ROEs. Staff's approach is reasonable and customary since seldom do rate years and SEC-reported annual reports coincide. As illustrated in Exhibit 268, the UBS Electric Utilities Report utilized an approach nearly identical to Staff's to contrast authorized and earned ROEs (Exh. 268, p. 19).

ii. DCF

Staff presents virtually the same DCF analysis it presented in the aforementioned Orange and Rockland rate proceeding and that the Commission has accepted in all fully-litigated electric and gas combination rate proceedings over the past seven-plus years. Staff's methodology is predicated largely upon the concept of sustainable growth that has been favored by the Commission for decades (Staff IB, p. 97). The Company's DCF analyses incorporate excessive growth rates that are inconsistent with the overall economy (Id.). The Company argues that our DCF model improperly assumes that all quarterly dividends are received at year-end and suggests that a more reasonable approach would be to assume that cash flows are received in the middle of each year (CE IB, p. 96). Staff and

[21] Case 10-E-0362, supra, Order Establishing Rates for Electric Service (issued June 17, 2011)(O&R Rate Order).

UIU both disagree with the Company's characterization of Staff's model. Ironically, UIU complains that Staff's DCF analysis shifts its entire stream of dividend data forward by half a year (UIU IB, p. 28). Staff presents a traditional cost of equity analysis that has been accepted by the Commission for many years, as recently as the Commission's June 17, 2011 Order setting electric rates for Orange and Rockland (Staff IB, p. 90).[22]

The Company also suggests that Staff's sustainable growth method fails to account for the additional growth available to a company, such as from technology innovations, new service offerings, and advanced operating standards (CE IB, p. 97). We presented evidence that our sustainable growth rate is consistent with investors' long-run growth expectations. Nine respected sources forecast annual real GDP growth from 2011-2040 ranging from 2.4% to 2.6% as illustrated on page 92 of the U.S. EIA's April 2013 *Annual Energy Outlook 2013* (Exh. 270). During cross examination Staff witness Henry noted that EIA's electric sales growth estimates already incorporate assumptions regarding the impact of such things as new service offerings (Tr. 206).

The Company criticizes Staff's sole reliance on Value Line dividend growth estimates in the near term of Staff's DCF model (CE IB, p. 98). The Company argues that its use of three sources (Zacks, Value Line and Thomson First Call) is more accurate than Staff's use of only one estimate (Id.). Staff's initial brief demonstrated that Mr. Hevert did not present any evidence indicating how sole reliance upon the Value Line estimates was unreliable (Staff IB, p. 99). The reason Mr. Hevert did not is because a comparison of these estimates reveals that the average Value Line estimates for his proxy group are slightly greater than the average growth estimates

[22] Case 10-E-0362, supra.

from his other two sources. Thus, our methodology is arguably too generous.

iii. CAPM

The Company takes exception to Staff's disagreement with the Company's use of the Constant Growth DCF model to estimate a market-wide return (CE IB, p. 100). Con Edison argues that this criticism is misplaced because the 13.01% market return used in its MRP calculations is generally consistent with the 12.0% to 12.3% February through April Merrill Lynch expected market return estimates on which Mr. Henry relied (Id.).

This comparison is inappropriate. The basic assumption underlying the Company's constant growth model is that the reported earnings growth rates for the next three-to-five years will last in perpetuity (Staff IB, p. 106). This is an unreasonable assumption. Staff and the Commission have instead relied upon a two-stage DCF model because "such a model is preferred especially when growth rates in the near-term and long-run might reasonably be expected to diverge…"(Henry Direct, p. 23).

Unlike the economy as a whole, the utility industry is relatively mature and stable (Henry Direct, p. 21). If the Commission has already concluded that the constant growth form of the DCF model is inferior with respect to estimating investor returns for a mature and stable industry, it is most certainly inadequate for estimating returns for the market as a whole. The fact that near-term and long-term growth estimates may from time to time converge is purely chance, and certainly not an endorsement of the constant growth form of the DCF.

Lastly, the Company contends that the calculation of Beta coefficients based on more current data, as allowed by *Bloomberg,* is consistent with the actual practice of analysts and investors and is analogous to the current use of stock prices in the DCF model (CE IB, p. 101). One of the principal reasons that the Commission has consistently used *Value Line* betas is that they are calculated over a five year period, thereby mitigating the inherent volatility of using beta estimates calculated over shorter time periods (Staff IB, p. 105). The fact that by chance recent beta estimates measured over periods as short as one year happen to resemble beta estimates measured over the past five years is not reason enough to incorporate betas measured over shorter periods into the CAPM methodology. Betas measured over shorter periods will be more widely dispersed, and if the Commission adopts the Company's approach it would have to accept disparate CAPM estimates. Given that the Commission stated in Case 10-E-0362, "any alteration in this method should be done in a manner that avoids increasing the volatility of the CAPM" the Company's approach should be rejected (Id.).

IX. Rate Base

a. Electric Capital

NYC claims in its initial brief that Staff's review of projects appears to have been predominately focused on comparing the Company revenue requests and capital budgets to its historical expenditures and that the record does not demonstrate that we considered the need or plans for undertaking additional projects, in particular the storm hardening projects (City IB, p. 26, n 11).

In our initial brief we noted that we conducted an extensive analysis of Con Edison's line items presented in the Company's pre-filed testimony's exhibits (Staff IB, p. 113). We compared historical budgets to historical expenditures and made adjustments to reflect our forecasted expense levels for each line item. Comparison of historical budgeted expenses to actual expenses is a method to measure how well the Company executes its capital programs. Our objective is to make recommendations to the Commission that correctly reflect, as closely as possible, the reasonable costs of the Company's capital programs. Applying this measurement of actual performance to planned performance on the Company's proposed budget results in a reasonable guide to what the Company will most likely expend in the Rate Year. Thus, Staff performed a meaningful review of the Company's budget.

Additionally, we reviewed and evaluated the information provided by the Company in its filing and in response to the hundreds of multi-part IRs that were propounded on Con Edison. We assessed the cost estimates, prioritization of programs, and alternatives considered as well as the white papers provided in the Company's testimony exhibits. We also performed numerous site inspections to investigate and confirm the status of major on-going and conceptual capital projects and to assist our analysis of the timing, reasonableness of cost, and need for those projects.

We take exception to the City's remark that the Commission should not rely solely on analysis provided by Con Edison when investigating the Company's reinforcing and expanding of its electric system (City IB, p. 31, n. 16). The City further states that the Commission should use the contractor it already retained or hire another engineering consultant to independently assess the Company's system capabilities and infrastructure expansion plans to meet present and future load growth (Id.). The City did not indicate in its initial brief which contractor the Commission has retained. The Commission has the various engineering and professional Staff within the Department of Public Service who is responsible for investigating the Company's current capabilities as well as its reinforcement and expansion plans. In addition, the Commission requires that periodic management audits be performed for the Company that include the investigation of the Company's construction program planning, system reinforcement and expansion programs and long term planning. For these, reasons the City's recommendations should be rejected by the Commission.

i. Emergent Transmission Reliability

Con Edison opposes our $4 million reduction to its Emergent Transmission Reliability Program (CE IB, p. 107). The Company claims that the adjustment was "based strictly on historical expenditure levels that ranged from $1.79 million to $8.35 million and averaged $4.4 million from 2008 through 2012" (Id.). The Company further states that it "discussed six emergent projects that have been scheduled for work in 2013 at a cost of $10 million and in 2014 at a cost of $9.5 million" (Id.). In addition, Con Edison notes that Staff agrees that the recent project to install feeder 34091 at a cost of $21.6 million in 2012 met the definition of an emergent transmission reliability project and if that project had been considered in the historical expenditure levels that we reviewed, the five year average would have increased by about $4 million per year to about $8.7 million (Id.).

The Company's arguments should be rejected by the Commission. Con Edison under-spent its Emergent Transmission Reliability Program budget in each of the last five fiscal years (SEIIP Direct, p. 59). On average, the Company budgeted $7.8 million and spent $4.4 million annually, for fiscal years 2008 through 2012. Furthermore, while we agree that the project to install feeder 34091 was an emergent project we do not agree that the intent of the Emergent Transmission Reliability Program is to fund such large scale emergent project-- the intent is to fund smaller projects such as the six projects referenced above.[23] Finally, the $5.5 million funding level we recommend is not based strictly on historical expenditure levels as the Company claims; it is $1.1 million greater than average

[23] The Company funded the project to install feeder 34091 under its own line item (Exh. 498).

historical spending levels for this program. Consequently, Staff's $4 million adjustment is reasonable and should be adopted by the Commission.

ii. Area Substation Reliability

For the Area Substation Reliability and Auto Ground Circuit Switchers program, the Commission should determine a funding level of $8.5 million annually for 2014-2016 (SEIIP Direct, pp. 64-65). Con Edison states, "CE-EIOP's rebuttal testimony states that two of the three are now rescheduled for fall 2013, the third will be rescheduled in 2013, and 8 to 9 units will be installed in 2013 (CE-EIOP-R, p. 46)." (CE IB, p. 108). Con Edison's claim should be rejected. According to its response to Staff IR DPS-32 (Exh. 242, pp. 3-5), there are over a dozen outages and work that are yet to be determined for 2014, leaving substantial uncertainty as to whether these transformer bank installations will be scheduled. Furthermore, the Company has implicitly confirmed our analysis in stating that, "this table shows the outages and work that is currently planned, which may change according to resource availability and system conditions" (Exh. 242, p. 1). Therefore, Staff's adjustments should be adopted by the Commission.

iii. Facility Improvement Program

Regarding the Facility Improvement Program, Con Edison claims that "Staff's adjustment ignores a variety of factors presented to SEIIP in response to information request DPS-684, which SEIIP failed to include in their exhibit of responses on which they relied" (CE IB, p. 108). This assertion is incorrect, as we did consider the information provided in response to DPS-684 when assessing this program. As we indicated in our initial brief, the 37 projects identified totaling $17.2 million are candidate projects to be completed on a discretionary basis considering the Company's resource availability, timing, and need, and only a select number of projects from the candidate list are completed in any given year (Staff IB, p. 116). Because this is an annually recurring program, Staff believes it is reasonable to make adjustments to this program based on past historic performance, which on average has totaled $4.2 million annually over the past five years. Additionally, the Company states that it plans to reduce its budget in 2013 for this program from $6.6 million to $4.5 million due to reprioritization of projects to account for storm hardening expenditures (Exh. 874, p. 3), further suggesting that spending for this program is discretionary, and that our recommended level is adequate. Therefore Staff’s annual allowance of $5 million should be adopted by the Commission.

vii. Failed Transformer Program

Con Edison opposes the $1 million adjustment we recommend to the combined budgets of the Transmission Feeder Failures program, the Failed Transformer program, and the Failed Equipment other than Transformers program (CE IB, p. 111). The Company claims that we sought to justify our $31.9 million recommendation by relying on its statement in Exhibit 242, which states that its average request for 2013-2017 was approximately $31.3 million (Id.). The Company further claims that we overlooked the fact that its 2013 budget of $24.3 million for the Failed Transformer program was reduced by $7.5 million, to $16.8 million to provide funding for 2013 storm hardening work and if the $7.5 million amount was included in the four-year average, the average request would be $32.8 million (Id.).

As an initial matter, we object to the year-to-date and projected spending amounts for 2013 presented by the Company on page 111 of its initial brief, as these amounts are not part of the record in these proceedings and were not reviewed and vetted by Staff or any other party. Therefore, the ALJs and Commission should not take this information into consideration in setting the capital expenditure level.

Regarding Con Edison’s claim that its 2013 budget for the Failed Transformer program was reduced from $24.3 million to $16.8 million to provide funding for 2013 storm hardening work, the Company noted that it was expecting to obtain cash flow savings for this program due to a decreased 2013 cash liability and it still planned to replace all failed transformers that were encountered in 2013 (Exh. 242, p. 83). Therefore, it is obvious that the $16.8 million budget was appropriate for 2013. It should also be noted that actual spending for the Failed Transformer program was $18.4 million in 2011 and $8.4 million in 2012 (Exh. 246). For the reasons provided in our initial brief, our $1 million adjustment is reasonable and should be adopted by the Commission (Staff IB, pp. 120-121).

x. Network Transformer Relief

Con Edison incorrectly characterizes the basis for our recommended $7 million budget reduction for this program in its initial brief (CE IB, pp. 112-113). The Company claims our reduction was based on Con Edison’s average annual spending of $14 million less than budget from 2007 to 2012 and that load growth in 2013 is similar to that forecasted for 2014, therefore funding in 2014 should reflect its 2013 budget (Id.).

With regard to the $14 million, we stated in our revised testimony that we found that there is an annual difference of $14 million, on average, from 2007 to 2011 (SEIIP Direct, p. 80). The words ‘less than’ were not used by us and the 2012 actual and budget figures were not used in our calculation. There were some years in which Con Edison spent more than its budget, and in some years Con Edison spent less than its budget (Exh. 242, p. 26). The $14 million was derived by first determining the absolute difference between what is budgeted and actually spent for each year. By calculating the average absolute difference for each year, the $14 million was derived. This $14 million difference is a “red flag” indicating that Con Edison has not been able to appropriately forecast a budget for this program.

For the network loads, we did not compare the 'load growth' as claimed by Con Edison; we compared the total load forecasted. We recommended that the Commission reduce the 2014 budget to reflect the budget level for 2013 because the projected network loads in the 2012-2021 ten year load relief report for 2013 are approximately similar to the amount of forecasted network loads for 2014 found in the 2013-2022 ten year load relief report (SEIIP Direct, pp. 80-81).

xi. Secondary Open Mains

In its initial brief, the Company states, "SEIIP proposes to reduce the network Secondary Open Mains Program from $138 million to $128.3 million" (CE IB, p. 113). We proposed a budget of $129.3 million, which is the amount Con Edison allocated to this program in 2013. We filed a revised Exhibit SEIIP-2 on July 17th indicating the correct adjustment to this program (Exh. 956). Also, on page 113 of the Company's initial brief, it states that "…CECONY often spends more than its budget for open mains – and has spent a total of $156 million over budget from 2008 through 2012". This spending level, however, was prior to Con Edison fully implementing the changes in its new specification established in 2012 to prioritize open mains and therefore is not a good comparison of how it will allocate funding moving forward (SEIIP Direct, pp. 85-86).

xii. EO Transformer Purchases

The Company states in its initial brief that "while SEIIP's Ex. 242, p. 5 indicates an adjustment of $7.839 million for 2014 Transformer Purchases, SEIIP does not propose such an adjustment in testimony for Equipment Purchase expenditures (SEIIP, p. 78), and this adjustment is assumed to be an error on the exhibit" (CE IB, p. 114). We did not make an adjustment to the Transformer Purchases program. We filed a revised Exhibit

SEIIP-2 on July 17 indicating that no adjustment was made to this program (Exh. 956).

xv. Storm Hardening

Con Edison's direct case proposed $15 million for 120/208 volt transformer/network protector project, and $10 million for the 460 volt network protector project in 2014 (Exh. 495, p. 180). We recommend a funding reduction for the 120/208 volt transformer/network protector installations by $400,000 to $14.6 million and increase the 460 volt network protector installations by $3.9 million (SEIIP Direct, pp. 38-40). Our review of the Company's update/rebuttal indicates that the 120/208 volt transformers/network protector installations have been adjusted to reflect an increase in project cost from $15 million to $22.5 million (Exh. 79, p. 180). Our review of the project cost indicates that the increase was due to the larger capacity transformers needed and the lower than anticipated reconditioning rate of existing transformers (Exh. 868). We accept the Company's revised proposed funding and recommend $22.1 million for the 120/208 volt transformer/network protector installations and $10 million for the 460 volt network protector installations.

b. Gas Capital

i. Slippage Adjustments

1. – 4. Gas Transmission and Generation; Distribution Supply Main Pressure Control IT Projects

The Company argues that our slippage adjustments in the capital categories of gas Transmission and Generation, Distribution Supply Main, Pressure Control and IT Projects should be rejected because the adjustments fail to provide sufficient funding for certain projects and programs, are inconsistent with the Commission's past practice in applying similar adjustments and will hinder the Company's ability to advance important Commission goals (CE IB, p. 123). Moreover, the Company admits that while it did historically under-spend in these particular capital categories, its total gas spending was in line, or slightly above, historic levels and, therefore, no adjustments are warranted (Id.).

The Company's argument that Staff's slippage adjustments deviate from past Commission practice is not persuasive. Our concern regarding the Company's repeat under-spending in these categories is legitimate and, therefore, our decision to seek an adjustment to protect ratepayers is reasonable (Staff Gas Infrastructure Panel Direct, pp. 25-26). We testified that Staff conducted an extensive analysis of Con Edison's capital projects in the Company's pre-filed testimony's exhibits (Id.). We compared historical budgets to historical expenditures and made adjustments to reflect our forecasted expense levels for each. Comparison of historical budgeted expenses to actual expenses is a method to measure how well the Company executes its capital programs. Our objective is to make recommendations to the Commission that correctly reflect, as closely as possible, the reasonable costs of the Company's capital programs. Applying this measurement of actual performance to planned performance on the Company's proposed budget results in a reasonable guide to what the Company will most likely expend in the Rate Year.

While we did acknowledge that each capital project was justified, this acknowledgment does not excuse the Company's repeated failure to spend up to its budgeted levels (Id.). Moreover, while the Company's claim that it had to redirect expenditures to other projects seems plausible, Staff's review of these discrete categories revealed a pattern of systematic under-spending over several years (Id., pp. 25-27). Finally, Staff is not looking to hinder the Company's ability to advance important projects and Commission goals. Rather, Staff is simply trying to ensure that ratepayers are protected and the

Company's spending levels in these discrete categories are in line with its forecasts (Id.).

Without these slippage adjustments the likelihood of a repeat performance is high. Therefore, Staff's adjustment in these discrete categories should be adopted.

ii. Adjustment to Oil to Gas Conversion Costs

The Company states that we ignored the corrected cost data of mains and services installed for oil-to-gas conversions, and by not using these new 2012 costs Staff incorrectly under-forecasted the Company's capital costs (CE IB, pp. 125-126). The City argues that our adjustment to this program should be denied because it may somehow have the "perverse" effect of delaying the Company's oil-to-gas conversion efforts which would be contrary to State and City policies (City IB, p. 42).

Regarding Con Edison's argument that we ignored corrected cost data, Staff reviewed the unit costs to install mains and services in the boroughs of the Bronx, Manhattan and Queens from a range of years, which included 2012, and ultimately chose to apply known historic costs to the Company's projection of footage (Staff Gas Infrastructure Panel Direct, pp. 17-20). Staff did not change its position when presented with the Company's claim on rebuttal that the 2012 Productivity Report data was inaccurate, in part due to the extreme cost differential between the Company's historical spending to install mains and services, and its new 2012 levels (Staff IB, pp. 140-141). Moreover, regardless of what system the Company is using to track costs, the cost to install a piece of pipe along similar streets does not change based upon whether it is "traditional new business" or "oil-to-gas" conversions (Id.). When Staff compared those costs, the differential was again substantial (Id.). Therefore, the Company's claim that its new system of cost reporting created inaccurate data is irrelevant.

Regarding the City's arguments, while the City claims that our adjustment to the Company's oil-to-gas conversion costs could undermine the Company's oil-to-gas expansion efforts, the City has not provided any basis for this claim; nor can it. Our adjustment is not intended to have any detrimental effect on the Company's Rate Year oil-to-gas conversion efforts. Without our adjustment, however, ratepayers would be providing above-cost recovery to the Company. With Staff's adjustment, the Company should still be in a position to build-out its gas system based on its forecasted number of new oil-to-gas conversion customers in the Rate Year. Moreover, if the Company does add customers not included in its forecast, it gets additional incremental revenue through the Revenue Decoupling Mechanism. Accordingly, there should be no reason at all for the Company not to connect new gas customers and the City's assertion that Staff's adjustment undermines this effort is, therefore, baseless. Accordingly, Staff's adjustment to the Company's oil-to-gas conversion capital program should be adopted.

iii. LNG Year Round Liquifier

The Company continues to argue that it needs to spend $2.5 million to change the equipment at its LNG facility (CE IB, p. 127). Regardless of its reasoning, the simple undisputed fact remains that the current water system of liquefying is only unworkable when temperatures drop below freezing (Staff Gas Infrastructure Panel Direct, p. 21-22). Because of the combination of the infrequency of the temperature occurrence along with the ratio of usage to capacity of the tank, it is an unnecessary project and the capital expenditures associated with this project should be rejected (Id., pp. 21-24).

iv. Removal of Leak Prone Pipe

New York City argues that our opposition to Con Edison's incremental leak-prone pipe replacement program targeting coastal flood zones fails to acknowledge the Company's

Post-Sandy Enhancement Plan to replace low-pressure cast iron and bare steel pipes with new pipes designed for high pressure and that this somehow nullifies Staff's recommendation regarding the replacement of leak-prone pipe in flood zones (City IB, pp. 45-46).

New York City's position in unsupportable. Instead of addressing Staff's recommendation on the merits, New York City attempts to undermine Staff's credibility (Id.). However, a review of the Company's Post-Sandy Enhancement Plan, released after Staff's testimony was submitted, yields no modification to our recommendation. Staff argued that because Con Edison had not performed the necessary level of analysis needed to justify this replacement program and associated cost, it should not be allowed (Staff Gas Safety Panel Direct, p. 17). New York City provides nothing to refute Staff's position in this regard. But, in order to ensure that Con Edison incorporates the safety risks associated with the impact of flooding in these areas, a risk recognized in the Post-Sandy Enhancement Plan (City IB, pp. 45-46), Staff recommended the Company incorporate this risk factor into its main replacement prioritization program (Staff Gas Safety Panel Direct, pp. 15-17).

Furthermore, New York City refers to other companies, specifically National Grid's experience during Superstorm Sandy, to support its position that leak-prone pipe in flood zones should be treated differently (City IB, pp. 46-47). National Grid's gas distribution system is very different from Con Edison's system and is located in a vastly different geographical area. Flooding in National Grid's gas system was mostly due to damage sustained by complete gas main and gas service line breaks, cracks, and damages to customer owned piping beyond the meter, not water infiltration through previously known leaks. Superstorm Sandy, on the other hand, actually had relatively little impact on Con Edison's system where it had to pump out approximately 1,500 gallons of water (Exh. 580, p. 16). If the goal is to increase the safety and reliability of Con Edison’s gas system, the City should examine more closely the true causes for the wide spread damages and outages to other companies systems before instituting or increasing pipe replacements based solely on a single event.

Accordingly, Staff’s recommendation to include leak-prone pipe in Con Edison’s risk prioritization model should be adopted.

vi. Storm Hardening

1. Vent Line Protection (VLP) Devices

Con Edison states in its initial brief that Staff did not clearly indicate when it proposes to implement testing of its VLP devices (CE IB, p. 129). However, it now appears that Con Edison could accept Staff’s testing method, provided incremental O&M expense is included (CE IB, p. 129). New York City also seems to indicate its support for Staff’s testing method (City IB, pp. 48-49).

In response to the Company’s concerns, we believe Con Edison should report completed VLP installation data to the Commission semi-annually (as of June 30th and Dec 31st) within 30 days. Testing should begin based on the installation reported up until June 30, 2014 and be completed by December 31, 2014 and, thereafter, annually. The test results summary should be reported to the Commission within 30 days following each calendar year. If Staff’s recommendation for the testing of VLP devices is adopted (Staff Gas Safety Direct, p. 50), we do not oppose the incremental O&M expense required under our recommendation.

c. Steam Capital

i. Emergent Projects

The Company is correct in its understanding that Staff accepts the updated Rate Year forecast for the Emergent Work category of the Steam capital budget for inclusion in the revenue requirement (CE IB, p. 132).

ii. Storm Hardening

Staff's reply brief addresses issues regarding sluice gate implementation raised by the Company (CE IB, p. 133), and the City of New York (City IB, pp. 61-62).

We understand that the intended design and implementation of sluice gates, and other alternative water sealant valves such as moat walls, is to prevent water from entering the Company's plant tunnels. Staff does not dispute that the sluice gate and moat walls are intended to prevent water from entering the plant at two different locations within the 59th Street Station. However, as Staff pointed out when cross examined by the City (Tr. 836-838), the Company did not adequately demonstrate the existence of any vital equipment between the tunnel entering the 59th Street Station and moat wall locations. Staff requested, but did not receive, cost estimates of damage that would have been prevented if the sluice gate design had been implemented before Superstorm Sandy, as compared with other proposed Storm hardening initiatives. Staff notes that the estimate for intake tunnel sealing and sluice gate installation increased from $5.5 million to a total of $16 million (CE Steam Infrastructure and Operations Panel R/U, p. 9), nearly tripling between the two estimates. Further proof by the Company of a more thorough cost benefit analysis is required before a final determination on the sluice gate design can be reached. It should be noted, however, that the Company is required to adequately justify its proposal rather than Staff being required to disprove the proposal as the Company appears to contend in its brief (CE IB, p. 134). Staff believes that the sluice gate's deferral to the Collaborative will provide the Company the opportunity to facilitate a consensual agreement among all of the stakeholders.

d. Electric Production Capital

i. Emergent Projects

In its initial brief, Con Edison claims that our recommendation to eliminate Electric Production emergent work from plant targets is inconsistent with our downward only net plant reconciliation by category of expenditure proposal (CE IB, p. 136). The Company states that Staff’s emergent work proposal provides inadequate funding for each Emergent Work category, while net plant reconciliation by category of expenditure denies Con Edison the flexibility to move funds from one category of expenditure to another.

These claims are unsubstantiated as the funding levels we recommend have historically provided for adequate funding within the reconciliation category (Staff IB, p. 152). Con Edison’s Electric Production Emergent Work category is intended to allow the Company funding for unanticipated projects that cannot be predicted but inevitably arise during the course of a year (CE IB, p. 135). Funding unknown projects with unknown projected expenditures is inappropriate. Additionally, traditional rate making allows for regulated utilities in New York State to earn a return on prudently incurred capital expenditures.

The Company also claims our recommendation that the Commission eliminate the Electric Production emergent work capital forecast from plant targets is inconsistent with the Staff Steam Infrastructure Panel recommendation to utilize historic average budgeted levels for the emergent work category (CE IB, p. 136). We do not dispute that we have recommended different treatment for such expenditures between the electric and steam businesses. However, we have fully justified elimination of electric production emergent work from the electric capital forecast and there is a rational basis for both positions (Staff IB, pp. 151-152).

ii. Storm Hardening

Con Edison has not fully justified the need for sluice gates for the tunnels located at the East River Station, nor has it identified the benefits that will be achieved by installing sluice gates in addition to other storm hardening measures. These additional measures include the installation of moats and barriers, active emergency pumps, and critical equipment relocations (SEPP Direct, p. 25). Similarly, Con Edison has not fully justified the need for transfer tunnel hardening, including the submarine door purchase and installation (Id., 26). We recommend that the need and costs associated with the sluice gate project and transfer tunnel hardening/submarine doors be reviewed as part of the Storm Hardening Collaborative (Id., 25-26). Should the Collaborative fail to come to a determination on the sluice gate project, the Commission should not include this expense in the Company's revenue requirement.

The City of New York claims that our position on the sluice gate project is baseless, asserting we conceded that none of the proposed measures standing alone could protect the facility from flooding, and that emergency pumps should not be used as a primary line of defense for storm hardening this facility (City IB, p. 62). We never indicated the emergency pumps should be used as a primary line of defense, to the contrary our position is that moat walls should be the primary line of defense for critical equipment within the East River station (Tr. 66).

The City also claims that we conceded our review was limited in that it did not go beyond reviewing the information provided by the Company (Tr. 65, 74). This claim is without merit. We reviewed Con Edison's filing associated with storm hardening as we would traditionally review capital expenditures proposed in any rate case filing (Tr. 72). While we did not propose independent projects, we fully reviewed each project proposed by the Company.

Additionally, the City claims our recommendations to further review the sluice gate and submarine door installations are inconsistent and cannot withstand scrutiny (City IB, p. 62). The City claims our recommendation was inconsistent in that we did not dispute any of the steam storm hardening projects even though none of it was supported by a cost-benefit analysis or evaluation of alternatives (Id.). The City's claims are incorrect. The Staff Steam Infrastructure Panel recommended that the Company's proposed sluice gate installation at a Con Edison Steam Production facility be reviewed in the storm hardening collaborative as well, which is consistent with our Staff Electric Production Panel recommendation (SSIP Direct, p. 10).

The Company asserts that it has fully justified the need and costs of these projects, as the sluice gates protect intake tunnels which are one of the primary routes for flood waters to enter the stations, and can cause significant damage to critical equipment as occurred during Superstorm Sandy (CE IB, p. 137). Con Edison's claims rest on the concept that the sluice gate and submarine door storm hardening measures will be fully functional regardless of the storm water elevation (Id.).

While the sluice gates and submarine doors are intended to protect the tunnels regardless of storm water elevation, there are over 40 perimeter entrances (470 linear feet) to the East River facility (Exh. 87, pp. 33-36). The perimeter will be sealed using a variety of doors and gates (flood doors, roll up doors and flood gates) at over 40 entrances (Id.). While the hardening measures at the tunnels may provide protection to those tunnels independent of storm elevation, the perimeter will not be protected from any storm elevation level. The perimeter flood gates will be four feet in height (Id.). We recommend that this problem be addressed in the collaborative, so the need and costs associated with the sluice gates project and transfer tunnel hardening/submarine doors may be more fully understood and reviewed. However, should the parties not agree on whether these projects are rational and make good engineering sense in the collaborative, the Commission should deny recovery of costs for these projects.

e. Municipal Infrastructure

See discussion in section IV.d.i.

f. Hudson Avenue

The Company continues to reject our recommendation that the Company be required to conduct a detailed study of the proposed transfer of the Hudson Avenue Steam assets to the Electric Department. The Company states that requiring a complete accounting of the share of ownership, investment and cost recovery between steam and electric customers over the life of the Hudson Avenue facility, as Staff proposes, is unreasonable and that we have not explained its significance (CE IB, p. 138). It is our position that such information is necessary so that the Commission can determine a reasonable allocation of costs and benefits associated with the property. For example, if the Commission ultimately determines that the property should be sold, the information could be used by the Commission to allocate the sales proceeds.

In response to Staff's recommendation that the Company consider the sale of the property, the Company states that has been considered (CE IB, p. 139); however, it continues to believe that the property is "ideal" for the electric operations and should be retained, but provides no concrete support for such a claim. The Company admits that it cannot reasonably estimate the level of demolition cost until specific project designs are developed, and that neither the environmental remediation nor demolition will occur in the next few years

(Id.). The Company has not provided essential information necessary for the Commission to make an informed decision on the proposed transfer. Without this information, there is no way to determine whether the property is suitable for electric operations or to ascertain the true value of the property, which can then be compared to the cost of alternatives. For these reasons, Staff's recommendation should be adopted.

The City claims that Staff's opposition to the Hudson Avenue transfer is unsupported (City IB, p. 66). The City fails in its attempt to demonstrate that there is a known future use of the property. The Company does not have specific plans for the site and no detailed evaluation is being considered by it. While the City claims that Staff failed to explain what risks of the transaction should concern the Commission, our testimony clearly made reference to the uncertain future material cost of demolition as one of those risks (Staff Policy Panel Direct, p. 31).

The City argues that we did not provide any explanation or justification as to why a "new standard" should be applied to the proposed transfer (City IB, p. 68). Property transfers of this type and magnitude occur very infrequently. Contrary to the City's assertion, there is no standard approach the Commission uses to address such transfers of real property. For the benefit of all ratepayers, the Company should be directed by the Commission to complete the study recommended by Staff and file it with the Secretary in these proceedings and in its next rate case.

g. Customer Operations Capital

i. Customer Service System Study

The Company claims that Staff's estimate of $50 million overstated Con Edison's previous requests for funding of CSS upgrades by over $38 million (CE IB, p. 140). This is not entirely accurate, as the Company's figure of $11.4 million also excludes funding for certain adjunct systems and software, such as off-system billing and retail access (CE COP U/R, p. 22). While there may have been some overlap in Staff's figure reflecting multi-year requests, the funding for adjunct systems would have been saved if Con Edison had earlier undertaken a comprehensive CSS upgrade. Whether the correct figure is closer to $11.4 million or $50 million, the record demonstrates that continuing to prop up this outdated system is costly, and ultimately unsustainable.

The Company further states it cannot meet Staff's proposal to file a comprehensive CSS replacement plan by its next rate case, which the Company states may be as early as February 2014 (CE IB, p. 23). We agree that the study should be well thought out and researched, and that such a study may not be able to be completed by February 2014. Given that the Company agrees the eventual replacement of its CSS is necessary; however (CE IB, p. 22), and the fact that previous studies have been undertaken (Tr. 1969), with no replacement plan produced, the Commission must establish a firm deadline for Con Edison to submit such a plan. If the Commission decides to provide a longer time frame for the Company to complete said study, it should establish a firm deadline, which should not exceed 12 months from the date the of the order setting rates in this case.

h. Shared Services Capital

i. Facilities Critical Infrastructure

Over the past five years, Con Edison has spent an average of $16.5 million on FCIP projects (Exh. 8). There is no reason to expect that the Rate Year will be any different. On page 143 of its initial brief, Con Edison states that "FCIP have been deferred in the past in order for the Company to address higher priority work." The Company continues, "if a compliance project arises, FCIP projects are often relegated in priority since compliance projects generally involve conditions that must be addressed immediately." First, the Company continues to have a number of compliance projects in its queue.[24] Thus, to the extent one credits the Company's explanation, it does not follow that spending on FCIP projects will increase by approximately $8.5 million in the Rate Year compared its five year historic average – or by approximately $14 million over the Company's 2012 spending level for this program.

Second, Con Edison has not shown that the historic spending levels were only the result of deferring FCIP projects in favor of compliance projects. The historic level of spending on FCIP projects is not insignificant. It would be reasonable to believe that it simply isn't realistic for the Company to increase its spending on FCIP projects so dramatically in the Rate Year.

Finally, the Company makes a new proposal in its initial brief, that, should the Commission adopt Staff's $16.5 million forecast for FCIP, the Company should be allowed to defer for later recovery from ratepayers additional expenditures up to $25 million. This proposal is unwarranted and should be rejected. This spending is entirely within the Company's control. Moreover, the Commission is setting rates for Con Edison for one year. Providing the Company with the requested deferral mechanism is unnecessary.

i. Deferred Fuel

Staff recommended using the Company's forecast of Rate Year fuel cost to calculate deferred fuel balances and indicated

[24] For example, the Company has identified the following compliance project work for the Rate Year: $25 million related to Local Law 26 (CE Shared Services Panel, Direct, p. 131); $7 million related to Astoria Outfall B (CE Shared Service Panel R/U, p. 30); $2 million related to an Agency mandated renovation of the Bill Printing & Mail Operations (Exh. 400, p. 3); $3.5 million related to Facilities Buildings and Yards All Other (Safety Environmental Regulatory) (Exh. 400, p. 29).

that the Company relied on the same forecast to calculate its working capital requirements related to purchased power (Staff IB, p. 161). In response, the Company argues, "[t]hat CECONY used the fuel cost forecasts in the calculation of working capital does not support their use for deferred fuel cost in rate base. The working capital in rate base is calculated based on the FERC working capital formula that the PSC has applied for many years." (CE IB, p. 146). However, whether the Company's working capital in rate base is based on a formula is irrelevant. The Company's reliance on past deferred fuel balances based on past fuel costs to forecast the Rate Year deferred fuel balances is unreasonable since it has no connection to the fuel costs the Company is forecasting in the Rate Year.

k. Mount Vernon Properties

These properties were purchased by the Company to facilitate a remediation project near a former manufactured gas plant (MGP) (Staff IB, p. 162). As the remediation project is complete, there is no future utility use for the properties, and the Company currently has the properties on the market for sale; thus, they no longer provide any current or future use to ratepayers (Staff IB, p. 163). The Company asserts that it has always recorded the costs of acquiring these properties as a regulatory asset (CE IB, p. 148). Further, the Company asserts that "it makes no sense to remove these costs from rate base and instead charge customers for all the acquisition costs now knowing that most if not all of the costs will be offset by the proceeds from the sale of these properties" (Id.). The Company's filing indicates the Mount Vernon Properties are accounted for under "Utility Plant" not "Net Deferrals/Credits from Reconciliation Mechanisms" which includes the balance of the Site Investigation and Remediation (SIR) deferral[25] (Exh. 86, 89, and 91). Therefore, the Company appears to account for the costs of the Mount Vernon properties differently than it states within its brief. Nonetheless, in the Orange and Rockland Rate Order, the Commission determined that the cost of acquisition of land at various MGP sites shall be deferred until remediation is completed and the restored propertied can be valued for use or sale. Therefore pursuant to Commission precedent, it is not appropriate to carry the investment in rate base because it no longer has a specific utility purpose. The circumstances that existed in the previous cases, which led to their inclusion in rate base, no longer exist today. The property is not a depreciable item, and the Company will recover the cost of the land when it is sold.

It should also be noted that the property may be placed on the market at the sole discretion of the Company; meanwhile under the Company’s proposal it would continue to collect carrying charges at the expense of ratepayers.

X. Reconciliations

a. Net Plant

The Company claims that we rely on the “single, terse reason” of improvements in the Company’s budgeting process, to support its proposal for downward reconciliation by specific category of expenditure (CE IB, p. 150). This claim is false. We explained in testimony that the unreliable plant-in-service model used by the Company in these proceedings hindered our ability to audit the Company’s capital net-plant forecasts, and provide further support that these downward reconciliation mechanisms are warranted (Staff Policy Panel Direct, pp. 38-39).

While the Company also rejects our proposal to include a new category for storm hardening, it should be noted that in

[25] Specifically exhibit AP-8 page 1 of 3 line 16.

the Company's August 22, 2013 filing in Case 13-M-0376[26] notifying the Commission of its receipt of a property tax refund and proposed distribution of such refund, the Company states that it has entered into a settlement with the City that includes a commitment that it will perform at least $140 million of storm hardening, resiliency and/or protection work that is directly related to protecting the electric, gas and or steam systems within the City of New York from storms (Case 13-M-0376, August 22 Filing, Appendix A, p. 6). This settlement also requires Con Edison to provide the City with a report of the storm resiliency work performed, including the benefits intended to be realized, and the storm resiliency costs incurred each calendar year (Case 13-M-0376, August 22 Filing, Appendix A, p. 7). While we take no position in these proceedings on the petition in Case 13-M-0376, the potential availability of such tax refund proceeds to offset certain storm hardening investments furnishes another reason why a new category for storm hardening should be adopted by the Commission.

b. Property Taxes

i. Reconciliation

We continue to recommend that a property tax reconciliation mechanism is not necessary in the context of a one-year rate case (Staff IB, pp. 166-168). However, Staff noted the potential for a significant reduction for the Company's NYC property taxes and recommended that the Company be directed to provide the impacts so they can be properly reflected in rates in these proceedings (Staff IB, p. 168). In the event the Company fails to provide the information the Commission should then consider implementing a reconciliation

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[26] Case 13-M-0379 Petition of Consolidated Edison Company of New York, Inc. for Approval of Proposed Distribution of a Property Tax Refund.

mechanism to capture the expected tax reduction (Staff IB, pp. 168-169).

ii. Refund Sharing

Staff did not address Property Tax Refund Sharing in our initial brief, but we agree with the Company. The Commission should continue the current 86/14 mechanism for property tax refunds that the Company secures (CE IB, p. 155).

f. New laws, including pending state and federal initiatives

The Company proposed to modify the existing deferral accounting for expense changes due to legislative, regulatory and related actions (New Laws Provision) to include changes in revenues due to such circumstances (CE IB, p. 162). Based on the lack of compelling support for this modification, Staff recommended the existing deferral accounting not be modified (Staff IB, p. 180).

Con Edison argues that the New Laws Provision as implemented has recently proven to have limited value in terms of the intended symmetrical approach to changes in law (CE IB, p.162). In support of this claim the Company references a Commission Order modifying electric safety inspections that directed utilities to refund to customers any savings resulting from the modifications (CE IB, p. 162).

The Company's reference to the Order modifying electric safety inspections is misguided. First, the modifications to the electric safety inspections were not due to an unanticipated change in law, rather it was at the behest of several utilities, including Con Edison.[27] Second, the reason for directing utilities to refund customers any savings

[27] Case 04-M-0159, Proceeding on Motion of the Commission to Examine the Safety of Electric Transmission and Distribution Systems, Order Granting Petition in Part and Modifying Electric Safety Standards (issued March 22, 2013).

resulting from the modifications was to ensure that customers are not charged for work that is no longer required.[28]

In addition, to support their allegation of an unbalanced approach by Staff, the Company references several other deferral requests in which Staff recommended to the Commission that it not provide deferred accounting treatment (CE IB, pp. 162-163). In those instances, the Company was essentially requesting the Commission provide a blank check to recover unquantifiable future costs that may, or may not, materialize in the Rate Year (Staff IB, pp. 178-179).

Finally, if an actual known change in law impacts the Company's revenues or costs it always has the right to petition the Commission for deferral accounting. Based on the foregoing, there is no need to modify the existing deferral accounting related to the New Laws Provision.

XI. Revenue Allocation/Rate Design

a. Electric

i. Electric ECOS

2. Embedded Cost of Service Study

Base Year

NYC and NYPA generally raise the same arguments in their initial briefs regarding the ECOS study. NYPA's claim that the Company "violates the Commission's policy regarding the timing for future ECOS studies set forth in the last Con Edison rate proceeding" is simply wrong (NYPA IB, p. 8). The Commission did not set a policy regarding the timing for future ECOS studies in the 2010 Electric Rate Order. In addition, both NYC and NYPA's interpretation of the provision on page 34 of the Joint Proposal adopted in the 2010 Electric Rate Order related to the timing of ECOS studies and future rate filings is incorrect (Id.; NYC IB, p. 72). As a preliminary matter, Staff

[28] Id., p. 7.

takes issue with NYC's characterization that the Commission "endorsed" an agreement among the parties to the 2010 Joint Proposal (City IB, p. 72). NYC, as a long-standing intervenor in Commission proceedings, should well know that the Commission only "adopts" or rejects the proposals made by parties making a joint proposal to the Commission.

The provision in question states that for each year the Company delays in filing for new base rates, the ECOS study underlying the Company's filing will be premised upon a year that is no more than two years prior to the year in which the filing was made. This provision assumed that the Rate Year would remain April 1 – March 31. It did not specify the conditions that would apply if the Company filed for a different Rate Year period. Since the Company's filing was delayed for only eight months, the ECOS premised on 2010 complies with the 2010 Electric Rate Order. For this reason, NYPA's assertion that the ECOS is obsolete should be rejected.

NYPA Deficiency

The County of Westchester claims that we "did not explain whether the full alleged NYPA deficiency should be addressed if there is less of a rate decrease, or even a rate increase in this case" (COW IB, p. 49). Staff continues to recommend that the Commission implement the results of the Company's 2010 ECOS study and recognize the full deficiencies and surpluses without applying mitigation measures to any of the service classes, including NYPA (Staff ERP Direct, p. 12; Staff IB, p. 185).

Tolerance Band

Both NYC and NYPA argue that the tolerance band should be widened to ±20% to account for their claim that the demand study does not reflect its customer's response to reflecting the full $10.8 million deficiency (City IB, pp. 80-82; NYPA IB, p. 12). Their argument should be rejected since it assumes that

NYPA's customers, such as NYC, are elastic and will in fact be able to respond to increased delivery rates resulting from the demand study. It also assumes that the increased Con Edison delivery rates will be passed through to NYPA customers, a "fact" not in the record. NYPA has its own revenue allocation and rate design which has no relation to Con Edison's delivery rates and NYPA has provided nothing in the record indicating how delivery rates will be set by it. Lastly, in light of the current low-priced gas commodity environment, it is very possible that the total bill for some or all of NYPA's customers could have decreased and/or customers could have increased their consumption. For these reasons, NYC's and NYPA's proposal that the Commission adopt a ±20% tolerance band should be rejected.

iii. Rate Design

1. Voluntary Time of Use Rate

Con Edison proposed to add a new VTOU rate under SC 1 – Residential and Religious (CE ERP Direct, p. 38). The proposed SC 1 Rate III is designed to encourage shifting residential usage away from both supply and delivery peak periods by offering off-peak supply and delivery rates (CE ERP Direct, p. 38). The Company states that the on-peak and off-peak periods for the new Rate III have been set based on patterns of system and customer load curves and consideration of potential impacts on area substations (CE ERP Direct, p. 39). The Company's proposed design of the new VTOU rate includes an off-peak period from 1 a.m. to 7 a.m. daily (CE ERP Direct, p. 39-40).

Several parties raised concerns regarding the hours of the off-peak period and proposed to extend the VTOU off-peak period. NYC proposed to increase the VTOU off-peak period from the Company's proposed six hours (1 a.m. to 7 a.m.) to nine hours (11 p.m. to 8 a.m.) (City IB, p. 88). UIU proposed an off-peak period from midnight to 7 a.m. (UIU Rate Panel Direct,

p. 60). NRDC proposed that the off-peak period should be increased to at least 10 hours (NRDC IB, p. 2).

Con Edison does not support expanding the off-peak period. The Company states that this off-peak period “comports with the goals of avoiding incremental capacity expansions, rate design simplicity, customer-understanding considerations and, most importantly, maintaining network reliability” (CE IB, p. 173; CE ERP Rebuttal, p. 28). Staff would agree that the off-peak period of Con Edison’s proposed SC 1 VTOU Rate III should be expanded if it can be shown that more customers would benefit from this rate.

The UIU also proposed a “critical peak” supply period rather than Con Edison’s proposed “super peak” supply period. Under the UIU proposal, prices would be justified based on actual events such as extremely high temperature and/or unusually high loads (UIU IB, p. 68). The proposal is more narrowly focused on specific times and days when peak usage is at the highest levels and energy supply costs are correspondingly at the highest levels (UIU Rate Panel Direct, p. 61). As stated by Con Edison, this is not currently a cost-effective option because of the interval metering and communications that would be necessary to implement this rate (CE IB, p. 173 and CE ERP Rebuttal p. 32). Therefore, the UIU proposal should be rejected as it does not provide sufficient details concerning the costs and benefits of its proposal.

Con Edison states “it is unclear whether Staff’s proposed price guarantee on the total bill would also apply to retail access customers who purchase supply from an ESCO” (CE IB, p. 172). We do not recommend that the price guarantee be applied to ESCO customers.

The Company’s primary objections to our VTOU proposal are that the VTOU rate is a “whole house” rate that would apply to all load being served at the customers’ home, that the recommended cap would have to be subsidized by other customers and that the rate cap guarantee would not educate customers, nor provide an incentive to change usage behavior (Id.). The Company is correct that we propose that the recovery of the financial impact of offering the VTOU rate cap be recovered from other residential customers; however, given the relatively small pool of potential customers-- approximately 600 (Graves Direct, p. 14), the rate impacts on Con Edison's 2.8 million other residential customers will be small. On the other hand, the one-year guarantee we recommend will lower these customers' evident objections to trying VTOU rates -- less than 0.003% of EV owners currently take such a rate (Graves Direct, p. 14), and provide an opportunity for these customers to discover that taking service under such rates may offer benefits to them, should they be able to shift their load to off peak periods. While the cap does afford customers the opportunity to be held harmless if they, over a one-year period, use electricity on peak too often, such an incentive practically cannot be gamed – either a customer will be better off on the VTOU rate, in which case the offer was successful; or the customer will be better off on the flat rate, in which case they will be no worse off for having tried the VTOU rate, which (considering history), they would not likely have done. In order to secure benefits, we expect that most customers will truly make an effort to shift load to off-peak periods so to take advantage of lower commodity and distribution prices; and such efforts will be facilitated by the outreach and education that we recommend be provided as part of the trial offer. Importantly, most customers do not know what their load pattern looks like and are not able to balance the benefits and cost of the VTOU rate without some experience on the rate. We see the cap as a "trial period" in which customers will become acclimated to considering the time of day they use electricity, and the cap is an effort to convince them to try something new and to ease their transition to such rates. While it is true that the VTOU rate guarantee would apply to the whole load associated with the customer's home, this impact is discussed in witness Graves' testimony and exhibits (Graves Direct, p. 10; Exh. 273, pp. 3-8). Mr. Graves' analysis shows that despite the fact that all load will be subject to the VTOU guarantee, a majority of customers who charge their PEVs at night will benefit from the VTOU rate and will not be due refunds under the guarantee we recommend. Therefore, the Commission should adopt our recommendations on the one-year VTOU price "guarantee" or cap.

In its initial brief, the Retail Supply Association (RESA) argues against providing a guarantee to PEV owners because "it would mask and distort the true cost of electricity" (RESA IB, p. 15). This is the same argument used by Con Edison, that the guarantee blunts the price signal; Staff addressed this argument above and in our initial brief (Staff IB, p. 192). In particular, because any price guarantee refund would only be paid at the end of a year-long trial, customers will see the full impact of the VTOU rate during the time they participate in the trial. RESA also claims that implementing a PEV price guarantee in this proceeding would be premature because the Commission instituted a proceeding to review policies that may increase consumer acceptance and use of electric vehicles (RESA IB, p. 15). While it is true that the Commission has opened a case on electric vehicle policies[29], that case does not preclude the Commission from taking action in these proceedings; particularly by doing so in a way that may increase such acceptance. It is entirely appropriate for the Commission to act on our recommendation in this proceeding.

[29] Case 13-E-0199, In the Matter of Electric Vehicle Policies, Notice of Proceeding and Seeking Comments (issued May 22, 2013).

iv. PJM OATT – allocation of costs, recovery mechanism

In its initial brief, both NYC and NYPA states that cost causation principles militate against any allocation of PJM OATT service costs to NYPA since its supply resources provide reliability benefits to all electricity users in NYISO Zone J that more than offset the reliability benefits of the PJM OATT service (City IB, pp. 95-96; NYPA IB, pp. 15-16). All load serving entities procure their own supply resources that provide similar benefits that NYPA claims its resources provide. As the Con Edison Electric Infrastructure & Operations Panel stated, the need for and “the benefits of the PJM OATT service relate to the delivery of energy to customers – not to the sale of energy” (Exh. 860). In addition, violations of Con Edison’s N-1-1 contingency standard would have occurred if the Company had not contracted for the PJM OATT service (Exh. 854). The record demonstrates that the PJM OATT allows the Company to reliably serve all customers including NYPA and is necessary to meet its obligations under the Delivery Services Agreement that it has with NYPA (Exh. 943). Therefore, the costs associated with the PJM OATT service should be allocated to the NYPA delivery rates.

NYPA states that “At the subsequent hearing, the SEIIP agreed that the benefit provided by the PJM OATT service to NYPA customers was limited to the fact that NYPA customers, too, benefitted from the resulting lower locational capacity requirements” (LCR) (NYPA IB, p. 21). Staff agrees that one benefit provided by the PJM OATT service is a lower LCR to all customers in New York City (SEIIP Direct, p. 101). However, we did not state that the benefit provided by the PJM OATT service to NYPA customers was solely a lower LCR. The PJM OATT service also provides reliability benefits to NYPA customers, as it is necessary to meet Con Edison’s transmission reliability criteria (Staff IB, p. 198).

NYPA's assertion that Staff "clearly had not conducted any assessment of the PJM OATT analyses made by NYPA or Con Edison" is false (NYPA IB, p. 22). We performed a thorough review of the analyses made by NYPA and Con Edison, which included numerous IR requests to further assess the prudency and allocation of PJM OATT costs. We also disagree with NYPA's statement that "Because no party has rebutted Mr. Liberty's testimony, the Commission should accept Con Edison's proposal to exclude NYPA from an allocation of PJM OATT costs" (NYPA IB, p. 22). In Staff's initial brief, we disagree with Mr. Liberty's proposal to exclude NYPA from cost responsibility (Staff IB, pp. 196-199).

vii. Tariff Changes

"Campus-Style" Tariff

PACE proposes that the Commission abolish the single account standard under General Rule 20.2(1)(B)(8) "campus-style tariff" to allow multiple billing customers in a campus-style DG project in order to expand DG opportunities (PACE IB, p. 16). The City of New York also proposes eliminating the single customer limitation. According to NYC, given the State's policy in favor of expanded DG development, eliminating the single customer limitation is a natural extension of the Campus Style Tariff (City IB, p. 137).

Since the Commission only recently issued its Order on the campus-style tariff,[30] Staff believes that more customer experience with the rates is necessary before additional changes are made and that any of the changes proposed by PACE or NYC require further analysis to better understand the impacts of such changes.

[30] Case 11-E-0299, Tariff Filing to Revise Provisions of Standby Service for Retail Access, Order Approving Tariff Amendments with Modifications (issued November 17, 2011).

Contract Demand Charges

Con Edison proposed to revise General Rule 20.4.3 (Leaf 164) to provide the Company with final authority to approve or modify the Contract Demand established by a standby rate customer (CE ERP Direct, p. 67). Additionally, the Company proposes to no longer assess a surcharge on or after January 1, 2014 if the customer exceeds a customer-set contract demand approved by the Company (Id.). The Company claims that the change to this Rule "extends the policy currently applicable to customers served under General Rules 20.2.1(B)(7) and 20.2.1(B)(8), pursuant to the Commission's Order of October 18, 2012, in Case 11-E-0299" (Id.).

The City of New York and PACE oppose the Company's proposal that it have final approval of customer contract demand charges. PACE states that allowing the Company to set the Contract Demand has the potential to inflate the Contract Demand charge beyond the customer's actual use (PACE IB, p. 17). The elimination of penalties would have a negative effect on mitigation efforts by DG customers, such as load reduction and efficient use of DG systems (Id.). The City of New York argues that Con Edison has not provided adequate justification to support its proposal to eliminate the customer option to set the Contract Demand and the Company's proposal would be an additional barrier to DG (City IB, pp. 136-137).

In rebuttal, the Company states that it currently has the final authority to approve or modify the Contract Demand set by customers with single accounts and multiple accounts who install DG in front of the Company's meter, as approved by the Commission's October 2012 Order, and the Company proposed to extend that authority to all standby accounts (CE IIP Rebuttal, p. 143). It is not the customer's maximum potential demand but its daily as-used demand that provides the customer with the incentive to control its operations (CE IIP Rebuttal, pp. 143-144).

Staff recommends Con Edison have the final authority to approve or modify the Contract Demand established by a standby rate customer and no longer assess a surcharge on or after January 1, 2014 if the customer exceeds a customer-set contract demand approved by the Company. The Company's proposal will make consistent the Contract Demand for all standby accounts.

b. Gas

The Company proposes a number of changes to its non-firm rates and terms of service including changes to Rate 1 and Rate 2 delivery rates, a minimum annual volume threshold for new Rate 1 interruptible customers, modifying the annual reconciliation for full service Rate 1 customers and increasing the customers' share of the non-firm revenue imputation. For the most part, Staff's initial brief addresses the Company's arguments. However, the Company did raise some additional arguments in its initial brief which require the following responses.

iv. Non-firm Rate Changes

1. Interruptible Rate 1 Rate Structure

The Company claims that Staff's interruptible rate design recommendation is unnecessarily low and no phase-in of the minimum charge is necessary (CE IB, p. 189). According to the Company, interruptible customers should be customers with usage well above small gas customers to provide any appreciable impact to the system (Id.).

Staff refers to its initial brief regarding the validity of Con Edison's proposed rate, however, regarding its proposal that there be no phase-in, it is important to point out that there is currently no minimum usage for Rate 1 customers, and in fact there are a number of very small customers taking interruptible service. Therefore, any minimum charge increase would be a significant impact on those customers. To illustrate, there are currently 61 customers taking Rate 1 service that use less than 250 therms per month (Exh. 581, p. 36) and are subject to interruptible delivery rates in January 2013 of approximately 38.8 cents per therm and 23.8 cents per therm for Residential and Non-Residential customers, respectively (Exh. 581, p. 7). The cost at these delivery rates for 250 therms was approximately $97 and $60 for Residential and Non-Residential customers, respectively. Under Con Edison's proposal of a Residential customer charge of $216 and Non-Residential customer charge of $170 (Exh. 581, p. 13), inclusive of the first 250 therms, Residential and Non-Residential customers would have delivery rates of 123% and 186% higher, respectively. The low level of usage and the Company's perceived lack of benefit to interrupting these small customers is certainly not a justification to allow significant rate shock. Accordingly, the Company's proposed Rate 1 rate structure should be rejected.

2. Rate 1 Annual Revenue Reconciliation

The Company claims that the more expensive the gas it must purchase in order to maintain service to interruptible customers, the smaller the contribution interruptible customers make to the system and, therefore, the smaller the benefit to firm customers who bear ultimate responsibility for the system's costs (CE IB, p. 192). According to Con Edison, firm customers should not be required to continue subsidizing the interruptible delivery rates and, therefore, the annual reconciliation performed for full-service Rate 1 customers should be done on a delivery component basis only (Id.).

Staff disagrees with the assertion that firm customers subsidize interruptible delivery rates. First, interruptible delivery rates are set based on a number of variables, including market conditions (Exh. 581, p. 6). In the current rate environment, alternative fuels do little to mitigate high interruptible delivery rates for natural gas (CE Gas Infrastructure Panel Direct, p. 67; CE Gas Infrastructure Panel R/U, p. 116). Thus, non-firm revenues have been significantly higher than the non-firm revenue imputation for the last several years providing a substantial benefit to firm customers and shareholders (Exh. 581, p. 46 and Tr., p. 296). Second, firm customers only subsidize interruptible delivery rates if the delivery revenue from interruptible customers does not achieve, at a minimum, the cost to maintain interruptible customers on the system. Under Staff's recommendation, Con Edison would still collect, at a minimum, the cost to maintain interruptible customer service through the customer charge regardless of the interruptible customer usage (Staff Gas Rates Panel Direct, pp. 24-26). Under Con Edison's proposal, the Company would simply be collecting more than the cost to maintain service (CE Non-Firm Services Panel Direct, pp. 11-12; Exh. 581, p. 13).

Therefore, it is not a valid argument to claim that firm customers subsidize interruptible rates as a basis to reconcile SC 12 sales customer revenues on a delivery only basis.

3. Non-Firm Revenue (Rate 1)

Con Edison argues that significant changes are occurring with respect to its discretionary capacity release revenues that make reliance on the past unreasonable (CE IB, pp. 195-196). Declining revenues from discretionary capacity release is projected for the Rate Year due to changing market conditions (Id.). The Company acknowledges that historical highs in revenues from this category of non-firm revenues was reached during 2012, but it now anticipates that such will return to the reduced levels more typical of the past (Id.). Therefore, the Company argues there is no reasonable basis for designing rates that include projected revenues based on historical levels where those levels cannot reasonably be replicated during the Rate Year (Id.).

The Company's arguments are misplaced. The undisputed facts remain, Con Edison collected over $78 million in the last full rate year (Exh. 581, p. 46), which was over $25 million above the imputation of $53 million, and $20 million above Staff's proposed imputation of $58 million. Con Edison is projecting an additional $8 million in the Rate Year revenue from Rate 1 customers (City IB, pp. 120-121). During the last full rate year the net capacity release revenue was $13.7 million, and the four prior rate years was an average of $4.9 million (Exh. 581, p. 46). Thus, even if capacity release revenue fell to $0, well below historical levels, the Company would still be $6 million above Staff's proposed $58 million imputation even without including the additional $8 million Rate Year 1 projected revenue increase. Therefore, Staff's non-firm revenue imputation should be adopted.

5. Need for Evaluating Interruptible Service

The Company states that if Staff is suggesting that the Company structure interruptible rates so as to steer new or existing customers to interruptible service instead of firm service, it disagrees (CE IB, p. 193-194). It goes on to state that Staff is incorrect in asserting that interruptible customers provide a benefit to firm customers by getting off the system on the coldest days (Id.). Rather, the Company states that interrupting service to interruptible customers on coldest days prevents detrimental impacts to firm customers, but that in turn does not provide a benefit to firm customers because interruptible customers are simply meeting their commitments that go hand-in-hand with their discounted rates (Id.). Finally, the Company claims that it sees no reason to conduct a study on quantifying the benefits of interruptible service because any study would require assumptions relating to unknown variables and, therefore, the study would provide little if any value (Id.).

To be clear, Staff is not suggesting an incentive to steer new or existing customers to interruptible service. We believe all customers should continue to make their own economical service decisions based on their individual needs. However, contrary to the Company's assertions, it is reasonable to conclude that interruptible customers provide a benefit to Con Edison's gas system and its firm customers through increased system reliability and efficiency (Tr. 277) as well as the additional non-firm revenues that firm customers and shareholders enjoy. Moreover, when the Company's system is constrained and additional load is required, interruptible customers are interrupted.

Historically, alternative fuel prices were competitive with gas. However, that construct has changed and natural gas prices are much lower than alternative fuels. On cross-examination, Staff agreed that customers incur costs in order to be interruptible, such as procuring alternate fuel supplies, and owning and maintaining equipment to burn alternate fuels (Tr. pp. 365-66). But, Staff could not identify any incentive to being an interruptible customer if forced to incur such costs while paying interruptible delivery rates that are comparable to firm delivery rates (Id., p. 367).

Con Edison's response to this argument is to seek to maximize revenues from interruptible customers for the benefit of its firm customers (CE Gas Non-Form Service Panel Direct, p. 13). Its response, however, is in conflict with the Commission's stated goals in the Proceeding to Examine Policies Regarding the Expansion of Natural Gas (Case 12-G-0297, issued November 30, 2012, p. 8). Therein, the Commission stated that "[g]iven the significant changes in the natural gas industry, and the potential economic and environmental advantages of natural gas, it is appropriate to revisit the issues related to the natural gas system" (Id., p. 8). Therefore, the Company's historic approach needs to be evaluated in the broader context recommended by the Commission and discussed above (Staff Gas Rates Panel Direct, pp. 29, 37).

Additionally, the Company argues that there is no current impediment to meeting the needs of new firm customers on a reasonable schedule and Staff has provided no study that indicates that the rates to firm customers will be lower by increasing the interruptible class instead of building the firm class (CE IB, pp. 193-194). This argument is misleading and at odds with Con Edison's own testimony (Tr. 277-278). The concern is not with lowering rates as a byproduct of increasing interruptible customers. The concern is the unknown effect on firm rates as a byproduct of decreasing the interruptible class and increasing capital spending, a direct result of which is inefficient utilization of system resources (Tr. 278, 339-342).

Based on the foregoing, Staff continues to recommend the need for a study to better determine the value of interruptible customers for the benefit of all Con Edison customers.

XII. Other Issues

a. Performance Mechanisms

i. Electric

1. Network Frequency and Duration Targets

The Company claims that our proposed network targets, based on ten years of performance data, should be rejected since the outage performance data during 2003 to 2007 is reported differently and less accurately than under a new Outage Management System (OMS) used since 2008 (CE IB, p. 206). The

Company quoted the following language in the 2009 Electric Rate Order[31] to support its position:

> "[Staff and the Company] agree that the Company has a new outage management system, called STAR (System Trouble Analysis Response), that records more accurately than the Company's legacy system the start time of an outage and that predicts a greater number of customers will be affected by an outage as compared to the Company's legacy system. Both agree as well that the effect of the new system is that with absolutely no change in the level of reliability, STAR results will suggest a change in reliability when compared to the legacy system's results."

These statements cited by the Company do not support its assertion that the outage performance data from 2003 to 2007 are reported differently and less accurately than under its "new" Outage Management System (OMS) used since 2008. As stated by the Commission in its 2009 Electric Rate Order on page 258:

> "DPS Staff proposes instead that network SAIFI be suspended temporarily, with two interim alternative measures adopted, including (a) Network Interruptions, and (2) Summer Feeder Open-Autos (Tr. 3545). These are measures that are indicative of reliability, that have been tracked for a long time, and that are not affected by the use of the STAR system."

The fact that the interruption data used in the current targets is not affected by the use of the new OMS was not rebutted by Con Edison in the 2008 electric rate case, nor has Con Edison provided any data to prove otherwise. The Company has not shown that the OMS upgrades had any impact on the current network metrics used. This is one of the primary reasons for changing the metric. As we stated in our initial brief in Case 08-E-0539[32], we do not intend to expose the Company to an increased

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[31] Case 08-E-0539, et al., Con Edison – Electric Rates, Order Setting Electric Rates (issued April 24, 2009) at 257-258 (2009 Electric Rate Order).

[32] Case 08-E-0539, et al., Con Edison – Electric Rates, Staff Initial Brief at 296.

chance of rate adjustments simply because more accurate data is being used. Since the interruption data is not affected by the use of the new OMS, ten years of data should be used by the Commission, as Con Edison proposed in the 2009 electric rate case (Case 09-E-0428, IIP Direct, p. 249).

On page 206 of Con Edison's initial brief, it claims that when network outage performance data for 2003 to 2012 is adjusted to remove major storm outages, the adjusted number of network outages shows a marked increase during 2009 to 2011 when compared to 2003 to 2008 (Exh. 72). However, we view Con Edison's past performance as cyclical in nature, as the RPM Panel discussed during cross examination (Tr. 2147). Con Edison's performance in 2003 (Exh. 72, p. 3), after removing major storm outages, was higher than its performance for 2008, 2010, and 2012 (Exh. 71, p. 1). Con Edison's performance in 2005 (Exh. 72, p. 3) was higher than its 2008 and 2012 performance (Exh. 71, p. 1). There are also examples of how Con Edison's average duration performance between 2003 and 2007 (Exh. 72, p. 4) are higher than its performance between 2008 and 2012 (Exh. 71, p. 2).

Our RPM Panel was asked why reported outages increased during cross examination by Con Edison (Tr. 2146). We provided several possible reasons but as Con Edison mentioned, we did not mention a decline in actual performance as a cause (CE IB, p. 208). However, simply because it was not mentioned, does not mean that declined performance could not be a reason. Our response to Con Edison's questions was that "…there could be many reasons. There could be -- it could be weather-related. It could be how we calculate the threshold, the target. It could be technology. It could be equipment that's out in the field. There could be many things." (Tr. 2146). Our answer was not intended to be an all inclusive response put to provide examples of possible causes. Before and after the 2008 OMS upgrades, Con Edison’s duration performance for both radial and network system has been an area of concern for us.[33] Consequently, Con Edison’s assertion that upgrades to the OMS since 2008 is the cause for the difference in interruption and duration data between 2003 to 2007 and 2008 to 2012, rather than reliability performance has not been proven.

Con Edison averred that our proposed targets are too low, increases its risk of a revenue adjustment, and if our proposed targets were in effect over the last five years, Con Edison would have had a revenue adjustment in three of the five years for Network Outages per 1,000 Customers and two of the last five years for Network Outage Duration (CE IB, pp. 206-207). First, the targets to be set by the Commission in this electric rate proceeding will not be applied retroactively and Con Edison would not be exposed to a revenue adjustment for past performance based on revised target levels for the future. The targets set are based on Con Edison’s actual past performance. Therefore, Con Edison has been able to achieve these targets in the past and it remains feasible for Con Edison to achieve these targets in the future, especially considering its increased investment in reliability.

The targets Con Edison proposes would allow the Company with too much leeway. By using the most recent five year performance history, plus 10% as used by the Commission to derive the initial targets in the 2008 Electric Rate Order, the Network Outages per 1,000 Customers target would be 2.4 and Network Outage Duration target would be 4.7 hours (based on the data in Exh. 72). With the most recent five year performance

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[33] Case 09-E-0450, 2008 Electric Reliability Performance in New York State, 2008 Electric Reliability Performance Report, filed June 26, 2009, p. 13 and Case 13-E-0148, 2012 Electric Reliability Performance in New York State, 2012 Electric Reliability Performance Report, filed June 17, 2013, pp. 16-17.

history data in Exhibit 71 plus 10%, the Network Outages per 1,000 Customers target would still be 2.4 and Network Outage Duration target would be 4.8 hours. These targets are still lower than the 2.5 Con Edison proposes for Network Outages per 1,000 Customers target and 5.0 hours for Network Outage Duration target. A Network Outages per 1,000 Customers target of 2.5 and the Network Outage Duration target of 5.0 hours is higher than all the Company's actual performance over the past 10 years (Exh. 72). Bearing in mind that the Con Edison proposed capital budget for reliability programs and projects for its distribution system is approximately equal to or more than $200 million annually between 2014 and 2017 (Exh. 80), Con Edison should be held responsible for better, not worse reliability. The purpose of an RPM is not to constantly reset the target to a level higher than all the Company's past performance. This would not motivate better performance.

Con Edison is correct when it states on page 207 of its initial brief that we acknowledge that since 2006, the Company has "made a lot of changes over the year[s]" to its outage management system (Tr. 2141) and "various upgrades over the years" (Tr. 2148) – such that "perhaps fifty percent of the data [underlying SRPMP's revised targets] is based upon performance using an outage management system that the company no longer reports under" (Tr. 2148). While some of the data is from a time when the old OMS was used, the quality of the interruption data was not the area of concern for us, as we stated repeatedly during cross examination (Tr. 2144, 2148, and 2153) and Con Edison has not indicated there is a change in the quality of the interruption data resulting from various OMS upgrades.

Con Edison states that the current network outage target of 2.5 outages per 1,000 customers in a year, allows for 6,176 outage events yearly or just 17 outage events per day (CE

IB, p. 208). The Company also states our proposed target of 2.2 would reduce the annual number of outage events by 740 per year to only 5,434 (Id.). Since the Company delivers power to over two million network customers, it has spent over a billion dollars annually on T&D capital projects and programs from 2008 to 2012 (Staff IB, pp. 113-114), it proposes to continue to spend over a billion dollars annually on T&D capital projects and programs from 2013 to 2017 (Exh. 80), and in light of the numerous critical customers (such as the New York Stock Exchange, Federal Reserve, etc.) in its service territory, targets should be low and reflect the network system that customers have paid for.

3. Over-duty Circuit Breaker Metric

CPA's initial brief states that there should not be an annual limit of $3 million for Con Edison to purchase and install fault current mitigation equipment because the Company's obligation to provide safe and adequate service is not limited to $3 million, and if the Company finds reimbursements excessive, it has the simple remedy of correcting over-duty conditions on its distribution system (CPA IB, p. 16). CPA's proposal should be rejected by the Commission. As with the capital program that funds the replacement or retrofit of over-duty circuit breakers, a budget should be set for the purchase and installation of fault current mitigation equipment to prevent unlimited expense exposure to ratepayers.

While Con Edison accepts our proposal that the Company pay for fault current mitigation devices for Distributed Generation (DG) customers, it states in its initial brief that the basis for our proposal is simplistic, unsound, and misleading (CE IB, p. 213). It supports its over-duty breaker replacement program by claiming that it has operated with over duty breakers due to the lack of economically available higher-duty circuit breakers and the very low frequency and low risk associated with the use of the more readily available standard-duty ratings (Id.). In addition, the Company claims this approach has avoided a significant expense for ratepayers and the breaker replacement program is replacing breakers at a rate that is consistent with the constraints associated with scheduling and removal of substation bus sections to facilitate the breaker replacements. Con Edison concludes that its strategy does not give rise to an obligation to subsidize or mitigate the costs of DG operators that would add fault duty in constrained networks but that if the Commission determines as a policy matter that DG customer costs for mitigating fault current should be subsidized, its associated costs should be deferred for later recovery (Id.).

It remains our position that the amount of over-duty breakers on the system is a conscious decision made by Con Edison and that there would likely be more over-duty breakers if the Commission did not monitor Con Edison’s effort to replace or retrofit 13/27 kV over-duty circuit breakers through the institution of the over-duty breaker performance metric. For example, in 1999, before the metric was in place, the Company replaced only 19 breakers (Staff RPM Panel Direct, p. 20), compared to the replacement of 60 breakers per year as required under the current metric. Furthermore, while it might not be economical to replace some circuit breakers, many of them can be economically replaced. As is to cost recovery, it has been Staff’s position throughout this proceeding that the Company should be permitted to recover the costs of the fault current mitigation devices and therefore the Commission should allow it to defer up to $3 million per year for future recovery from ratepayers.

ii. Gas

1. Infrastructure Enhancement

The Company claims that our analysis for pipe replacement is not supported by any studies or analyses (CE IB, p. 221). Further, it claims that Staff's recommendation to exclude certain pipe replacements from the annual target would require increased funding and eliminate the incentive to identify synergies (Id., p. 222).

The Commission should adopt Staffs position to replace a minimum of 60 miles of leak-prone pipe per year using the Company's risk prioritization model to identify pipe replacement (Staff IB, pp. 234-235). Since the universe of leak-prone pipe cannot be replaced all at once, Staff believes this is the most effective way to identify the highest risk pipe to remove, thereby, increasing the safety of Con Edison's system. Regarding the Company's assertion that Staff's recommendation would increase funding and eliminate synergies, Staff considered the increased pipe replacement and based on the Company's response to Staff's information requests concluded that an additional $487.5 per foot was reasonable in the Rate Year (Staff Gas Infrastructure Panel Direct, pp. 34-35). Finally, Staff would like to clarify, however, that additional replacement should not just be steel as the Company indicates (CE IB, p. 222), but rather it could be any leak prone pipe the model prioritizes for replacement.

2. Leak Management

Con Edison states that Staff's recommendation to change the existing dual target that encompasses both hazardous and total leaks to a single target of no more than 900 total leaks in backlog by the end of the Rate Year fails to adequately consider the reasons impacting the Company's actual performance of 997 in 2012 and would substantially increase its O&M expense by about $1.2 million (CE IB, pp. 217-218).

Although Staff admits that no examination of the circumstances surrounding the Company's 2012 results was done, Con Edison also provides no explanation of any such circumstances in its testimony or initial brief (Id.). Staff did, however, examine the amount of repairs that Con Edison performed since 2008 and reiterates here that historically the Company repairs approximately 7,000 leaks per year (Staff IB, p. 238).

Regarding Con Edison's argument that the target identified by Staff is unreasonable and reducing the target should be based upon an analysis of the cost to achieve (CE IB, pp. 217-218), Staff believes that reducing the total leak backlog will lead to an increase in public safety, a benefit which cannot be compared to any costs. Moreover, Staff does not anticipate that the Company will achieve leak backlog levels merely through additional leak repairs of non-hazardous type 3 leaks, thereby, incurring additional O&M expenses (CE IB, p. 218). Rather, it is expected that the additional recommended leak-prone pipe replacement program will identify leak-prone pipes that have existing leaks and will result in a significant reduction in total leak backlog without incremental O&M expenses (Staff Gas Safety Panel Direct, pp. 19-20). Therefore the Company's request for $1.2 million for repairing 200 additional leaks (illustrative level of 1100 to requested level of 900 during the Rate Year)(CE IB, pp. 217-218) should be rejected.

iv. Customer Operations

The Company states that "there has been no demonstration that, based on the current mechanism, CECONY is not providing customers with safe and adequate service." (CE IB, p. 224) To the contrary, Staff testified, which testimony was uncontroverted, that Con Edison ranks below all other New York utilities in call answer rate, except the Long Island territory served by National Grid, and that service territory involves use of legacy systems maintained under contract with the Long Island Power Authority; and that even including Con Edison and the KeySpan Companies, the average Call Answer Rate for New York utilities was 67.6% (Staff CPP Direct, p. 30). If such difficulty getting through to the Company is not unsafe (which in some circumstances it may be), it is at least inadequate, by comparison with its peers.

Con Edison further claims that:

> "Staff relies on CECONY's performance in November 2012 as a basis for determining that the Company can achieve Staff's proposed call answer rate without additional resources. Such reliance is wholly without merit, since call volumes in November 2012 were unique due to the impact of Superstorm Sandy. In fact, CECONY overran its O&M budget for the month by approximately $0.5 million using overtime to respond to the increased call volume due to the influx of emergency calls. Both Staff and UIU fail to recognize seasonal fluctuations to the volume of calls received that accounts for the fluctuation in call answer rate performance from month to month." (CE IB, p. 224)

In fact, as discussed in Staff's initial brief, it is Con Edison that ignores the seasonal fluctuations in call volumes, in taking a "straight line" approach to calculating how many full time year-round representatives would be required to meet the target (Staff IB, p. 248). We further relied on November 2012 performance to demonstrate that, even in extreme circumstances such as Superstorm Sandy, the Company can handle large call volumes expeditiously with its existing resources. Given such performance, the Company should be able to accommodate normal seasonal fluctuations with more prudent management of employee vacations, timing of new hires/promototions, rotational assignments, etc., and without having to hire additional personnel. In addition, the call answer rate target is measured annually, not monthly; i.e., the Company can (as it does with the current target today) allow call answer rate to slip below the target in busier months, as long as it posts stronger performance in slower months. Staff's proposed target should be adopted.

c. Gas Only Issues

ii. Lost And Unaccounted For Gas

Astoria states in its initial brief that the Commission should reject the Company's proposed line loss increase, from 0.1% to 0.5%, assigned to generators, because the losses attributable to generators is negligible (Astoria IB, pp. 6-7).

Staff agreed with the Company that 0.2% of the 0.5% was measurable and that 0.3% was a fair estimate of high pressure transmission line losses which would be calculated and adjusted for, if necessary, in the future (Staff Gas Policy Panel, pp. 20-22; CE Peter T. Carnavos R/U, pp. 15-16). Staff provided examples of losses on high pressure transmission lines for several other interstate pipelines to support our position (Exh. 589). Therefore, Astoria's assertion that generators do not contribute to system line loss is inaccurate. Generators account for a significant portion of the total Con Edison system throughput and it is unfair for other customers to bear the losses on the dedicated volumes that serve generators (Id.).

Therefore, the Commission should adopt the 0.5% as a reasonable level that represents the generator's share of losses for the Rate Year.

iii. Gas Balancing

The Company indicates that Staff's changes to its balancing services should be rejected (CE IB, pp. 237-239). It states that Staff's primary basis for recommending the changes are to provide uniformity with other downstate utilities, and not based upon a formal study or analysis (Id.). Regarding changes to the dead-bands, it argues that these changes will not decrease the amount of assets the Company needs to retain to provide balancing services (Id.).

Similarly, Astoria also disagrees with Staff arguing that because Staff admitted on cross-examination that Con Edison does not acquire any additional assets to provide balancing services, tightening the dead-bands will not reduce needed assets or balancing costs (Astoria IB, p. 11). Astoria also argues that reducing the dead-bands to 2% would treat generators in Con Edison’s service territory differently than the way other utilities in the State treat transportation customers (Id.). Finally, Astoria submits that Staff’s assertion that generators should be held to a tighter standard is incorrect (Id., p. 12).

Regarding the proposal that balancing issues be discussed in the Marketer Collaborative and not in the rate case (CE IB, p. 237), Staff disagrees because allowing inconsistency on balancing provisions with other utilities, especially a neighboring one, creates potential competitive disadvantage for customers (Staff IB, pp. 252-254). The parties who would be affected by these changes are participating in this case and are aware of the changes being recommended. By delaying the implementation of the cash-out dead-bands, any competitive disadvantage that exists will continue beyond the Rate Year (Id.). In addition, improvements to reliability and any reduction in asset requirements will also be delayed.

Staff also rejects Astoria’s argument that generators do not have the capability to closely manage usage, and that the Commission should not change dead-bands because higher levels exist in other parts of state (Astoria IB, p. 10). What Astoria fails to mention in its initial brief is that the balancing provisions being proposed by Staff match those currently in place for the metropolitan NYC and Long Island areas (Staff IB, p. 252-254) thereby leveling the playing field for down state generators.

Moreover, the Company and Astoria argue that the Company does not need to acquire additional assets to provide balancing services for interruptible customers and, therefore, no changes are warranted (CE IB, p. 239). While we agree that the Company does not technically acquire assets for these customers, the nature of the dead-bands is to provide the flexibility for customers to not have to deliver exact amounts of gas for a given period of time. In order to provide that flexibility, the Company must be able to deliver the volumes of gas to customers who under-deliver. It does so by managing the volumes within the distribution system with existing assets and without causing harm to its firm customers. Therefore, the wider the dead-band, the greater the volume the Company must manage. By reducing the dead-band for generators, from 10% to 2%, the burden falls on the generators to be more diligent in managing their daily requirements and thus reduces the assets in the system required to balance their loads (Staff Gas Policy and Supply Panel Direct, pp. 14-15). If a wider dead-band remains in place, the result would be more frequent interruptions and higher balancing costs to generators as growth continues within Con Edison's territory.

Finally, we do not believe a formal study is necessary to show that Staff's recommended changes would improve system reliability by encouraging customers to deliver within lower tolerances because as discussed above, system reliability is enhanced by shrinking the dead-bands. Accordingly, Con Edison's and Astoria's arguments should be rejected.

v. 100 Foot Rule

The City includes in its initial brief a request for adjusting the current rules on customer entitlement of mains and service line, as well as a clarification regarding multiple connections on main extensions (City IB, pp. 143-145). On November 30, 2012, the Commission initiated a proceeding to consider, among other things, clarification of 16 NYCRR §230 regarding the application of the 100 foot rule by utilities.

The City is an active participant in that proceeding. Staff, therefore, recommends that these issues remain open for discussion in the generic case, where all interested stakeholders from across New York State can be heard before the Commission considers any substantive changes.

d. Steam Only Issues

i. Steam Variance

The Company's assertion that "Staff proposes to calculate a tolerance band starting from one data point" (CE IB, p. 249) is not correct. As stated by Staff several times during the Company's cross-examination of the Staff Steam Rate Panel the tolerance band is represented by the 80% Confidence Interval of the 5 most-recent historical annual steam variance amounts (Tr. 253-254); the Staff Panel also pointed out that it is impossible to "construct a confidence interval using one data point" (Tr. 253). "The confidence interval is expressed as the average of a set of data plus and minus the interval size" (Staff Steam Rate Panel Direct, p. 20) and, "the size of the interval is based on… the standard deviation of the data analyzed, and the number of data points analyzed" (Id.). The generation of a confidence interval explicitly requires a set of multiple data points, therefore the Company's assertion that the tolerance band is based on only one data point is factually incorrect and mathematically unsound.

In its initial brief, the Company states that "Staff did not explain what they meant by 'slide back'", and that Staff did not explain "why or how customers would pay higher steam fuel costs if the current mechanism remains in place" (CE IB, p. 249). Staff's comments regarding larger higher deadband targets allowing the Company to "slide back" refer to the possibility that the Company may decide to allocate resources away from improving Steam variance and allowing higher annual variance amounts than what has been shown in the to be possible in the past. Higher annual variance amounts necessarily lead to customers paying higher fuel costs than if the variance had been kept lower; since variance is defined as the “loss of thermal energy between the generation of the steam and the consumption of the steam by the customer” (CE Steam Fuel Panel R/U, p. 2), when the steam variance is higher the customers are paying for more steam to be produced than what they actually used. Staff states that the current deadband does not “provide a sufficient incentive for keeping the variance level from increasing” (Staff IB, p. 257), and that the Company, without a sufficient incentive, could allow the variance amounts to increase to “higher than what we would consider acceptable” (Tr. 258), therefore forcing customers to pay higher fuel prices than they otherwise would have had the Company been properly incented to minimize variance.

The Company states that the existing variance should not be modified, however, if the Commission determines that a modification is warranted, the Company urges that the City of New York’s proposal on steam variance be accepted (CE IB, p. 248). The Company states further that NYC’s change to the deadband is reasonable (CE IB, p. 249), despite the testimony of its expert witnesses to the contrary. In its rebuttal testimony, the Company’s Steam Fuel panel characterized the NYC proposal as “unreasonable” (CE Steam Fuel Panel R/U, p. 10) in part because the lower limit proposed by NYC witness Arnett is “unachievable due to factors that are beyond the Company’s control” (Id., p. 6) and rejects proposal to set the steam variance incentive mechanism on a comparable basis to a similar provision in the Company’s Gas business because “steam and natural gas are different, and have different properties” (Id., p. 7) and “there are no equivalent losses” (Id.) between the Gas and Steam businesses. The Company does not support the expert opinion of its Steam Fuel Panel, therefore, the Company's assertion in this respect should not be viewed as persuasive.

The City notes in its initial brief, "the Company's real interest in opposing variance incentive mechanism updates is to preserve a revenue stream" (City IB, p. 150); failing that the Company seems eager to adopt a proposal which would, for the reasons outlined by Staff in its initial brief, "preclude the Company from earning any incentive at all" (Staff IB, p. 258), and is a "negligible" change to an already unduly high upper deadband level (Id.). Setting the steam incentive mechanism at the deadband levels described by Mr. Arnett is tantamount to eliminating the incentive mechanism altogether because "his lower [deadband] limit is unachievable" (CE Steam Fuel Panel R/U, p. 6), and neither the current upper deadband limit nor that proposed by Mr. Arnett offer a meaningful penalty for steam variance levels worse than what the latest data have shown to be achievable. Generally, incentive mechanisms are designed to confer a benefit for good performance, and impose a penalty for poor performance. The fact that the current steam variance incentive mechanism has provisions for both benefits and penalties conveys the intention that it was not designed to act only as an additional revenue stream for the Company, however, as noted by NYC, "the thresholds embedded in the incentive mechanism again have become stale" (City IB, p. 148) because they are readily being achieved. Staff's proposal includes realistic targets for both achievable benefits and meaningful penalties.

In its initial brief, the Company points out that none of the active parties addressed operation of the steam variance incentive mechanism during the linking period between the Rate Year ending September 2013, and the Rate Year beginning January 1, 2014. The Company proposed that "Steam maintain the current October through September period for purposes of the steam variance” (CE IB, p. 250). Staff has no objections to the Company’s proposal. The Commission should accept the Company’s proposal to maintain the current timeframe in regard to the steam variance incentive mechanism and accept Staff’s prospective proposal relative to the steam variance.

e. Customer Ops Only Issues

ii. Low Income Programs

The City criticizes Staff for not performing an analysis of the energy affordability gap of Con Edison’s low income gas customers who receive Medicaid (City IB, p. 155). The City itself performed no such analysis; however (or if it did so, it did not provide the results of such analysis), leaving open to question whether such an analysis would have showed that the affordability gap faced by Medicaid customers was more or less than that faced by other low income program participants.

In addition, the City incorrectly quotes Staff as saying that “…virtually all Medicaid recipients participate in other qualifying programs” (Id.). What Staff actually said was virtually all Medicaid recipients qualify for other programs (Tr. 1866). Such testimony was further corroborated by the City’s own witness, Ms. Noel (Noel Direct, p. 12, Tr. 1991).

The City also errs when it states that “the eligible S.C. 3 [gas low income program] customers had increased by 20% to 30,000…” (City IB, p. 155). In fact, the last reported number of participants in SC 3 was 24,689 customers as reported by the Company in its publically filed Gas Low Income Program report dated July 31, 2013, in Case 09-G-0795. This is below the enrollment target of 25,500 Staff proposed for its recommended gas low income proposal (Staff CPP Direct, p. 14). In addition, this example illustrates that participation in the Company’s electric and gas low income programs fluctuates on an annual basis. This further supports our recommendation that no adjustment to the electric low income program's budget or target enrollment level is required at this time.

In addition, the City makes an inapt comparison of two programs in support of its proposals. The City finds a "significant inconsistency" in Staff's support for Con Edison paying Transco for gas odorization and heating while opposing the City's proposal that Con Edison reimburse HRA for funding its opt-out letter: "There, Transco would be providing an essential service to Con Edison that is not part of Transco's business or needs; here, the Con Edison low income programs are indisputably not HRA programs" (City IB, p. 158). Exactly so: Transco would be providing a service that meets Con Edison's business needs; while the opt-out letter fulfills legal requirements applicable to the Agencies, not to Con Edison.

The City has provided no reason why Con Edison ratepayers should undertake the costs of the opt-out letter; however, for the first time in its initial brief, the City indicates that it "is willing to seek recovery on an after-the-fact basis, with its request supported by appropriate documentation. This procedure would ensure that there is an audit trail, and that the funds provided are directly related to this purpose." (City IB, pp. 157-158). Should the Commission decide that Con Edison should reimburse the City and/or the County of Westchester for mailing the opt-out letter, payment should only be rendered after a full and complete audit has determined the propriety of charges the City and/or Westchester seek to recover.

Con Edison misstates the effect of the existing adjustment mechanism in the electric low income program. The Company notes that it "proposed to maintain the current spending target of $38.25 million and its ability to adjust the discount based on the most recent estimated number of participants;" and after noting Staff's agreement with this proposal, states that "as reflected in the Company's update testimony, the discount would be reduced to $7.40 per month based on the most recent annual reconciliation, which identified 435,000 electric low income customers." (CE IB, p. 256). In fact, the adjustment mechanism in place, and which Staff proposes to continue, would not adjust the monthly discount level by more than $0.50 in one year (Staff IB, p. 261). This would result in a discount level of $8.00 in the Rate Year.

For the reasons stated above, Staff's positions should be adopted to best balance the interests and needs of low income customers along with those of all other rate payers.

iii. Mandatory Hourly Pricing

Regarding the KEMA Mandatory Hourly Pricing (MHP) Program Evaluation Report, Con Edison states, "Staff's criticism that the study used smaller sample sizes does not necessarily mean that larger sample sizes would generate larger responsiveness to prices. Additionally, price responsiveness estimates from smaller samples are still unbiased predictors of the true population's price responsiveness. Smaller samples should not alter the outcome of the result of the study." The Company also states, "While it may have been useful to have attempted one or more pooling techniques, CECONY believes that the result would have only strengthened its findings and recommendations by increasing the t-values on the very low price elasticity estimates found" (CE IB, pp. 260-261).

If larger sample sizes based on pooled data would have produced the same results, and would have strengthened the original findings, as the Company contends, it is puzzling why the Company did not provide any pooled data model results to corroborate this assertion. It is also puzzling why the KEMA study [redacted]. Since it chose not to do so, there is no record basis for the Company's assertion that pooled models would have produced similar price elasticity estimates. Thus, we still take issue with the KEMA report's methodological flaws and believe they still call into question the validity of the report's conclusions.

g. Smart Grid

Staff and the Company have little disagreement in this area. The two parties are in agreement on the Company's Smart Grid expenditures, however Staff and Con Edison are seeking different due dates for the Company's final report reconciling the Company's actual Smart Grid expenditures and the amounts recovered through its Smart Grid surcharge. While the Company wants its report due to the Commission on or by March 31, 2014, Staff is seeking 60 days after the year end, which equates to March 1, 2014. Due to the relatively minor difference in time, and in an effort to narrow the issues in these proceedings, Staff will agree to the Company's request to file its final report in March 2014.

h. Reconciliation Report

Please see comments above, XII.g. Smart Grid.

j. Management Audit

In its initial brief, the City takes issue with certain aspects of the Company's implementation of recommendations from Management Audit of Con Edison completed on August 7, 2009. Specifically, the City expresses concern: (i) that the Company's long range plans do not explicitly discuss climatological issues (City IB, pp. 163 – 165); (ii) that the calculation of management audit savings includes savings unrelated to the implementation of the management audit (City IB, p. 165); and (iii) that the Company has not appropriately implemented the Resource Analysis recommendation (City IB, pp. 165-166). Extrapolating from these three concerns, the City asserts that "the PSC should conduct a more in-depth review of the Company's Audit and compliance with the Audit and take appropriate action based on the results of that review" (City IB, pp. 163).

Turning first to the City's concern regarding the Company's long range plans, the City asserts that, because the plans do not explicitly discuss climatological issues, such issues were not adequately considered in developing the long range plans. However, the Company's testimony indicates that climatological issues were incorporated in the long range plans, even if not explicitly discussed. For example, the Company explained that:

> [T]he plan has capital expenditure and putative projections of capital expenditure included in it. And within those there are programs related to reduction of risk, a hardening of the system, as well as investments such as sectionalizing switches that address our system resiliency. So in that sense the risks of weather related events to the system and investments associated with them are collected in the plan (Tr. 951-952).

That said, Staff supports the City's suggestion that the Company's long range plans explicitly discuss climatological issues has merit. Accordingly, the Company should consider including such discussion in future iterations of its long range plans.

Second, the City asserts that savings realized from the conversion of the 59th St. and 74th St. generating stations from #6 fuel oil to natural gas and the retirement of the Hudson Avenue boilers are inappropriately counted as management audit savings because the conversions were discussed in Con Edison's 2007 Steam Resource Plan (City IB, p. 165). As an initial matter, Staff notes that, whether or not these embedded savings are counted as management audit savings, there is no impact on the Rate Year revenue requirement. Second, Staff freely admits that the fuel conversions at the 59th St. and 74th St. generating stations was contemplated in the 2007 Steam Resource Plan. However, the 2007 plan provided no definite statements, explaining only that "the Plan assumes the need for these projects during the Plan period…" and that "the exact timing of these conversions has not yet been established."[34] Con Edison only later finalized its decisions with regard to the 59th St. and 74th St. generating stations, at least arguably in part, as it developed its long range plans in response to management audit recommendation 38.[35] Furthermore, the Management Audit report specifically discusses the 2007 Steam Resource Plan and the future of the Hudson Avenue boilers and the 59th St. and 74th St. generating stations. Accordingly, Staff believes it is not unreasonable to allow the Company to count these savings as savings generally flowing from implementation of the management audit.

Finally, turning to the City's concern regarding the Company's implementation of resource analysis through the use of the Virtual Enterprise Modeling model (VEMO) (City IB, p. 165-166), the City's concern is off mark. First, the management audit report specifically identifies the "VEMO workforce planning model procured by [Con Edison's] Human Resource[s]" (Exh. 818, p. 51). Thus, the City's argument that the Company's use of the VEMO model is inappropriate is unconvincing.

The City's request that the Commission engage in a new "in-depth review of the Company's Audit and compliance with the Audit" on the basis of the City's three concerns is unwarranted. Accordingly, the City's request should be rejected.

[34] Case 05-S-1376, Con Edison – Steam Rates, 2007 Steam Resource Plan (filed October 26, 2007), pp. 24-25.

[35] Case 08-M-0152, Comprehensive Management Audit of Con Edison, Final Report, redacted (filed August 7, 2009), *Generally*, Section X.

k. Other Policy Issues

iv. East River Repowering Project Fuel Cost Allocation

The City states that the Commission should revisit the balancing factors underlying the East River Repowering Project (ERRP) fuel cost allocation decision in its 2010 Steam Rate Order[36] to address two unanticipated situations that have developed since that Order was issued. Those two situations are a reduction in steam load and the impact of steam storm hardening projects (City IB, pp. 167-168). The City claims that both of these situation put unanticipated upward pressure on steam rates.

The City argues that large increases to steam prices were not anticipated previously by the Commission and that such price increases could result in the steam business falling into a "death spiral" (City IB, p. 168). The City's concerns are without merit. The fact is that the February 8, 2010 steam price elasticity report submitted in Case 09-S-0029 analyzed the impact of steam price changes ranging from 17% to 36% in a single year and the Commission had this information before it when making its determination in the 2010 Steam Rate Order.[37] In addition, this information was available to the Commission when it issued its May 2013 ERRP allocation implementation Order.[38]

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[36] Cases 09-S-0794, et al., Con Edison – Steam Rates, Order Establishing Three-Year Steam and Gas Rate Plans and Determining East River Repowering Project Cost Allocation Methodology (issued September 22, 2010)(2010 Steam Rate Order).

[37] Case 09-S-0029, Proceeding on Motion of the Commission to Consider Steam Resource Plan and East River Re-powering Project Cost Allocation Study, and Steam Energy Efficiency Programs for Consolidated Edison Company of New York, Inc., Report Regarding Steam Price Elasticity and Long Term Steam Revenue Requirement Forecast (filed February 8, 2010).

[38] Cases 09-S-0794, et al., supra, Order Approving Compliance Filing with Modifications and Denying Request for

Contrary to the City's concerns, steam rates and steam customer bills are expected to decrease resulting from the gas addition projects at the Company's 59th Street and 74th street steam production plants, which allow the Company to produce steam using natural gas, thus resulting in lower steam prices. In addition, Staff is also recommending that the Commission determine a revenue requirement *decrease* of $10.156 million for the steam business (Staff IB, p. 1).

Therefore, the City's claim that unanticipated situations have arisen since the Commission made its ERRP fuel cost collocation decisions should be rejected. The allocation of ERRP fuel costs that the Commission has adopted is fair and reasonable and therefore should remain unchanged.

XIII Conclusion

For the reasons stated herein, and in our initial brief, Staff's proposals and adjustments should be adopted.

Respectfully submitted,

/s/

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Reconsideration and Motion for Consolidation (issued May 20, 2013).