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**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

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

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

Evidentiary Hearing
19th Floor Hearing Room
Public Service Commission
Three Empire State Plaza
Albany, New York 12223

Friday, October 24, 2008
8:30 a.m.

BEFORE :

GERALD L. LYNCH
Administrative Law Judge

HOWARD A. JACK
Administrative Law Judge

1 JUDGE JACK: On the record. Good morning,
2 all, on what we hope will be our last day.

3 Mr. Bomke, please rise.

4 DAVID BOMKE, after first having been duly
5 sworn, was examined and testified as follows:

6 JUDGE JACK: Thank you. Please be seated.

7 DIRECT EXAMINATION

8 BY MR. DIAMANTOPOULOS:

9 Q. Good morning, Mr. Bomke.

10 A. Good morning, Mr. Diamantopoulos.

11 Q. Do you have before you 20 pages and an additional
12 cover page of your direct testimony in this proceeding
13 dated September 8, 2008?

14 A. I do.

15 Q. Do you have any corrections to your direct
16 testimony?

17 A. I do not.

18 Q. If I were to ask you the same questions in your
19 direct testimony today would your answers be the same as
20 in the document before you?

21 A. They would be.

22 MR. DIAMANTOPOULOS: Your Honor, New York
23 Energy Consumers Council asks that the direct testimony
24 of David F. Bomke, the executive director of the New

1 York Energy Consumers Council, be copied into the record
2 as if orally given.

3 JUDGE JACK: Motion is granted.

4 (The following is the prefiled testimony of
5 David Bomke:)

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1 **Q. Please state your name, occupation, and business address?**

2 A. My name is David F. Bomke. I am the Executive Director of the New York Energy
3 Consumers Council, Inc., which is located at 11 Pennsylvania Plaza, 22nd Floor, New
4 York, New York, 10001-2006.

5 **Q. On whose behalf are you appearing in this proceeding?**

6 A. I am appearing on behalf of the New York Energy Consumers Council, Inc. ("NYECC"),
7 which was created on July 30, 2004 as a result of the consolidation of the Owners
8 Committee on Electric Rates ("OCER") and the New York Energy Buyers Forum
9 ("NYEBF"). NYECC's members represent a broad spectrum of energy buyers, including
10 hospitals, universities, financial institutions, residential and commercial property
11 managers, public benefit corporations, energy service companies and energy consultants.

12 **Q. Have you previously submitted testimony in a proceeding before the New York
13 State Public Service Commission ("PSC" or the "Commission")?**

14 A. Yes, I have previously submitted testimony in various cases before the Commission,
15 including Case Nos. 07-E-0523 and 07-S-1315.

16 **Q. Please describe your educational background and relevant work experience.**

17 A. I graduated from MacMurray College in Jacksonville, Illinois and completed a year of
18 graduate studies at Rice University in Houston, Texas. I have worked in various
19 capacities in the utilities and educational sectors in Texas, Florida, New York, and
20 Connecticut. I have undertaken extensive work as a data analyst in the fields of
21 educational staffing, facilities management, and energy management since 1985. Since
22 1991, I have worked primarily in New York's energy management sector. As a

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1 consultant I had primary responsibility for managing the energy data and procurement
2 activities of the New York State Office of Mental Health from 1991 through early 2004. I
3 also served on the steering committee of NYEBF from 1993 through its consolidation
4 with OCER on July 30, 2004 to form NYECC. I served as the chairman of NYEBF's
5 Steering Committee in 1995 and served in various capacities on the boards of directors of
6 both NYEBF and NYECC until I became the first full-time Executive Director of
7 NYECC in November of 2004.

8 **Q. What are your responsibilities as Executive Director of NYECC?**

9 In my present capacity I am primarily responsible for the twin focuses of advocacy and
10 education. My advocacy responsibilities include representing the needs of energy
11 consumers in regulatory proceedings (such as this one), in collaboratives resulting from
12 such proceedings (such as the collaboratives resulting from Commission Orders and Joint
13 Proposals in recent Con Edison Electric, Steam, and Natural Gas Rate Cases, 04-E-0572,
14 07-E-0523, 05-S-1376, 07-S-1315 and 06-G-1332, respectively), in interactions with
15 energy supply companies and with the regulated utility company (i.e., Con Edison), and
16 in interactions with agencies such as the Federal Energy Regulatory Commission and the
17 New York Independent System Operator. A particularly relevant component of my
18 advocacy role has been my service on the Steam Business Development Task Force and
19 that Task Force's preparation of the Steam Business Development Plan for the
20 Consolidated Edison Steam System. I have been heavily engaged in the work of the
21 Energy Efficiency Portfolio Standard proceeding since its implementation, serving on
22 several working groups. The educational component of my responsibilities includes the

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1 development and presentation of various seminars, newsletters, and member briefings on
2 issues of critical urgency to energy consumers in Con Edison's territory on behalf of
3 NYECC. The New York Energy Consumers Council is focused exclusively on the needs
4 of energy consumers in Con Edison's service territory.

5 **Q. Do you have any introductory comments to make as to electric rates in Con Edison's**
6 **service territory as compared with electric rates elsewhere in the United States?**

7 **A.** Yes. Electricity consumers in New York City and the County of Westchester already pay
8 higher electric rates than consumers anywhere else in the continental United States. (See
9 for example, a press release from NUS Consulting Group published in Reuters on May
10 19, 2008, entitled "Average U.S. Electricity Prices Rise 3.9 Percent"), See Exhibit __
11 (DFB-1). NUS Consulting Group surveyed 24 investor-owned electric companies in the
12 country, and the top surveyed utility once again in terms of price was Consolidated
13 Edison (NY) at 18.07 cents per kilowatt-hour ("kWh"). Con Edison was the highest
14 priced electric utility in this group's previous year's survey as well. The other four
15 utilities in the top five in terms of price in the current survey are National Grid (NY) at
16 15.22 cents/kWh, Commonwealth Edison (IL) at 13.08 cents/kWh, Southern California
17 Edison (CA) at 12.47 cents/kWh, and Reliant Energy (TX) at 12.34 cents/kWh. These
18 top five amounts compare unfavorably with the average price of electricity in the United
19 States. as of April 1, 2008, which was 9.57 cents per kWh.

20 **Q. Are you concerned that investors may not look to invest in utility stocks and in Con**
21 **Edison in particular under current stock market uncertainty if the Commission**
22 **does not give the Company its requested increase?**

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1 A. No, I am not concerned. For example, a recent internet posting for stockpickr stated that
2 “[w]ith the stock market uncertainty, more and more investors are turning to utility
3 stocks.” See Exhibit __ (DFB-2). This internet posting lists Con Edison among “some of
4 the highest-yielding electric utility stocks.” The posting further stated as follows:
5 “Consolidated Edison (ED) yields 6% and serves parts of New York, New Jersey and
6 Pennsylvania. The stock has a P/E of 12 and a PEG of 3.94.” In addition, another recent
7 internet posting which lists dividend yields by the top ten yielding stocks in the utility
8 industry, lists Con Edison as having the highest Earnings Per Share (“EPS”) among the
9 ten utilities listed, \$3.61 EPS and among the top four utilities with dividend yields above
10 6%. See Exhibit __ (DFB-3). The Company’s common dividend has been increased for
11 34 consecutive years. While there were 29 constituents of the S&P 500 index as of
12 December 31, 2007 that had increased their dividends more years than Con Edison, Con
13 Edison is among only two constituents from this group that belong to the utilities sector.
14 See Exhibit __ (DFB-4). In a list entitled “America’s Finest Companies – 2007 Dividend
15 All-Stars” excerpted from a report by Staton Institute, while there are 69 publicly-traded
16 US companies that have increased their dividends for more years than Con Edison, Con
17 Edison is among only three constituents from this group that belong to the Electric Utility
18 Industry. See Exhibit __ (DFB-4).

19 **Q. Please summarize your testimony?**

20 A. The primary focus of my testimony is to emphasize the importance of minimizing the
21 economic burden and bill impact upon large electric energy consumers located within
22 Con Edison’s service territory and to discuss Con Edison’s testimony regarding its

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1 proposed increase in the revenue requirement, the Accounting Panel's proposed use of a
2 surcharge mechanism for projected capital spending during each rate year, insufficient
3 direction to managers when developing their operating and capital budgets to consider the
4 rate impact on customers, additional cost burdens to electric ratepayers, building owners'
5 access to tenant electric load information for the purpose of maximizing energy
6 efficiency efforts, new programs proposed that do not demonstrate adequate cost
7 efficiency or reductions in existing costs, D&O insurance coverage costs, incentive
8 compensation, the First Avenue proceeds, the need for further cost mitigation, the use
9 and reporting of actual hourly consumption recorded on customers interval meters, the
10 speed with which billing usage data is provided to ESCOs, delays in the release of billing
11 data, and the furtherance of Clean Distributed Generation and Combined Heat and Power.

12 **Q. How much of an increase is Con Edison seeking in its revenue requirement in this**
13 **electric rate case for the rate year ending March 31, 2010?**

14 A. In its original May 9, 2008 filing, Con Edison requested a "mitigated" increase for Rate
15 Year 1 ending March 31, 2010 in the amount of \$654.1 million. Without Con Edison's
16 various proposed means of mitigating the rate increase to this amount, Con Edison's
17 proposed increase would have been \$426 million more, or \$1.08 billion. In Con Edison's
18 July 25th preliminary update, the Company increased its previously proposed "mitigated"
19 increase amount by \$120.272 million, resulting in a new "mitigated" increase request of
20 \$774.4 million and an unmitigated increase request of \$1.2 billion. Ironically, this
21 unmitigated amount sought is the same proposed increase amount sought by Con Edison
22 in its May 2007 filing, much of which was reasonably disallowed by the Commission in

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1 Case 07-E-0523. A similar approach to further mitigate the Company's rate request will
2 be necessary in this case in order to prevent unjust and unreasonable rates. Given the
3 Company's subsequent withdrawal of its energy efficiency proposal from this rate
4 increase request, I am concerned about whether the mitigation factors originally proposed
5 will be decreased.

6 **Q. Is Con Edison also seeking an increase in its revenue requirement in this electric
7 rate case for the additional rate years ending March 31, 2011 and 2012?**

8 A. Yes. The original filing proposed increases for these additional rate years of \$475
9 million and \$420 million, respectively. Together with the second and third year proposed
10 rate increases, the cumulative three-year impact of this unmitigated request on ratepayers
11 would have exceeded \$4.7 billion.

12 **Q. Did you consider Con Edison's proposed \$1.2 billion revenue requirement increase
13 in Case 07-E-0523 reasonable?**

14 A. No, I did not.

15 **Q. Do you consider Con Edison's proposed unmitigated \$1.2 billion revenue
16 requirement increase in Case 08-E-0539 more reasonable?**

17 A. No, I do not.

18 **Q. Do you consider Con Edison's proposed mitigated \$774.4 million revenue
19 requirement increase in Case 08-E-0539 reasonable?**

20 A. No, I do not. I consider an increase in excess of 82% above the \$425 million increase
21 that the Commission just authorized on March 25, 2008 in 07-E-0523 to be *per se*
22 unreasonable absent some exigent extraordinary circumstance, which has not been

1 demonstrated in this proceeding. This recent Commission Order authorized significant
2 infrastructure spending to improve and maintain the reliability of service, to enhance
3 public safety by increasing inspections to detect stray voltage, to facilitate efficient use of
4 energy, and to implement customer service and reliability performance mechanisms and
5 also included provisions to moderate rate impacts on low-income customers.
6 Significantly, this authorized increase only five months ago follows unprecedented actual
7 capital expenditures in Case 04-E-0572 of \$1.08 billion for RY1, \$1.371 billion for RY2,
8 and \$1.704 billion (estimated) for RY3. According to the Commission's recent Order,
9 Con Edison was expected to spend approximately \$1.616 billion more than the level set
10 in rates during the 3-year period of that plan, when accounting for plant retirements and
11 other factors. My understanding is that Staff's investigation and report thereto of these
12 capital expenditures called for in the Commission's recent Order have not yet been
13 completed but may affect this proceeding when they are completed. It is worth noting
14 that in response to Staff Interrogatory 413 as to whether the benefits of the substantial
15 investments in the construction program have been reflected in the Company's revenue
16 requirement, the Company's response, in relevant part, stated that "it is difficult to
17 quantify 'cost reductions' resulting from these investments." See Exhibit __ (DFB-5).

18 **Q. Do you agree with Con Edison's Accounting Panel's proposed use of a surcharge**
19 **mechanism for projected capital spending during each rate year?**

20 **A.** No. First, such an approach would appear to circumvent the Commission's existing rate
21 case process and procedures and could potentially exclude valuable intervenor input at
22 times when the Commission may not be reviewing a pending rate case. Second, such an

1 approach will likely discourage multi-year rate settlement cases. Third, but most
2 importantly, no good reason has been provided as to why the current approach, which
3 incorporates forecasts of capital spending for 5 and 10 year horizons, is inadequate for
4 forecasting capital spending expenditures for the 1 to 3 year horizons of any rate plan.

5 **Q. Do you think that there is a lack of emphasis and insufficient direction from the**
6 **Company to its managers when developing their operating and capital budgets to**
7 **consider the rate impact on customers?**

8 A. Yes. The Company's guidance materials to its managers should explicitly state in writing
9 that managers must consider the rate impact on customers when developing operating and
10 capital budgets. For example, in NYPA IRs 70 and 71, Con Edison was asked if the
11 written guidance materials provided to its managers to assist in the development of capital
12 budgets included the consideration of the rate impact on customers. See Exhibit __
13 (DFB-6), Exhibit __ (DFB-7). Despite Con Edison's affirmative response to NYPA IR
14 71, I was unable to locate any such consideration in the written guidance materials
15 provided in either the Company's response to NYPA IR 70 or in the responses to follow-
16 up IRs by NYECC and NYPA, NYECC IR 25 and NYPA IR 113, respectively,
17 requesting a specific indication of where such guidance is provided. See Exhibit __
18 (DFB-8), Exhibit __ (DFB-9).

19 **Q. Are the cost burdens to electric ratepayers in this proceeding limited to the amount**
20 **in rates that the Commission will ultimately decide are just and reasonable in this**
21 **case?**

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1 A. No. There are other Commission proceedings and determinations which will produce
2 significant incremental cost burden impacts upon electric ratepayers in this proceeding.

3 **Q. What additional cost burdens do electric ratepayers in the Con Edison service**
4 **territory face?**

5 A. Based on the June 23, 2008 Commission Order in the Energy Efficiency Portfolio
6 Standard Proceeding ("EEPS"), beginning on October 1, 2008, the annual level of overall
7 SBC electric revenue collections will increase approximately 91%, from \$175 million to
8 \$334.3 million. Since Con Edison' ratepayers pay approximately half of the SBC
9 amounts collected, the existing \$87.5 million in SBC will now balloon to approximately
10 \$167.2 million annually. In addition, based on the August 22, 2008 Commission Order in
11 EEPS, Con Edison may earn maximum potential incentives of \$15 million
12 (approximately \$10 million annually for attaining its levelized annual incremental
13 reduction targets of 255,316 MWhs as well as an additional maximum \$5 million for the
14 megawatt incentive to be applied only in New York City). The Commission will soon be
15 evaluating submissions by NYSERDA and Con Edison that would require additional
16 ratepayer funding, likely through incremental SBC surcharges. In addition, electric
17 ratepayers are expecting to incur additional electricity costs for New York State's
18 participation in the Regional Greenhouse Gas Initiative. Con Edison's witness Joseph A.
19 Holtman has tentatively estimated the impact of this initiative at \$10.8 million per year or
20 more for Con Edison's ratepayers. In addition, electric customers are currently still
21 bearing the additional costs of the System-Wide and Targeted Demand Side Management

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1 Programs implemented in accordance with the Commission's Order of March 25, 2008 in
2 the previous Con Edison Electric Rate Case.

3 **Q. What is the cost of Con Edison's proposed energy efficiency and demand side**
4 **management costs to ratepayers over three years?**

5 A. The cost in 2009 is \$26.85 million. In 2010, the additional amount requested soars to
6 \$83.635 million and the amount requested in 2011 is \$75.865 million. The aggregate
7 total sought by Con Edison over three years is an astounding \$186.35 million. Con
8 Edison's effort to mitigate the size of its "unmitigated" requested increase in this case is
9 in large part conditioned on acceptance by the Commission of its proposed DSM
10 program. On August 14, 2008, in an e-mail from Con Edison's counsel Marc Richter,
11 Con Edison "decided to withdraw from consideration in this case the Company's
12 proposed extension of its Targeted Program and its proposal to submit its non-targeted
13 programs for consideration in this proceeding if they are not reviewed in the EEPS
14 proceeding. See Exhibit __ (DFB-10). The Company will pursue the extension of its
15 Targeted Program in the EEPS proceeding. Accordingly, the IIP [Infrastructure
16 Investment Panel] will delete the portion of its initial testimony beginning on p. 265, line
17 7, through p.272, line 18, up to the word "Order." The IIP will further address this
18 matter, as appropriate, in its September 29 update/rebuttal testimony." Con Edison's
19 August 14th e-mail is confusing and potentially can serve to prevent active parties from
20 commenting upon Con Edison testimony that has been withdrawn but which may be
21 introduced again in the update/rebuttal stage of testimony. To the extent that Con Edison
22 attempts to engage in such conduct in the update/rebuttal stage of testimony, NYECC

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1 reserves its right to object. NYECC would also reserve its right to object to Con Edison's
2 proposal to submit its non-targeted programs for consideration in this proceeding if they
3 are not reviewed in the EEPS proceeding, as the NYECC would generally agree with the
4 Company's contention that the EEPS proceeding is the appropriate proceeding for
5 approval of Con Edison's non-targeted programs.

6 **Q. Do you have any additional concerns about either Con Edison's current or proposed**
7 **energy efficiency programs?**

8 A. Yes. NYECC believes that building owners should have access to tenant electric load
9 information for the purpose of maximizing energy efficiency efforts and attaining City
10 and State energy efficiency targets and goals. Although the NYECC recognizes the
11 Company's mandate to protect such customers' confidential financial data, it is critically
12 important for building owners and managers to be given unlimited access to the electric
13 load profiles of their tenants in order to ensure the safe and reliable electricity supply
14 within their buildings. Since many existing leases do not include specific
15 accommodations allowing building owners and managers to require their tenants to
16 provide this information, the only practical recourse is to secure it from the Company.

17 **Q. What is the consequence of the additional cost burdens imposed on large electric**
18 **ratepayers in New York City and Westchester County?**

19 A. These additional cost burdens have helped drive and will continue to drive the electric
20 costs of Con Edison's consumers even higher than the costs of fuel and utility
21 infrastructure alone would warrant. Because of the merciless financial assault on
22 ratepayers from multiple sources, the Commission should do everything in its power to

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1 contain costs in the context of any overall rate increase contemplated in this proceeding.
2 Con Edison's proposed mitigation efforts are simply not enough. Approval of Con
3 Edison's requested increase will have further deleterious effects on New York's
4 ratepayers and on New York's economy. New York's consumers cannot afford the
5 unrelenting upward spiral of total energy costs. Absent significant incremental rate
6 mitigation, the proposed new rates will drive existing businesses to move away from New
7 York or to simply close their doors altogether and will discourage new businesses from
8 moving into New York or opening their doors here.

9 **Q. Are you concerned about the number of new programs proposed by Con Edison in**
10 **its rate filing that do not demonstrate any cost efficiency or any reductions in**
11 **existing costs to customers?**

12 A. Yes. I cannot help thinking in reading some of the Company's responses to
13 Interrogatories that cost containment is not truly a priority for the Company during the
14 rate proceeding. Many Company responses ignore or give short shrift to demonstrating
15 either cost efficiency or cost reductions elsewhere in the filing when new programs are
16 proposed. Examples include responses to DPS IRs 210.5 and 210.6 regarding Process
17 Improvement – Accounting By Network, See Exhibit __ (DFB-11), Exhibit __ (DFB-12);
18 DPS IRs 211.5 and 211.6 regarding Process Improvement – Energy Services CSR
19 Automation, See Exhibit __ (DFB-13), Exhibit __ (DFB-14); DPS IR 213.6 regarding
20 Process Improvement – Technical Support/NYC Regulatory Liaison, See Exhibit __
21 (DFB-15); DPS IRs 214.5 and 214.6 regarding Process Improvement – Field Auditing &
22 Quality Control, See Exhibit __ (DFB-16), Exhibit __ (DFB-17); DPS IRs 216.9 and

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1 216.10 regarding Process Improvement – Establishment of a Regional Contractor
2 Oversight Review Group, See Exhibit __ (DFB-18), Exhibit __ (DFB-19); DPS IR 223
3 regarding Process Improvement – RMS Response Group, See Exhibit __ (DFB-20); DPS
4 IR 234 regarding Advanced Technology – Joint Pole Use Software, See Exhibit __
5 (DFB-21).

6 **Q. Are you also concerned about the rate impacts on customers by the new programs**
7 **proposed by Con Edison in which requests for staffing are sometimes double their**
8 **existing level?**

9 A. Yes. For example, the Company's Emergency Management Panel requests an increase in
10 staffing from sixteen to thirty-two and roughly a doubling of the historical level of
11 spending. It is worth noting that the Commission's recent March 25, 2008 Order reminds
12 everyone that "[t]he Company is provided with over \$1 billion of non-fuel O&M in rates"
13 and that the Company is not relieved of its responsibility to provide safe and adequate
14 service, and to make adjustments to its corporate policies and procedures where
15 necessary, despite not having authorized any incremental funding for emergency
16 preparedness. In like manner, it would not appear reasonable to authorize additional
17 customer funding now to drive the Company's emergency preparedness improvement
18 obligations. In addition, given the magnitude of the Company's rate filing request, it
19 seems particularly profligate for customers to have to pay for additional cost items such
20 as the benchmarking initiative and the weather analysis position.

21 **Q. Are you also concerned about the percentage increases in some costs proposed by**
22 **Con Edison in its rate filing?**

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1 A. Yes. For example, despite a 5 year average annual cost (from 2003 through 2007
2 inclusive) for environmental, health and safety issues (EH&S) of \$250,000 per year,
3 estimated costs for EH&S emergent work is estimated at \$500,000 per year, a 100%
4 increase above the five year historical average of all EH&S costs not just emergent work.
5 NYECC believes that a cost increase of 100% more the prior five-year average should be
6 deemed unjust and unreasonable absent an exigent circumstance requiring such an
7 increase, particularly in a rate case where the Company has been ordered to demonstrate
8 significant mitigation efforts.

9 **Q. Are there other cost increases proposed by Con Edison in its rate filing that you
10 believe are excessive?**

11 A. Yes. For example, based on the Company's Interrogatory responses to NYECC and
12 CPB, which include a reference to the 2007 Survey of Director's and Officer's Liability
13 Insurance Purchasing and Claims trends issued by Towers Perrins ("Towers Survey"),
14 See Exhibit __ (DFB-22), it appears that the Company could reduce costs to customers
15 by reducing its D&O policy limits to somewhere between \$88 million and \$146 million
16 instead of the requested \$300 million requested. According to the Towers Survey
17 referenced, out of 2,927 companies included in the survey population, only 18 companies
18 (less than 1%) were utilities. Among repeat participants reporting their business class, the
19 average limits for utilities decreased from \$93 million in 2006 to \$88.06 million in 2007.
20 Only organizations with assets greater than \$10 billion – the overwhelming majority of
21 which are not utilities increased limits from \$128 million in 2006 to \$146 million in
22 2007. It is worth noting in this context that in response to NYECC Interrogatory 29, the

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1 Company stated that “[t]here have been no claims or litigation against our D&O
2 insurance over the past five years and, accordingly, no defense or settlement costs have
3 been incurred.” See Exhibit __ (DFB-23). Under the circumstances, a \$2 million or
4 more savings to customers from a reduction in D&O insurance coverage seems
5 appropriate and reasonable. The Company’s shareholders can of course always pay for
6 any D&O insurance coverage in excess of what the Commission finds to be a reasonable
7 policy limit should management decide it wants additional D&O insurance coverage.
8 However, customers should not have to pay for this excess amount.

9 **Q. Are there other costs that you believe should not be paid for by Con Edison’s**
10 **customers?**

11 **A.** Yes. In the recent March 25, 2008 Order in Case 07-E-0523, the Commission disallowed
12 deferred compensation stock options and the Company’s variable pay plan as “incentive
13 compensation” which requires clear and convincing demonstrations that the officers’ and
14 managers’ performances, in their respective departments and units, have produced any
15 specific results or quantified productivity to warrant incentive payments. It appears that
16 this standard has not been met in the instant case either. Therefore, NYECC would
17 request that the Company’s request for “incentive compensation” for variable pay and for
18 long term incentives be denied in this proceeding as well.

19 **Q. Do you think the electric portion of the First Avenue proceeds from Case 01-E-0377,**
20 **in whole or in part, should be applied to reduce the revenue requirement in this**
21 **proceeding?**

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1 A. Yes. Consistent with the Commission's March 25, 2008 Order Establishing Rates For
2 Electric Service, NYECC believes that one-half of the remaining First Avenue electric
3 proceeds should be used for the rate year ending March 31, 2010 and one-half of the
4 remaining First Avenue electric proceeds should be used for the rate year ending March
5 31, 2011, irrespective of whether there is a one year rate case or a two or more year rate
6 plan in this proceeding.

7 **Q. Are there other areas in Con Edison's filing that you think can result in mitigation**
8 **of Con Edison's proposed revenue requirement?**

9 A. Yes. The prices of gasoline, copper and steel have begun to decline from recent record
10 highs cited in the Company's original filing and in its preliminary update. Since these
11 costs escalations are part of the Company's justification for cost pressures beyond its
12 control, concomitant reductions in the prices of such costs should be reflected in
13 mitigation of the revenue requirement. In addition, to the extent the Company has not
14 implemented feasible productivity gains and efficiencies in the same way that other
15 businesses have in these difficult economic times, they should not be allowed simply to
16 pass on the entirety of these higher costs to customers.

17 **Q. Do you have any concerns regarding the Company's failure to use and report the**
18 **actual hourly consumption recorded by a customer's interval meter?**

19 A. Yes. We understand that the Company is continuing to experience "holes" in its
20 collection of load profile data for customers equipped with interval meters. With a
21 failure in excess of 4%, instead of using those customers' actual data to extrapolate the
22 necessary data, Con Edison routinely utilizes load curves using class average patterns.

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1 Despite efforts by these customers to modify their actual consumption in response to
2 hourly price signals, they are ultimately charged in accordance with class average
3 performance patterns. This approach appears diametrically opposed to the intentions set
4 forth in the Commission's Orders mandating Hourly Pricing for large consumers.
5 Wholesale providers of electricity cannot justify discounting the cost of commodity based
6 upon customers actual load profiles as long as Con Edison continues to report their
7 consumption using class average profiles rather than their actual use levels. In response to
8 NYECC IR 57, the Company confirmed that there are circumstances in which it will not
9 use the interval data recorded. See Exhibit __ (DFB-24). The Company should be
10 compelled to resolve the system failures in a timelier manner, and share their findings
11 and the status of the meter issue with the customer in a timely and concise manner. The
12 Commission's mandate to extend Mandatory Hourly Pricing to even more customers
13 increases the urgency for the Company to eliminate the practice of using average load
14 shapes rather than actual interval consumption data. In addition, members of the NYECC
15 have expressed their concerns that the Company has not published a prioritization
16 protocol for rectifying these data aberrations. We request that the Company establish and
17 publish such a protocol.

18 **Q. Do you have any issues you would like to raise in regard to the speed with which**
19 **Con Edison provides billing usage data to Energy Service Companies ("ESCOs")?**

20 **A.** Yes. Some of NYECC's members have expressed concern with the duration of time
21 between when meter data is collected by Con Edison and when it is supplied to ESCOs
22 for billing purposes. In particular, one NYECC member, Constellation New Energy

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1 ("New Energy"), which is a PSC-approved ESCO that markets electricity to commercial
2 and industrial customers in New York State, has noted that there is a substantial
3 difference between the delay period for Con Edison billing data and Orange and
4 Rockland billing data. In reviewing their records, New Energy has found that on average
5 billing data is provided by Orange and Rockland in about 3 days, whereas with Con
6 Edison the delay is closer to 10 days.

7 **Q. Is there an obvious reason why these reporting periods should be so different?**

8 A. No. It would stand to reason that if Orange and Rockland can provide billing data in 3
9 days, then Con Edison should be able to achieve the same performance through sharing
10 of best practices between affiliates.

11 **Q. Why does NYECC have concerns about delays in Con Edison's release of billing
12 data?**

13 A. NYECC's member employs a range of sophisticated market monitoring and hedging
14 strategies. These strategies depend on up to date information in order to respond to
15 market conditions that can change daily, or even hourly. Unnecessary delays in receiving
16 billing data from Con Edison can undermine the effectiveness of these risk management
17 strategies.

18 **Q. How would you suggest this problem be remedied?**

19 A. The Commission should require Con Edison to lower its reporting time for billing data to
20 a similar period as Orange and Rockland by 6 months after the beginning of the rate plan.

21 **Q. Does the NYECC have any position on the role(s) of Clean Distributed Generation
22 and Combined Heat and Power in Con Edison's service territory?**

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1 A. Yes. For the past two years, the NYECC has been working under a contract with the New
2 York State Energy Research and Development Authority (NYSERDA) to foster Clean
3 Distributed Generation (DG), notably through Combined Heat and Power (CHP)
4 installations, in high-rise buildings in New York City. We have supported the efforts of
5 Con Edison Electric to expand the deployment of CHP installations throughout its service
6 territory. We continue to applaud the leadership demonstrated by the individual appointed
7 as the Company's Distributed Generation Ombudsman, who has worked extensively to
8 facilitate expanded implementation of CHP installations.

9 **Q. Do you have any objections to the Company's performance in this area?**

10 A. Regrettably, I do. For DG/CHP installations to succeed, they must often integrate with
11 the local natural gas distribution company and/or with the local steam utility company.
12 Although electric utility company de-coupling has apparently removed disincentives that
13 might have discouraged the Company's support of DG/CHP installations, I remain
14 concerned that some potential CHP installations might be perceived as having negative
15 implications for Con Edison's steam system, thus adversely affecting the company's
16 promotion of CHP installations within the territory served by the steam system.

17 Given the potential benefits of DG/CHP in high rise buildings within the area served by
18 Con Edison's steam system, we would favor the implementation of bi-directional
19 incentives to encourage Con Edison's promotion of this technology. If Con Edison
20 maintains the same level of annual new CHP installation going forward as it has in the
21 previous two years, no incentive shall be paid. If annual new CHP installation levels drop
22 below 75% of the previous two-year average, the Company should be held liable for a

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1 penalty payment per kilowatt (\$/kW) for the difference between actual new CHP
2 installations and the 75% threshold level. Similarly, if annual new CHP installation levels
3 exceed 125% of the previous two-year average, the Company should be awarded an
4 incentive payment per kilowatt (\$/kW) for the difference between 125% of the previous
5 two-year average and the actual installation level. The NYECC proposes a bi-directional
6 target incentive in the range of \$100/kW.

7 **Q. Does this conclude your testimony?**

8 **A. Yes.**

9
10

1 BY MR. DIAMANTOPOULOS:

2 Q. Mr. Bomke, have you also sponsored the exhibits
3 that have been premarked for identification in this
4 proceeding as Exhibits 239 through 262 inclusive?

5 A. Yes.

6 MR. DIAMANTOPOULOS: Your Honor, Mr. Bomke
7 is available for cross-examination.

8 JUDGE JACK: You have the original of those
9 exhibits for us?

10 MR. DIAMANTOPOULOS: Yes. I provided them
11 to Judge Lynch before we began.

12 JUDGE JACK: Thank you. Looks like Con
13 Edison is the only cross-examination.

14 MR. LUBLING: Yes, Your Honor. Only a
15 couple of questions.

16 CROSS EXAMINATION:

17 BY MR. LUBLING:

18 Q. Good morning, Mr. Bomke.

19 A. Good morning, Mr. Lubling.

20 Q. At page 3 of your testimony you cite to a survey
21 by the NUS Consulting Group and the surveys of the 24
22 largest -- of the largest investor-owned electric
23 companies in the country; is that correct?

24 A. That is correct.

1 Q. You cite some comparative electricity prices on
2 the cents-per-kilowatt-hour basis; is that correct?

3 A. That is correct.

4 Q. Did you investigate some of the possible causes
5 of Con Edison's high rates?

6 A. Not specifically this instance, no.

7 Q. Let me quote almost verbatim, but verbatim, your
8 response in the last rate case to the same question and
9 tell me that if that's still true today.

10 In that case you said, I recall conversations
11 with various utility companies asking why their prices
12 were so high, and they often cited for New York State
13 the ability of New York State's government to use the
14 utility companies as a tax collector, stealth taxes, the
15 property taxes they charge, and so forth. So, those
16 were some of the issues that helped me understand and
17 answer that question.

18 Would that still be true today?

19 A. It would be. Having given more thought to the
20 statement of stealth tax, I would subtract that if I
21 were to repeat the statement again because it has a
22 connotation that I was not thinking of at the time.

23 Q. What if I substituted "hidden taxes" instead of
24 "stealth tax"?

1 A. That would be fine.

2 Q. These bundled rates that you cite include the
3 supply or commodity; isn't that correct?

4 A. I believe that is correct.

5 Q. They are not purely delivery service rates,
6 correct?

7 A. I believe that's correct.

8 Q. One of the reasons that rates vary among this
9 group is obviously the variability of the price of
10 supply commodity; isn't that correct?

11 A. Yes, that also would be correct.

12 Q. So, the bundled rates could be high simply
13 because they included high supply rates, and in Con
14 Edison's case would be Con Ed's purchase power cost;
15 isn't that correct?

16 A. That's certainly one of the contributing factors
17 I would agree.

18 Q. Purchase power costs include what Con Edison buys
19 on a daily basis or when it hedges, but it also includes
20 many imbedded costs of NUG contract; isn't that correct?

21 A. Yes. I believe that would be true as well.

22 Q. And would you know or would you agree with me
23 that at least some of those NUG contracts were entered
24 into by law pursuant to New York State statute 66-C, and

1 there was a minimum six-cent law and also some federal
2 PURPA requirements; isn't that correct?

3 A. In general, I would agree. I am not sure of the
4 percentage in this case, but yes.

5 Q. Generally, okay. Now, are you aware that on the
6 Commission's website there is a staff prepared report
7 entitled "Financial Statistics of the Major
8 Investor-Owned Utilities in New York State". Would you
9 accept that subject to check?

10 A. I will certainly review the Public Service
11 Commission website. If I could ask for some further
12 direction. I sometimes have difficult finding
13 information on the Public Service Commission website.

14 Q. If you look at the website under Commission
15 documents it's called -- the current report on the
16 website is the 38th Annual Edition of the Financial
17 Statistics of the Major Investor-Owned Utilities in New
18 York State covering the period 2003 to 2007.

19 A. Thank you.

20 Q. And would you -- do you know, would you accept
21 subject to check that the report I just cited compares
22 the revenues and sales and various costs of all the
23 major electric utilities in New York State as compared
24 to the US average. Would you accept that subject to

1 check?

2 A. Subject to check.

3 Q. One final question. Would you accept subject to
4 check that that report on the Commission's website
5 prepared by Staff shows that Con Edison's 2007 cost for
6 fuel and purchase power is almost twice the US average,
7 that the income taxes are about 30 percent higher than
8 the US average, and taxes other than income taxes are
9 more than four times the US average.

10 Would you accept that subject to check?

11 MR. DIAMANTOPOULOS: Your Honor, objection.
12 Can Mr. Lubling refer to a particular page?

13 MR. LUBLING: Sure. In fact, I can show--

14 MR. DIAMANTOPOULOS: Because this is a lot
15 of data to ask.

16 MR. LUBLING: Sure. It's page 33 and it's
17 entitled -- I can show it to the witness. I'm asking
18 him to accept subject to check.

19 It's entitled -- page 33 of the report --
20 "Average Cost Electric Service by Cost Component" and it
21 shows the percent of total revenues of fuel and purchase
22 power, wages and benefits, other expenses, depreciation,
23 etc.

24 And it shows for each of the major electric

1 utilities, Central Hudson, Con Ed, New York State
2 Electric & Gas, National Grid, O&R, RG&E, New York State
3 and then it shows the last column US average 2006.

4 MR. DIAMANTOPOULOS: Your Honor--

5 Q. Would you accept that subject to check?

6 MR. DIAMANTOPOULOS: If Mr. Lubling has a
7 copy of that perhaps he could show it to the witness.

8 JUDGE JACK: That would be helpful.

9 BY MR. LUBLING:

10 Q. Mr. Bomke, if I can just direct your attention to
11 the bottom, bottom table, which shows --

12 MR. VAN ORT: Can I just ask a question? Is
13 that a Staff report or is it a report submitted?

14 MR. LUBLING: Staff report.

15 A. What was the question again, sir?

16 Q. Do you see those statistics comparing each of the
17 utilities to the US national average?

18 A. Yes, I do.

19 Q. And without doing the math -- you can do the math
20 quickly -- would you accept subject to check that the
21 report shows that Con Ed's costs for full and purchase
22 power is almost twice the US average, income tax is
23 about 30 percent higher, and taxes other than income
24 taxes are more than four times the US average.

1 You can check it and then submit if my math is
2 wrong.

3 MR. DIAMANTOPOULOS: I was wondering -- I
4 don't have a copy of that. Do we have another copy?

5 MR. LUBLING: I do have another copy.

6 JUDGE JACK: Could you provide that to
7 Counsel.

8 MR. LUBLING: Sure. Going to take me a few
9 minutes.

10 Q. Turning to page 11 of your testimony. Do you
11 have that?

12 A. Yes.

13 Q. I'm focusing on lines 8 through 16 --

14 A. Yes.

15 Q. -- where you say that the New York Energy
16 Consumer Council believes that building owners should
17 have access to tenant electric load information.

18 Now, you do recognize that such customers' data
19 is confidential, as you say; do you not?

20 A. To the extent -- yes, I understand area of
21 confidentiality regarding their data.

22 Q. And you note here that existing leases do not
23 include specific accommodations allowing building owners
24 and managers to require their tenants to provide this

1 information.

2 A. I believe that's what I say, yes.

3 Q. Do you require it at all of new leases?

4 A. I don't issue any leases. I am aware of concerns
5 raised by my constituency that they had many existing
6 leases in place, some of which have durations in
7 multiple years, 10 years, 20 year leases. I'm not sure
8 when they were originated and I'm not sure whether they
9 revise all of their leasing policies to amend this
10 situation.

11 The challenge is still there that they are
12 currently required to report information on energy
13 consumed in their buildings. In order to do that, they
14 would like to get that information and so they requested
15 assistance from Con Edison to provide that.

16 Q. Do you know whether they have approached the
17 tenants directly and asked them for permission to
18 release that confidential data?

19 MR. DIAMANTOPOULOS: Objection, Your Honor.

20 Are you asking for a specific example, Mr.
21 Lubling?

22 MR. LUBLING: No. He's saying that the only
23 alternative he sees to getting confidential customers'
24 data is to have the Commission change its policies and

1 to have Con Ed provide confidential data.

2 I am asking whether he's exhausted other
3 means of obtaining that data, for example, putting a
4 requirement in the leases, approaching tenants and
5 saying it's important for owners to have your usage
6 data. Could we have it. Could you give us a consent
7 for Con Edison to give it to us.

8 All I am asking is: Have you exhausted, the
9 members of the New York Energy Consumers Council,
10 exhausted all other avenues of obtaining this data other
11 than asking Con Edison to provide confidential customer
12 information.

13 A. I can't unequivocally answer that affirmatively.
14 I understand that they have been unsuccessful in all
15 their efforts to date. Whether they have attempted
16 everything viable to get it, I can't attest to.

17 Q. And do you have any suggestions? Do you expect
18 Con Edison to ask each of these tenants whether they can
19 release the data to the managers, or do you just think
20 the Commission ought to order Con Edison to violate its
21 confidentiality with its customers and provide you the
22 data?

23 A. I would not advocate Con Edison violating any
24 order of the Public Service Commission. The concern is

1 the extent to which the data is confidential and the
2 extent to which it reflects only electrons flowing
3 through the building owners' distribution systems, it
4 seems as though they should have access to that
5 information in terms of when the electricity travels
6 through the system, because of the impact it has on the
7 building owners' investment. I'm not asking for
8 financial information or anything else that might
9 intrude on that.

10 Q. But I think you do recognize in your testimony
11 that the company has a mandate -- currently has a
12 mandate -- to protect such customers' confidential data?

13 A. I believe I reference customers' confidential
14 financial data. I am not certain whether the load
15 consumption data, to my knowledge, is confidential to
16 the same terms as the financial data is.

17 Q. And my question, again, is: Have you asked the
18 tenants? If they have no problem releasing such data I
19 would think they would all mail you their electric bills
20 every month.

21 A. I think I have answered that question, that we
22 have -- to my knowledge, my membership has approached
23 their tenants to secure -- made every effort that I know
24 they could to get the data because I would not expect

1 tenants to provide financial information.

2 I can't imagine why I would expect them to send
3 copies of their electric bills. I was also concerned
4 primarily with the data and load profile, which would
5 not show up on most electric bills, and would be
6 irrelevant to this conversation.

7 We are concerned about the impact to satisfy the
8 requirements of the EPA's portfolio manager, to satisfy
9 requirements for Energy Star applications, to satisfy
10 pending legislation in the City, to require building
11 profile data to be reported, and to ensure that our
12 constituency and others faced with those same challenges
13 could get access to the data, which in terms is not just
14 how much -- how much they spent for electricity is
15 irrelevant.

16 The concern is how much electricity flows through
17 the building system so that the building owner can be
18 responsible in ensuring safe and reliable use of energy
19 within their building.

20 Q. Are you saying the tenants don't have such
21 information, only Con Edison does?

22 A. I am not aware of what information the tenants
23 have. Again, I am only repeating a request from the
24 landlords.

1 I am not asking for the information for myself
2 because I don't consider it any right or privilege I
3 would have.

4 MR. LUBLING: I have no further questions,
5 Your Honor.

6 MR. DIAMANTOPOULOS: May we take a few
7 minutes?

8 JUDGE JACK: Yes, you may.

9 (Recess taken.)

10 MR. DIAMANTOPOULOS: Just a few questions,
11 Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. DIAMANTOPOULOS:

14 Q. Mr. Bomke, I refer you to what has been marked
15 for identification as Exhibit 239, the first exhibit
16 that you sponsored with your direct testimony.

17 Do you have that before you?

18 A. Yes, I do.

19 Q. Do you know any of the particulars of the factors
20 considered by the NUS Consulting Group that they
21 considered in their study beyond what is contained in
22 this press release?

23 A. No, I do not.

24 Q. Mr. Bomke, referring you now to the document that

1 was shown to you by Mr. Lubling, the Department of
2 Public Service Staff document, 38th Annual Edition of
3 the Financial Statistics with Major Investor-Owners 2003
4 through 2007.

5 Did you notice anything else while dealing with
6 this particular document?

7 A. I did notice -- again, I did not do the
8 mathematical calculations -- that on several lines the
9 Con Edison expenses were significantly higher than the
10 national average.

11 I remember noticing, I believe, wages and
12 depreciation expenses also were significantly higher.

13 MR. DIAMANTOPOULOS: Thank you, Mr. Bomke.

14 No further questions, Your Honor.

15 JUDGE JACK: Recross?

16 MR. LUBLING: One question, Mr. Bomke.

17 RECROSS EXAMINATION

18 BY MR. LUBLING:

19 Q. Are you aware whether labor costs in New York
20 City are higher than elsewhere in the nation?

21 A. I am very much aware that they are higher in New
22 York City than elsewhere in the nation.

23 Q. And would depreciation costs depend on how much a
24 plant is in service -- how much plant is in rate base?

1 A. I believe so, but I'm not an expert in this area
2 by any stretch of the imagination. I simply noticed
3 those lines were higher as I was trying to get a sense
4 for the comparison you asked me to do.

5 MR. LUBLING: If I wasn't in a rush and it
6 wasn't Friday, I would go through each of those lines.

7 Thank you. I have no further questions.

8 JUDGE JACK: Thank you, Mr. Bomke. You are
9 excused.

10 THE WITNESS: Thank you.

11 JUDGE LYNCH: Is the County of Westchester
12 panel next?

13 MR. GLASS: Yes, Your Honor.

14 RONALD LIBERTY AND FRANK RADIGAN, after
15 first having been duly sworn, were examined and
16 testified as follows:

17 DIRECT EXAMINATION

18 BY MR. GLASS:

19 Q. Panel, could you please introduce yourselves.

20 A. (Liberty) My name is Ronald Liberty.

21 (Radigan) My name is Frank Radigan of the Hudson
22 River Energy Group, consultant to the County of
23 Westchester.

24 Q. Panel, did you prepare 35 pages of initial

1 testimony that was submitted on behalf of Westchester
2 County in this proceeding?

3 A. (Liberty) Yes.

4 Q. Do you have any revisions to the initial
5 testimony that you submitted?

6 A. (Liberty) Yes, we do.

7 Q. Could you please proceed to describe each of
8 these revisions, citing page, line and the nature of the
9 revisions.

10 A. (Liberty) Page 13, line 3, there is a table. The
11 heading of the table in the first line describes the
12 numbers as being in thousands. Two instances of that.
13 That should read million in both instances.

14 On page 30, lines -- starting at line 12, there
15 is a sentence that begins at line 10. The system has
16 130,500 miles of cable. Three-quarters of that cable or
17 94,000 miles of it are underground.

18 The next sentence should read, in New York City,
19 approximately 82 percent or 86,931 miles out of 106,675
20 are underground or almost 93 percent of the underground
21 cable is located in the City--

22 MR. GLASS: I do believe the corrections on
23 page 30 and the ones that appear on page 31 had been
24 sent out to the parties previously as a -- showing the

1 corrections we made.

2 A. (Liberty) To continue with that sentence, we had
3 located in the City, while -- and then this picks up
4 again in the text, original text -- while Westchester
5 County has only 769 miles of underground cable, or 7.5
6 percent of the total.

7 (Recess taken.)

8 JUDGE LYNCH: Should the correction be
9 further clarified?

10 MR. GLASS: I think that would probably be a
11 good idea.

12 MR. LIBERTY: You want the sentence redone
13 or you just want a clarification?

14 MR. GLASS: We want a clarification on the
15 relationship of how many miles are actually underground
16 and what the 106,675 miles refer to.

17 MR. LIBERTY: Okay. There are 94,000 miles
18 of underground cable in the entire system, New York City
19 and Westchester County. And of that amount, 86,931
20 miles are underground in the City, leaving about 7,069
21 miles in Westchester County.

22 BY MR. GLASS:

23 Q. And the 106,675 miles you are referring to, is
24 that the total number of miles of cable in New York

1 City, both underground and overhead?

2 A. (Liberty) That is correct.

3 Q. Can you proceed with any other corrections you
4 may have?

5 A. (Liberty) Yes. On page 31, on line 7, 500
6 kilowatt hour bill for Westchester County. The number
7 originally given was \$106.50. And the revised number is
8 \$110.14.

9 On line 9, the difference in the bill originally
10 was \$14.41. Should be \$17.95. The percentage
11 difference on the original testimony was 15 percent and
12 the correction is 19 percent.

13 On page -- on line 9, same page, the original
14 bill of a 250 kilowatt commercial customer was
15 \$16,528.27. And the new number is \$17,066.48.

16 On line 11, the difference originally was
17 \$404,051.65 and the new number is \$4,589.86. And the
18 percentage difference, the original was 32 percent and
19 the revised is 37 percent.

20 Q. With the initial testimony did you submit two
21 exhibits that have been premarked for identification as
22 Exhibits 231 and 232?

23 A. (Liberty) Yes.

24 Q. Do you have any corrections to those exhibits?

1 A. (Liberty) No.

2 Q. Did you submit any rebuttal testimony in this
3 case?

4 A. (Liberty) No.

5 Q. If I asked you the same questions today with the
6 revisions you noted earlier, would your answers be the
7 same as you gave in your initial testimony?

8 A. (Liberty) Yes.

9 MR. GLASS: Your Honor, I would request the
10 initial testimony of the panel be entered into the
11 record as if orally given.

12 JUDGE LYNCH: Motion is granted.

13 (The following is the prefiled testimony
14 from the County of Westchester:)

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1 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

2 A. My name is Ronald J. Liberty. I am a private consultant to the utility industry.

3 My office address is 26 Birkdale Court, Slingerlands, NY 12159.

4

5 My name is Frank W. Radigan. I am a principal in the Hudson River Energy

6 Group, a consulting firm providing services regarding the utility industry and

7 specializing in the fields of rates, planning and utility economics. My office

8 address is 237 Schoolhouse Road, Albany, New York 12203.

9

10 Q. MR. LIBERTY, WOULD YOU PLEASE SUMMARIZE YOUR

11 EDUCATION AND BUSINESS EXPERIENCE?

12 A. I received a Bachelor of Science Degree in Electrical Engineering from

13 Rensselaer Polytechnic Institute in Troy, NY in 1964. From 1964 through 1969 I

14 was employed as a Project Engineer for Niagara Mohawk Power Corp. (now

15 National Grid). My responsibilities included the design of electric transmission

16 and distribution lines and power substations. In 1970 I began serving on the staff

17 of the Department of Public Service (DPS). I worked as a Senior, Associate, and

18 then Principal Valuation Engineer in the Power Division's Rate Section where I

19 testified in numerous electric rate cases before the Commission and managed the

20 analysis and testimony of other engineers under my supervision. I was also

21 responsible for the analysis and recommendations on rate-related petitions and

22 tariff changes filed before the Commission. In 1976 I became the Chief of Power

23 Rates where I was responsible for the timely and quality submission of testimony

1 in electric and steam rate cases by the engineering staff. In 1981, I became
2 Deputy Director of the Power Division and expanded my responsibilities to
3 include supervising staff presentations in Article VII and VIII construction cases,
4 and providing administrative oversight of the System Planning, and Systems
5 Operations Sections. In 1996 I became Director of the Power Division where my
6 primary responsibility was as senior policy advisor to the Public Service
7 Commission on all matters related to the electric utility industry that came before
8 the Commission for decision including the transition to a competitive
9 environment for the provision of energy supply. In 2000 I became the Director,
10 Federal Energy Intervention with responsibility of interacting with FERC and
11 Congress in the development of rules and laws (including the Energy Act of
12 2005) to help insure that actions by these entities would not negatively impact the
13 consumers of New York State as the competitive market was developing. I
14 retired from state service in 2004 and am now a consultant to the energy industry.
15 In that capacity, I worked with the DPS to organize the second Northeast Inter-
16 ISO Coordination Conference held in Washington, DC in May 2005. The
17 purpose of that conference was to bring together Federal Commissioners as well
18 as State Commissioners from the northeast and mid-Atlantic states with
19 executives from the three ISOs operating in the region – NYISO, PJM-ISO, and
20 ISO-NE. The goal was to find ways to expand wholesale competitive electricity
21 markets in ways that benefited consumers throughout the region.

22

1 Q. MR. RADIGAN, WOULD YOU PLEASE SUMMARIZE YOUR
2 EDUCATION AND BUSINESS EXPERIENCE?

3 A. I received a Bachelor of Science degree in Chemical Engineering from Clarkson
4 College of Technology in Potsdam, New York (now Clarkson University) in
5 1981. I received a Certificate in Regulatory Economics from the State University
6 of New York at Albany in 1990. From 1981 through February 1997, I served on
7 the Staff of the New York State Department of Public Service ("DPS") in the
8 Rates and System Planning Sections of the Power Division. My responsibilities
9 included resource planning and the analysis of rates and tariffs of electric, gas,
10 water and steam utilities in the State encompassing rate design, and performing
11 embedded and marginal cost of service studies. I also performed depreciation
12 studies for these utilities and recommended changes to depreciation rates that
13 were in the public interest.

14
15 I was also responsible for directing assigned engineering staff during major rate
16 proceedings including those relating to integrated resource planning and
17 environmental impact studies. In February 1997, I joined the firm of Louis Berger
18 & Associates as a Senior Energy Consultant. In December 1998, I formed my
19 own consulting company – the Hudson River Energy Group. In my 27 years of
20 experience, I have testified as an expert witness in utility rate proceedings on
21 approximately 65 occasions before various utility regulatory bodies, including, but
22 not limited to, the Arizona Corporation Commission, the Maryland Public Service
23 Commission, New York Public Service Commission, the Nevada Public Utilities

1 Commission, the New York State Department of Taxation and Finance, the Ohio
2 Public Utility Commission, the Connecticut Department of Utility Control, the
3 Rhode Island Public Utilities Commission, the Michigan Public Service
4 Commission, the Vermont Public Service Board and the Federal Energy
5 Regulatory Commission.

6
7 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?**

8 A. We are testifying on behalf of the County of Westchester ("Westchester"). Con
9 Edison serves most of the electric customers located in Westchester. Con Edison
10 also serves the City of New York ("City"). Con Edison serves approximately
11 345,000 customers in Westchester compared with 2,890,000 customers in the
12 City. For convenience, we will refer to customers located in Westchester as
13 "Westchester customers" and customers located in the City as "City customers".
14 Westchester customers account for approximately 12% of Con Edison sales and
15 12% of Con Edison revenues.

16
17 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

18 A. The purpose of our testimony in this proceeding is to review Con Edison's filing
19 and make recommended modifications to the proposed revenue requirement and
20 rate design. Con Edison is proposing a one year rate increase of over \$774
21 million and it recommends further increases in the ensuing two years amounting
22 to an additional \$900 million. While the Company has described the first year
23 increase as a 6.7% increase in total electric bills, a more accurate statement is that

1 it represents an 18.2% increase in delivery rates during year one and
2 approximately a 40% increase in delivery rates over the proposed three year rate
3 plan. This proposed three-year rate increase comes on top of the increase of
4 approximately 16% authorized in the Company's last electric rate case (Case 07-
5 E-0523). Should the Company's proposal be adopted in this case, delivery rates
6 will be increased approximately 62% over a four year period. This compares to
7 an inflation rate over this same period of approximately 9%. This level of
8 increase will create an extraordinary burden on customers in the Company's
9 service area and seriously upsets the balance between reliable service and
10 reasonable rates.

11
12 Concentration on the delivery portion of the rate is appropriate given the fact that
13 the costs of electricity, the commodity, are changing independently from the costs
14 of delivery. In fact, the volatility in the market cost of electricity only makes the
15 problem worse. For a customer in NYC, the cost of energy through the NY ISO
16 in July 2007 was less than 8 cents per kWh. In July 2008 it was over 14 cents per
17 kWh. The cost burden of electricity to Con Edison's customers is real and
18 substantial. While market prices for energy and capacity are not the subject of
19 this proceeding, the Commission is the only recourse in applying some constraints
20 on the delivery cost increases sought by the Company. The County urges the
21 Commission to act in the ratepayers best interests by adopting the constraints and
22 other ratepayer-oriented recommendations made herein.

23

1 In the last rate case the County made similar arguments after noting that very
2 little, if any, consideration was given by the Company to balancing the needs of
3 customers for reliable service with their just as important need for reasonable
4 rates. In that case the County proposed a series of mitigation measures to reduce
5 the Company's proposed rate increase of over \$1.2 billion. The Company appears
6 to have listened to some of the County's concerns and has claimed to have
7 implemented some mitigation measures in this case. Without mitigation the
8 Company reports that its rate increase would have been approximately \$1.1
9 billion, almost as large an increase as was rejected in the last rate case by the
10 Commission. The Company adopted many of the suggestions that the County
11 recommended in the last case in order to moderate the rate increase in this case.
12 While the County is thankful that the Company listened, more needs to be done.
13 Just as in the last rate case, every effort should be made to reduce this rate
14 increase to the minimum necessary to provide safe and reliable service.

15
16 **Q. WHAT ARE YOUR RECOMMENDATIONS?**

17 **A.** We have examined the Company's filing in detail and provide seven
18 recommendations that, if adopted by the Commission, will continue to balance
19 rates that are just and reasonable with the opportunity for shareholders to earn a
20 fair rate of return on their investment. Overall, we propose a \$297 million
21 reduction in the Company's requested rate increase for the first year. This would
22 reduce the requested increase for the first year from \$774 million to \$477 million.
23 This reduction can be accomplished without harm to the Company, its ratepayers,

1 or the reliability of the system, while preserving the economic vitality of the
2 region, thereby providing safe and adequate service at just and reasonable rates.
3 The three year rate plan should be rejected. We believe that the Company's
4 ratepayers would be better served with a one year rate adjustment. Developing
5 and designing rate levels for more than one year is far better suited to a settlement
6 process than a litigated case given the heightened uncertainties in forecasting
7 beyond one year. As such, in each instance, the effect on the "rate year" refers to
8 only the 12 month period ended March 31, 2010. Our recommendations are as
9 follows:

- 10 1) limit the return on equity to 9.1% thereby reducing the
11 Company's proposed rate increase by \$107 million;
- 12 2) Impute a Productivity and O&M Performance Adjustment of \$75
13 million. The Company's rates of return in each year of the last 3
14 year rate case were above that allowed in the settlement
15 agreement. Clearly, the Company has the ability to control its
16 costs to a large degree and has done so to the benefit of its
17 shareholders. The company's ratepayers should share in the
18 Company's ability to improve its productivity and performance.
- 19 3) Remove negative net salvage from depreciation rates and
20 implement the practice of expensing negative net salvage for the
21 transmission and distribution accounts hereby saving ratepayers
22 \$70 million during the rate year;

- 1 4) Reduce the Company's proposed capital program to reflect a
2 program more consistent with the need to balance ratepayer and
3 shareholders interests. This adjustment reduces rate year revenue
4 requirement by \$45 million; and
- 5 5) Reject as premature the Company's proposal to allocate an
6 additional \$15 million in delivery revenues to NYPA delivery
7 service customers.
- 8 6) Allocate to all customers net congestion revenues including both
9 congestion rents, and TCC auction proceeds. These represent
10 offsets to the cost of the transmission system. They should be
11 allocated to all customers in proportion to the costs paid for the
12 transmission system. This allocation must reflect the congestion
13 costs paid by customers as well. The "surplus" (i.e., the
14 congestion revenues minus congestion costs) should be allocated
15 to all customers in proportion to their allocation of the overall
16 costs of the system.
- 17 7) Initiate a special study to determine whether the cost of
18 delivering power to Westchester is significantly less expensive
19 than delivering power NYC. Indications are that the Company's
20 massive construction program is disproportionately concentrated
21 in NYC, property taxes in NYC have increased at a greater rate
22 than those in Westchester, certain costs unique to NYC are being
23 partly paid by Westchester customers, and other utilities with

1 service territories similar to Westchester have significantly lower
2 rates than those charged Westchester customers. Such a study
3 will help determine if a separate Rate District for Westchester
4 should be established or another method adopted to reflect these
5 cost differences.

6
7 In sum, these adjustments total \$297 million and result in a rate increase of \$477
8 million rather than the \$774 million proposed by the Company. This level of rate
9 increase for the rate year – about 11.2% -- is nearly 4 times the projected inflation
10 rate.

11
12 **RETURN ON EQUITY**

13 **Q. PLEASE DISCUSS YOUR POSITION ON RETURN ON EQUITY**

14 **A.** As we stated in the last rate case, neither of us are experts in the cost of capital or
15 utility capital structure. That said, anyone with a long background in the utility
16 industry can comment on the reasonableness of the utility's proposal. In this case,
17 the utility is asking for a 10.0% return on equity. In the most recently concluded
18 case for Orange and Rockland, Con Edison's sister electric utility (Case 07-E-
19 0949) the Commission granted a return on equity of 9.4% (which included a 0.3%
20 stay out premium – Order page 42). In the most recently concluded case for Con
21 Edison's Electric Division, Case 07-E-0523, the return on equity authorized was
22 9.1%. It is also instructive to look at recent cases involving other utilities decided
23 by the New York Commission. In the recently completed KeySpan/National Grid
24 merger, which involves a five year rate plan, the utilities agreed to a return on

1 equity for KeySpan's Gas Divisions (KeySpan's Energy Delivery of New York
2 Division and KeySpan Energy Delivery of Long Island Division) of 9.7% and
3 9.6% respectively. Naturally this return on equity entailed a significant stay out
4 premium for the long length of the rate plan. Based on this recent history, for
5 both Con Edison and the industry in New York, we will utilize a more consistent
6 rate of return on equity of 9.1% to develop a total revenue requirement in this
7 case. Con Edison reports that a 100 basis point change in return on equity results
8 in a change of revenue requirement of \$119 million. As such, the 90 basis point
9 change recommended here results in a reduction of rate year revenue requirement
10 of \$107 million.

11
12 **PRODUCTIVITY AND O&M PERFORMANCE ADJUSTMENT**

13 **Q. PLEASE DISCUSS THE COUNTY'S APPROACH TO THE COMPANY'S**
14 **PROPOSED O&M PROGRAM CHANGES AND REVENUE FORECAST.**

15 **A.** For the test year ended 12/31/2007 the level of non-fuel O&M expenses was
16 \$1.576 billion. The Company adjusted this amount for inflation, labor escalation
17 and normalization to the rate year ended 3/31/2010 for an inflated level of \$1.679
18 billion. It then added to this level new O&M programs of \$90 million for a grand
19 total O&M level of \$1.769 billion or 12% higher than the test year. On the
20 revenue side of the income statement the Company is forecasting modest sales
21 growth of \$25 million. This large increase in O&M and small increase in
22 revenues helps set the stage for a large rate increase.

23

1 This same phenomena was seen in the last rate case. Then, the Company
2 approached the development of rate year O&M the same way - by adding
3 inflation and new programs to the base level (\$1.224 billion) to arrive at a total
4 O&M for the rate year of \$1.680 billion. In the last case, the County
5 recommended that all existing elements of O&M plus inflationary factors be
6 allowed but that new programs be limited to an additional \$50 million to help
7 mitigate the high rate levels being sought. The Commission allowed virtually all
8 the O&M expenses sought by the Company resulting in a 28% increase in O&M
9 from base year levels. On the revenue side of the income statement the Company
10 forecast very little sales growth of \$20 million to offset the cost increases.

11

12 **Q. ARE YOU STATING THAT THE COMPANY SHOULD NOT FORECAST**
13 **O&M EXPENSES AND REVENUES?**

14 **A.** No, but one should not just focus on the numbers being forecast by the Company
15 since they have control of the forecast models, the input data, and the accounting
16 books. It is our position that one should also look at the accuracy of past forecasts
17 and use that information to help guide one in assessing the validity of the
18 forecasts in this case. The table below shows the revenue and O&M expense
19 forecasts from the Company's 2004 rate case (Case 04-0572). The table also
20 contains actual information for the historic calendar year closest to the rate year
21 (which all ended on March 31st following the year in question). As can be seen
22 the net amount of money available to the Company in each year significantly

1 exceeded the amount of money forecast in the Settlement Agreement as adopted
 2 by the Commission, thereby providing a windfall to the Company.
 3

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

4
 5 As can be seen, Con Edison's actual net income exceeded its forecast in the rate
 6 case. This enabled the Company to over earn on the 10.3% return on equity that
 7 was implicit in the settlement of the last rate case. Specifically, the Company
 8 earned an 11.4% return on equity for the rate year ended March 31, 2006; a
 9 10.76% return on equity for the rate year ended March 31, 2007 and a 10.96%
 10 return on equity for the rate year ended March 31, 2008. See Exhibit _____
 11 (FWR-RLJ-1). Based on the Company's equity level of \$8.1 billion as of
 12 December 31, 2007, including tax effects, this over earning equates to \$100
 13 million per year in each year of the recently completed three year rate plan.
 14

15 While there are many factors that go into why a Company over earns when
 16 compared to a forecast including productivity improvements and efficiency gains
 17 by the utility, regulators should take into account a utility's ability to achieve
 18 greater earnings through better overall performance. While regulators try to be as

1 efficient as possible when reviewing forecasts, models and input data this review
2 is not perfect. This seems to be especially true for Con Edison who earned so
3 lavishly in the last rate case. Traditionally, the Commission uses a 1%
4 productivity imputation as a means to reflect additional efficiency gains that may
5 not have been captured in the normal regulatory review process. This 1%
6 productivity imputation has been generally only applied to labor but it is intended
7 to encompass all aspects of productivity and efficiency improvements. Given that
8 the Company's labor costs are forecast to be \$570 million in the rate year a 1%
9 productivity imputation would equate to only \$5.7 million. Given that the
10 Company has been over earning at a level of \$100 million per year. We propose a
11 Productivity and O&M Performance Adjustment (PPA) to permit ratepayers to
12 share in cost savings that the Company has been able to achieve over the last three
13 years and likely to be achieved during the rate year in this case.

14

15 **Q. WHAT DO YOU PROPOSE?**

16 A. First, the PPA imputation should be applied against all levels of non-fuel
17 operation and maintenance expense. The non-fuel O&M level forecast by the
18 Company in this case is \$1.7 billion. Second, the PPA imputation should
19 approach but not exceed that achieved by the utility in the past. There should be
20 some incentive for the utility to find efficiency gains. The Commission has used
21 a wide variety of sharing mechanisms for various expense factors in the past.
22 Incentives for savings in fuel were shared on an 80% ratepayer and 20%
23 shareholder basis for many utilities when these mechanisms were in place. In

1 Case 04-E-0572 a 75/25 ratepayer/shareholder sharing level for earnings above
2 13% was adopted by the Commission. We believe this 75/25 sharing is a
3 reasonable balance given the ease with which the Company was able to over earn
4 in past years and we recommend that it be used here. As such, we propose a \$75
5 million PPA to O&M expenses for purposes of setting rates in this case.
6

7 **DEPRECIATION**

8 **Q. COULD YOU PLEASE EXPLAIN HOW THE ISSUE OF DEPRECIATION**
9 **IMPACTS THE PROPOSED RATE INCREASE IN THIS CASE?**

10 **A.** As part of its mitigation efforts in this case the Company has foregone recovery of
11 \$502 million of under recovered depreciation reserve. Generally, the existence of
12 deficiencies in depreciation reserves means that existing depreciation rates have
13 been too low. Our review of the Company's filing shows that negative net
14 salvage is the driving force behind the Company's large depreciation reserve
15 deficiency.

16
17 Net Salvage is the gross salvage value of equipment when retired less the cost of
18 removing and/or retiring it. Negative net salvage is when the cost of removal
19 exceeds the salvage value. In the case of Con Edison, with its large underground
20 network, the cost of removing underground equipment is very large relative to
21 any salvage obtained. For example, between 1983 and 2007, Con Edison retired
22 \$64 million of underground services. The net salvage cost to the utility to effect
23 these retirements was \$196 million or 3 times the original cost of the service.

1 Similarly, for Con Edison's largest Transmission & Distribution Account 367
2 (Underground Conductors), the utility has experienced negative net salvage
3 values of over 135% for the last ten years.
4

5 **Q. HOW IS NET SALVAGE RECOVERED IN DEPRECIATION RATES?**

6 A The way the Company recovers negative net salvage is to add it to the
7 depreciation rate and recover the money over the life of the new equipment. The
8 thinking behind this approach is that the customers who are using the equipment
9 and benefiting from the service it provides should be the customers who pay for
10 its eventual removal. Since negative net salvage is an integral part of the
11 depreciation rate, it is also included in the calculation of the theoretical reserve.
12

13 To illustrate the amount of money related to negative net salvage, one can
14 examine the depreciation rates of Account 361 (Station Equipment). In this case,
15 the Company is proposing a negative net salvage rate of 25%. At the end of 2007
16 this account had \$1.5 billion in assets and the Company is proposing an average
17 service life of 45 years for a depreciation expense rate of 2.78%. The 2.78% rate
18 is derived by dividing the value to be recovered (in this case 25% of the original
19 cost) by the Average Service Life (in this case, 45 years). This depreciation rate
20 results in a depreciation expense of \$41.7 million. \$8.3 million of this depreciation
21 expense is caused solely by negative net salvage.
22

1 At the end of 2007 the Company had a depreciation reserve for Account 361 of
2 approximately \$494 million and calculated a theoretical reserve of approximately
3 \$468 million for a depreciation reserve shortfall of \$26 million.

4
5 There is an alternative, however, that can benefit ratepayers now. Had there been
6 no negative net salvage for this account, the depreciation expense would be
7 reduced from \$41.7 million to \$33.3 million for a savings of \$8.4 million. Also
8 the theoretical reserve would be \$374 million thereby resulting in an excess
9 reserve of \$120 million. If one were to amortize this excess over 10 years, the
10 revenue requirement would be reduced by another \$12 million. Thus, for this one
11 account depreciation expense would be reduced by \$20.4 million.

12
13 **Q. HOW SHOULD NEGATIVE NET SALVAGE BE RECOVERED?**

14 **A.** Given the extraordinary amount of money that the utility is requesting in this case,
15 the Commission should consider all alternatives to aggressively reduce rates. One
16 proven alternative method of funding negative net salvage is by expensing current
17 net salvage costs. Pennsylvania and New Jersey expense negative net salvage.
18 Con Edison's sister utility, Orange & Rockland, has operating divisions in these
19 states. Con Edison Gas Division has used this approach in the past. The
20 mechanics of this approach would involve the removal of the net salvage from
21 both the depreciation expense and depreciation reserve calculations. In its place,
22 negative net salvage would be treated as an amortization. The amortization
23 amount set in rates would be the amount of money spent over the last ten years.

1 Any differences between actual spending and the amortization amount would be
2 tracked with any differences added to the amortization amount the next time rates
3 are re-set.
4

5 **Q. CAN YOU ILLUSTRATE THE SAVINGS THAT WOULD RESULT**
6 **FROM SUCH AN APPROACH?**

7 **A.** Yes, again using Account 361 (Station Equipment) as an example, if historic net
8 salvage was expensed and amortized over a ten year period, the amortization
9 expense would be \$4.4 million. On a net basis this is a significant savings to
10 ratepayers. As noted above, the elimination of net salvage from depreciation
11 expense would save \$20.3 million for this account. The increased amortization
12 expense must be netted against this amount for a net savings of \$15.9 million for
13 this one account alone. If this approach were used for all Transmission and
14 Distribution accounts, the revenue requirement would be reduced significantly.
15 Given that extraordinary action is needed to help reduce the proposed increase in
16 revenue requirement in this case, we recommend that this approach be adopted.
17

18 This approach also makes the reserve deficiency on Transmission and
19 Distribution account reverse and become a surplus. This surplus should be
20 amortized over ten years. When applied to all T&D accounts, this
21 recommendation will decrease rate year revenue requirement by \$70 million.
22
23

1 Q. **COULD THIS APPROACH BE USED FOR ALL ACCOUNTS?**

2 A. It could be used for all accounts but we do not recommend it. Transmission and
3 Distribution accounts reflect long lived assets. When T& D plant is retired it is
4 usually replaced with new equipment. Production plant on the other hand does
5 have a significant amount of investment but the number of plants is relatively
6 small and replacement of them may or may not occur. For example, when the
7 Waterside plant was retired, it was demolished and the capacity replacing it was
8 installed at the Company's East River Station. General Plant accounts are
9 different for another reason. These accounts have many small pieces of
10 equipment that have very short lives. Thus, the benefits from changing net
11 salvage practices for these accounts would be significantly different. In fact,
12 because of the number of small low cost units, many utilities believe it is not
13 efficient to track each unit of property and have abandoned traditional depreciation
14 practices and are using a straight line amortization method for all of the costs in
15 these accounts.

16

17 **CAPITAL PROGRAM**

18 Q. **HAVE YOU REVIEWED THE COMPANY'S CAPITAL**

19 **CONSTRUCTION PROGRAM PRESENTED IN THIS CASE?**

20 A. Yes. We have reviewed the Company's capital program and the rate year rate
21 base. We observed that the growth in the Company's rate base from the last case
22 is largely attributed to additions to T&D plant. Consequently, we limited our
23 review to those expenditures. We noted that net T&D plant additions increased

1 about \$700 million per year over the last four years. In the current case, the
2 Company has forecasted that net T&D plant will increase by \$1.37 billion per
3 year over the three rate years – nearly twice the spending level of the recent past.
4

5 In the last Con Edison Rate Case we reviewed the Company's proposed capital
6 expenditures for T&D, particularly as they translate into the rate year rate base
7 taking into account any significant changes in customer load. In our review we
8 did not analyze each individual item as to its efficacy or timing. Virtually any and
9 all capital additions will have some incremental impact on safety and reliability.
10

11 Our goal was to limit the amount spent to balance the gain in reliability with the
12 potential increase in rates. Our purpose was to evaluate overall growth in net
13 T&D plant over the recent past to determine a reasonable level for that element of
14 rate year rate base. Our goal was to propose a rate base growth amount that was
15 more consistent with recent history in order to help contain what would otherwise
16 be a devastating rate increase to the Company's ratepayers without affecting the
17 Company's high level of reliability and satisfactory customer service.
18

19 While the Commission did not accept our recommendation to limit additions to
20 net plant to the experience in the prior two years, it did express its grave concern
21 over the size of the overall construction program calling it "extraordinary" and in
22 need of "strict scrutiny". It also expressed its "serious concerns regarding the
23 pace of growth in the Company's capital program." Further it adopted a

1 downward adjustment to the capital program in part as a "reasonable restriction
2 on overall spending, in order to mitigate rate increases."
3

4 In this case, the Company has once again proposed an enormous construction
5 program that, when coupled with many other elements in its filing, amounts to a
6 burdensome rate increase for its customers. And this comes on top of a very large
7 increase in the last case. While the Company has claimed to have "mitigated" the
8 increase by cutting its construction program, there is little evidence that those
9 "cuts" were made solely to reduce rate impacts or that they were sufficient to
10 provide a better balance between supplying adequate (not perfect) service with
11 having reasonable rate levels.
12

13 In this case we still believe that the overall rate increase being proposed is too
14 high and produces unreasonable rates. In order to keep a proper balance between
15 spending levels and rate levels, it is necessary to reduce spending and that
16 includes the capital program. We propose that the capital construction program
17 be reduced by \$273 million.
18

19 **Q. PLEASE DESCRIBE HOW YOU DEVELOPED THAT AMOUNT AND**
20 **HOW THAT REDUCTION WILL IMPACT THE REVENUE**
21 **REQUIREMENT IN THIS CASE.**

22 **A.** We examined each of the Major Construction Programs: substations,
23 transmission, electric operations, and systems operations. See Exhibit _____

1 (FWR-RJL-2) We then reviewed the priority that the Company assigned to each
 2 of the specific projects in those programs.

3
 4 In each program we looked at projects that had a low priority assigned by the
 5 Company and propose eliminating those dollars from the capital program. We
 6 retained all projects denoted as high priority and most of those labeled as medium
 7 priority. Eliminating these lower priority projects does not mean that they should
 8 necessarily be eliminated from the capital program. Rather, it sets a lower
 9 budgetary amount while still leaving the Company with the flexibility to reorder
 10 all of its projects to fit within the new budgetary constraint.

11
 12 The adjusted amounts from each program are as follows:
 13

Program 2009	Budgeted Amount \$(000)	Adjustment \$(000)	Percentage
Substations	535,715	84,227	15.7%
Transmission	207,194	18,550	8.9%
Distribution	996,038	161,676	16.2%
System Operations	16,810	8,405	50.0%
TOTAL	1,755,757	272,903	15.5%

14
 15 A 15.5% adjustment to the capital program starting in 2009 would result in an
 16 adjustment to rate base for the 12 months ended 3/31/2010 of \$222 million.

17 Applying a revenue requirement factor of 20% to this amount results in an
 18 adjustment to revenue requirement of approximately \$45 million.

1 REVENUE ALLOCATION

2 Q. HAVE YOU REVIEWED THE COMPANY'S PROPOSED REVENUE
3 ALLOCATION?

4 A. Yes. Based on our review we believe that no re-allocation of revenues amongst
5 service classes should be made at this time. There are several reasons for this
6 which individually and collectively dictate that any additional reallocation await
7 the results of the ongoing cost of service study.

8
9 First and foremost there is no directive from the Commission that any alleged
10 deficiency be eliminated in this case. As noted by the Commission in the last
11 case:

12 We find that the judges' recommendation to implement only one-half the
13 indicated NYPA deficiency at this time is justified by the amount of rate
14 increase all customers will experience and the need to avoid abrupt rate
15 changes. Gradualism is warranted here.¹

16
17 The year 2005 was the year from which costs and load data were obtained as
18 inputs to the last cost of service study used in the last electric rate case and
19 introduced by the Company in this case as well. In the current case, the
20 Commission is setting rates for the rate year ending March 31, 2010 – a period of
21 five years since the last study and a period during which the Company has
22 engaged in an enormous construction program.

23

¹ Case 07-E-0523 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service, Order Establishing Rates for Electric Service, issued and effective March 25, 2008, page 134)

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

4
5 If the Commission wanted to reallocate revenues again in this case it had ample
6 opportunity in its last rate order to indicate such a procedure because NYPA
7 asked the Commission to address the matter. The Commission ruled without
8 equivocation on the issue. "As to NYPA's request that we address cost of service
9 study matters for the period beyond the rate year, it is not proper to do so in this
10 case. Our ratemaking actions pertain directly to the upcoming rate year and
11 without prejudice to subsequent rate periods.²" Our interpretation of the Order is
12 that the Commission would have to evaluate another cost study to determine if
13 any further allocation adjustments should be made.

14
15 Second, since 2005, Con Edison has added over \$3.0 billion in non-production
16 plant additions. The Company forecasts more than \$3.0 billion more in non-
17 production plant additions for 2008 and 2009. Thus, in the short time span of four
18 years the Company will have an increase in non-production plant of \$6 billion or
19 40%. The majority of these plant additions are for underground distribution plant.
20 According to the 2005 Con Edison cost of service study, NYPA's customers were
21 only responsible for 8.9% of such underground facilities. Since NYPA's
22 customers represent 10% of total T&D revenues, an across the board increase will
23 likely result in NYPA paying more than its share of the increase in plant and

² Ibid.

1 conversely the rest of Con Edison's customers will pay less. All other things
2 being equal, this will result in an increase in the rate of return provided by NYPA
3 customers.

4
5 Third, it has come to the attention of the County that Con Edison has been
6 estimating bills for a number of the governmental accounts in Westchester
7 County, including the County itself. It is believed this is not an isolated problem
8 affecting NYPA customers in Westchester but affects a substantial proportion of
9 NYPA customers, including those located in NYC. This estimating of bills has
10 been going on for quite some time and at least as far back as the early 2000s,
11 which includes the period covered by the 2005 cost of service study. It is unclear
12 what type of bias the use of estimated bills has had on the cost of service study
13 but it definitely had some affect, enough to question the validity of that study. If
14 the estimation process overstates the bill or billing determinants then NYPA's
15 customers will be allocated an inordinate share of costs making it appear that
16 NYPA's customers are not providing their fair share of revenues. We believe the
17 upcoming 2007 cost of service study will provide cost allocations factors that are
18 more accurate than the 2005 study. Consequently, any revenue increase granted
19 in this case should be applied proportionately between Con Edison's and NYPA's
20 customers.

1 **TRANSMISSION CONGESTION REVENUES**

2 **Q. PLEASE COMMENT ON THE COMPANY'S PROPOSED RATE**
3 **TREATMENT OF AUCTION PROCEEDS FROM TRANSMISSION**
4 **CONGESTION CONTRACTS (TCCS)?**

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

11

12 **Q. DOES NYPA BENEFIT FROM THESE PROCEEDS?**

13 **A.** No. In Case 07-E-0523 the Commission specifically excluded NYPA
14 participation in TCC auction proceeds. In that case the Commission reversed the
15 recommendation of the Administrative Law Judges and accepted a Con Edison
16 argument that the transmission system used to serve NYPA is "not related to" the
17 transmission system used to serve Con Edison Native Load customers. Further,
18 the Commission found that since NYPA was compensated for its congestion costs
19 any further participation in TCC auction proceeds would be unfair to Native Load
20 Customers.

21

22

23

1 **Q. DO YOU AGREE WITH THE COMMISSION'S FINDING?**

2 A. No. This issue was not adjudicated during the proceeding but was rather brought
3 up in briefs and there was no opportunity to engage in discovery, develop
4 testimony, or cross examine witnesses.

5
6 **Q. WHAT IS A TCC?**

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

10

11 **Q. HOW DID CON EDISON GET THE RIGHT TO COLLECT TCCS?**

12 A. When the NYISO was formed, Con Edison was granted a set of TCCs that were
13 thought to be sufficient to hedge the congestion costs of its Native Load
14 customers. NYPA was also given a set of TCCs when the ISO was formed. Per
15 an agreement between NYPA and Con Edison that was signed in 2000, NYPA
16 assigned its TCCs to Con Edison.

17

18 **Q. DOES NYPA INCUR CONGESTION COSTS?**

19 A. Yes, NYPA and Con Edison incur congestion costs. Per the terms of the 2000
20 Agreement Con Edison reimburses NYPA for its congestion costs.

21

22

1 Q. PRIOR TO CASE 07-E-0523, DID NYPA SHARE IN ANY OF THE TCC
2 AUCTION PROCEEDS?

3 A. Yes, prior to this most recent decision, NYPA received a share of the first \$60
4 million in TCC revenues. The share was proportional -- i.e. NYPA's load in
5 proportion to the total system load.

6
7 Q. PLEASE COMMENT ON THE ISSUE THAT THE TRANSMISSION
8 SYSTEM USED TO SERVE NYPA IS NOT RELATED TO THE
9 TRANSMISSION SYSTEM USED TO SERVE CON EDISON'S NATIVE
10 LOAD?

11 A. There is no factual basis for this argument. Con Edison's transmission system is
12 itself integrated and operated as a single unit and this transmission system is itself
13 integrated within the NY ISO. If the "NYPA system" was separate and distinct, it
14 would have its own Open Access Transmission Tariff ("OATT") rate on file with
15 the Federal Energy Regulatory Commission and the appropriate cost allocation
16 would be a direct assignment of the costs of that system, rather than an allocation
17 of a share of the costs of the total system. The fact is that Con Edison has one
18 OATT rate that it charges for use of its whole integrated transmission system.

19

20 Q. PLEASE QUANTIFY THE TRANSMISSION CONGESTION REVENUES
21 IN THIS CASE.

22 A. These revenues come in three ways: 1) Con Edison sells its Native Load TCCs in
23 the ISO market auctions. For 2006 this resulted in \$105 million in revenues.

1 2) Con Edison has another set of Residual TCCs that it also sells at auction in the
2 ISO. These Residual TCCs generated \$44 million in revenues in 2006; and

3 3) Con Edison receives congestion revenues for the TCCs that were assigned by
4 NYPA to Con Edison. Con Edison reimburses NYPA for its congestion costs
5 with these revenues. In 2006, Con Edison received \$83 million in revenues from
6 these TCCs.

7
8 **Q. DOES THE COUNTY BELIEVE THAT NYPA IS ENTITLED TO A**
9 **SHARE OF THIS TCC REVENUE?**

10 A. Yes. NYPA should be permitted to share in any surplus auction proceeds (i.e.
11 auction proceeds that exceed Native Load congestion costs) and any surplus
12 congestion rents (i.e. congestion rents from NYPA transferred TCCs that exceed
13 NYPA's congestion costs). It is appropriate for NYPA to receive a proportionate
14 share of this excess because it puts NYPA in the same position as any other Con
15 Edison customer.

16
17 **Q. WHAT DOES THE 2000 AGREEMENT BETWEEN NYPA AND CON**
18 **EDISON SAY WITH RESPECT TO THIS ISSUE?**

19 A. NYPA has indicated that the agreement states that NYPA is to be reimbursed for
20 its congestion costs, and that implies that Con Edison retains any surplus. The
21 agreement is silent on the ratemaking treatment of the surplus Con Edison retains.

22

1 Q. DO THE CUSTOMERS OF OTHER RETAIL ACCESS PROVIDERS OR
2 ESCOS RECEIVE THE BENEFIT OF THESE SURPLUS TCCS?

3 A. Yes. These credits are applied to all delivery charges whether the customer's
4 energy is supplied by Con Edison or an ESCO. Since other ESCOs receive this
5 credit, NYPA should be allocated a portion of this credit as well.
6

7 WESTCHESTER COUNTY RATES

8 Q. PLEASE COMMENT ON THE ISSUE OF SEPARATE RATES FOR
9 WESTCHESTER COUNTY?

10 A. In many ways the Con Edison electric system is two systems in one. The system
11 has 130,500 miles of cable but three-quarters of that cable, or 94,000 miles of it,
12 are underground. In New York City approximately 82% or 86,931 miles out of
13 106,675 are underground or almost 93% of the underground cable is located in the
14 City, while Westchester County has only 7,069 miles of underground cable or
15 7.5% of the total. Service to this underground system is done through manholes
16 and Con Edison has 264,000 in service. Only 11,369 or only 4.3% of the total
17 manholes are in Westchester and 95.7% in NYC. In contrast, the overhead
18 system is comprised of 207,500 poles and 93,212 or 45% of them are located in
19 Westchester. These values reflect the different characteristics of the service areas
20 of NYC and Westchester. Furthermore, the demographics are markedly different.
21 The following table illustrates the population densities for various areas and show
22 that Westchester is quite different from the Company's NYC area and similar to
23 other nearby counties:

Deleted: there is 94,250 miles of cable
but

Region	Population	square miles	population/sq mi
Orange County	370,000	830	450
Rockland County	300,000	175	1,700
Westchester County	950,000	430	2100
NYC	8,200,000	303	27,000
Manhattan	1,600,000	23	69,500

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While one would normally think that a higher density of customers would result in cost savings, statistics seem to indicate the opposite. Con Edison has the highest electric rates of any investor owned utility in the continental United States. Orange & Rockland has a service territory that is similar to Westchester and has significantly lower rates. For example, a 500 kWh electric bill in Westchester County for July 2007 is \$110.14 using the MSC applicable in the County. A comparable bill in Orange and Rockland is \$92.19. The difference is \$17.95 or 19% higher in Westchester. A 250 kW commercial bill in Westchester for the same period would be \$17,066.48 compared to a similar bill in Orange and Rockland of \$12,476.62. The difference is \$4,589.86 or 37% higher in Westchester. While we do not expect that rates in Westchester will exactly match those in O&R's area, this comparison indicates a probability that costs to serve may be lower in Westchester than they are in NYC.

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The high rates of Con Edison are in part due to the cost of getting power to the highly congested New York City area. It has limited transmission import

1 capability which adds to the costs. Much of the investment incurred by the
2 Company is due to the double contingency criteria established in the early 1960s
3 and it something that is almost exclusive to Manhattan and none of which applies
4 in Westchester.

5
6 Historically, sales growth and investment go hand in hand but the large increases
7 in investment over the last few years give an indication that this may no longer be
8 true. Based on the facts presented at the June 18, 2008 Technical Conference by
9 Con Edison 4 of the 13 or 31% of the load areas in Westchester County requires
10 new investment to meet reliability criteria. In Staten Island 8 out of 8 or 100% of
11 the load areas require new investment. In Brooklyn and Queens, 14 out of 20 or
12 70% of the load areas require new investment. In the Bronx 4 out of 9 or 44% of
13 the load areas require investment to meet reliability criteria. In Manhattan almost
14 every load area above mid-town requires new investment Manhattan also
15 requires two new substations and replacement of the M51 feeder on the M51 line.
16 This work is all on top of the new M-29 line to Manhattan which is forecast to
17 cost \$220 million. Clearly, capital investment in the recent past and in the next
18 few years is disproportionately focused in the NYC area

19
20 Increase in property taxes naturally follows investment and in this case \$290
21 million of the requested \$774 million is due solely to increases in New York City
22 property taxes alone. As forecast by the Company, property taxes in NYC are
23 projected to cost approximately \$852 million in the rate year. Property taxes paid

1 to Westchester governmental entities, on the other hand, are forecast to cost
2 approximately \$74 million. Based on 2007, sales to Westchester customers
3 account for 12% of all sales so they will pay \$111 million of this \$926 million
4 total property tax burden. As the \$111 million is significantly (50%) greater than
5 the \$74 million paid to Westchester governmental entities, this is a further
6 indication that Westchester ratepayers may be paying too much relative to the
7 costs of serving New York City.

8
9 On April 22, 2007 (Earth Day), PlaNYC 2030 was unveiled. The plan outlined
10 steps to clean up brown fields, create affordable housing, utilize open spaces,
11 provide cleaner and more efficient energy sources, improve water quality and
12 infrastructure, achieve cleaner air quality and address climate change issues. One
13 of the 16 proposed transportation initiatives in PlaNYC was a congestion pricing
14 program. As proposed the congestion pricing zone is defined as the island of
15 Manhattan south of 60th Street with a proposed fee of \$8 for cars and \$21 for
16 trucks entering the zone. The idea behind the fee was that a significant
17 percentage of commuters would switch to public transportation and not bring their
18 cars into the City. Other aspects of the PlaNYC 2030 were to accelerate
19 reliability improvements to the City's grid, facilitate repairs through improved
20 coordination and joint bidding and support Con Edison's efforts to modernize the
21 grid.

22

1 As Westchester reads PlaNYC 2030 it is clear that New York City wants those
2 who use certain congested facilities to pay for them. The City wants a modern
3 electric infrastructure and it wants to reap the rewards of the utility investment
4 through increased property taxes. We take no issue with that philosophy.

5 However, Westchester endorses the concept that what New York City wants, New
6 York City should pay for. Another matter is the ratemaking treatment of certain
7 steam generating plants located in the City. Some parties have expressed concern
8 that the electric department may be helping to support parts of the steam system.
9 However, until those issues are resolved, the cost to serve Westchester should not
10 be impacted by these matters that affect only NYC.

11
12 Department staff considered the issue of separate rates in 1982 and decided that
13 rates in Westchester were not discriminatory and that the County need not be
14 considered a separate rate class. However, we note that that study incorporated
15 numerous assumptions that are no longer relevant. For example it did not reflect
16 the effect of today's competitive energy and capacity markets; did not anticipate
17 the enormous construction program the Company is currently undertaking,
18 particularly in NYC relative to Westchester County; did not reflect the
19 interrelationship between Con Edison's electric department and its steam
20 department which provides steam service solely to NYC customers; and, did not
21 anticipate the large increases in NYC property taxes relative to Westchester.

22

1 Because of all of the above observations, we recommend that the Commission
2 institute a special study to determine what it costs to serve Westchester County
3 and New York City and possibly develop a separate rate district for the County or
4 even segregate the County from the rest of Con Edison and attach its service area
5 to its lower cost sister electric utility Orange & Rockland.

6

7 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

8 **A. Yes it does.**

1 MR. GLASS: The panel is available.

2 JUDGE LYNCH: The company has the option of
3 going first or second.

4 MR. DIAMANTOPOULOS: I would ask the County
5 of Westchester's responses to NYECC information request
6 set one be marked for identification as one exhibit.
7 That would be four pages consisting of interrogatory
8 information request number 70, 71, 72 and 73.

9 JUDGE LYNCH: That's Exhibit 450.

10 (Exhibit 450 marked for identification.)

11 MR. DIAMANTOPOULOS: Thank you, Your Honor.

12 CROSS EXAMINATION:

13 BY MR. DIAMANTOPOULOS:

14 Q. Directing your attention to what has been marked
15 as Exhibit 450, County of Westchester's responses to
16 NYECC information request, and ask if this is the
17 panel's response to the interrogatories posed by NYECC?

18 A. (Radigan) They are.

19 Q. Do you have any corrections to your responses
20 since they were made -- provided to the parties on
21 October 8, 2008?

22 A. (Radigan) No.

23 Q. Panel, isn't it true that the physical location
24 of various new facilities in New York City that are

1 being put in by Con Edison also benefit the County of
2 Westchester by benefitting the reliability of the entire
3 Con Edison service territory?

4 A. (Radigan) Not necessarily.

5 Q. Why is that?

6 A. (Radigan) Because if you are putting in a
7 distribution feeder in lower Manhattan it only improves
8 the reliability of the customers served from that
9 feeder.

10 Q. Does Con Edison install distribution feeders in
11 Westchester County?

12 A. (Liberty) Yes.

13 Q. And do those distribution feeders benefit
14 Westchester County in a similar manner to New York City?

15 A. (Radigan) Yes.

16 Q. Would you agree that there are common costs for
17 the Con Edison service territory that are not easily
18 segregated?

19 A. (Radigan) No.

20 Q. So, isn't it true that it would be very difficult
21 to segregate certain common costs as were contained in
22 Con Edison's testimony -- infrastructure panel testimony
23 -- such as call center costs?

24 A. (Radigan) No.

1 Q. What about computer systems and support?

2 A. (Radigan) No. They are common costs. They need
3 to be allocated. It's not that you can't identify them.

4 Q. That's what I am talking about. Don't you think
5 the allocation would be difficult?

6 A. (Radigan) No.

7 Q. How would you segregate the costs?

8 A. (Radigan) We could do it a number of ways. You
9 could do it number of customers, demand, sales, on the
10 allocation of other plants.

11 There is lots of different ways to do it.

12 Q. Now, in your testimony you are proposing that Con
13 Edison perform a cost of service -- a special study, as
14 you termed it; is that correct?

15 A. (Radigan) Yes.

16 Q. And in response to NYECC interrogatory number
17 73-C you indicated that it's the company -- or the
18 ratepayers that should pay for this special study; is
19 that correct?

20 A. (Radigan) That is correct.

21 Q. And the company and the ratepayers should pay for
22 that notwithstanding that it's Westchester County that
23 is requesting such a study?

24 A. (Radigan) You have to realize the genesis of why

1 we are making the request. If the company's rate
2 proposal is fully adopted, approximately 964 million of
3 base rates is going to be property taxes paid to New
4 York City. That's 20 percent of the bill.

5 Now, that could happen for one of two reasons.
6 One is that you are adding a lot of plant in New York
7 City and Westchester doesn't want to pay for that or,
8 two, the New York City property tax rates are way too
9 high. Westchester doesn't want to pay for that, either.

10 Q. Isn't it true a significant amount of plant was
11 added to Westchester County in the previous, say, five
12 years?

13 A. (Radigan) I tracked the plant growth in Con Ed
14 and in Westchester, New York City area. Historically,
15 they tracked very well. The amount of plant added in
16 Westchester has been approximately the same amount of
17 sales. Growth in Westchester and growth in New York
18 City is approximately the same.

19 But today when we looked at the company's rate
20 filing, \$300 million of the company's rate request is
21 just property tax in New York City. It just begs the
22 question why.

23 Q. So, your objection -- your request for this study
24 is based on higher property taxes in New York City?

1 A. (Radigan) 20 percent of the base rate bill is
2 for property taxes in New York City.

3 Q. Is that a yes?

4 A. (Radigan) Yes. Definite yes.

5 A. (Liberty) I think that's the major factor. There
6 may be a lot of other factors.

7 Q. I refer you to your responses to interrogatory
8 number 72, page 3 of the exhibit marked for
9 identification as 450.

10 In your response you refer to a 1982 cost of
11 service study and PSC decision which essentially
12 indicated that rates in Westchester were not
13 discriminatory and that the County need not be
14 considered a separate rate class; is that correct?

15 A. (Liberty) Yes.

16 Q. Are you familiar with the Public Service
17 Commission's order and the cost of service study?

18 A. (Liberty) Generally.

19 Q. Did you review it --

20 A. (Liberty) Yes.

21 Q. -- in responding to my interrogatory?

22 A. (Liberty) Yes.

23 Q. Now, in this proposed special study that you are
24 requesting would you want a tolerance band to be

1 included in such a study? Do you think it would be
2 appropriate to include a tolerance band of some sort?

3 A. (Radigan) Yes.

4 Q. What tolerance band would you propose be used?

5 A. (Radigan) I don't have an idea off the top of my
6 head. Generally, a tolerance band at a minimum of 10
7 percent, and they can go higher depending on the quality
8 of the data.

9 Q. And you are aware that in this 1982 case that
10 Westchester County was underpaying relative to what New
11 York City was paying; is that correct?

12 A. (Liberty) I don't think that was the result of
13 the study.

14 You talked about a tolerance band and I think the
15 Commission is aware that they used tolerance bands in
16 things like this. And they said within that tolerance
17 band they saw no difference between Westchester County
18 and New York City.

19 Q. That's correct. With the inclusion --

20 A. (Liberty) No under or over.

21 Q. With the inclusion of the tolerance band in that
22 study, Westchester County did not have to pay more in
23 rates; is that correct?

24 A. (Liberty) That is correct.

1 Q. Without the tolerance band, however, they would
2 have had to pay more; is that correct?

3 A. (Liberty) Well --

4 Q. If there were no tolerance band included in that
5 study is it correct that Westchester County would have
6 had to have paid more?

7 MR. GLASS: Objection, Your Honor. The
8 tolerance bands is part of the Commission's methodology.
9 Sounds like he's making either a hypothetical or coming
10 up with some statement that isn't really consistent with
11 the Commission's position.

12 So if he wants to do it as a hypothetical,
13 that's one thing, but we object to the form of the
14 question.

15 MR. DIAMANTOPOULOS: Your Honor, this is not
16 a hypothetical. This is an actual Commission decision
17 and there is language in the Commission decision that I
18 can refer the witness to.

19 JUDGE LYNCH: I think I am going to allow
20 the question. The reason is you do a study. You come
21 up with a result. And the result is what it is and then
22 you apply the tolerance band.

23 It's a process and you don't ignore any
24 steps. You don't just look at the end result. You look

1 at the whole process to make sure it's reasonable.

2 The question really is obvious -- I think
3 the answer is obvious, but if it's relevant to this
4 case, I would just as soon have the number here than go
5 find the study.

6 MR. DIAMANTOPOULOS: Thank you, Your Honor.

7 Q. Panel, specifically in the Staff report that was
8 adopted by the Commission there is language in the --
9 specifically states that -- specifically, the attached
10 summary sheet shows a systemwide company average rate of
11 return of 8.32 percent, a New York City return of 8.54
12 percent and Westchester return of 7.02 percent.

13 These rate of return indicators taken at face
14 value alone would appear to suggest that New York City
15 as a whole is paying more than its fair share.
16 Conversely, Westchester as a whole would seem to be
17 paying less than its fair share.

18 However, as the following discussion shows, these
19 rates of return fall within acceptable tolerance limits
20 of studies of this nature. Subject to check, would you
21 agree that the -- Staff's analysis indicated that at the
22 time of the 1982 case that without a tolerance band that
23 Westchester was not paying its fair share?

24 MR. GLASS: I think the study speaks for

1 itself.

2 MR. DIAMANTOPOULOS: Then there wouldn't be
3 any problem with them agreeing with it because that's
4 what the study says.

5 A. (Liberty) If you are asking us to agree that's
6 what the study says, then we will agree that's what the
7 study says.

8 A. (Radigan) I agree.

9 Q. Thank you. And you would have no problem if this
10 special study that you were requesting were to be
11 performed that there would be a tolerance band, as well?

12 A. (Radigan) Yes, we have already agreed to that.

13 MR. DIAMANTOPOULOS: Thank you, panel. No
14 further questions.

15 Thank you, Your Honor.

16 MR. LOUGHNEY: I just have questions arising
17 from the exhibit that was marked by Mr. Diamantopoulos,
18 Exhibit 450.

19 JUDGE LYNCH: Okay.

20 BY MR. LOUGHNEY:

21 Q. Good morning, panel.

22 A. (Panel) Good morning.

23 Q. Panel, are you familiar -- I think, Mr. Radigan,
24 you should be fairly familiar with this. Are you

1 familiar with the PSC case beginning in, I believe, 2000
2 where the County challenged the way that Con Edison
3 delivery rates were designed?

4 A. (Radigan) Yes.

5 Q. Am I correct in that case the County wanted to
6 change how the MAC was to be used to equalize the
7 delivery rates between the County and New York City?

8 A. (Radigan) Yes, I am.

9 JUDGE LYNCH: Hold on just a second. Off
10 the record.

11 (Off the record.)

12 BY MR. LOUGHNEY:

13 Q. Mr. Radigan, you were a witness for the County in
14 that case, weren't you?

15 A. (Radigan) I was.

16 Q. And the initiative the County was pursuing was to
17 recognize geographical differences so that the MAC was
18 not used to equalize delivery rates, correct?

19 A. (Radigan) Correct.

20 Q. Do you recall, Mr. Radigan, that the results of
21 the 1982 study that Mr. Diamantopoulos was talking
22 about, that those results were introduced as evidence in
23 what I will call the County case from 2000? I don't
24 have the case number.

1 A. (Radigan) Yes.

2 Q. Do you recall that in that case the City argued
3 that if the MAC were to be changed to recognize
4 geographical differences that the 1982 study should be
5 revisited?

6 A. (Radigan) I don't recall that specifically.

7 MR. VAN ORT: Just for clarification, are we
8 referring to the case identified in response to 72?
9 There is a decision in 82. Is that the one we are
10 referring to?

11 JUDGE LYNCH: Let's just go with we don't
12 know the number for now.

13 MR. LOUGHNEY: Sorry, Your Honor. I should
14 have it.

15 Q. My question, Mr. Radigan, you don't recall the
16 City putting forth an argument that if the MAC were to
17 be revised the way the County was asking for that the
18 1982 study should be revisited?

19 A. (Radigan) I remember it as an issue. I don't
20 remember the specifics.

21 Q. You remember the 1982 results being introduced
22 into the case?

23 A. (Radigan) I do that.

24 Q. Do you recall the Commission in its decision, I

1 believe in 2004, reaffirming the results from the 1982
2 study and basically saying they saw no reason to revisit
3 the study? Do you recall that?

4 A. (Radigan) Yes, I recall that Commission said
5 there was no evidence presented that indicated that the
6 study should be revisited, but here we are with \$300
7 million of an \$800 million rate request just being due
8 to increases in New York City property taxes.

9 Q. Right, but as recently as 2004 the Commission saw
10 no reason to revisit that?

11 A. (Radigan) That is correct.

12 Q. Do you recall the County's position on whether
13 the 1982 study should be revisited in that case?

14 A. (Radigan) I do not.

15 MR. LOUGHNEY: Thank you, Your Honor.

16 BY MR. LUBLING:

17 Q. Good morning. Just to get a couple follow-up
18 questions out of the way. Would you agree with me that
19 New York City electric crews that are normally assigned
20 to New York City can be sent to Westchester to help
21 repair damage on overhead lines following storms?

22 A. (Radigan) Yes.

23 Q. And you don't have any data that shows that
24 customers in Westchester make proportionally fewer calls

1 to customer service than they do in New York City?

2 In other words, there could be fewer Westchester
3 customers, but they could be making on average more
4 calls to New York City customers. You don't have any
5 data to refute that?

6 A. (Liberty) We didn't look at number of calls.

7 Q. Two questions on property taxes since a large
8 part of your testimony does refer to property taxes.

9 Do you know or would you accept subject to check
10 that the company's update in this case, the update
11 presentation, estimates that upstate and Westchester
12 property taxes will increase by seven and-a-half percent
13 from the historic test year to the rate year?

14 A. (Radigan) Could you refer me to the exhibit.

15 Q. Sure. Exhibit AP-9, schedule 4. I will get you
16 the actual --

17 A. (Radigan) The formal update, AP-9?

18 Q. Right.

19 A. (Radigan) Yes, I have that.

20 Q. Do you see that it says upstate and Westchester
21 going from 83 million to 90.225 million?

22 A. (Radigan) Yes, but the original presentation had
23 an -- I believe it was a \$2 million decrease. And then
24 the update had a \$7 million increase for New York City.

1 It was a \$233 million increase plus another \$89 million.

2 Q. My only question was: Does the company's update
3 show an estimate of seven and-a-half percent increase?

4 That's all I asked.

5 A. (Radigan) Yes.

6 Q. Okay. And would you know or accept subject to
7 check that while New York State imposes a 4 percent
8 sales tax on all electric bills, and New York City
9 imposes a 4 percent sales tax -- additional 4 percent
10 sales tax on electric bills, there are some places in
11 Westchester County, such as New Rochelle or White
12 Plains, that impose a 6 percent sales tax on electric
13 bills?

14 Would you accept that subject to check?

15 A. (Radigan) Subject to check, yes.

16 Q. Now, your testimony addresses the company's
17 allegedly relatively high bills. And if I look at page
18 6, you say beginning on line 18, "While market prices
19 for energy and capacity are not the subject of this
20 proceeding, the Commission is the only recourse in
21 applying some constraints on the delivery cost to
22 increase sought by the company."

23 Do you see that?

24 A. (Liberty) Yes.

1 Q. When you say that market prices for energy
2 capacity are not the subject of this proceeding, they
3 are actually the subject of proceedings before the New
4 York ISO and FERC; isn't it correct?

5 A. (Liberty) Yes.

6 Q. Do you know or do you personally participate on
7 behalf of Westchester County before the New York ISO and
8 FERC in trying to mitigate the cost of energy and
9 capacity?

10 A. (Liberty) Not us personally.

11 Q. Do you know whether Westchester County has an
12 active participation in these proceedings?

13 A. (Liberty) That, I don't know.

14 Q. Now, when you were looking for ways to reduce the
15 impact of Con Ed's rate increase did you consider asking
16 Westchester County to forego some of the millions of
17 dollars of taxes that the County gets from Con Edison
18 electric bills as a way to mitigate the rates?

19 A. (Radigan) No.

20 Q. When you were looking for ways to reduce the
21 impact of the rate increase did you at least consider
22 asking Westchester County to forego any additional sales
23 tax that may be generated by any increase allowed in
24 this case?

1 A. (Liberty) No.

2 Q. When you were looking for ways to reduce the
3 impact of the rate increase did you consider at least
4 asking Westchester County to forego additional property
5 taxes that may be generated by any infrastructure
6 improvements to Westchester County?

7 A. (Radigan) No.

8 A. (Liberty) No.

9 Q. Turning to the subject of TCCs.

10 A. (Radigan) Page 26?

11 Q. Correct. Let me skip first to page 28 where you
12 say beginning at line 1, "Prior to case 07-E-0523" --
13 and that was Con Ed's most recent electric rate case.

14 The question is did NYPA share in any of the TCC
15 auction proceeds? And the answer you give is yes.
16 "Prior to this most recent decision NYPA received a
17 share of the first 60 million in TCC revenues."

18 Do you see that?

19 A. (Liberty) Yes.

20 Q. That case where NYPA received a share of the
21 first 60 million in TCC revenues, that was a three-year
22 settlement adopted by the Commission; is that correct?

23 A. (Panel) Yes.

24 Q. The rate plan adopted by Commission in March

1 2005; is that correct?

2 A. (Radigan) Yes.

3 Q. Would you agree with me then the settlement
4 agreement, without getting into the details of the
5 negotiations, there are give and takes?

6 A. (Radigan) Yes.

7 Q. Among all the parties?

8 A. (Radigan) Among all the parties.

9 Q. If I look at that settlement agreement versus
10 case 07-E-0523, the one change you note is that NYPA
11 doesn't get to share in any of the proceeds of the TCC
12 auction proceeds; is that correct?

13 A. (Radigan) That is correct.

14 Q. Do you know or accept subject to check that under
15 the settlement agreement approved by the Commission in
16 2005 NYPA shared in the burden of Con Edison's targeted
17 DSM program but in case 07-E-0523 NYPA did not share in
18 the burden?

19 All the company's DSM costs flowed through the
20 MAC, whereas under the settlement agreement you referred
21 to, some of the DSM costs actually went to the T&D
22 carrying charges that are paid by all customers.

23 Do you know or do you accept that subject to
24 check?

1 A. (Liberty) We will accept that subject to check.

2 Q. Turning to the 2000 settlement that you refer to
3 in, I think, beginning on line 26. If you go to page 27
4 -- and let me just get the definition just so we get
5 agreement. And I have no problem with your definition
6 of the TCC.

7 And you say TCC represents the right to collect
8 or the obligation to pay congestion rents associated
9 with one megawatt of transmission, correct?

10 A. (Liberty) Yes.

11 Q. So if Con Ed or NYPA own a transmission line from
12 generating plant to their load, and they owned TCCs,
13 they can deliver that electricity to the load without
14 paying rents because they own the TCC on the line; is
15 that correct?

16 A. (Liberty) Yes.

17 Q. On the other hand, if I were to take -- if I, the
18 producer, the generator, were to take that electricity
19 instead of servicing it to my load, I would sell it into
20 the market, that's where your definition comes in.

21 If I own the TCCs, I sell in to the market. I
22 get a market price and that has a component of
23 congestion. That's basically the definition?

24 A. (Panel) Yes.

1 Q. You note that there was an agreement in 2000
2 between Con Edison and NYPA where Con Edison -- certain
3 TCCs were transferred by NYPA. Grandfathered contracts
4 were assigned to Con Edison so long as Con Edison agreed
5 to pay NYPA's congestion costs.

6 And the excess congestion rents would belong to
7 Con Edison's customers?

8 A. (Radigan) Correct.

9 I'm not sure we answered that correctly. Can you
10 repeat that.

11 Q. Sure. If you want, I can read from one of your
12 interrogatory responses. I don't think you will have a
13 problem.

14 A. (Radigan) I just want to make sure we understand
15 it.

16 Q. Sure. Generally speaking, our understanding -- I
17 added generally speaking, but our understanding is
18 whatever transmission costs NYPA incurs to meet its load
19 obligation in Con Edison's service territory are
20 reimbursed by Con Edison?

21 A. (Radigan) That was the part I agree with it.

22 A. (Liberty) We agree with that.

23 Q. I don't think there is any controversy.

24 A. (Radigan) Excuse me.

1 Q. Any surplus congestion rents are kept by Con
2 Edison under the 2000 agreement. Con Edison reimburses
3 NYPA for its congestion costs. I think your testimony
4 says any surplus is retained by Con Edison.

5 The question is how should that be allocated?

6 A. (Radigan) That was the point I wanted to make
7 sure was clarified. Thank you.

8 Q. You say part of that should be allocated to NYPA
9 customers?

10 A. (Radigan) Yeah.

11 Q. The Commission in the last case said that it's
12 all allocated to Con Edison's native load customers?

13 A. (Radigan) Yes. Thank you. I want to make sure
14 the record was clear.

15 Q. Now, if you look at page 27, line 14 to 16, you
16 say -- you say "When the NYISO was formed Con Edison was
17 granted a set of TCCs that were thought to be sufficient
18 to hedge the congestion costs of its native load
19 customers. NYPA was also given a set of TCCs when the
20 ISO was formed. Per an agreement between NYPA and Con
21 Edison that was signed in 2000 NYPA assigned its TCCs to
22 Con Edison."

23 Is that correct?

24 A. (Radigan) That is correct.

1 Q. Do you have the May 11, 2000 agreement before
2 you? I can provide you with a copy.

3 JUDGE LYNCH: It's an exhibit.

4 MR. LUBLING: It has been made an exhibit?

5 JUDGE LYNCH: I believe so.

6 MR. LUBLING: I stand corrected. It's
7 Exhibit 419 marked for identification. Actually, we are
8 going to mark an exhibit later that has a summary of
9 this agreement. We are going to mark an exhibit later,
10 interrogatory from NYPA, that not only has the agreement
11 but has a summary of it from Con Edison to the ISO
12 asking them to implement the agreement.

13 Q. Do you have that agreement before you?

14 A. (Liberty) Yes.

15 Q. You can look at it, paragraph E, and that's on
16 page 4 of that agreement of Exhibit 419.

17 A. (Liberty) We have that.

18 Q. Do you see it says NYPA will retain the
19 grandfathered rights associated with contracts number
20 217 and 218?

21 A. (Liberty) Yes.

22 Q. Do you know or do you accept subject to check
23 that those two contracts, which the TCC NYPA retained,
24 are the grandfathered transmission rights of delivering

1 energy from the Poletti project to NYPA's in-City load
2 and the KYAC project at Kennedy Airport to NYPA's load?

3 MR. GLASS: Your Honor, since you are going
4 to be having the NYPA panel coming on next and they are,
5 I assume, the ones that would know about their own
6 agreement -- they are coming on today. It would make
7 sense instead of having this panel take something
8 subject to check to have this question directed to the
9 NYPA panel.

10 MR. LUBLING: I will take that under
11 advisement.

12 MR. GLASS: Thank you.

13 MR. LUBLING: But your panel has three pages
14 of testimony about the 2000 settlement. I like them
15 better.

16 Q. Do you see that? The next sentence is, "To the
17 extent that NYPA has other NYPA sources located within
18 New York City, those sources will be treated the same as
19 grandfathered rights associated with contracts number
20 217 and 218 and consistent with the terms of the 1989
21 agreements."

22 Do you see that?

23 A. (Liberty) Yes, we do.

24 Q. All I wanted to get on the record is that NYPA

1 didn't transfer all its TCC and your testimony doesn't
2 account for all TCCs, but there are some TCCs that NYPA
3 kept to deliver energy from its production to its
4 customers within New York City.

5 Would you agree with that?

6 A. (Radigan) Can I just ask for clarification to the
7 question?

8 Q. Sure.

9 A. (Radigan) The generation sources related to
10 contracts 217 and 218 are both in Zone K?

11 Q. Zone J.

12 A. (Radigan) Zone J. Just want to make sure.

13 Q. In fact, would you accept subject to check the
14 attachment L to the New York ISO OATT tariff, which
15 lists all the grandfathered tariffs, which show those
16 two contracts as going from Poletti to NYPA load and
17 from KYAC to NYPA load.

18 If you look at the capacity associated with those
19 two contracts, the capacity -- summer capacity
20 associated with contract number 217 is 733 megawatts.
21 And the summer capacity associated with the KYAC project
22 is 105 megawatts.

23 And it's shown on attachment L, if you accept
24 that subject to check?

1 A. (Radigan) Subject to check.

2 Q. Let me ask you this question: If NYPA were to
3 deliver energy from Poletti to its customers the TCC
4 wouldn't pay congestion rates; isn't that correct?

5 A. (Radigan) Correct.

6 Q. If, on the other hand, if NYPA delivers all the
7 energy to its load from upstate sources, Con Edison
8 would pay its congestion rents because NYPA gets
9 reimbursed for congestion rents?

10 A. (Radigan) That is correct.

11 Q. If NYPA takes the Poletti output and sells it to
12 the market, that market price has a congestion rent
13 customers, as you testified before?

14 A. (Liberty) I would think so, yes.

15 Q. If NYPA sells nothing from Poletti and KYAC
16 delivers nothing to its load center, zero, but brings
17 all the power from upstate to its customers, it actually
18 gains because Con Edison reimburses it for congestion
19 rents coming down from upstate.

20 And NYPA gets to keep the congestion rents on
21 that line from Poletti to the market because it sells it
22 into the market and it gets a cost component, if that
23 were true? In my scenario is that correct?

24 A. (Liberty) Is that a hypothetical?

1 Q. Hypothetical. Right now, no, it's hypothetical
2 at this point. I'm giving you a hypothetical. Could
3 that be a good scheme to maximize profits if you were a
4 NYPA manager?

5 A. (Liberty) I don't even know if that is a
6 hypothetical.

7 Q. Suppose it was conceivable, would you agree with
8 me that's a good way to maximize?

9 You are an engineer. I'll give you a
10 hypothetical.

11 A. (Liberty) I would challenge your use of the word
12 "good".

13 Q. I am sorry, but is it a way to maximize profits?

14 A. (Liberty) Could be a very distorted way.

15 MR. LUBLING: Nothing further.

16 MR. VAN ORT: One question.

17 JUDGE LYNCH: Let me just find out who has
18 follow-up before we get to Staff.

19 Mr. Loughney?

20 MR. LOUGHNEY: Just for the purpose--

21 JUDGE LYNCH: You have one. I want to
22 identify.

23 MR. LOUGHNEY: It's not follow-up. It's
24 just a clarification. The case number I was referring

1 to involved the separation of rates was case number
2 00-E-1208. And the Commission decision was November 25,
3 2003. Thank you to Ms. Krayeske for providing that
4 information.

5 JUDGE LYNCH: Staff had a follow-up
6 question.

7 BY MR. VAN ORT:

8 Q. Panel, you state on page 27 in response to the
9 question, how did Con Edison get the right to
10 collections, you state that the -- when the NYISO was
11 formed, Con Edison was granted a set of TCCs thought to
12 be sufficient to hedge the congestion costs of native
13 load customers.

14 Do you see that?

15 A. (Radigan) I see that.

16 Q. Did you take that from some document or is that
17 text that you prepared on your own?

18 A. (Radigan) That's my understanding of what
19 happened.

20 Q. Would you agree subject to check that in the NYPA
21 panel testimony on page 17, beginning on line 7 through
22 9, that's the response as stated?

23 A. (Radigan) Okay.

24 MR. VAN ORT: That's all I have, judge.

1 MR. GLASS: If we could have five minutes,
2 Your Honor.

3 JUDGE LYNCH: Break until -- we will recess
4 until 10:00.

5 MR. GLASS: Thank you.

6 (Recess taken.)

7 JUDGE LYNCH: Mr. Glass.

8 MR. GLASS: Just a few questions.

9 REDIRECT EXAMINATION

10 BY MR. GLASS:

11 Q. Do you remember being asked whether you
12 considered recommending to Westchester County that it
13 lower its taxes?

14 A. (Liberty) I remember being asked those questions,
15 yes.

16 Q. What would be the result if Westchester County
17 lowered its taxes on Con Edison?

18 A. (Liberty) If they lowered their taxes, this would
19 result in lower expenses to the company and, all other
20 things being equal, lower rates.

21 Just an observation, though, that the incentive
22 to lower taxes just in Westchester County wouldn't be as
23 strong if -- wouldn't be as strong today as it would if
24 the County had its own rate district, for example.

1 Q. Mr. Diamantopoulos asked you some questions that
2 related to items that affected rates in just New York
3 City and items that affected rates just in Westchester
4 County. Do you remember that discussion?

5 A. (Liberty) Yes.

6 Q. And what are some of the items that would be
7 included there?

8 I know a good deal of time was spent on taxes.
9 Could you indicate some of the other items that would be
10 affected?

11 A. (Liberty) When you do a cost analysis or cost
12 separation study you consider all kinds of costs. Some
13 of them are common and need to be allocated across the
14 board, but there are some items that would be
15 particularly unique to New York City, costs that might
16 relate to aspects of operating the steam system that
17 might trickle over to the electric side or operation and
18 maintenance on New York facilities.

19 Then we would look in Westchester County for
20 similar kinds of costs that are unique to Westchester
21 County when you make the separations. So, property
22 taxes would be one element. In this case, it's quite a
23 major element, but we would expect to look at all
24 aspects of operations.

1 Q. Do you remember Mr. Lubling asking you how TCC
2 revenue in excess of NYPA's congestion is handled?

3 A. (Liberty) Yes.

4 Q. You recall the discussion of the treatment of
5 excess TCCs as it relates to the 2000 agreement?

6 A. (Liberty) Yes.

7 Q. What is your understanding of the treatment of
8 excess TCCs as contained in that agreement?

9 A. (Liberty) My understanding is that the agreement
10 basically didn't want to change the arrangement held
11 previously, but there was a new system coming up called
12 TCCs. They had to transform some of those from a TCC to
13 a right.

14 NYPA retained some rights. Others were
15 transferred into the TCC system. The agreement is that
16 whatever NYPA pays for TCCs Con Edison would reimburse,
17 recognizing that there is going to be TCC revenue or
18 rents in excess of that. And the agreement called then
19 for Con Edison to retain those TCCs.

20 There was no description in the contract itself
21 that indicated what Con Edison should do with excess
22 revenues. That to me is more of a ratemaking aspect
23 rather than a contractual aspect. Those revenues that
24 we deal with in our testimony and we believe some of

1 those revenues should be allocated to the NYPA as well
2 as the native load customers.

3 Q. What is your understanding of contracts 217 and
4 218?

5 A. (Liberty) My understanding is those involve
6 contractual rights. There is no -- not really a part of
7 a TCC system. Those are within Zone J -- within Zone J,
8 so there is no TCCs associated with those rights.
9 That's just a right to move power from generator that
10 was grandfathered.

11 MR. GLASS: No further questions.

12 JUDGE LYNCH: Recross by anybody?

13 MR. DIAMANTOPOULOS: Yes, Your Honor. A few
14 questions.

15 RECROSS EXAMINATION

16 BY MR. DIAMANTOPOULOS:

17 Q. You are aware of Commission decisions that
18 indicate that the County of Westchester derives benefits
19 from the Con Ed steam system as well as New York City?

20 A. (Radigan) Could you be more specific, what
21 benefits?

22 Q. What specific benefits?

23 A. (Radigan) No, what specific benefits.

24 Q. They are enumerated in the Commission's decision

1 to--

2 JUDGE LYNCH: Is this beyond?

3 MR. DIAMANTOPOULOS: No, it's not beyond,
4 Your Honor. There was questioning on this.

5 JUDGE LYNCH: There was an answer on it.
6 Give us other examples. Steam costs could trickle over
7 into the electric department or something like that, I
8 think I heard.

9 MR. LIBERTY: All we meant by that, in
10 operating the steam system there are certain common
11 costs between steam and electric. And they have to be
12 allocated between steam and electric.

13 And what we would want to look at in the
14 study to see are there any benefits to Westchester
15 County from the part that's allocated to electric or is
16 that just a benefit that really pertains to the New York
17 City area and, if so, we would want to see that
18 separation take place.

19 BY MR. DIAMANTOPOULOS:

20 Q. Right, but my question really goes to whether or
21 not you are aware the Commission in probably the
22 previous three steam cases has referenced that the
23 County of Westchester derives as much benefit from the
24 steam system as other ratepayers in New York City in the

1 entire system. Are you aware of those decisions?

2 A. (Radigan) I am aware of those decisions, but I
3 don't recall those statements are exactly correct.
4 That's why I was having you provide it.

5 Q. I don't have a copy of the decision, but it's a
6 generic question.

7 MR. GLASS: The decisions speak for
8 themselves.

9 MR. DIAMANTOPOULOS: They do.

10 JUDGE LYNCH: He asked him whether he was
11 aware of it, though. I am responding to Mr. Glass.

12 BY MR. DIAMANTOPOULOS:

13 Q. You also mentioned in your response to Mr.
14 Glass's redirect that there are some common costs
15 between ratepayers in Westchester and New York City.
16 Can you elaborate a little bit on what costs you are
17 referring to?

18 A. (Liberty) Well, there are common costs, for
19 example, the company headquarters, Four Irving Place.

20 A. (Radigan) Transportation equipment.

21 A. (Liberty) Transportation equipment, computers,
22 the billing system, and so forth. These are common
23 costs between New York City and Westchester. We expect
24 that those would be allocated in some manner -- logical

1 manner.

2 Just like in the cost of service study, those are
3 allocated to customer classes in some reasonable manner.

4 MR. DIAMANTOPOULOS: Thank you. No further
5 questions.

6 JUDGE LYNCH: Mr. Lubling?

7 MR. LUBLING: Just one or two follow-up
8 questions.

9 BY MR. LUBLING:

10 Q. On page 29 of your testimony, line 10, you say
11 NYPA should be permitted to share in any surplus auction
12 proceeds. That's auction proceeds that exceed native
13 load congestion costs and any surplus congestion rents,
14 that's rents from NYPA transfer TCCs that exceeds NYPA
15 congestion costs.

16 Let me understand what you are saying you want to
17 make -- NYPA is made whole by Con Edison reimbursing its
18 congestion rents. You want to make Con Ed's native load
19 whole and anything surplus to share --

20 MR. GLASS: How does that relate to the
21 redirect?

22 MR. LUBLING: If I recall, one of the
23 questions was regarding -- I think the witnesses said
24 that the 2000 settlement didn't address -- just

1 addressed certain grandfathered rights, TCCs. I am
2 trying to get his understanding of what the 2000
3 settlement did.

4 MR. GLASS: Just as it relates to the
5 particular rights?

6 MR. LUBLING: Just as they relate to the two
7 different rights. They distinguished between TCCs and
8 other grandfathered contract rights. I'm trying to get
9 a clarification.

10 BY MR. LUBLING:

11 Q. All I am trying to get is on the 2000 settlement
12 there were certain TCCs that were transferred to NYPA
13 and certain TCCs were retained by NYPA and certain
14 grandfathered contracts that continued.

15 I'm putting them all in one ball. And your
16 recommendation is that there'd be an allocation of any
17 surplus. By the word surplus I mean in excess of all
18 rents paid by NYPA customers that are reimbursed and all
19 rents paid by Con Edison customers; is that correct?

20 A. (Radigan) Correct.

21 Q. And that includes whether Con Ed incurs -- gets
22 proceeds that sells TCCs that reimburses NYPA for
23 certain rents and it has excess rents. You are saying
24 that should go into the sharing pot.

1 And anything less, all congestion rents incurred
2 by NYPA, incurred by Con Edison customers, including
3 when Con Edison's customers buy from the day-ahead
4 market and they incur certain congestion costs.

5 You're saying, make everybody even on rent and
6 then the surplus shared between everybody; is that
7 correct?

8 A. (Radigan) That is correct.

9 MR. LUBLING: I have no further questions.

10 JUDGE LYNCH: Thank you very much. The
11 panel is excused.

12 MR. VAN ORT: I believe the next witness is
13 Staff Martin Insogna.

14 MARTIN INSOGNA, after first having been duly
15 sworn, was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. VAN ORT:

18 Q. Mr. Insogna, did you prepare a document entitled
19 "Prepared Testimony of Martin Insogna" for this
20 proceeding?

21 A. I did.

22 Q. And does that document contain 27 pages of text?

23 A. Yes.

24 Q. And since the time that you prepared that

1 document have you determined that any edits or
2 corrections to it are necessary?

3 A. Actually, Mr. Van Ort, there is perhaps one
4 clarification that should be made. My testimony
5 included a discussion of the company's request for
6 funding for additional customer field representatives
7 and which in my testimony I recommended the Commission
8 disallow that expense.

9 In the course of the subsequent discovery it
10 became evident that my proposed adjustment was
11 duplicated by adjustment by the accounting panel in
12 their normalization adjustment of company's labor
13 expenses and so I would want to clarify that.

14 Q. So, you are accepting the company's position on
15 that issue?

16 A. The company in its subsequent rebuttal testimony
17 indicated that -- I believe they indicated they
18 considered the matter to be resolved based on our
19 discovery response. So, yes, I am accepting their
20 position on that.

21 JUDGE LYNCH: Let me ask. I am a little
22 confused. If his adjustment duplicates one by the Staff
23 accounting panel, has that dispute been resolved, as
24 well?

1 MR. VAN ORT: I am informed --

2 JUDGE LYNCH: It's not just that he's
3 testifying, it's just that the issue is dropping out
4 altogether?

5 MR. VAN ORT: It is dropping out. The
6 question then is we are willing to allow his testimony
7 to come in with that clarification if that's acceptable.

8 JUDGE LYNCH: Tell me roughly where that is.

9 THE WITNESS: Page 14, line 23.

10 JUDGE LYNCH: Thank you.

11 BY MR. VAN ORT:

12 Q. If I were to ask you the questions stated in your
13 testimony today would they be the same as originally
14 given with the clarifications you have provided here
15 today?

16 A. Yes.

17 MR. VAN ORT: Judge, we ask Mr. Insogna's
18 testimony be copied into the record as if orally given.

19 JUDGE JACK: Motion granted.

20 (The following is the prefiled testimony of
21 Martin Insogna:)

22

23

24

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MARTIN INSOGNA

1 Q. Please state your name, employer, and business address.

2 A. My name is Martin Insogna. I am employed by the New York
3 State Department of Public Service (Department). My
4 business address is Three Empire State Plaza, Albany, NY
5 12223.

6 Q. What is your position at the Department?

7 A. I am employed as a Utility Consumer Program Specialist 5
8 in the Office of Consumer Services.

9 Q. Please describe your educational background and
10 professional experience.

11 A. I hold a Bachelor's Degree in philosophy and economics
12 from Colgate University. Prior to joining the
13 Department, I was employed in a wide range of customer
14 service fields, including as a representative of the then
15 New York Telephone Company. I joined the Consumer
16 Services Division of the Department in 1990 as a Consumer
17 Services Specialist, investigating and resolving utility
18 consumer complaints. In April 1994, I was accepted into
19 a traineeship with the Office of Energy Efficiency and
20 Environment, with responsibility for policy and
21 operational considerations involving utility energy
22 efficiency and emerging environmental issues. In March
23 1998, I was promoted to the title of Associate Utility
24 Rate Analyst, and transferred to the Electric Division,

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1 with responsibility for review and analysis of utility
2 rate and rate-related filings. When the Department was
3 reorganized in 1999, I was assigned to the Retail
4 Competition section of the Office of Electricity and
5 Environment, with responsibility for a wide variety of
6 initiatives related to the introduction of retail access.
7 In January 2000, I was promoted to the title of Associate
8 Policy and Compliance Analyst and transferred to the
9 Residential Advocacy Section of the Office of Consumer
10 Education and Advocacy. The Department of Civil Service
11 subsequently reclassified the title of Associate Policy
12 and Compliance Analyst to Utility Consumer Program
13 Specialist 4. In December 2003, the Department was again
14 reorganized, and the Office of Consumer Services assumed
15 responsibility for consumer advocacy functions within the
16 Department. In August 2008, I was promoted to my current
17 title.

18 Q. Please briefly describe your current responsibilities
19 with the Department.

20 A. I oversee utility compliance with Public Service Law and
21 Commission regulations regarding consumer protections and
22 access to service; monitor and analyze utility customer
23 service quality performance and responsiveness to
24 customer needs; promote access to affordable utility

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1 services for low-income and other special needs
2 customers; and address residential and small business
3 customer interests in utility rate cases and other
4 Commission proceedings.

5 Q. Have you previously testified before the Commission?

6 A. Yes. I have previously testified in proceedings
7 concerning Orange and Rockland Utilities, Inc., New York
8 State Electric and Gas Corporation, Niagara Mohawk Power
9 Corporation, d/b/a National Grid, Rochester Gas and
10 Electric Corporation, KeySpan Energy Delivery New York
11 and KeySpan Energy Delivery Long Island, and Consolidated
12 Edison Company of New York, Inc. (Con Edison or the
13 Company). The subjects of my previous testimony have
14 included energy efficiency programs, system benefits
15 charge implementation, rate design, consumer protections,
16 service quality, low income customer needs, outreach and
17 education, utility metering and commodity supply pricing.

18 Q. What is the scope of your testimony in this proceeding?

19 A. I will address Con Edison's proposals regarding automated
20 meter reading, low income customer needs, bill redesign,
21 credit and collection field operations, customer outreach
22 and education programs, informational advertising and the
23 customer service performance incentive mechanism.

24 Q. In your testimony, will you refer to, or otherwise rely

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1 upon, any information produced during the discovery phase
2 of this proceeding?

3 A. Yes. I will refer to, and have relied upon, several
4 responses to Staff Information Requests (IRs). I am
5 sponsoring them as Exhibit __ (MXI-1).

6 Q. Con Edison discussed a three-year rate plan proposal in
7 its filing. Will you address this proposal?

8 A. No, my testimony only addresses a traditional one-year
9 case.

10 Automated Meter Reading

11 Q. Please summarize the Company's proposals regarding
12 automated meter reading.

13 A. As described by the Company's Customer Operations Panel,
14 Con Edison plans to complete the saturated installation
15 of Automated Meter Reading (AMR) in Westchester County.
16 It also plans strategic installation of AMR at locations
17 outside of Westchester that are hard to read and for
18 selected projects where the Company believes meter
19 reading efficiencies can be gained through the use of
20 AMR.

21 Q. Do you recommend that the Commission approve these
22 proposals?

23 A. I support the proposal to complete the Westchester
24 project. This project commenced the planning phases in

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1 2003, and the Company proposes to complete the deployment
2 in the Rate Year. When completed, this project will
3 produce considerable labor savings that can be passed on
4 to customers. I do not support the Company's proposals
5 for strategic AMR investments because they do not provide
6 comparable labor savings, and because they could
7 potentially become stranded investments, if the
8 Commission authorizes implementation of the Company's
9 advanced metering infrastructure (AMI) proposal.

10 Q. What is Con Edison's AMI proposal?

11 A. The Company filed its plan for the development and
12 deployment of advanced electric and gas metering
13 infrastructure (AMI Plan) on March 28, 2007, in Cases 94-
14 E-0952, 00-E-0165 and 02-M-0514. The Company proposes to
15 implement AMI system-wide over a seven-year period. As
16 noted on page two of its AMI Plan, Con Edison proposes,
17 before system-wide AMI implementation, to undertake three
18 pre-deployment pilot demonstrations in order to evaluate
19 "the performance of selected technologies, the
20 integration of meter data derived from AMI into [the
21 Company's] 'back-office' systems, and customer response
22 to additional information about their utility usage."

23 Q. What is the status of that proposal?

24 A. In an Order issued on December 19, 2007 in Cases 94-E-

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1 0952, 00-E-0165 and 02-M-0514, Con Edison was directed to
2 file supplemental plans for the proposed AMI pilots for
3 Commission approval, upon the Commission's adoption of an
4 AMI standard. The Commission continues to deliberate
5 concerning the features and functions of AMI systems that
6 should be included in its standard, and has not yet
7 adopted an AMI standard, so the AMI Plan remains pending.

8 Q. Why is there a risk of Con Edison's proposed AMR
9 investments becoming stranded?

10 A. Among the features and functions under consideration by
11 the Commission for adoption as part of its AMI standard
12 is two-way communications capability. According to the
13 response to Staff IR DPS-439, the AMR modules currently
14 being deployed are not capable of two-way communication.
15 If the Commission's functional requirements for AMI were
16 to include two-way communication capability, the cost of
17 the AMR module would become stranded and the deployment
18 of AMI would be compromised, as the Company would avoid
19 installing AMI in areas where AMR was already installed.

20 Q. Won't the AMR investments in Westchester be similarly
21 stranded?

22 A. Yes; however, at present it would be the only area of the
23 Company's territory where this problem would exist. In
24 addition, the Westchester AMR project was begun five

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1 years ago, and is nearly complete. It would be
2 reasonable to complete this project and extract the labor
3 savings available. It would not make sense to create the
4 stranded cost problems in other areas of the Company's
5 service territory.

6 Q. Won't that sacrifice the labor savings in other areas?

7 A. No. As explained on page 13 of the Customer Operations
8 Panel Pre-Filed testimony, there is not a positive
9 business case for a saturated AMR deployment outside of
10 Westchester. Furthermore, the Company does not propose a
11 saturated deployment that would provide similar labor
12 savings outside of Westchester in any event. Rather, the
13 Company plans strategic installations for which it cites
14 other benefits, such as reductions in estimated readings
15 for hard-to-read locations and easing the planning of
16 meter routes for new buildings. These benefits are
17 outweighed by the potential for stranded costs and
18 compromising the future deployment of AMI.

19 Q. What would be the impact of the Commission's rejection of
20 the strategic AMR proposals?

21 A. Capital costs would be reduced by \$3.08 million in the
22 Rate Year, and operation and maintenance (O&M) costs
23 would be reduced by \$34,000.

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1 Low Income Customer Needs

2 Q. Does Con Edison currently have any special programs for
3 its low income customers?

4 A. Yes. The Company's low income program includes a monthly
5 Customer Charge reduction of \$5.92 for customers
6 receiving a number of different social services programs.
7 Con Edison has an automatic enrollment process by
8 matching Company records with records from the New York
9 City Human Resources Administration and the Westchester
10 County Department of Social Services. Currently, about
11 245,000 customers are participating in the low income
12 program, and it is anticipated that a similar number of
13 low income customers will be eligible for the low income
14 rate discount in the Rate Year.

15 Q. Does the Company propose to continue its programs?

16 A. Yes, the Company proposes to continue the program at the
17 same funding level as in the current rate plan, \$17.4
18 million per year.

19 Q. Do you support a low income program for Con Edison
20 electric customers?

21 A. Yes. Energy costs represent a large burden on low income
22 families. Information from a variety of sources,
23 including the Residential Energy Consumption Survey
24 conducted quadrennially by the Federal Energy Information

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1 Administration, indicates that while middle and higher
2 income customers experience energy costs in the general
3 area of one to five percent of income, lower income
4 customers experience energy costs in the general area of
5 10 to 20 percent of income. A December 2007 report from
6 the federal government's Oak Ridge National Laboratory
7 entitled Short and Long-Term Perspectives: The Impact on
8 Low-Income Consumers of Forecasted Energy Price Increases
9 in 2008 and a Cap-and-Trade Carbon Policy in 2030
10 identified "an escalation in the price of carbon-based
11 fuels over more than a decade that has outpaced the
12 increase in purchasing power of low-income households.
13 The long-term problem is further exacerbated by sharp
14 energy price increases experienced in recent years, in
15 part due to the impact of Hurricanes Katrina and Rita on
16 petroleum and natural gas supplies in 2005, and high
17 international petroleum prices and market uncertainty...
18 The impact of these rising energy costs across time can
19 be measured for individual households in the form of
20 rising energy burdens, defined as the ratio of
21 residential energy expenses divided by household income.
22 From 2001 through 2005, the most recent year for which
23 data is available, the average residential energy burden
24 for low-income households rose from 12.6 percent to 14.6

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1 percent of income. For non-low-income households the
2 average burden was 3.1 percent of income in 2001 and
3 remained essentially unchanged at 3.2 percent of income
4 in 2005." As a result, many low income customers cannot
5 afford essential services such as electric service.
6 These families typically must trade off among food,
7 shelter, medicine and energy purchase decisions. In
8 addition, for heating customers, loss of a household's
9 primary heat source presents serious health and safety
10 risks, both due to the potentially fatal effects of cold
11 weather and the fire and health hazards resulting from
12 using unsafe alternative heating sources. Furthermore,
13 low income families tend to live in poorly maintained and
14 energy inefficient housing. This not only wastes energy,
15 but increases the likelihood that these customers will be
16 unable to pay their utility bills. For these reasons,
17 programs to address the needs of low income customers are
18 essential.

19 Q. Why should such programs be funded by utility customers?

20 A. There are a number of reasons. First, helping low income
21 customers to pay their electric bills helps utilities and
22 their customers. Utilities carry uncollectible expenses
23 that are paid for by all customers as a cost of business.
24 Collection costs and working capital on the unpaid bills

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1 of low income customers impose additional costs on the
2 utility and its customers. These costs can be reduced
3 with the effective implementation of a low income
4 program. Savings include reductions in costs associated
5 with credit and collection, arrears and bad debt, deposit
6 maintenance, regulatory expenses, repeated payment plan
7 negotiations, credit agency fees, diversion of revenue
8 from arrears to reconnection fees and diversion of
9 revenue resulting from forced moves. Second, the
10 implementation of a low income program is consistent with
11 Commission practice over the past several years. The
12 Commission has authorized the implementation of low
13 income programs at Central Hudson, Con Edison, KeySpan,
14 National Fuel, NYSEG, National Grid, O&R and RG&E.
15 Finally, in its Order Continuing the System Benefits
16 Charge (SBC) and the SBC-Funded Public Benefit Programs,
17 issued December 21, 2005 in Case 05-M-0090, the
18 Commission stated that, "[o]il and gas prices are
19 volatile and rising, resulting in electricity commodity
20 price increases for New York consumers, negatively
21 impacting low income consumers, in particular, who spend
22 a higher percentage of their income on energy costs."
23 Citing the recent escalation in fuel costs and the
24 disproportionate impact such increased costs have on low

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1 income customers, the Commission increased annual SBC
2 support for low income programs by more than \$11 million,
3 to more than \$38 million annually through 2011. For
4 these reasons, financial support for Con Edison's low
5 income rate discount should be increased.

6 Q. What type of program do you recommend for Con Edison's
7 electric low income customers?

8 A. I propose to continue the Company's existing low income
9 program; however, I believe the funding level should be
10 increased to \$24.7 million. I recommend that qualified
11 low income customers should continue to receive a
12 discount from the monthly charge sufficient to reduce the
13 customer charge to its current level of \$6.50. If the
14 SC1/SC7 monthly charge is allowed to increase by 20
15 percent to \$14.90 as the Company proposes, this level of
16 customer charge represents a discount of \$8.40 per month,
17 or \$100.80 per year. The cost of such a program would
18 total approximately \$24.7 million per year. A \$24.7
19 million annual expenditure level, if spread over all
20 electric sales, would result in a rate impact of about
21 \$0.0005 per kilowatt hour (kWh), or about 0.4 percent of
22 electric revenues. This is a reasonable funding level
23 for such a program, particularly given the rising cost of
24 electricity, the impact of electricity costs on low

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1 income customers, and the potential for offsetting
2 benefits to the Company and all customers.

3 Q. What is the effect on the Company's revenue requirement
4 if the Commission adopts your proposal?

5 A. Revenue requirement would be increased by approximately
6 \$7.3 million.

7 Bill Redesign

8 Q. Please summarize Con Edison's bill redesign proposals.

9 A. The Company was directed to develop an unbundled bill
10 format in the Commission's Order Directing Filing of
11 Unbundled Bill Formats issued on February 18, 2005 in
12 Case 00-M-0504. Con Edison spent about \$1.5 million in
13 the historical year on this project. In the Company's
14 last electric rate case, Case 07-E-0523, the Commission's
15 March 25, 2008 Order (the 2008 Rate Order) authorized
16 additional O&M expenditures of \$1.1 million. The Company
17 stated that this increase was needed to cover the costs
18 of printing the bill on larger paper. In the current
19 case, the Company seeks an additional \$0.8 million,
20 consisting of about \$0.5 million for bill archival and
21 retrieval costs, and about \$0.3 million for incremental
22 system software and maintenance fees.

23 Q. Do you support these additional expenditures?

24 A. No. Regarding the bill archival and retrieval costs, it

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1 appears that this primarily supports the ability for
2 Company representatives to see a facsimile image of
3 customer bills. While this may be a convenience, Con
4 Edison's customer information system did not have this
5 capability with respect to the previous bill. Customer
6 representatives should be able to learn where various
7 items appear on the bill in a relatively short period of
8 time, and refer customers to particular charges without
9 the need for a facsimile image. Regarding system
10 software and maintenance fees, these fees should simply
11 displace software and maintenance fees on the previous
12 bill generation system. It is further unclear why
13 incremental fees were not anticipated and incorporated,
14 if necessary, in the Company's prior electric rate
15 filing, Case 07-E-0523. Finally, given that the
16 ratepayers paid for a completely new bill generation
17 system, the Company should be able to find offsetting O&M
18 savings that obviate the need to separately recover these
19 incremental costs.

20 Q. What is the revenue requirement effect of the rejection
21 of the Company's proposal?

22 A. O&M expenses would be reduced by \$754,000.

23 Credit and Collection Field Operations

24 Q. Please summarize the Company's proposals regarding field

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1 operations.

2 A. Con Edison proposes to increase field operations staffing
3 assigned to customer collections activities. During
4 2007, 24 customer field representatives (CFRs) were
5 hired. The Company added 15 CFRs that were authorized by
6 the Commission in the 2008 Rate Order, bringing its
7 current CFR staffing level to 176, as stated in the
8 Company's pre-filed Exhibit ___(CO-20). Furthermore, as
9 stated on page 21 of the Customer Operations Panel Pre-
10 Filed Testimony, "the Company continues to reduce CFR
11 staffing levels as a consequence of the installation of
12 AMR." The Company nevertheless proposes to hire 27 more
13 CFRs. Its proposal would add \$1.2 million to O&M, plus
14 \$52,000 in capital costs to equip the CFRs with handheld
15 devices.

16 Q. Do you support this proposal?

17 A. No. I note that the Company has proposed no adjustment
18 to uncollectible expense as a result of this massive
19 influx of credit and collection field personnel. The
20 labor cost of additional CFRs should pay for itself in
21 increased collections - if it does, then uncollectible
22 expense should be reduced by at least a like amount. If
23 not, then the costs are not justified, since the costs of
24 the collection effort outweigh the additional revenues

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1 produced. Either way, there should not be an increment
2 to revenue requirement for this expense.

3 Q. What is the effect if your adjustment is adopted?

4 A. There would be a reduction of \$1.2 million to Rate Year
5 O&M expenses and a reduction of \$52,000 to capital costs
6 for the Rate Year.

7 Customer Outreach and Education Programs

8 Q. Please summarize Con Edison's proposals regarding
9 customer outreach and education programs.

10 A. Con Edison's Public and Customer Information Panel
11 proposed a budget of \$3.6 million for its outreach and
12 education (O&E) program. This program is designed to
13 inform and educate customers on such matters as customer
14 rights and responsibilities, safety issues, responsible
15 use of energy, and various Company programs and services,
16 such as the CONCERN Program services for seniors and
17 customers with special needs, protections for customers
18 using life-sustaining equipment, the levelized payment
19 plan and the direct payment plan and the EnergyShare
20 Fund. The O&E budget also funds liaison functions with
21 community leaders, emergency customer care including the
22 mobile Customer Information Centers, children's
23 education, including a website for students and teachers,
24 employee education regarding customer programs and

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1 concerns and activities designed to evaluate O&E program
2 effectiveness.

3 Q. Do you support the Company's request for O&E funding?

4 A. The \$3.6 million requested by the Company for O&E appears
5 reasonable and in line with past expenditures in this
6 area.

7 Q. Do you have any other specific recommendations regarding
8 O&E?

9 A. Consistent with past practices in this area, I recommend
10 that Con Edison be directed to annually develop a
11 detailed O&E program plan, setting forth program goals,
12 objectives, messages, communication strategies and
13 effectiveness evaluation methodologies. The plan should
14 be filed annually with the Director of the Office of
15 Consumer Services, at least 90 days before the date of
16 implementation and be evaluated and refined on an
17 expedited basis for program content and final budget for
18 each initiative, through collaborative discussions among
19 Con Edison, Staff and any other interested parties.

20 Informational Advertising

21 Q. Please summarize the Company's informational advertising
22 proposals.

23 A. The Company proposes to spend \$17.5 million on
24 informational advertising in the Rate Year. Con Edison's

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1 Public and Customer Information Panel draws a distinction
2 between the O&E program discussed above and informational
3 advertising. As shown in the response to Staff IR DPS-
4 538, virtually no informational advertising money was
5 spent in the historic test year on O&E program areas,
6 including customer rights and responsibilities, electric
7 safety, emergency customer care, EnergyShare, the CONCERN
8 program or other Con Edison programs and services. The
9 only exception listed in that response was an
10 advertisement costing approximately \$4,000 that was
11 placed in the New York City Housing Authority Journal
12 regarding protections for customers using life-sustaining
13 equipment.

14 Q. What topical areas are covered by the Company's
15 Informational Advertising Budget?

16 A. The Public and Customer Information Panel proposes the
17 following separate budget allocations for the following
18 types of messages that are communicated through
19 informational advertising: \$8.8 million for Energy
20 Conservation Tips; \$1.8 million for Emergency
21 Preparedness; \$4.6 million for Infrastructure
22 Improvements; \$1.8 million for Workplace Diversity; and,
23 \$0.3 million for other general advertising.

24 Q. Did the Public and Customer Information Panel testimony

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1 have any other purpose?

2 A. Yes. The Public and Customer Information Panel also
3 notes that in the 2008 Rate Order, the Commission,
4 applying its 1977 policy on advertising expenses (the
5 1977 Policy Statement), reduced Con Edison's funding for
6 advertising. The Public and Customer Information Panel
7 indicated that the 1977 Policy Statement should either
8 not be applied or modified to reflect current and changed
9 circumstances. The Panel states that there is a much
10 greater demand for information in today's environment,
11 and that advertising cost increases have outpaced general
12 inflation, rising at an average rate of about eight
13 percent annually. The Panel proposes that the 1977
14 Policy Statement, if applied, should exempt programmatic
15 advertising in areas that are important to the
16 Commission.

17 Q. Please summarize the provisions of the 1977 Policy
18 Statement.

19 A. The 1977 Policy Statement generally allows between 1/25
20 and 1/10 of 1 percent, or between 0.04 and 0.10 percent
21 of revenues to be directed to informational advertising,
22 such percentages to be applied in inverse proportion to
23 utility size. This range yields budget values
24 approximately between \$3 million and \$7.5 million for Con

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1 Edison. Specific utility allocations are to be
2 determined in individual utility rate cases "on the basis
3 of various other factors including size, geographic
4 location, number of customers and costs of doing business
5 in the area." The 2008 Rate Order allowed Con Edison
6 0.06 percent of revenues, or \$4.5 million.

7 Q. What is your assessment of the relevance of the 1977
8 Policy Statement to Con Edison's current circumstances?

9 A. Its useful to recall that the 1977 Policy Statement was
10 itself a revision of a 1972 policy, and the 1977 Policy
11 Statement expressed the Commission's intent to revisit
12 its policies on informational advertising periodically.
13 Since 1977, many major developments have occurred that
14 impact the need for utilities to communicate with
15 customers. Such developments include, but are not
16 limited to, the federal government's enactment of Public
17 Utilities Regulatory Policy Act in 1978, the enactment of
18 Home Energy Fair Practices Act in 1981, and the
19 Commission's adoption of Opinion 96-12 in 1996, which
20 initiated restructuring of the electric industry in New
21 York, the sale of utility property and assets and the
22 introduction of competitive energy suppliers and retail
23 access. On the other hand, the 1977 Policy Statement
24 established certain categories of advertising and

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1 determinations of their recoverability in rates that
2 remain valid, including sales/promotional advertising
3 intended to stimulate consumption and civic/political
4 advertising intended to sway public opinion on
5 controversial issues, both of which should continue to be
6 not recoverable. The Commission further recognized that
7 "There is... a large middle ground of institutional
8 advertising that falls somewhere between that which is
9 clearly beneficial to consumers and that which is clearly
10 political or controversial" and sought a simple and
11 straightforward way to determine a reasonable level of
12 allowance for informational advertising that would "end
13 the vexing and essentially arbitrary process our Staff
14 now engages in of reviewing all informational and other
15 institutional advertising" to determine in which category
16 each belonged. Based on my reading of the Commissions
17 2008 Rate order, and specifically pages 47 and 48, I
18 believe the Commission took fair and appropriate
19 consideration of all of these factors. First, the
20 Commission determined that informational advertising
21 should be considered separately from "consumer outreach
22 efforts, which are separately budgeted and accounted for
23 in rates." Second, it determined that because evaluation
24 of the appropriate level of informational advertising

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1 continues to be "a much more subjective enterprise,
2 reliance on the policy statement's guidelines has
3 continuing merit and application here." Finally, the
4 Commission determined that "[i]f the Company believes
5 that the funds available to it through the standard
6 allowance are insufficient for it to accomplish proper
7 objectives, the program plans that it submits for our
8 review in the future should include the Company's funding
9 request for any additional informational and
10 institutional advertising it believes is warranted."

11 While not explicitly presented as such, the Public and
12 Customer Information Panel's testimony can be viewed as
13 the Company's response to this invitation.

14 Q. Do you believe that the Company met the standard that was
15 outlined in the 2008 Rate Order?

16 A. Only in part. I recommend that the Commission find that
17 portions of the Company's proposals for additional
18 funding are warranted. Of the \$17.5 million requested by
19 the Company, I recommend that the Commission authorize
20 expenditures of \$6.7 million.

21 Q. How does this expenditure level for informational
22 advertising compare with historical expense levels?

23 A. According to the revised response to Staff IR DPS-7,
24 historic expenditures for informational advertising were

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1 \$5.6 million in 2004, \$5.4 million in 2005, \$7.6 million
2 in 2006 and \$16.7 million in 2007. The 2007 expenditure
3 is clearly an outlier, and 2005 saw the lowest level of
4 these expenditures over the four years. If these two
5 figures are discarded, the average annual expenditure
6 over this period was about \$6.7 million. This is my
7 recommended level.

8 Q. Do you recommend specific adjustments to Con Edison's
9 proposed informational advertising budget?

10 A. No, I would allow the Company latitude to make its own
11 decisions regarding how to allocate the overall budget to
12 the areas of Energy Conservation Tips, Emergency
13 Preparedness, Infrastructure Improvements, Workplace
14 Diversity and other general advertising identified in its
15 filing. I can; however, offer some general guidance and
16 observations. The topic of greatest concern is Emergency
17 Preparedness, which addresses a Commission mandate to
18 inform customers on how to contact the Company during
19 emergencies, and how to report on and obtain information
20 regarding outages. Given the importance of this issue,
21 it is difficult to justify a budget for Upgrading
22 Infrastructure advertising that is more than 250 percent
23 higher than that for Emergency Preparedness. While the
24 1977 Policy Statement recognized that it was reasonable

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1 to afford utilities the opportunity to defend, justify,
2 or merely explain and describe its activities, resources
3 for this effort should not surpass those devoted to
4 Emergency Preparedness. Similarly, the Company should
5 recruit women and minorities as employees and contract
6 with women and minority owned businesses, and may even
7 publicize these efforts; but the advertising budget for
8 Workplace Diversity should not be set equal to
9 advertising for Emergency Preparedness, which is a core
10 responsibility of the utility. Finally, the Company's
11 Public and Customer Information Panel, at page 44 of its
12 pre-filed testimony, explains that Energy Tips
13 advertising "urges customers and the public to think
14 about energy as a valuable commodity and to change their
15 behavior with respect to energy usage." This is a
16 laudable, goal; however, it would do more to support the
17 state's energy conservation goals to focus on marketing
18 specific energy efficiency programs. The Energy Tips
19 advertising does not do this, although the Company
20 promises that Energy Tips and energy efficiency program
21 marketing will be coordinated.

22 Q. What is the effect if your adjustment is adopted?

23 A. There would be a reduction of \$10.8 million to Rate Year
24 operations and maintenance expenses.

1 Customer Service Performance Incentive Mechanism

2 Q. Please describe Con Edison's current customer service
3 performance incentive.

4 A. Con Edison's electric customer service performance
5 incentive (CSPI) was updated in the Commission's 2008
6 Rate Order. A maximum revenue adjustment in favor of
7 customers of up to \$40 million annually (equivalent to
8 approximately 33 basis points of electric common equity)
9 is applicable if the Company does not meet customer
10 service threshold targets. The Company files a report
11 annually on its performance under the incentive
12 mechanism. The customer service performance metrics are
13 measure the following areas: PSC complaint rate;
14 satisfaction of electric emergency callers, other non-
15 emergency callers to the Company's telephone centers and
16 visitors to the Company's service centers; time to
17 complete new and initial service jobs, initial phase;
18 time to complete new and initial service jobs, final
19 phase; meter reading, percent read on cycle; telephone
20 calls, percent answered; billing accuracy (percentage of
21 bills not adjusted due to company error); routine
22 investigations (percentage completed within 30 days); and
23 the Outage Notification Incentive Mechanism (ONIM), a
24 measurement of the Company's performance in customer

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1 notification of service outages. For measurement
2 purposes, under the terms of the existing rate plan,
3 performance resulting from abnormal operating conditions,
4 such as strikes, natural disasters, major storms and
5 other unusual events, are not considered. In such cases,
6 Con Edison will omit data for the affected geographic
7 area from the calculation.

8 Q. Does the Company propose to continue the CSPI?

9 A. Con Edison is silent on the matter of continuing this
10 performance mechanism.

11 Q. Do you propose to continue the CSPI?

12 A. Yes. The Commission, in Case 94-E-0952, its general
13 electric rate and restructuring case, stated its
14 preference for performance-based regulation for
15 monopolies. As long as delivery service remains a
16 monopoly, there are virtually no consequences to Con
17 Edison for failing to provide good customer service,
18 absent CSPIs. CSPIs help to align shareholder and
19 customer interests by providing earnings consequences to
20 shareholders for the quality of service provided to a
21 utility's customers. Presently, CSPIs are in effect at
22 all of the major energy utilities that link earnings
23 directly to companies' performance on specific measures
24 of customer service. I propose continuation of Con

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1 Edison's CSPI.

2 Q. Does this conclude your testimony at this time?

3 A. Yes, it does.

1 BY MR. VAN ORT:

2 Q. Mr. Insogna, is it correct you prepared an
3 exhibit entitled "Prepared Exhibit of Martin Insogna,"
4 which you have identified as MS-1 and has been premarked
5 as Exhibit 174 for this proceeding?

6 A. Yes.

7 Q. Since the time you prepared that exhibit have you
8 determined any corrections are needed to it?

9 A. No changes or corrections are needed.

10 MR. VAN ORT: Mr. Insogna is available for
11 cross-examination.

12 JUDGE JACK: Do the parties have an agreed
13 order of cross?

14 MR. FOGEL: I am going first, Your Honor.

15 JUDGE JACK: Please proceed.

16 MR. FOGEL: Thank you.

17 CROSS EXAMINATION

18 BY MR. FOGEL:

19 Q. Good morning, Mr. Insogna.

20 A. Good morning.

21 Q. Been a while. Good to see you again.

22 A. Good to see you, Mr. Fogel.

23 Q. I believe even though it was part of

24 Ms. Kennedy's testimony you are the witness dealing with

1 the budgeting for the Power Your Way program. I believe
2 you were the person that responded to the
3 interrogatories I had propounded; is that correct?

4 A. I did respond to your interrogatory regarding
5 Power Your Way expenses that was part of the company's
6 outreach and education historic expenditure, which is
7 the subject of my testimony.

8 Q. I didn't want Ms. Kennedy to think I was ignoring
9 her.

10 It's my understanding from the testimony of -- I
11 will call the term Staff generically, but I believe it
12 was specifically Ms. Kennedy's testimony that the Staff
13 had supported the company's proposal to essentially
14 normalize out from historic year expenditure in the
15 amount of \$1.622 million in 2007 relating to Power Your
16 Way?

17 A. Yes.

18 Q. Now, prior to making that determination to accept
19 the company's position did Staff review the specific
20 items that were incorporated in that expenditures --
21 total expenditures of \$1.622 million?

22 A. We did not review the specific expenditures. We
23 rather considered the general nature of those
24 expenditures and their purpose.

1 Q. And in that regard if I could reference you to
2 what has been previously marked as Exhibit 382. I don't
3 know if Staff has a copy of that. I can bring it up to
4 you, but that was in 382.

5 And I believe it was a response to SCMC-1. In
6 item 1B the company provided specific listing of all the
7 components of that \$1.622 million?

8 A. I do have a copy of the interrogatories.

9 Q. So, based on your prior response Staff did not
10 specifically review each of those items before making
11 the determination to support the company's normalization
12 proposal?

13 A. Correct.

14 Q. Now, Mr. Insogna, you provided responses to SCMC
15 question number 1. And this was interrogatory response
16 reply dated September 18, 2008. Let me show you a copy
17 and make sure we are talking about the same document.

18 JUDGE LYNCH: I note SCMC-1 is the same
19 number on Exhibit 382, which is a different document.

20 MR. FOGEL: Let me double-check. Yes,
21 because one had two questions and this was SCMC-11.

22 JUDGE LYNCH: That's helpful. In the future
23 no matter how many sets you have ask questions in order.
24 So the last set, the last question, you never have this

1 problem.

2 MR. FOGEL: The difference here, Your
3 Honor --

4 JUDGE LYNCH: We don't need to spend any
5 more time on it.

6 MR. FOGEL: There were different parties.
7 This was my first question of the company. This is my
8 first Staff. That's why I was confused.

9 Q. In any event, Mr. Insogna, this represented an
10 accurate copy of your responses to interrogatory?

11 A. It does.

12 MR. FOGEL: Your Honor, I would like the
13 document marked for identification with the next
14 available number.

15 JUDGE JACK: Staff response to SCMC-1 will
16 be marked for identification as Exhibit 451.

17 (Exhibit 451 marked for identification.)

18 Q. Paraphrasing, I guess, basically Staff's
19 position, is it their view that given the development of
20 retail access in the company's service territory Staff
21 is of the view that it's not necessary to spend
22 ratepayer funds promoting retail access?

23 A. I think that's a fair and reasonable summary of
24 our position, yes.

1 Q. Would you -- would it be Staff's position,
2 however, that it may still be necessary for the company
3 to engage in various outreach and education activities
4 dealing with retail access as we go forward?

5 A. That is a reasonable expectation also, yes.

6 Q. So then it's not Staff's position by agreeing to
7 this accounting adjustment to espouse a view that says
8 the company should not engage in outreach and education
9 activity relating to retail access depending upon the
10 particular circumstances?

11 A. It's not our expectation that's what's going to
12 occur, that our belief the company will continue to
13 conduct certain activities that will be designed to
14 facilitate retail access, facilitate customer access to
15 information about competitive providers and information
16 about how to contract with alternative providers of
17 commodity.

18 Q. Based upon, I guess, this filing and current
19 economic circumstances, would it be your view that there
20 would be a continuing pressure on upward movement in
21 rates as we go forward based upon the best information
22 we have now?

23 A. The company's filing in this case -- both the
24 company's filing and Staff's position will involve an

1 increase in rates.

2 Q. Would you also agree that both the company as
3 well as the Commission will be looking for ways to help
4 customers deal with future increases in rates?

5 A. Yeah, I think it's safe to agree with that.

6 Q. Would you then believe as part of the company's
7 outreach and education activities it would be reasonable
8 for them to inform customers of opportunities that they
9 may have to help alleviate their energy cost burden?

10 A. Yes.

11 MR. VAN ORT: Clarification, are we asking
12 about the delivery rates or commodity rates?

13 MR. FOGEL: Doesn't make a difference. My
14 question is so good, it applies to both.

15 MR. VAN ORT: It applies to the last
16 question, also?

17 MR. FOGEL: Yeah. That was even better.

18 THE WITNESS: My answer is yes.

19 BY MR. FOGEL:

20 Q. Are you aware of the number of service
21 initiations Con Edison has on average on an annual
22 basis? Would you agree to the number subject to check
23 in excess of 300,000?

24 A. I could agree with that subject to check.

1 Q. Would that tend to indicate that on the Con
2 Edison system on an annual basis that there are a
3 material number of new customers coming onto the system
4 who were not there in the previous year?

5 A. One moment, I'm sorry.

6 Q. Take your time.

7 A. Your question again, please.

8 Q. Given that number of new service initiations,
9 would it be reasonable to conclude that on an annual
10 basis in the Con Edison service territory there are a
11 material number of new customers who have come onto the
12 system who may have not been there in the previous
13 calendar year period?

14 MR. VAN ORT: What do you mean by
15 "material"?

16 MR. FOGEL: Why don't we have the witness
17 ask the question.

18 MR. VAN ORT: It's your question. Define
19 the parameters so the witness can answer.

20 MR. FOGEL: If he has a problem with
21 material, he can tell me. He says, can you please
22 further define that and I will try and do that. The
23 mere fact that I used the word material does not make an
24 improper --

1 MR. VAN ORT: Material can be used in a
2 number of sentences. Could be used in the sense as to
3 what the Commission determines as materiality. I want
4 to make sure the record is clear as to what you are
5 referring to when you are asking the question.

6 MR. FOGEL: There is no PSC docket or
7 proceeding or Commission opinion number that has
8 addressed the issue of what's a material number of
9 service initiations in a year. Trust me on that one.

10 JUDGE JACK: Let's see if the witness can
11 answer.

12 THE WITNESS: Out of the total number of new
13 service initiations that the company experiences, which
14 you just asked me and I will agree subject to check is
15 approximately 300,000 annually, some number of those
16 will be customers who are new to Con Edison and not had
17 service before.

18 BY MR. FOGEL:

19 Q. And would you agree to whatever that number is --
20 and whether we want to label it material or good or
21 significant or more than five, whatever makes you happy,
22 would you agree that with respect to those customers it
23 may be necessary to provide that -- them with
24 information that other customers may have had or been

1 exposed to?

2 A. I will agree subject to check that it's more than
3 five.

4 Q. You are giving me a lot. I am walking home with
5 the cash. I earned my keep today.

6 Regardless of whatever the number is -- each year
7 the number will be a different number. Customers will
8 need to be apprised of information that other customers
9 already have?

10 A. New customers probably need more information than
11 customers who have been customers of the company
12 previously. And it's my belief that the company has a
13 new customer welcome kit that's regularly distributed to
14 new customers that provides such information.

15 MR. FOGEL: I have nothing further. Thank
16 you.

17 JUDGE JACK: Who's next in the order of
18 cross?

19 MR. LOUGHNEY: I have some questions, Your
20 Honor.

21 BY MR. LOUGHNEY:

22 Q. Good morning, Mr. Insogna.

23 A. Good morning, Mr. Loughney.

24 Q. My questions have to do with your testimony

1 regarding the AMR program.

2 Are you familiar with City witness Cherniak's
3 testimony regarding a large number of estimated bills
4 that the City receives?

5 A. I have seen that testimony, yes.

6 Q. Do you agree with the conclusion that estimated
7 bills are inferior to actual meter reads?

8 A. I can agree with the proposition that an actual
9 meter read is always preferred. The customer certainly
10 prefers to get an actual reading as opposed to an
11 estimated reading and it would be my belief and
12 expectation that so does the company.

13 Q. Would you agree that estimated bills deprive
14 customers of actual energy usage information that would
15 allow them to accurately track their energy usage?

16 A. Considering an actual bill as compared to an
17 estimated bill, the estimated bill is going to be less
18 certain and, therefore, less informative.

19 Q. Would you agree that actual energy usage is
20 important for consumers to evaluate the financial impact
21 of installing energy efficiency measures?

22 A. Expanding on my previous answer, Mr. Loughney,
23 certain information is preferable in making such
24 decisions as opposed to less certain information that

1 you can get from estimated readings. I guess that's a
2 yes.

3 Q. Thank you. To the extent that customers are
4 receiving inaccurate estimated bills, couldn't that
5 provide a disincentive to install more -- disincentive
6 to the more efficient use of electricity?

7 Again, the assumption is the estimated bills are
8 inaccurate?

9 A. Since an estimated bill could be -- could just as
10 easily be overestimated as underestimated, it's not
11 necessarily a disincentive to conservation that it's
12 inaccurate.

13 However, I am going to go back to my previous
14 answer and building once again upon that. I think to
15 the extent that the information that's provided by an
16 estimated bill is less certain it, therefore, provides
17 less certainty than an energy efficiency investment
18 would be cost effective.

19 Q. Thank you. In addition to energy efficiency
20 would you agree that estimated bills can be inequitable
21 because customers may be billed for usage that occurred
22 in either a prior month or subsequent month?

23 A. I think that can occur at least with respect to
24 demand readings, if there is a missed demand reset.

1 On -- as far as usage is concerned, if a bill is
2 over or underestimated in one month and then an actual
3 reading is taken the following month, they should pretty
4 much balance out in most cases.

5 Q. With respect to the missed demand reading, a
6 missed demand reading could result in over or
7 undercharges for the estimated -- on the estimated bill,
8 correct?

9 A. It would be hard to imagine a situation where it
10 would be an undercharge. If the demand meter is reset
11 and the demands recorded in this month are lower than
12 the previous month, then an accurate reading will be
13 taken.

14 If the meter has not been reset and it's still
15 registering the higher demand that was drawn in the
16 previous month, then an overcharge would occur.

17 Q. Thank you for that clarification.

18 Could you look at page 7 of your testimony, lines
19 7 through 12. You talk there about the saturated AMR
20 deployment program in Westchester County. Am I correct
21 that that saturated deployment has only occurred in
22 Westchester?

23 A. Yes. That particular project is limited to
24 Westchester.

1 Q. Do you know what the total cost of the saturated
2 program is projected to be when it's finished for
3 Westchester County?

4 A. I am afraid I don't have that number off the top
5 of my head, sir.

6 Q. Can I give you a number to accept subject to
7 check for 2009. And the reference is to customer --
8 company's customer operations panel, Exhibit C04. I
9 believe it's been marked as Exhibit 90 in this case.

10 And that exhibit shows that the saturated program
11 in Westchester County in 2009 will cost approximately
12 \$20 million while the strategic AMR program for
13 hard-to-read meters is \$1.3 million for that same year.

14 Can you accept those numbers subject to check?

15 A. Mr. Loughney, I am looking at the company's
16 Exhibit C04 now. It shows the saturation for 2009. It
17 shows the saturation program total as \$19.7 million and
18 the strategic program total as 3.08 million.

19 Q. And of the 3.08 million do you see the line that
20 separates out the hard-to-read meters?

21 A. That figure is 1.3 million, yes.

22 JUDGE LYNCH: This is Exhibit 90.

23 Q. On page 7 again of your testimony, lines 21
24 through 23, you are recommending the rejection of the

1 strategic AMR proposals; is that correct?

2 A. Yes.

3 Q. And the capital costs for the entire AMR proposal
4 -- strategic AMR proposal is identified as 3.08 million?

5 A. Yes.

6 Q. Do you have a breakdown of what the hard-to-read
7 portion of that would be?

8 A. For that I would refer to the same Exhibit 90.

9 And for the hard-to-read meters it would be 500,000.

10 Q. And that's --

11 A. I am sorry. Hard-to-read meters for replacements
12 is 500,000, in new locations it's 1.3 million, for a
13 total of 1.8.

14 Q. And you also cite to the O&M costs associated
15 with your total rejection of the strategic AMR proposal
16 is 34,000, correct?

17 A. Yes.

18 Q. What's the combined revenue requirement impact of
19 your recommended rejections of the strategic AMR? Have
20 you broken down the capital costs into what the revenue
21 requirement impact would be?

22 A. I have not, no.

23 Q. It would be some percentage of the \$3.8 million
24 -- \$3.08 million?

1 A. It would be some portion of that that's recovered
2 in the rate year.

3 Q. Plus the 34,000?

4 A. Yes.

5 MR. LOUGHNEY: I have nothing further, Your
6 Honor.

7 Thank you, Mr. Insogna.

8 THE WITNESS: Thank you.

9 JUDGE JACK: The company.

10 BY MS. SCHOENWETTER:

11 Q. Still morning. Good morning, Mr. Insogna.

12 A. Good morning.

13 Q. Would you agree that one of the reasons that the
14 company proposes AMI and AMR is that customers want
15 actual bills?

16 A. I will agree with the proposition the customers
17 want actual bills. I won't try to guess what the
18 company's motivations are.

19 Q. Are you aware that the company's routines for
20 estimating readings where they have not been able to get
21 them include the use of historical data on customer
22 accounts?

23 A. The estimation procedure where an actual read
24 can't be obtained would involve a review of historic

1 usage, yes.

2 MS. SCHOENWETTER: Thank you. No further
3 questions.

4 JUDGE JACK: No other parties are listed as
5 cross. Do you have any further questions or move to
6 redirect?

7 MR. VAN ORT: About five minutes to discuss.

8 JUDGE JACK: Certainly. Five minutes.

9 (Off the record.)

10 JUDGE JACK: Back on the record.

11 Staff has redirect?

12 MR. VAN ORT: We have no redirect, Judge.

13 JUDGE LYNCH: Thank you. The witness is
14 excused. Thank you, Mr. Insogna.

15 THE WITNESS: Thank you.

16 BRIAN HEDMAN, JOHN CHAMBERLIN and DONALD
17 BENNETT, after first having been duly sworn, was
18 examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. LEVENSON:

21 Q. Good morning, panel. Could you state your names
22 and occupation for the record.

23 A. (Hedman) My name is Brian Hedman. I'm a
24 principal with the Cadmus Group.

1 A. (Chamberlin) John Chamberlin, also principal with
2 the Cadmus Group.

3 A. (Bennett) Don Bennett, consultant on contract
4 with Cadmus.

5 Q. Gentlemen, do you have before you 23 pages of
6 direct testimony submitted in this case and 25 exhibits
7 accompanying that testimony?

8 A. (Chamberlin) We do.

9 Q. Were the testimony and exhibits prepared by you
10 or under your direction?

11 A. (Chamberlin) Yes.

12 Q. Do you have any corrections to the testimony or
13 exhibits?

14 A. (Bennett) Yes, we do.

15 Q. Go through them, please.

16 A. (Bennett) Beginning with the direct testimony on
17 page 3, line 23, there is a number 54.2 that should be
18 deleted and changed to 79.4.

19 On the next page, page 4, line 4, a number 211
20 should be changed to 214.

21 On page 8, line 23, immediately after the period
22 the word i-n should be capitalized capital I-n.

23 On page 9, line 13 the word actual should be
24 actually.

1 On page 13, line 17, two changes. The first, the
2 number 96 should be changed to 95. Then at the very end
3 of the line that after NYPA-9 the word corrected should
4 be inserted.

5 On page 26, line 19, the number 80 should be
6 deleted and the word eight should be inserted.

7 On page 27, line 23, on the question after the
8 word able insert to, t-o. So it reads, were you able to
9 identify?

10 On page 33, there will be several changes. On
11 line 9, the first word financial should be replaced with
12 the words stock price. So that it reads stock price
13 stability. On the next line, line 10, at the very end
14 of the line the A plus plus, one of the pluses is
15 deleted so that it reads A plus.

16 And I will say that this -- all parties have been
17 advised of this. I understand this was a change that
18 came about from a document that was available after our
19 testimony was submitted. And we did submit this to all
20 parties.

21 That causes a change on the next line. This is a
22 little complicated, but I will try to get it right. On
23 line 11, after the first word and delete to the
24 semicolon. In other words, delete through the word

1 level.

2 Q. Including the semicolon?

3 A. (Bennett) Including the semicolon.

4 Then after the word three insert the word other
5 utilities so that it reads, only three other utilities
6 are rated.

7 On line 14, the first time the word financial
8 appears delete that and insert the words stock price.

9 Then on line 19 to clarify at the beginning of
10 that line before the word stability insert stock price.

11 On page 36, line 1, delete the word financial and
12 insert stock price.

13 MR. RICHTER: Are those initial caps?

14 MR. BENNETT: In other places we haven't
15 been. They probably should be, but we didn't request
16 that be done or didn't insert that. It probably
17 technically would have been more correct to capitalize
18 every place.

19 BY MR. LEVENSON:

20 Q. Proceed.

21 A. (Bennett) Page 39, line 22, the number 30.455
22 should be replaced with the number 28.62.

23 And the same change on the next line.

24 There, it reads 30 and-one-half. Replace that with

1 28.62.

2 Page 40, the same change.

3 Q. Line 22?

4 A. (Bennett) Yeah, line 2. Replace 30.455 with the
5 number 28.62.

6 On line 4, replace the number 152.53 with 143.3.

7 On line 18, replace the number 51.6 with 42.4 and
8 again on line 19, the same change, replace the number
9 51.6 with 42.4.

10 And then on line 20, replace the number 143 --
11 I'm sorry -- 141.38 with the number 116.2.

12 On page 41, line 2, replace the number 54.2 with
13 79.4.

14 Then on page 43, line 12, it indicates answer.
15 The capital A period should be eliminated. It's all one
16 continuous answer.

17 Q. Mr. Bennett, or the panel, do you have
18 corrections to any of your exhibits that were
19 accompanying the direct testimony?

20 A. (Bennett) Yes, we do.

21 Q. I actually note the exhibits are -- I don't know
22 if I labeled them before, Exhibit numbers 195 through
23 214 and Exhibits 349 through 353, a couple of which
24 Mr. Bennett is going to comment on.

1 A. (Bennett) Right. My first change will be to
2 Exhibit 196, which is also captioned NYPA-2. And there
3 are several numbers here that change.

4 On the first column of numbers, that is under Con
5 Edison all classes, the line by reduced working capital,
6 the number now is 6008. That should be deleted and
7 replaced with 8,800.

8 Then if you will drop down two lines, the current
9 number is 211,000. That should be replaced with
10 213,792.

11 Then if you move to the next column to the right,
12 NYPA savings, again, by reduced working capital. The
13 current number is 808. That should be replaced with
14 1,183.

15 And then the total number on the bottom of that,
16 two rows below the current number, 28,369 should be
17 replaced with 28,744.

18 Q. Mr. Bennett, is this the first time the parties
19 are being made aware of these particular changes?

20 A. (Bennett) No, these and the other changes to the
21 exhibits have all been provided to the parties. This
22 one, I understand, was September 26. Basically as soon
23 as it was available.

24 Q. There might be an organizational question as to

1 how this exhibit is put together. Can you comment on
2 that.

3 A. (Bennett) Thank you. It is confusing. And for
4 that, we apologize. The NYPA savings total, the 28,744
5 is only the total of the last four lines.

6 In other words, the top two lines eliminate
7 revenue deficiency and TCC revenues are not included in
8 that total. So this total only has to do with the
9 allocation -- with revenue requirement issues and the
10 allocation of those to NYPA.

11 Q. And the same thing would apply to the EDSS
12 column?

13 A. (Bennett) Yes, that's right.

14 MR. LEVENSON: Note for the record we have
15 included in the official exhibits NYPA-9 corrected. We
16 have extra copies here.

17 Q. NYPA-9 corrected is a complete substitute of the
18 original. Could you just explain that.

19 A. (Bennett) Yes. My understanding is NYPA-9, which
20 is Exhibit 203, is completely new. It was provided to
21 the parties on the day after the testimony was
22 submitted.

23 And my understanding is that all parties have
24 been using it, this exhibit. It is in the record.

1 JUDGE LYNCH: Right, but let me clarify. It
2 is not really a substitution because what was identified
3 as 203 is NYPA-9 corrected. It's not the original.

4 MR. LEVENSON: That's what I meant to say.
5 We were discarding the original. All parties seemed to
6 have done so.

7 JUDGE LYNCH: I have this was done on
8 September the 12th. It's what I wrote on my copy.

9 MR. LEVENSON: Okay. I know it was very
10 close after the filing was made.

11 Q. Is there one more you wanted to talk about?

12 A. (Bennett) Yes, there is. Exhibit NYPA-24, which
13 is Exhibit 352. Okay, here there are quite a few
14 numbers here.

15 JUDGE LYNCH: This is a corrected version
16 subsequent to the original version?

17 MR. LEVENSON: We circulated it on September
18 26. We felt it was a little bit -- we felt we would
19 make the corrections on the record here.

20 MR. BENNETT: We wanted everyone to be
21 aware. May I proceed with these changes?

22 JUDGE LYNCH: Yes, absolutely.

23 MR. BENNETT: There are quite a few numbers
24 on this page. We will try to get them all

1 understandable the first time.

2 Looking under the column headed lag days,
3 the first column of numbers, the first number that
4 appears, 30.455 should be changed to 28.62.

5 MR. VAN ORT: By revenue recovery.

6 A. (Bennett) Yes. By revenue recovery. The very
7 same change on the next line changing 30.455 to 28.62.

8 Now is where it gets a little harder. The last
9 column on the right, first line by revenue recovery,
10 current number is 146,647,403. That is changed to
11 137,811,482.

12 The next line, current number is 5,885 -- the
13 existing number on line two of the table, the current
14 number is 5,885,855 and that should be changed to
15 5,531,216.

16 The very next line, this is a subtotal, the
17 current number is 152,533,258 and that would change to
18 143,342,698.

19 And then several lines down next to last line on
20 the table, and this is still in the right-hand column,
21 this is the line by the words net lag. The current
22 number is 51,604,425 and that would be replaced with
23 42,413,864.

24 Then the last number net, 141 -- existing number,

1 I am sorry, is 141,381,987 and that changes to
2 116,202,368.

3 JUDGE LYNCH: I just want to indicate for
4 the record all of those corrections are already
5 reflected in the document that has been identified as
6 352, which is NYPA-24 as corrected on September 26,
7 2008.

8 MR. LEVENSON: Thank you.

9 Q. Does that conclude your corrections on the direct
10 testimony and exhibits?

11 A. (Bennett) Yes, it does.

12 Q. If I were to ask you -- taking into account these
13 corrections in this testimony, would the answers and the
14 exhibits be the same?

15 A. (Bennett) Yes.

16 MR. LEVENSON: Your Honor, I move NYPA
17 panel's direct testimony to go into the record and be
18 received as if orally given.

19 JUDGE LYNCH: Motion is granted.

20 (The following is the prefiled direct
21 testimony of the NYPA panel:)

22

23

24

NYPA PANEL

1 I. INTRODUCTION AND PURPOSE OF TESTIMONY

2 Q. Members of the Panel, please state your names and business addresses.

3 A. [John Chamberlin] My name is John Chamberlin. My business address is The Cadmus
4 Group, 28 E. Main Street, Suite A, Reedsburg, Reedsburg, Wisconsin 53959.

5 [Don Bennett] My name is Don Bennett. My business address is Don Bennett Management
6 Consultant, Ltd., 4617 S. 3rd Street, Arlington, Virginia 22204.

7 [Brian Hedman] My name is Brian Hedman. My business address is The Cadmus Group,
8 720 S.W. Washington, Suite 400, Portland, Oregon, 97205.

9 Q. Please summarize your professional and educational experience – and whether you
10 have testified before any state or federal regulatory agencies.

11 A. [John Chamberlin] I am a principal with The Cadmus Group, where I am responsible for
12 utility rates, cost of service, and financial planning work. Prior to joining The Cadmus Group
13 (then Quantec, LLC) in March 2003, I was with KEMA Management Consulting, formerly
14 XENERGY, Inc. Before that, I was Vice President, Strategy and Planning at PG&E Energy
15 Services, where I led development of market entry and evaluation models, assessed
16 product profitability, and evaluated the economic and financial aspects of regulatory and
17 market rules, among other things.

18 I joined PG&E Energy Services following the 1997 sale of the consulting company I co-
19 founded: Barakat and Chamberlin, Inc. ("BCI"). This 150-person firm was a national leader
20 in utility consulting for more than ten years. At BCI, I led the electric utility consulting
21 practice, and personally managed numerous rate, cost of service and related assignments

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1 for utilities throughout North America. I have appeared in numerous regulatory proceedings
2 during the past 20 years, and have testified in several civil proceedings, and before several
3 state legislative bodies. I am the author of four books, numerous published articles and
4 hundreds of presentations on utility rate, cost of service and related issues. I hold a B.A. in
5 Economics from California State University at Chico, as well as an M.A. and a Ph.D. in
6 Economics from Washington State University. My resume is attached as part of Exhibit __
7 (NYPA-1).

8 [Don Bennett] I am an independent management consultant, providing financial and
9 strategic management consulting services to the energy utilities industry and other
10 infrastructure businesses. I have served the energy industry for 37 years, first as a financial
11 executive and, for the last 15 years, as a consultant. I was a partner at Arthur Andersen,
12 serving as the head of its National Utility Consulting Group before departing in 1997. Prior
13 to entering consulting, I served in various financial management positions with The
14 Southern Company, the electric holding company in Atlanta, Georgia. I have appeared as a
15 witness before this Commission as well as the Federal Energy Regulatory Commission. I
16 also have testified in several litigation proceedings, both in court and before arbitration
17 panels. I have a Bachelor of Science degree in Industrial Management from the Georgia
18 Institute of Technology (Atlanta, Georgia) and an M.B.A. from the University of North
19 Carolina at Chapel Hill. My resume is attached as part of Exhibit __ (NYPA-1).

20 [Brian Hedman] I am a principal with The Cadmus Group, where I am responsible for utility
21 rates, cost of service, and other regulatory services. Prior to joining The Cadmus Group in
22 February 2001 (then Quantec, LLC), I was Manager of Regulation for PacifiCorp. I was
23 responsible for the development of revenue requirements and demand side regulatory

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1 policy. I have testified before the Federal Energy Regulatory Commission and the regulatory
 2 commissions in New York, Wyoming, Utah, Idaho, Montana, Oregon and Washington. I
 3 received a B.A. in Accounting from the University of Washington and an M.S. in Economics
 4 from Portland State University. My resume is attached as part of Exhibit __ (NYPA-1).

5 We note here that all of the exhibits accompanying our testimony have been prepared by us
 6 or under our supervision.

7 **Q. What is the purpose of your testimony?**

8 A. On behalf of the New York Power Authority ("NYPA"), the purpose of our testimony is to
 9 present the findings of our review and analysis of the rate case filing made by Consolidated
 10 Edison of New York, Inc. ("Con Edison" or "the Company") which gave rise to this
 11 proceeding before the New York Public Service Commission (the "Commission" or
 12 "NYPSC").

13 **Q. Please summarize your recommendations for the Commission.**

14 A. As described in detail below we recommend that the Commission:

- 15 1) Reject Con Edison's imputation of an unsubstantiated additional \$15.1 million in
 16 alleged NYPA revenue deficiency
- 17 2) Require that Con Edison prepare a contemporaneous cost-of-service study or in lieu
 18 of that, allocate the final revenue requirement increase on an equal percentage basis
 19 across all customer classes
- 20 3) Assign NYPA its \$17.1 million proportionate share of excess TCC revenues
- 21 4) Reduce projected expenditures on rate base by 20%
- 22 5) Authorize no higher than 9.1% return on equity
- 23 6) Reduce working capital by ^{79.4}~~54.2~~ million

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1 7) Eliminate the EBCAP adjustment, reducing rate base by \$201 million
2 Exhibit __ (NYPA-2) summarizes the revenue requirement impact of these
3 recommendations. In total, our recommendations would reduce the Company's proposed
4 revenue requirement increase by \$21⁴ million.

5 **Q. Please describe the organization of your testimony.**

6 A. First, we describe the proposal's highly inequitable cost apportionment on the NYPA and
7 Economic Development Delivery Service ("EDDS") classes resulting from Con Edison's
8 unorthodox two-step revenue allocation process (which relies on an outdated 2005 cost-of-
9 service study) and recommend that the unsubstantiated NYPA revenue deficiency be
10 eliminated. Second, we address the inequitable treatment proposed for NYPA and EDDS
11 with respect to Transmission Congestion revenues and recommend to the Commission an
12 equitable solution. Third, we summarize our analysis of the revenue requirement portion of
13 the filing and present specific recommendations to the Commission.

14 **Q. Please explain why you structured your testimony in this way.**

15 A. While traditionally we would address the revenue requirement aspect of the rate filing first,
16 we believe that the inequities we discovered in our analysis, stemming from the Company's
17 proposed treatment of the NYPA and EDDS classes, on the issues of cost of service and
18 TCC revenues, are particularly detrimental to NYPA and its customers and merit a
19 heightened priority.

20 **II. COST-OF-SERVICE MODEL AND REVENUE INCREASE ALLOCATION**

21 **Q. Do you agree with Con Edison's reliance upon a 2005 cost-of-service model to**
22 **determine a revenue deficiency for the current proceeding?**

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1 **A.** No. Utility rates are set to recover the expected costs to provide the utility service. The rate
2 year in the current proceeding is 2010. It is unlikely that the costs incurred in 2005 will bear
3 any resemblance to the costs that will be incurred during the rate year. Similarly, the
4 revenues used to develop the purported deficiency in the 2005 study are neither the current
5 revenues, nor are they the revenues proposed for the rate year.

6 **Q. Please explain why a cost-of-service study is needed.**

7 **A.** There is little debate that the cost of providing electric service is the primary criterion for the
8 reasonableness of rates. It is the regulator's role to establish the cost of providing service to
9 each customer class and to set rates that allow the utility a fair opportunity to cover its costs
10 and earn a return on its shareholders' investment based on the costs and revenues that are
11 expected to be received during the period that the rates are in effect.

12 **Q. Are you aware of any sources that lend support to these principles that you've**
13 **outlined?**

14 **A.** Yes. On page 389 of their 1988 book "Principles of Public Utility Rates" authors Bonbright,
15 Danielsen and Kamerschen state "Without a doubt the most widely accepted measure of
16 reasonable public utility rates and rate relationships is cost of service." On page 12 of the
17 1992 "Electric Utility Cost Allocation Manual of the National Association of Regulatory Utility
18 Commissioners" ("NARUC Manual" or the "Manual") indicates that cost studies are used by
19 regulators for the following purposes:

- 20 - To attribute costs to different categories of customers based on how those
21 customers cause costs to be incurred.
22 - To determine how costs will be recovered from customers within each customer
23 class.

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- 1 - To calculate costs of individual types of service based on the costs each service
2 requires the utility to expend.
- 3 - To determine the revenue requirement for the monopoly services offered by a utility
4 operating in both monopoly and competitive markets.
- 5 - To separate costs between different regulatory jurisdictions.

6 **Q. Does the NARUC Manual describe the cost allocation procedure?**

7 **A.** Yes, the Manual devotes several chapters to describe the specific methodologies commonly
8 used for both embedded cost studies and marginal cost studies. The Manual summarizes
9 the process as:

10 The total revenue requirement of the utility is attributed to the various classes of
11 customers in a fashion that reflects the cost of providing utility services to each
12 class. The cost allocation process consists of three major steps: functionalization of
13 costs, classification of costs, and allocation of costs among customer classes.

14 **Q. How are total revenue requirements determined?**

15 **A.** NARUC defines total revenue requirements as the sum of the costs (including a fair return
16 on investment) to serve all of the utilities various classes of customers.

17 **Q. Does the New York Codes, Rules and Regulations ("NYCRR") address cost of
18 service?**

19 **A.** Yes, we think so. Section 16 NYCRR 61.3(a) states (in relevant part):

20 (a) The utility whose rates, rules and regulations are being considered shall establish by
21 competent testimony;

22 (1) the annual revenues under the existing rates, rules and regulations that are being
23 considered and under those which said utility proposes to charge;

24 (2) number of units of service rendered (e.g., kilowatt-hours, M cubic feet, car miles and

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1 car hours or telephone calls) **for each service classification involved**, actual and
2 proposed; (emphasis added).

3 Section 16 NYCRR 61.3(b) states (in relevant part):

4 (b) Such utility shall establish by competent testimony:

5 **(1) the detailed cost of rendering the service to which such rates, rules and**
6 **regulations are applicable;**

7 **(2) the cost per unit of service rendered as defined in the preceding paragraph;**
8 (emphasis added).

9 Section 16 NYCRR 61.3(c) states (in relevant part):

10 **(c) Such revenues and costs shall be:**

11 **(1) for each of the three years immediately preceding the initiation of the case**
12 (emphasis added)

13 These rules clearly indicate that there is a need to be able to compare the detailed cost of
14 service for each service class to the revenues for those classes for each of the three years
15 prior to the case.

16 **Q. Does Con Edison's revenue increase allocation methodology follow the Bonbright**
17 **measure of reasonable rates, the NARUC Manual or the NYCRR?**

18 **A.** While we are not making a legal interpretation of the NYCRR, a layman's reading of the rule
19 would seem that Con Edison has not done so and indeed has not even updated the cost-of-
20 service study it prepared for the prior rate case, 07-E-0523. The rules appear to require that
21 the proposed revenues be based on costs and that those costs be more contemporaneous
22 than Con Edison is proposing. Con Edison's allocation of the proposed revenue increase is
23 inconsistent with the NARUC guidelines and Bonbright principles in that they 1) allocate the

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1 revenue increase on the basis of forecasted revenues rather than costs and 2) rely on an
2 outdated cost-of-service study.

3 **Q. Please explain why you believe that forecasted revenues are not an appropriate basis**
4 **for allocating the revenue requirement increase.**

5 **A.** Allocating the revenue requirement increase on forecasted revenues implicitly assumes that
6 the costs that will be incurred by Con Edison during the rate period will be incurred by the
7 customer classes in the same proportion as the costs that underlie the rates used to
8 forecast the revenues.

9 **Q. For ratemaking purposes, is it proper to assume that future costs will be incurred in**
10 **the same proportion as they were in the past?**

11 **A.** No. Such an assumption would be valid only when all customer classes are growing at the
12 same rate and when all investment is proportional to existing rate base. It is highly unlikely
13 that either condition is true very often or for any length of time. Consequently, it is vital that
14 cost-of-service studies be updated frequently and that they match the period during which
15 the rates will be in effect.

16 **Q. Please describe Con Edison's revenue requirement increase allocation process in**
17 **more detail.**

18 **A.** Con Edison employs a two step revenue requirement allocation. In the first step Con Edison
19 conducts a cost-of-service study based on an historic test period. The various components
20 of rate base and operating expenses are functionalized and allocated to the customer
21 classes using allocation factors that are based on cost drivers, such as kWh, kW and
22 numbers of customers. In the current case, a cost-of-service study (developed for the prior
23 case, 07-E-0523) was based on 2005 costs. In the first step, the cost-of-service study
24 compares the allocated costs to revenues based on current rates applied to the billing

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1 determinants of the historic period. This comparison indicates whether each customer
2 class's revenues would have fallen short of or exceeded their costs had the current rates
3 been in effect during the historic period.

4 A revenue deficiency or surplus is indicated when the calculated return on rate base
5 exceeds a tolerance band around the return that would have been earned by the Company
6 had the current rates been in effect during the historic period. The calculation of this
7 revenue deficiency or surplus is the first step in the two step process.

8 **Q. Why is a tolerance band employed?**

9 A. Cost-of-service studies are developed based on assumptions about the underlying cost
10 drivers such as the demand a customer or customer class places on the system during the
11 time that the system peaks or the total energy that a customer purchases through the
12 system. The use of a tolerance band reflects the realization that both the impacts that these
13 drivers actual^{ly} have on the system and the measurement of the drivers themselves cannot
14 be determined precisely.

15 **Q. The 2005 cost-of-service study employed a 10% tolerance band. Is that a reasonable
16 band to assume in this case?**

17 A. No. The rate year in this case is 2010, five years distant from the period of the cost-of-
18 service study. Such a time difference suggests that precision with which the cost-of-service
19 study reflects the actual costs that will be incurred during the rate period is greatly
20 diminished. We suggest that it is improper to base rates upon a 2005 cost-of-service study,
21 however, if the study is used the tolerance band should be expanded to reflect this
22 additional uncertainty.

23 **Q. Has the New York Commission previously relied upon a cost-of-service model
24 developed for a prior case to determine rates in a current case?**

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1 A. We have found no evidence that the Commission has ever relied on a re-used cost-of-
2 service model. Con Edison also indicates that they are not aware of any such occasion. See
3 Exhibit __ (NYPA-3).

4 **Q. Please describe the second step in the revenue requirement allocation process?**

5 A. The second step is the actual allocation of the revenue requirement increase. Con Edison
6 does not allocate the revenue requirement increase based on the projected costs of each
7 customer class; rather, the Company allocates the increase based on the forecasted
8 revenues for each class adjusted by the revenue deficiency or surplus identified in the first
9 step. Con Edison forecasts each customer class energy and demand for the rate year. The
10 Company then applies the rates currently in effect to those forecasted demand and energy
11 values to forecast the revenues for each customer class. The revenue deficiency or surplus
12 identified in the first step is then added to the forecasted revenues to create the total
13 revenues by class. The proportion of these total class revenues to the total system revenues
14 is then used to allocate the revenue requirement increase to each customer class.

15 **Q. Does that complete the two-step process?**

16 A. Not quite. After the revenue requirement increase is allocated to each customer class the
17 revenue deficiency or surplus (from the first step) is added to the allocated revenue
18 requirement increase to form the total increase proposed for each customer class.
19 Consequently, the identification of a revenue deficiency in step one has a multiplicative
20 impact on the overall increase proposed for that class. It has a direct impact in that it is
21 added to any allocation of the proposed revenue requirement increase and it has an indirect
22 impact in that it is added to the revenues used to create the allocation percentage.

23 **Q. Is this method of allocating revenue requirements commonly accepted in the**
24 **industry?**

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1 A. No, in fact we are unaware of any other utility in the nation that uses such a method.

2 **Q. What is the total revenue deficiency that Con Edison has incorporated into the**
3 **proposed allocation of revenues to NYPA?**

4 A. The total "deficiency" that Con Edison seeks from NYPA is \$30.2 million. This is comprised
5 of two parts:

6 a. a deficiency of \$15.1 million is built into the revenues shares for NYPA from the
7 immediately prior rate case. This deficiency will continue (under the Con Edison proposal)
8 into the current case.

9 b. Con Edison proposes to add an additional \$15.1 million. This second \$15.1
10 million is the portion of the alleged deficiency in the last case that was denied by the NYPSC
11 in the final order. Somehow, Con Edison believes it is entitled to recover this additional
12 amount, even though the Company does not even make an attempt to show that NYPA is
13 producing a current revenue deficiency, nor does the Company make an attempt to show
14 that NYPA will produce a deficiency during the period that the rates will be in effect. See
15 Exhibit __ (NYPA-4). We will discuss each of these sources of "deficiency" in turn.

16 **Q. So then how does Con Edison justify the inclusion of a \$15.1 million revenue**
17 **deficiency in addition to the \$15.1 million embedded in current rates?**

18 A. While they reiterate that they have not conducted a more recent cost-of-service study, the
19 Company indicates that it is their belief "that the 2005 Embedded Cost of Service ("ECOS")
20 study indicates that there is a remaining NYPA deficiency for the rate year beginning April 1,
21 2009". See Exhibit __ (NYPA-5).

22 **Q. Did you prepare an updated cost-of-service study for the NYPA class?**

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1 A. Yes. We developed an updated cost-of-service study that included updated allocators and
2 cost-of-service data from the FERC Form 1. The cost-of-service study is based on allocators
3 updated for NYPA load research and as such reflects only NYPA's updated cost.

4 Q. **Please describe the cost-of-service allocators that you updated.**

5 A. NYPA conducts an on-going study of its loads and provides the information to Con Edison
6 for use in Con Edison's class demand study. We used NYPA's data along with Con Edison's
7 system peak data to calculate a revised transmission demand allocator. The D03 allocator
8 declined from 13.71% in Con Edison's 2005 cost-of-service study to 12.59% in 2007.

9 Q. **Was this decline expected?**

10 A. Yes. The D03 allocator measures the class contribution to Con Edison's peak demand
11 hours. Con Edison has indicated that one of the primary drivers of its demand growth is
12 residential room air conditioning, see Exhibit __ (NYPA-6). The increased use of air
13 conditioning shifts additional demand into the summer months, where Con Edison's peak
14 occurs. The increased air conditioning load tends to decrease NYPA's relative contribution
15 to the summer peak.

16 Q. **Did you update the other allocation factors?**

17 A. Yes. The revenue allocator (R01) and kWh allocator (K01) were updated based on the
18 Company's response to New York City's interrogatory request ("IR") 24, see Exhibit __
19 (NYPA-7). The Company declined to provide the detailed meter data required to determine
20 the high tension (D04) and low tension (D09) allocators, see Exhibit __ (NYPA-8),
21 consequently the D04 and D09 allocators were estimated based on their historical
22 relationship to the demand allocator (D03).

23 Q. **Did you also update the underlying cost data?**

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1 A. Yes. We used the FERC Form 1 to update the 2005 cost-of-service data for 2006 and 2007.
2 The FERC data is not functionalized in the manner of the 2005 cost-of-service study nor
3 does it have the ratemaking and tax adjustments. Consequently, we functionalized the
4 FERC data on the same basis as the 2005 study. This approach implicitly assumes that the
5 investments that Con Edison is making going forward mirror those made historically. We
6 assumed the same ratemaking and tax adjustments as used in the 2005 study.

7 **Q. What did you assume for revenues?**

8 A. We used the actual 2006 and 2007 revenues provided by Con Edison in response to New
9 York City IR 24 for the sales revenue, see Exhibit __ (NYPA-7). We assumed the 2005 level
10 for miscellaneous revenues.

11 **Q. Do these revenues reflect the rate increase ordered in Case 07-E-0523?**

12 A. No, they do not. These are the actual revenues paid to Con Edison during 2006 and 2007.

13 **Q. Do the 2006 and 2007 studies indicate that NYPA continues to exhibit a revenue
14 deficiency?**

15 A. No, they do not. Both studies indicate that NYPA's rate of return is within a 10% tolerance
16 band around Con Edison's earned return. In 2006 NYPA's rate of return is 97% of Con
17 Edison's while in 2007 NYPA's return is ⁵96% of Con Edison's, see Exhibit __ (NYPA-9). ^{corrected}

18 **Q. Do your revenue assumptions include the higher expected revenues from the
19 elimination of NYPA's share of the net transmission congestion revenues or the
20 assignment of \$15.1 million in revenue deficiency both of which were ordered in Case
21 07-E-0523?**

22 A. No, they do not. NYPA's revenues would be expected to increase by more than \$8.5 million
23 due to the elimination of the TCC credit and by more than \$17.4 million due to the

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1 assignment of the \$15.1 million revenue deficiency if the revenues were updated to reflect
2 the rates ordered in Case 07-E-0523. See Exhibit __ (NYPA-10).

3 **Q. If the revenues were adjusted to reflect current rates would NYPA produce a revenue**
4 **deficiency?**

5 **A.** Not at all. As we noted above, the updated cost-of-service models indicate that even under
6 the old rates NYPA does not have a deficiency in 2006 or 2007 due to the declining
7 allocation factors and the shift in investment towards distribution plant. If the revenues were
8 adjusted to the current rates NYPA would show a surplus of \$8 million in both 2006 and
9 2007. It is worth repeating that Con Edison has produced no evidence in this case indicating
10 that NYPA produced a deficiency in 2006 or 2007. They rely solely upon the outdated 2005
11 ECOS.

12 **Q. What would be the effect of incorporating the Company's proposed additional \$15.1**
13 **million revenue deficiency on NYPA?**

14 **A.** It would further increase NYPA's surplus.

15 **Q. What do you conclude about the use of a 2005 cost-of-service study to determine**
16 **rates in this case?**

17 **A.** Our analysis clearly demonstrates the need for a more contemporaneous cost-of-service
18 study to support the current filing. Con Edison's reliance on a 2005 cost-of-service study
19 means that the costs occasioned by the customer classes during the 2009-2010 rate year
20 will be 5 years removed from the costs used to determine NYPA's alleged revenue
21 deficiency. The load and investment data clearly indicate that NYPA's share of the total
22 system costs are declining while NYPA's rates have been increased proportionately more
23 than the system in each of the last two rate cases. The updated cost-of-service studies
24 indicate that NYPA's revenue deficiency no longer exists. Imputing an additional \$15.1

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1 million based on an antiquated cost-of-service study would swing the pendulum past parity
2 and result in a significant revenue surplus. Such a result meets neither the standard of fair
3 nor reasonable rates.

4
5 **Q. In light of these conclusions, do you have any recommendations for the**
6 **Commission?**

7 **A.** Yes. First, the Commission should reject Con Edison's proposal to impute an additional
8 \$15.1 million alleged revenue deficiency on NYPA. Second, the Commission should require
9 that Con Edison follow the NYCRR and produce a cost-of-service study for the three years
10 prior to the initiation of this case. Finally, in the absence of an updated cost-of-service study
11 the Commission should apportion any rate increase equally across all classes.

12 **III. TRANSMISSION CONGESTION REVENUES**

13 **Q. Do you have concerns with the Company's proposed rate treatment of auction**
14 **proceeds from Transmission Congestion Contracts (TCCs)?**

15 **A.** Yes, our analysis shows that the proposed treatment results in an unfair allocation of
16 revenue requirement to the NYPA and EDDS classes.

17 **Q. The Company has said in its testimony that its TCC proposal is consistent with the**
18 **Commission's Order in the immediately previous rate case (07-E-0523) and,**
19 **accordingly, the current rate plan. In that order, and the NYPSC's subsequent order**
20 **denying NYPA's request for rehearing, the Commission concluded that there was "no**
21 **good reason" to allow NYPA to share in TCC auction proceeds. With respect to the**
22 **current proposal, do you agree?**

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1 **A.** With all due respect to the Commission, we do not agree. This issue was raised late in the
2 last case (on briefs), and there was no opportunity to develop testimony, nor to cross
3 examine witnesses on this critical topic. Our testimony in this case will show that the
4 evidence is clear that NYPA and EDDS pay their proportionate share of the costs of the
5 entire Con Edison transmission system, and are therefore entitled to a proportionate share
6 of the excess transmission congestion revenues that accrue to that system. Our proposed
7 treatment of NYPA and EDDS is exactly the same as that proposed for the Con Edison
8 Native Load customers.

9 **Q. How does Con Edison propose to incorporate revenue from the sale of Transmission
10 Congestion Contracts?**

11 **A.** The Accounting Panel explains in their testimony that the revenue requirement assumes
12 \$150 million in projected auction proceeds from the sale of TCCs. This value reflects a
13 credit to the revenue requirement. Any difference between the projected value and actual
14 proceeds will then be reconciled through the Company's Monthly Adjustment Clause
15 ("MAC").

16 **Q. Does NYPA benefit from these proceeds?**

17 **A.** No. The Final Order in Case 07-E-0523 specifically excluded NYPA participation in TCC
18 auction proceeds. The NYPSC, reversing the recommendation in the RD, accepted Con
19 Edison's arguments that the transmission system used to serve NYPA is "not related to" the
20 transmission system used to serve Con Edison Native Load customers, and that since
21 NYPA was compensated for its congestion costs (as a result of a May 11, 2000 Agreement),
22 any further participation in TCC auction proceeds would be unfair to Native Load
23 Customers.

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1 **Q. In order to better understand the basis for the allocation of TCC revenues, please**
2 **provide a brief overview regarding TCCs. What is a TCC?**

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

6 **Q. How does Con Edison acquire TCCs?**

7 **A.** In three ways. First, when the NYISO was formed, Con Edison was granted a set of TCCs
8 that were thought to be sufficient to hedge the congestion costs of its Native Load
9 customers. These are referred to as Existing Transmission Capability for Native Load
10 ("ETCNL" or "Native Load TCCs"). Second, the NYISO also assigned Con Edison (and
11 other New York Transmission Owners) a set of Residual TCCs. Third, in 2000, NYPA
12 assigned to Con Edison NYPA's original TCCs (within Con Edison's service territory) that
13 were allocated to it by the NYISO. Con Edison may also purchase TCCs on its own
14 account, but NYPA does not pay for, nor have an interest in this last category, and we
15 ignore it in the remainder of this discussion.

16 **Q. How does a transmission owner receive revenue from these TCCs?**

17 **A.** In two basic ways:

18 1. The transmission owner can sell TCCs in the NYISO market, and receive "auction
19 proceeds" from the sale.

20 2. The transmission owner receives "congestion rent" for any TCCs that it retains
21 (from users of those portions of the transmission system).

22 Since these are two related sources of revenue (i.e., from TCC auction proceeds, as well as
23 congestion rents associated with TCCs retained by the transmission owner), it is appropriate
24 to refer to these collectively as "congestion revenues". In the case of Con Edison, its

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1 congestion revenues are derived from the proceeds Native Load TCC and Residual TCC
2 auctions as well as congestion rents from the NYPA grandfathered TCCs that it retains.

3 **Q. Prior to Case 07-E-0523, did NYPA share in any of the TCC auction proceeds?**

4 **A.** Yes, prior to this most recent decision, NYPA received a share of the first \$60 million in TCC
5 revenues. The share was 14.22%; or the proportion of NYPA load to the total system load.
6 This share is also the basis for the allocation of the system transmission cost to NYPA.

7 **Q. In Case 07-E-0523, Con Edison argued that the transmission system used to serve**
8 **NYPA was "not related to" the transmission system used to serve Con Edison's**
9 **Native Load, and that NYPA was therefore only entitled to reimbursement of its**
10 **congestion costs, and not to any transmission revenues associated with the "Native**
11 **Load system". If the Company were to repeat this argument in the current case,**
12 **would you agree?**

13 **A.** No, there is no factual basis for this argument. Con Edison provided no support at all for the
14 assertion, and it is in fact wrong. Con Edison's system is integrated. The statement that the
15 transmission facilities used to serve NYPA are "not related to" transmission facilities used to
16 serve Native Load is a fiction. The facts are that NYPA agreed to give Con Edison a set of
17 TCCs (totaling 1680 MWs) that were provided to NYPA when the NYISO was formed.
18 These "grandfathered TCCs" were intended to approximate the pre-existing network service
19 agreements between NYPA and Con Edison. Since TCCs are all "point to point" rights,
20 there could not be an exact match between the previous network agreements, and the
21 TCCs. When it became clear that NYPA received TCCs that were worth more than the pre-
22 existing network agreements, NYPA agreed to turn the TCCs over to Con Edison, in return
23 for being reimbursed for its actual congestion costs. NYPA did not, however, give up any
24 right to receive a share of the surplus in revenues accruing to the transmission system. In

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1 fact, if the "NYPA system" was separate and distinct, the appropriate cost allocation would
2 be a direct assignment of the costs of that system, rather than an allocation of a share of the
3 costs of the total system. It is the latter approach, of course, that Con Edison employs.
4 That is, NYPA pays for the cost of the **entire** transmission system in proportion to its use of
5 the **entire** transmission system. Con Edison itself agrees that the transmission system used
6 to serve NYPA is not an electrically separate system, see Exhibit __ (NYPA-11).

7 **Q. Does Con Edison use any part of the "NYPA" transmission "system" that is**
8 **represented by the NYPA grandfathered TCCs?**

9 A. Of course it does. The best evidence for this is that the congestion rents collected by Con
10 Edison from the grandfathered NYPA TCCs are substantially larger than the congestion
11 rents incurred by NYPA. Exhibit __ (NYPA-12) shows that, in 2005, for example, Con
12 Edison collected \$174.5 million in congestion rents from various users of the grandfathered
13 NYPA TCCs, while it reimbursed NYPA for \$112.5 million in NYPA congestion costs.

14 **Q. Does Con Edison continue with the exclusion of NYPA from participation in**
15 **congestion revenues in this case?**

16 A. Yes, Con Edison does not update the 2005 ECOS. The Company uses the "revenue
17 shares" calculated from the final order in Case 07-E-0523. These revenue shares exclude
18 NYPA from any participation in TCC revenues. Since NYPA does not pay the MAC, it
19 cannot benefit from any flow through additional TCC auction revenues, nor congestion
20 rents, via the MAC.

21 **Q. Do users of the transmission system also incur congestion costs?**

22 A. Yes, both NYPA and Con Edison incur congestion costs. NYPA's congestion costs are fully
23 hedged, since Con Edison reimburses NYPA for its congestion. Con Edison's Native Load
24 congestion costs are also fully hedged, to the extent that TCC auction proceeds and

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1 congestion rents exceed those congestion costs. The excess of TCC auction proceeds and
2 congestion rents, under the current proposal, will flow entirely to Con Edison Native Load
3 Customers. NYPA will not share in this at all.

4 **Q. Please quantify the transmission congestion revenues in this case.**

5 First, Con Edison sells its Native Load TCCs in the NYISO market. Under the NYISO tariff,
6 Con Edison is required to sell all its Native Load TCCs in the auction. This resulted in \$105
7 million in revenue in 2006. See Exhibit __ (NYPA-13).

8 Second, Con Edison also receives income from congestion rents associated with
9 grandfathered TCCs assigned by the NYISO to NYPA at the creation of the NYISO. In
10 accordance with the 2000 Agreement, Con Edison reimburses NYPA for its congestion
11 costs within its service area associated with its governmental load in New York City and its
12 business customer load in the City and keeps the remainder (which in turn is flowed through
13 the MAC). In 2006, Con Edison received \$83 million in TCC rents from which it reimbursed
14 NYPA for \$56.5 million in congestion costs. See Exhibit __ (NYPA-12).

15 Third, Con Edison receives revenues from the sale of Residual TCCs by the NYISO in the
16 NYISO auction market. This resulted in approximately \$44 million in revenue to Con Edison
17 in 2006. See Exhibit __ (NYPA-13).

18 **Q. Is NYPA entitled to any part of these congestion revenues?**

19 **A.** Yes, NYPA is entitled to its share of the **excess** of congestion revenues over congestion
20 costs.

21 **Q. Please explain.**

22 **A.** Congestion revenues are an offset to the revenue requirement associated with the
23 transmission system, and should be credited to the parties that pay for the system. NYPA

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1 pays for the transmission system in proportion to its use; it should be treated exactly like the
2 Native Load Customers in both the allocation of the transmission system costs, as well as
3 the transmission system revenues. To afford NYPA any less is unfair, and confiscatory.

4 **Q. But, isn't NYPA fully compensated for its congestion costs when Con Edison**
5 **reimburses NYPA all of its congestion costs?**

6 **A.** Yes, but it is not fully compensated in comparison with Native Load Customers. While it is
7 true that, under the terms of the 2000 Agreement, Con Edison reimburses NYPA for all of its
8 congestion costs associated with the "grandfathered TCCs," retaining all of the congestion
9 revenues for the benefit of Native Load customers produces a significant "surplus" (ie.,
10 congestion revenues exceed congestion costs) for the Native Load customers, while NYPA
11 is afforded exactly zero benefit. NYPA is seeking is to be treated exactly like Native Load
12 customers: to share in the congestion "surplus" in proportion to the allocation of the
13 transmission cost. To see the fairness of this one might also suggest that Con Edison's
14 Native Load customers are fully compensated when they receive the benefit of auction
15 revenues equal to the Native Load congestion costs (similar to Con Edison's reimbursement
16 to NYPA for NYPA's congestion costs), and therefore any further benefit to Native Load
17 customers is somehow "double counting." In fact, both NYPA, and Native Load customers
18 pay for the system in proportion to their use, and both should share in excess congestion
19 revenues in proportion to how they pay for the system.

20 **Q. How is the proposed treatment of congestion revenues unfair to NYPA?**

21 **A.** Exhibit __ (NYPA-12) shows the various components of the "congestion surplus" for 2005
22 and 2006. Line 1 shows that the TCC auction proceeds associated with Native Load was
23 \$169 million (2005) and \$105 million (2006). Con Edison also received \$37 million and \$44
24 million (in 2005 and 2006) from the sale of residual TCCs. Congestion costs associated

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1 with Native Load was \$116.5 million (2005) and \$51 million (2006). Thus, there is a
2 congestion surplus (or "excess congestion revenues") of \$89.5 million (2005), and \$98
3 million (2006).

4 **Q. Does NYPA share in any of this surplus?**

5 A. No, it is entirely retained by Native Load customers. The TCC revenues are an offset to
6 revenue requirement for Native Load Customers, while the congestion costs are flowed
7 through the MAC.

8 **Q. Does Con Edison have any Native Load customers who purchase power from an
9 entity other than Con Edison?**

10 A. Yes, approximately 61% of Con Edison's Native Load is represented by customers, who like
11 NYPA, pay Con Edison for the use of its transmission and distribution system, but purchase
12 power from some other entity. See Exhibit ___ (NYPA-14) which provides raw data upon
13 which this percentage is based.

14 **Q. Are these customers excluded from sharing in the "congestion surplus"?**

15 A. No, they receive their allocated share of the surplus through the MAC. Only NYPA is
16 excluded from the surplus.

17 **Q. You mentioned earlier that Con Edison receives revenue, in the form of congestion
18 rent, from the NYPA grandfathered TCCs. Does this revenue exceed the congestion
19 costs that Con Edison is required to reimburse NYPA?**

20 A. Yes, the congestion rents exceed NYPA's congestion costs. Exhibit _(NYPA-12) shows that
21 Con Edison received \$62 million (2005) and \$26.5 million (2006) more in congestion rents
22 than it reimbursed NYPA for congestion costs.

23 **Q. How does Con Edison propose to treat this excess or surplus revenue?**

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1 A. The surplus flows through the MAC to the benefit of Native Load customers. NYPA would
2 not receive a share of it at all.

3 **Q. But doesn't the 2000 Agreement require that Con Edison retain the surplus?**

4 A. The agreement states that NYPA is to be reimbursed for its congestion costs, and that Con
5 Edison therefore retains any surplus. However, the agreement is silent on the ratemaking
6 treatment of the surplus Con Edison retains. It certainly does not state that the surplus is to
7 be retained solely for the benefit of Native Load customers.

8 **Q. Do you believe that NYPA is entitled to a share in the surplus of this congestion rent?**

9 A. NYPA is entitled to share in this surplus in exactly the same manner as Native Load
10 customers; that is, it is entitled to a share in proportion to the manner in which the cost of
11 the system is allocated.

12 **Q. Since NYPA is reimbursed for its congestion costs, why should it have any right to**
13 **participate in either the Native Load congestion "surplus", or the NYPA congestion**
14 **"surplus"?**

15 A. For the same reason that Native Load customers have a right to these revenues: Con
16 Edison generates these revenues with the transmission facilities that both groups pay for.
17 The question might be turned around and asked: why should Native Load customers have
18 a right to share in the congestion surplus, instead of their right being limited to a recovery of
19 incurred congestion costs? Both NYPA, and Native Load customers should be treated in an
20 identical manner, and both should share in the congestion surplus in proportion to their
21 assignment of the cost of the transmission system.

22 **Q. How should actual congestion revenues be allocated if they are greater than, or less**
23 **than the \$150 million built into the Company's current proposal?**

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1 A. Under the Company's proposal, any difference is passed through the MAC, in which NYPA
2 does not participate. We recognize that this may create an unfair situation. It would be
3 unfair to NYPA, if the actual value is greater than \$150 million, and unfair to customers who
4 pay the MAC if it is less. We therefore would agree to an adjustment mechanism for NYPA
5 that would apply a pro rata share of the difference between the actual congestion surplus
6 and \$150 million. This mechanism could also include an adjustment to recover Native Load
7 congestion costs in the extremely unlikely event that Native Load congestion costs were
8 greater than congestion revenues – to ensure that both NYPA and Native Load congestion
9 costs were fully hedged. However, if there are Native Load customers who also do not pay
10 the MAC, such a true up should be applied to them as well.

11 **Q. Please summarize the appropriate treatment of congestion revenues.**

12 A. Congestion revenues include both congestion rents, and TCC auction proceeds. These
13 represent offsets to the cost of the transmission system. They should be allocated to all
14 customers in proportion to the costs paid for the transmission system. This allocation must
15 reflect the congestion costs paid by customers as well. The "surplus" (i.e., the congestion
16 revenues minus congestion costs) should be allocated to all customers in proportion to their
17 allocation of the costs of the system.

18 Exhibit __ (NYPA-12) shows that the total surplus for Con Edison was \$151.5 million in
19 2005, and \$124.5 million in 2006. Since the test year is 2006, NYPA should receive an
20 amount equal to its ECOS transmission allocator (D03), times \$124.5 million, or a total
21 amount equal to \$17.1 million. Note that the D03 allocator in the 2005 ECOS was 13.713%
22 (i.e., not 14.22%).

23 Con Edison's proposal, and our proposed alternative can be summarized in Figure 1 below:

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Figure 1

Proposed Con Edison Rate Plan:	
Native Load:	Congestion Costs recovered through TCC proceeds Excess TCC proceeds returned to NL via the MAC Excess NYPA congestion rents distributed via the MAC
NYPA:	Congestion Costs recovered through 2000 Agreement Excess congestion rents flow to Native Load via MAC Excess TCC process flow to Native Load via MAC
NYPA Proposal:	
Native Load:	Congestion Costs recovered through TCC proceeds Proportionate share of excess returned to NL via the MAC Proportionate share of excess NYPA rents distributed via MAC
NYPA:	Congestion Costs recoverd through 2000 Agreement Proportionate share of excess TCC proceeds Proportionate share of excess NYPA congestion rents

1
2 **Q. Does your recommendation allow NYPA (and/EDDS) to receive any "double benefit"**
3 **from transmission revenues?**

4 **A.** No, it does not. It would ensure that NYPA (and EDDS) and Native Load customers are
5 treated exactly equally, and thus fairly. On the contrary, the current proposal allows Native
6 Load customers to enjoy the benefit of having their congestion costs fully reimbursed, and to
7 benefit additionally from the surplus congestion revenues. Under the current proposal
8 NYPA/EDDS would be reimbursed for congestion costs, but would receive no benefit at all
9 from surplus congestion revenues. Our proposal would restore equity. Since both Native
10 Load and NYPA/EDDS pay their proportionate share of the entire transmission system that
11 produces these revenues, both should share in the surplus in the same proportion.

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1 IV. REVENUE REQUIREMENT

2 **Q. Do you have some overall thoughts on the Con Edison rate request before we get into**
3 **some of the specifics of the proposed revenue requirement?**

4 A. A few weeks after placing a \$425 million increase in its delivery service rates, Con Ed has
5 returned to the NYPSC with a request for another 15.4% overall increase in the first rate
6 year, and indicates the need for over 40% overall over a three-year period.

7 **Q. Please comment on the level of Con Edison's electric rates.**

8 A. Overall electric rates in New York are among the highest in the country, a fact that is well
9 known and was not challenged in the 2007 case. We will identify several components that
10 should be reduced including the company's exceptionally large and expensive capital
11 expansion plan.

12 **Q. Does Con Edison justify its rates with demonstrations of cost increases?**

13 A. Yes, and many of those costs are demonstrably accurate, and the company should recover
14 such costs. However, it's the totality of the rates, and the price charged to the customers,
15 that concern us. Rather than focus purely on the opportunity to raise rates because of cost
16 increases, we would like to see the company placing similar efforts on lowering costs,
17 finding ways to meet customer service requirements for less cost.

18 **Q. Based on your analysis, how reliable is the Con Edison system?**

19 The Company's statistics suggest that the company is ^{eight}~~80~~ times more reliable (or less
20 unreliable) than other companies in the industry. Indeed, in reviewing Con Edison's
21 presentation at the Technical Conference on June 18, 2008, and looking specifically at slide
22 22, Exhibit __ (NYPA-15), we see a company operating at the very peak levels of reliability,

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1 within an industry that generally is considered to be quite reliable. This is an impressive
2 performance.

3 **Q. Is there other evidence of Con Edison's high reliability?**

4 A. Yes. In IR NYPA 52, we asked the Company to elaborate on its reliability record. In
5 response, the Company shared a series of graphs developed by PA Consulting, identifying
6 Con Ed as the clear leader among a number of large and well-known utilities. See Exhibit ____
7 (NYPA-16). We have every reason to agree that Con Edison is the most reliable distribution
8 utility in the United States, consistent with its own claims.

9 **Q. But the Company seems to justify at least part of its rate increase request on the
10 need to maintain or even improve the level of reliability, doesn't it?**

11 A. Yes, it does. And we question how a company at the very peak of reliability levels must
12 spend at this level to continue to improve that reliability. The amount of money being spent
13 by the company, together with small gains in reliability, suggests very strongly that the
14 company has surpassed the optimum point of spending.

15 **Q. What do you mean by the "optimum point"?**

16 A. In many engineering or management decisions, there are tradeoffs between service
17 reliability or other measures of quality, and cost. In many situations, a company has the
18 opportunity to spend more money to enhance quality or reliability. But, inevitably, a point of
19 diminishing return is reached wherein the quality gains are not commensurate with the cost
20 of achieving those gains. Ideally, management would seek to find that ideal "point of
21 diminishing return," where reliability has reached a point where additional expenditures
22 provide increasingly fewer improvements in reliability that do not justify their cost.

23 **Q. Were you able to identify Con Edison's "optimum point" and whether it has surpassed
24 it?**

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1 A. We could not. However, NYPA asked the Company questions regarding the optimizing of its
2 capital expenditure program in IRs 53 and 54. It is troubling to us that the responses
3 suggest that Con Edison does not seek an optimum level of reliability, but instead relies on
4 overall measures and equipment-specific loading levels. One could conclude that Con
5 Edison will keep spending at ever increasing levels until the Commission says "enough."
6 These questions and Con Edison's responses are entered as Exhibit __ (NYPA-17)(also
7 containing supporting Con Edison responses).

8 **Q. Does Con Edison's proposal consider its customers' willingness and ability to pay for**
9 **increased reliability?**

10 A. We asked the Company in IRs NYPA 55-57 how they take customer preferences for
11 reliability versus cost into account. According to the answers, shown on Exhibit __ (NYPA-
12 18), the Company does not. Con Edison does incorporate economic tests into their capital
13 spending decisions, as evidenced in their capital budgeting guidelines and in their budgeting
14 procedures, but those seem to be mostly to select least-cost alternatives among programs
15 that they are committed to do. But we could not find any evidence anywhere that they make
16 economic tradeoffs between customers' preferences for reliability versus their preferences
17 for lower rates.

18 **Q. Do they not have cost-related goals?**

19 A. In IRs NYPA 110 and NYPA 111, we asked to see the performance measurements applied
20 to their executives – those measures that drive the incentive pay program. In our
21 experience, these measures are strongly indicative of the pressures placed on individual
22 managers and executives to achieve certain business results. The Company responded
23 with copies of the performance indicators and weightings for each of its vice presidents,
24 shown here as Exhibit __ (NYPA-19).

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1 **Q. Did you review this performance system?**

2 A. Yes, and Con Edison evidently has a fairly robust performance management system, much
3 to its credit. The most noteworthy thing we observed, though, is the conspicuous absence
4 of measurements related to the cost of its T&D service. Each executive has a goal related
5 to his or her own O&M budget, as many companies do. And each also has a stake in
6 corporate ROE, again a very common measurement. But the only mention of the customer
7 in these measurements was a Customer Satisfaction Survey, which has a weighting in most
8 of the Con Edison cases of about three percent. Other measures related to the customers
9 had to do with quality of service measures, but it seems evident that no one's performance
10 is based on the ultimate price of the service to the customer, and the tradeoff between
11 service quality and price.

12 **Q. Can the dramatic proposed capital expenditures be justified by high load growth that
13 must be served?**

14 A. Here, there seems to be a discrepancy between the rhetoric that we hear and the facts –
15 including facts that are presented in this case. The rhetoric suggests a company that is
16 struggling to meet rapid load growth, as we see in the aforementioned Technical
17 Presentation, with dramatic pictures of new customer installations (slides 5-9 of Exhibit __
18 NYPA-15). But, we also see in calculations derived from the information provided by the
19 Company's Forecasting Panel on its Exhibit (Con Edison FP-7) that projected load growth is
20 near zero (0.4% from 2007 through the rate year ended March 31, 2014) with DSM
21 projections taken into account. Any new load must be met with service, of course, but Con
22 Edison's near-zero load growth effectively means that they cannot attribute heavy capital
23 spending to new loads.

24 **Q. So what can you conclude from your analysis of Con Edison's growth?**

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1 A. We contend that Con Edison's load growth is quite low to non-existent, and provides little
2 justification for the level of construction envisioned. So if we combine the two main reasons
3 for building new infrastructure plant – reliability and new load – we see a company with the
4 highest reliability in the country and very little load growth seeking to build at a rate of
5 growth that is among the highest in the country. It just doesn't compute.

6 **Q. Do you have a recommendation for the Commission? If so, please explain in detail.**

7 A. We have seen responses to hundreds of interrogatories seeking to understand Con
8 Edison's construction program and to understand its justifications. We have not examined
9 the Company's specific requirements sufficiently to challenge specific expenditures – in fact,
10 we believe that Con Edison itself is in the best position by far to make these judgments.¹

11

12 We prefer, instead, that the Commission determine a cap based in part on the customer's
13 value of reliability and impose that on Con Edison. If the Company finds that it simply can't
14 live with the cap, then its alternatives would be to live with lower income, to offset the costs
15 elsewhere (like in O&M expense) or to come back to the Commission with further
16 justification. The additional justification the Company should be required to provide should
17 include an analysis of the Company's overall level of reliability, as well as an economic
18 justification that links additional capital investment expenditures to Customer valuations of
19 the associated additional reliability.

20 **Q. What do you think the Company would do in the face of such a cap?**

21 A. Evidence from Con Edison's response to NYPA IR 70, Exhibit __ (NYPA-20), both the text
22 response as well as in the budget guideline letters provided as attachments, all suggests

¹ Of course, we fully support DPS Staff's abilities to review the Con Ed program, but believe that Con Ed has access to more data and to more analytical and engineering resources than anyone else involved in this case.

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1 that the Company would find a way to reduce its spending to conform with amounts
2 consistent with its rate allowances. By its refusal to modify overall spending to reduce rate
3 pressures, the Company seems to be putting itself in the posture of asking the Commission
4 to tell it where to cut. We believe that burden belongs on the Company, not the
5 Commission, but if the Company insists on spending at this level in the face of this
6 evidence, then we believe the Commission has little choice but to allow a lesser amount of
7 the expenditures in the rate base.

8 **Q. How much less?**

9 A. In the last case, the Commission disallowed approximately 8% based on a careful parsing of
10 the expenditures program by DPS Staff. Unfortunately, the 8% cut in one year's spending
11 only results in a reduction of about \$25 million annually when fully reflected in rates. We
12 think a more meaningful cut on the order of 20% would be in order, and would still give the
13 Company a very high level of spending proportionate to its size. A cut of 20%, or about
14 \$360 million for 2009, would lower annual revenue requirements by more than \$65 million.²
15 Of course, a lowering of the annual capital expenditure program over time produces much
16 greater savings in annual revenue requirements. If the Company believes that a reduction of
17 this level would result in system reliability below that which Customers are willing to pay for,
18 they should make that demonstration to the Commission.

19 **Q. Con Edison's testimony suggests that the Company is facing significant financial**
20 **distress as a result of the current rate plan which increased its annual revenue by**
21 **\$425 million. From a financial standpoint how does Con Edison support this**
22 **position?**

² The exact calculation of revenue requirement reduction depends on several factors, notably the in-service dates and depreciable lives of cancelled equipment, as well as the property tax treatment.

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1 A. Con Edison cites a number of Wall Street investment bankers who seem to be
2 "disappointed" in the rate result. If you look at it from the investment banker's point of view,
3 it is always disappointing to get less revenue and, therefore, less earnings. But we believe
4 that Con Edison is actually in very sound financial condition, should acknowledge this, and
5 accept the fact that its earnings don't have to be at or even near the top of the industry to
6 provide a sound financial return to its investors.

7 **Q. Please explain why Con Edison's focus is incorrect.**

8 A. The analysis of Con Edison's financial condition, in our opinion, focuses on poor
9 comparisons. If one looks at the relative handful of purely distribution utilities, with little or
10 no generation and little or no non-regulated businesses, then the returns aren't nearly as
11 high, and the financial ratios, including those related to stock price, aren't nearly as robust.
12 See Exhibit __ (NYPA-21). These companies, as a general rule, have one key factor in
13 common with Consolidated Edison – very low risk from a segment of the business that is
14 heavily regulated as to price, and is completely protected from the wild swings that are
15 common in energy commodity prices. Many of these companies have very little business
16 interest outside of the distribution of energy to end users.

17 **Q. One reason the Company is proposing to raise rates is to increase its stock price. Do**
18 **you think the current market price of its stock reflects a financial instability that**
19 **would hinder investment in the Company?**

20 A. No. For a company that is regulated on the basis of the book value of its investments,
21 keeping the stock price close to book value would seem to suggest that regulation is
22 working – that the Company is allowed to earn a return that justifies a market price that is
23 consistent with the accounting value of the assets placed into utility service. At a market-to-
24 book ratio of 1.13 as of mid-August, the market is saying, in our opinion, that the expected

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1 return on Con Edison's common stock is enough to justify the full value, plus a premium, of
 2 the book value of its assets. We're not sure why regulation should provide for more than
 3 that, especially with a company whose earnings are low-risk as this one is.

4 **Q. Please explain how investment in Con Edison presents a "low risk" to investors and
 5 how it can be financially advantageous.**

6 A. Two reasons – the past and the future. The past clearly shows that Con Edison stands out
 7 among its peers in one very important aspect of financial performance, and that is earnings
 8 stability. Value Line, the respected investment analysis service, scores Con Edison's
 9 ~~financial~~ ^{stock price} stability at a perfect 100. Even more compellingly, even after the last
 10 "disappointing" rate case result, Value Line rates Con Edison's financial strength³ as A+,
 11 ~~and there is no other utility rated at that level,~~ ^{other utilities} only three ^{are} rated as high as A+. Value Line,
 12 incidentally, also used the term "disappointing" in reference to the last rate result, but still
 13 rated New York regulation as "average" and accorded the aforementioned highest possible
 14 ratings to Con Edison's ~~financial~~ ^{stock price} stability and financial strength. This does not sound to us
 15 like a definition of a utility that is in dire financial straits.

16 **Q. Can you conclude that the Company will continue its remarkable earnings stability
 17 into the future?**

18 A. One could say that the Value Line assessment of the top level of financial strength and
 19 ^{stock price} stability is predictive, but we can go further. We know of no U.S. electric utility that has the
 20 earnings protections built into its rate and regulatory structure that Con Edison does.

³ Value Line describes its own ratings as follows: "Our Financial Strength ratings take into account a lot of the same information used by the major rating agencies. Our analysis focuses on net income, cash flow, the amount of debt outstanding, and the outlook for profits. Other factors also enter into the equation. For example, a company that faces the loss of patent protection on a key product might face a downgrade. The ratings range from A++ (highest) to C (lowest) in nine steps, based on the judgment of our senior staff members."

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1 **Q. Please explain the relationship between risk, earnings stability and the Con Edison**
2 **rate structure.**

3 A. In our opinion, the most important factor in assessing risk from the standpoint of investors is
4 volatility of earnings. Consistently high earnings tend to command a relatively high stock
5 price, and consistently lower earnings will merit a lower stock price. But inconsistent
6 earnings, especially a record of negative surprises, are especially damaging to securities
7 valuations. The predictability of return is the reason that fixed income securities (mostly
8 debt, like first mortgage bonds) requires so much lower return to the investor than does
9 common stock. And the safer the debt (higher the debt rating) the greater the probability of
10 receipt of interest and ultimately the return of principle, the lower the required interest rate,
11 and thus the realized return, to the investor. Therefore, in view of Con Edison's
12 exceptionally stable financial condition and the built-in regulatory assurances that it will
13 continue to earn its allowed return, the Company's allowed return should, in fact, be lower
14 than the many companies with greater risk of earnings volatility.

15 **Q. Can you speak to the allowed return in the 2007 case and to the Department of Public**
16 **Service Staff's ("DPS Staff") position on that issue?**

17 A. We certainly supported DPS Staff's position and approach in the last case. We believe that
18 the rate of return granted by the Commission is properly reflective of the very low risk profile
19 that Con Edison enjoys, and that is reflected when proper cost-of-capital studies are
20 conducted.

21 **Q. How does Con Edison have earnings stability built into its rate structure?**

22 A. Con Edison has several huge advantages in its rate structure. Probably the biggest
23 advantage is its fully forward-looking test year. This is an inherently sensible ratemaking
24 idea – to review and determine rates based on the time period in which they are actually

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1 going to be in effect, and we support the concept.⁴ By being able to use a fully forward-
2 looking test year, the Company is able to project its costs two years forward from the time of
3 the rate filing and have overall revenue requirements determined based on that. So the
4 Company's task is to project O&M costs and capital costs and other important factors with
5 enough conservatism that it can in fact stay within those limits during the actual periods of
6 operation. In our opinion, there are relatively few companies in this industry that have this
7 advantageous a ratemaking position.

8 **Q. Are there other mechanisms that help provide earnings stability?**

9 A. Yes, the revenue decoupling mechanism insulates the company's earnings margins from
10 kilowatt-hour sales volumes. In its testimony, the Company emphasizes the negative – that
11 it does not benefit from sales growth increases. But the positive side is that the Company is
12 insulated from the negative aspects of an economic downturn or of unusually mild weather–
13 that if kilowatt-hour sales go down, the Company's earnings margins are not affected.

14 **Q. Is Con Edison exposed to commodity energy prices?**

15 A. No. The Company is able to pass through its commodity energy prices to its full-service
16 customers. And of course, many of Con Edison's customers only buy delivery service from
17 the Company. So unlike many more vertically integrated companies, Con Edison has
18 essentially no exposure to commodity energy prices.

19 **Q. So what can you conclude regarding Con Edison's earnings stability?**

20 A. Con Edison's returns on invested capital are remarkably consistent. Comparing Con
21 Edison's parent company (Consolidated Edison, Inc.) returns from one year to the next over
22 the past nine years, we see a remarkable consistency, and a consistency fully aligned with

⁴ As we stated earlier in our testimony, we feel very strongly that Con Ed should be as forward-looking in its rate design and cost allocation as it is about its test period.

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1 Value Line's finding of a ~~Financial~~ ^{stock price} stability rating of 100. Exhibit __ (NYPA-21) shows the
 2 aforementioned nine distribution utilities with their annual ROE's for the past nine years,
 3 taken from the Value Line reports. We calculated the standard deviation of the ROEs for
 4 each company, and then divided the standard deviation by the mean, which is a measure of
 5 central tendency, or the degree of variance from the mean. Con Edison's ratio is 0.14, third
 6 lowest among the nine companies, and well below the average of 0.23. We note also that
 7 among the nine, only two have nine-year average ROEs above that of Con Edison.

8 **Q. Has Con Edison met its allowed return?**

9 A. Yes. In fact, as the Company's response to IR NYPA 42 shows, the Company has
 10 *exceeded* its allowed return in each of the last three years. Exhibit __ NYPA-22.

11 **Q. Given the Company's strong financial stability, do you have any recommendations
 12 with respect to the rate of return to be allowed by the Commission?**

13 A. Our conclusion is that we find the award in the last case at 9.1 percent to be not
 14 unreasonable and we urge the Commission to reach a similar finding in this case.

15 **Q. Let's move on to issues of Working Capital and Earnings Base Over Capitalization
 16 (EBCAP). What are your general thoughts on the Company's treatment of these
 17 issues.**

18 A. We continue to have questions about these two areas that seem to receive very superficial
 19 treatment by the Company.

20 **Q. What are your thoughts specifically on Con Edison's Working Capital Calculation?**

21 A. Our issues are with respect to the cash component of Working Capital. There, the
 22 Company insists on using a formula that it refers to as the "FERC one-eighth formula" and
 23 basically calculates the amount of cash working capital required as one-eighth of certain
 24 annual O&M expenses.

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1 **Q. Please describe the advantages and disadvantages of utilizing this FERC one-eighth**
2 **formula.**

3 A. The advantage that Con Edison touts is that the one-eighth formula is quick and easy to
4 calculate. We observe that this formula substantially overstates the amount of cash
5 required to run the business, which, presumably, Con Edison finds to be advantageous.
6 However, the Commission's objective here should be to determine a just and reasonable
7 estimate of the legitimate ongoing cash needs for operating a business. The one-eighth
8 formula may have been an acceptable estimate at one time, but in this era of aggressive
9 cash management, it simply no longer appears to hold true.

10 **Q. Is there a more accurate method for calculating the Company's working capital**
11 **requirements?**

12 A. We believe the Company should be required to prepare a detailed study of its actual
13 working capital requirements, rather than being allowed to rely upon a very simple
14 approximation of their requirements. Working Capital is a significant element of rate base,
15 and the value allowed should be equal to the actual requirements, not based upon a simple
16 approximation. Our suggestion is that a lead-lag study should be required to support the
17 Company's Cash Working Capital requirements.

18 **Q. Please describe how a "lead-lag" study works and why it is more accurate than the**
19 **FERC one-eighth formula.**

20 A. A lead-lag study basically recognizes that the only reason for cash working capital is to meet
21 the day-to-day cash needs of a company. The Company's accounting statements, as is true
22 for virtually all public corporations, are based on the concept of accrual, wherein assets and
23 liabilities, as well as revenues and expenses are recognized at the time of the transaction or
24 the delivery of service. These expenses and revenues are recognized despite the fact that

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1 cash changes hands at a time separate from the delivery of the services and materials to
2 the company or the services to customers.

3 Thus, the lead-lag study presents a detailed review of the amount of time between the
4 provision of a service and the receipt of the revenue, as well as the obtaining of a material
5 or service by the company, and its payment. To the extent that services are rendered by
6 the company in the form of electricity delivered to the customer, the company must wait to
7 receive its cash, and, similarly on the other side, the company will receive a bill for various
8 expenses and will pay that within an appropriate amount of time. These leads and lags on
9 revenue recoveries and expense payments constitute the real reason that the company
10 must maintain cash working capital.

11 **Q. Are lead-lag studies used in other states?**

12 A. Yes. While exact statistics are hard to obtain, it is obvious from a review of rate cases that
13 many of the commissions in the country either require or encourage a lead-lag study in
14 order to justify the inclusion of Cash Working Capital into the rate base. Among the states
15 where lead-lag studies are commonly used are Pennsylvania, Connecticut, Vermont,
16 California and Illinois, plus our neighbor across the river, the State of New Jersey.

17 **Q. You mentioned New Jersey. Doesn't the Company have an affiliate there?**

18 A. Yes, it is the Rockland Electric Company, and that company filed a lead-lag study in a
19 recent rate case, one decided in 2007.

20 **Q. In the absence of a fully-developed lead-lag study, is there any analysis that can
21 approximate the results of such a study?**

22 A. Yes. We have performed an approximation of a lead-lag study that will demonstrate why we
23 believe Con Ed should be required to perform a lead/lag study, and we will suggest a
24 reduction to the rate base request based on our analysis.

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1 **Q. Please describe your analysis.**

2 A. We obtained a copy of the Rockland Electric Company testimony and exhibits from the New
3 Jersey Board of Public Utilities. We offer Exhibit ___ (NYPA-23), a summary of the lead-lag
4 study results for Rockland Electric. In that exhibit, we list revenue and expense items, with
5 days of lag and lead assigned to them. The exhibit then calculates a column by multiplying
6 days times dollars, to come up with a weighted lead and lag for each revenue or expense
7 item.

8 **Q. Were you able to apply the methodology contained in that exhibit to calculate Con
9 Edison's Working Capital requirements?**

10 A. Yes, at least as a demonstration. What we cannot be sure of is the leads and lags
11 associated with each dollar amount. But if we assume that Rockland Electric and its
12 business practices are at least reasonably similar to Con Edison's, then we can infer that a
13 study of this type is indicative of the direction in which a fully-developed lead-lag study might
14 take us.

15 **Q. Please describe your lead-lag analysis.**

16 A. We developed a simple schedule based on Con Edison's projections for the first rate year,
17 the year ended March 31, 2010. To calculate the lag in revenues, we simply took an
18 average of accounts receivable from customer sales for the past twelve months and
19 compared that to customer revenues for the same period. Dividing average receivables by
20 annual revenues gives us a fraction that represents the proportion of annual revenues that
21 are held in receivables. Multiplying that result by 365 days gives us the average days of
22 receivables outstanding for the year, in this case ~~30.455~~^{28.62}. This says that from the time that
23 Con Ed recognizes the revenue until it actually receives cash is approximately ~~30.472~~^{28.62} days.
24 We included the Sales Tax that the Company must collect from the customers here, as well,

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1 on the theory that it must wait to collect these revenues, but the accrual for the tax liability
 2 takes place as the service is rendered. We then multiply the ~~30.455~~^{28.62} days by the annual
 3 revenue and sales tax amounts to determine a the dollar-days of lag – that is the day-
 4 weighted dollars that Con Ed must fund in the form of working capital, and it is ~~152.533~~^{143.3}
 5 billion dollar-days of lag. That will be offset to some extent, however, by the lead
 6 associated with Con Edison's receipts of services and materials some days in advance of
 7 actually paying cash for them.

8 **Q. How did you handle expenses?**

9 A. Since we did not have access to Con Edison's accounts in sufficient detail to estimate the
 10 lag in payments, we used the lag days from the Rockland Electric schedules. The only
 11 exception is that Rockland Electric did not deal with Interest Expense. Since this is a cash
 12 expense and a definable cost of doing business, we calculated the lag in interest expense
 13 as 115 days by comparing annual interest expense to interest accrued, much as we
 14 determined the lag in revenue recovery. The assumption of the most concern and the
 15 biggest impact has to do with salaries and wages, where Rockland Electric figured a lag of 8
 16 days. That's very low, but we used it because we had no information to contradict it.
 17 Overall, we found a total "lead" or lag in payables of 100.9 billion dollar-days, and a net lag
 18 of ~~54.6~~^{42.4} billion dollar-days determined by subtracting the lead in payables from the lag in
 19 receivables. The next calculation is to divide the ~~\$51.6~~^{42.4} billion dollar-days of net lag by 365
 20 days to determine the average daily lag, and that is ~~\$141.38~~^{116.2} million. See Exhibit __ (NYPA-
 21 24). This would be our recommendation for an allowance for cash working capital.

22 **Q. Do you have a recommendation for the Commission?**

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1 A. Con Ed calculated \$195.6 million based upon its use of the one-eighth of O&M expense
 2 methodology. Thus, our recommendation would be to disallow ~~\$54.2~~^{79.4} million of rate base
 3 because of the over-estimation of cash working capital requirements.

4 **Q. Do you also have concerns with respect to the Company's proposed EBCAP**
 5 **adjustment?**

6 A. Yes.

7 **Q. Before we go into your specific concerns, can you please describe what this**
 8 **adjustment is?**

9 A. In the simplest language, utility rate base represents, or should represent, all the assets that
 10 the Company claims are needed to provide utility services. The concept of "used and
 11 useful" is well recognized in utility regulation. Looking back to a 1975 case involving Niagara
 12 Mohawk, it was determined by the Commission that the rate base (or "earnings base") was
 13 greater than the capitalization upon which the Company needed to earn a return, and that if
 14 the Company were granted a return on the entirety of rate base, then the return on
 15 capitalization, and thus the return on equity, would be above the level awarded by the
 16 Commission. Thus the Commission made a negative adjustment to rate base, to bring it
 17 down to the level of capitalization. In this case, the situation is reversed, and rate base
 18 appears to be smaller than capitalization, so Con Edison seeks an adjustment to increase
 19 rate base to equal capitalization.

20 **Q. Do you find that this adjustment is appropriate in this case?**

21 A. No, we do not. In the first place, EBCAP is a classic tautology. Basically, it is a regulatory
 22 theory that says that whatever rate base comes out to be – inclusive of all plant and working
 23 capital and other allowed components that comprise a "used and useful" rate base – if it is
 24 different in any respect from capitalization, that there should be an adjustment to make it

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1 equal to capitalization. So, our question for the Commission is, "Why bother with all the
2 discussion about Working Capital, Plant in Service, Construction, etc., if EBCAP is going to
3 be a "plug-in" figure?" It certainly undermines any discussion of a "used and useful" doctrine
4 of ratemaking.

5 **Q. Are you aware of other Commissions that permit an EBCAP or similar type of**
6 **adjustment?**

7 A. We could find no other instance – none – of a public utility commission other than New York
8 that allows such an adjustment. In a review of Public Utility Reports ("PUR") regulatory
9 cases going back at least 10 years, we found no instance of "EBCAP" or anything that
10 suggests an adjustment of that type. We found numerous references to "used and useful,"
11 and that certainly appears to be the prevailing doctrine for regulatory agencies in this
12 industry.

13 **Q. Please explain why, in the present case, the Company claims that it needs such**
14 **EBCAP adjustment?**

15 A. The Company's rationale is the basis of our concern. Con Edison does not and refuses to
16 forecast EBCAP. In response to IR NYPA 23, the Company responded: "The Company
17 (and other utilities in New York State) has traditionally used the historic year excess rate
18 base over capitalization adjustment as a proxy for the rate year. Therefore, the Company
19 has not prepared projections of these components for an EBCap adjustment for the period
20 requested." See Exhibit __ (NYPA-25). In the 2007 case, Con Edison responded to a
21 similar question saying, in effect, that the components of EBCAP are too hard to predict.
22 We can't help but observe that this Company has no problem at all predicting every other
23 component of rate base and operating expenses.

24 **Q. What do you believe causes the EBCAP adjustment?**

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1 A. The big driver of the EBCAP adjustment is Regulatory Assets, and the big driver of that is
2 Pension Assets and Other Post-Retirement Benefit ("OPRB") Assets. The Regulatory
3 Assets reflect the booking of unrecognized net losses and prior service costs. Our opinion
4 is that this is an accounting artifact that is, in fact, very difficult to forecast – mainly because
5 it relies so heavily on pension fund performance in the financial markets. The pension and
6 OPRB assets on the balance sheet effectively are covered, at least in part, by the \$9.4
7 billion of pension and OPRB assets in Con Edison's managed funds. Some of those assets
8 find their way onto the balance sheet by annual expensing (and contra-expensing) of over-
9 and under-achievement of target returns in past years. Yet the fund assets do have, and
10 tend to earn over time, a targeted return. We don't believe that those assets belong in a
11 utility rate base.

12 ~~A.~~ We urge that the Commission disallow this portion of rate base, resulting in a reduction to
13 allowed rate base of \$200.8 million, which is the amount of EBCAP remaining in Con
14 Edison's mitigated request after the \$44.8 million reduction reflected in the July 25
15 preliminary update.

16 **Q. Does this conclude the Panel's testimony?**

17 A. Yes, it does.

1 BY MR. LEVENSON:

2 Q. Do you have before you, panel, 11 pages of
3 rebuttal testimony in this case with an exhibit?

4 A. (Bennett) Yes.

5 Q. Any corrections to any of these documents?

6 A. (Bennett) Yes.

7 Q. Please identify it.

8 A. (Bennett) On page 10, on line 17, the word I-N is
9 capitalized. It should not be. Should be lower case.
10 Lower case i-n. This is immediately after the word
11 TCCs.

12 Q. Taking into account the corrections, if I asked
13 you the questions contained in the rebuttal testimony
14 today would your answers be the same?

15 A. (Bennett) Yes, they would.

16 MR. LEVENSON: Your Honor, I move for the
17 rebuttal testimony to be moved into the record as if
18 orally given and I have submitted to you the exhibits
19 accompanying both testimonies.

20 JUDGE LYNCH: The NYPA panel's rebuttal
21 should be included in the transcript as if given orally.

22 (The following is the prefiled rebuttal
23 testimony of the NYPA panel:)

24

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1 I. INTRODUCTION AND PURPOSE OF TESTIMONY

2 Q. **Has the Panel previously filed testimony on behalf of NYPA in this case?**

3 A. Yes.

4 Q. **What is the purpose of the Panel's rebuttal testimony?**

5 A. The purpose of our testimony is to address several proposals presented by the
6 Department of Public Service Staff ("DPS Staff" or "Staff") in its direct testimony.
7 Specifically, we address DPS Staff Witness Randt's reliance upon the 2005
8 embedded cost-of-service model ("ECOS") and acceptance of Con Edison's
9 revenue allocation. We also address DPS Staff Witness Padula's proposal
10 regarding the allocation of excess transmission congestion revenues.

11 II. SUMMARY OF FINDINGS AND RECOMMENDATIONS

12 Q. **Please discuss the impact of DPS Staff's proposal regarding the reliance on
13 the 2005 ECOS.**

14 A. The 2005 ECOS purported to demonstrate a \$30.2 million revenue deficiency for the
15 NYPA class. In its order in Case 07-E-0523 ("2007 Case") the Commission directed
16 Con Edison to include half of that amount – that is, a \$15.1 million revenue
17 deficiency for NYPA in its revenue increase allocation. Staff Witness Randt relies on
18 the 2005 ECOS and the Commission order in her determination that Con Edison
19 should assign an additional \$6.7 million revenue deficiency to NYPA in the current

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1 case. In response to the New York City interrogatory number 10 to the DPS Staff,
2 Ms. Randt indicates that the assignment of an additional \$6.7 million revenue
3 deficiency to NYPA will result in an additional overall increase that is more than \$6.7
4 million. See Exhibit __ (NYPA-26). This is the same "multiplicative" impact that
5 arises due to the addition of the deficiency to the forecasted revenues used to
6 allocate the revenue requirement increase to NYPA that we described on page 10 of
7 our direct testimony.

8 **Q. Please discuss the impact of DPS Staff's analysis on NYPA with respect to the**
9 **treatment of transmission congestion revenues.**

10 **A.** Staff witness Mr. Padula compares the congestion reimbursement received by
11 NYPA to a proportion of the total transmission congestion revenues based on the
12 transmission allocator and concludes that NYPA receives an amount in excess of its
13 appropriate share. Staff's analysis fails to recognize that the underlying congestion
14 costs are not allocated on the basis of the transmission allocator, and erroneously
15 recommends that NYPA not be permitted to share in the transmission congestion
16 revenues in excess of total congestion costs of NYPA and Con Edison's Native Load
17 customers.

18 **Q. What are your specific recommendations regarding Staff's proposals?**

19 **A.** Our specific recommendations are:

- 20 1. Reject Staff's acceptance of the 2005 ECOS and require Con Edison to provide
21 an updated ECOS.

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- 1 2. In the absence of an updated ECOS acknowledge that due to the age of the
2 ECOS and the significantly increased expenditures since 2005, it is not possible
3 to demonstrate that NYPA continues to exhibit a revenue deficiency.
4 Consequently, no additional revenue deficiency should be assigned to NYPA in
5 this case. In fact, our updated ECOS shows that NYPA does not produce a
6 deficiency in either the 2006 test year or the rate effective periods.
- 7 3. If the Commission relies upon the 2005 ECOS, expand the tolerance band to +/-
8 20% to reflect the age of the ECOS and the subsequent increased uncertainty
9 that the study reflects the allocation of costs that will occur during the rate period.
- 10 4. Reject Con Edison's revenue based allocation of the proposed increase in favor
11 of a cost based allocation or alternatively, allocate the rate increase on an equal
12 percentage basis to all classes.
- 13 5. Recognize that excess transmission congestion revenues are appropriately
14 assigned to all rate classes in proportion to their allocated transmission system
15 costs.

16 **III. Embedded Cost of Service Study**

17 **Q. What is your understanding of Staff's proposed assignment of an additional**
18 **\$6.7 revenue deficiency to NYPA?**

19 **A.** Ms. Randt bases her adjustment on the 2005 ECOS that Con Edison filed in support
20 of the current case. She reiterates Staff's position in the 2007 Case that a 15%

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1 tolerance band should be used to reflect additional uncertainty in the ECOS results
2 due to Con Edison's lack of a study supporting the development of the low-tension
3 distribution cost allocators (D08/D09).

4 **Q. Do you agree with Ms. Randt's analysis and conclusion?**

5 A. No. We have two disagreements with Ms. Randt's analysis and conclusion. The first
6 area of disagreement is the apparent interpretation that there remains a residual
7 revenue deficiency from the 2007 Case final order. The Commission ordered that
8 one-half of the calculated deficiency be implemented in the 2007 Case without
9 prejudice to subsequent rate periods. In so doing, the Commission indicated that
10 NYPA would be subject to additional revenue deficiency in future rate periods should
11 such a deficiency exist. However, there is no foundation for the view that the
12 Commission anticipated that rates in future periods would be based on the same
13 cost-of-service study as was used in the 2007 Case and that the remaining one-half
14 of the revenue deficiency calculated by the 2005 ECOS would be applied to future
15 rate periods without a demonstration that such a deficiency remains.

16 **Q. Did you update the 2005 ECOS to determine whether a revenue deficiency**
17 **remains for NYPA?**

18 A. Yes. As we indicate on page 14, lines 3-11 of our direct testimony, we updated the
19 2005 ECOS for both 2006 and 2007. Our analysis indicates that NYPA does not
20 have a revenue deficiency in either year, nor would we expect a deficiency in the
21 rate period.

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1 Q. **Please explain your second area of disagreement with Ms. Randt's analysis**
2 **and conclusions.**

3 A. Our second area of disagreement is with the application of a 15% tolerance band in
4 the 2005 ECOS. While we applaud Ms. Randt for recognizing that the uncertainty
5 introduced in the 2005 ECOS by Con Edison's use of an unsupported diversity
6 adjustment in the D08/D09 allocators warrants a broader tolerance band, we are
7 concerned that she is recommending the same band that Staff recommended a year
8 ago when the 2005 ECOS was first filed. The purpose of the tolerance band is to
9 recognize that assumptions about the costs and underlying drivers in an embedded
10 cost-of-service study cannot be known for certain and that those costs are a proxy
11 for the costs that are expected to occur during the rate year. It stands to reason that
12 the further apart in time the ECOS and the period in which the rates will be in effect
13 are, the less certainty one has that the costs in the ECOS represent the costs in the
14 rate period. Consequently, if Staff observed enough uncertainty in the 2007 Case to
15 recommend a 15% tolerance band, we would expect Ms. Randt to recommend a
16 tolerance band in excess of 15% in the current case.

17 Q. **What tolerance band do you recommend?**

18 A. We recommend a 20% tolerance band. We believe that the passage of time and the
19 subsequent changes in load growth, capital expenditures and expenses warrant a
20 conservative application of the 2005 ECOS.

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1 IV. T&D Revenue Increase Allocation

2 **Q. Ms. Randt indicates that Con Edison allocated the proposed T&D revenue**
3 **increase based on "the proportion of each class' respective re-aligned rate**
4 **year delivery revenues to the total rate year delivery revenues" (Randt Direct,**
5 **page 11, lines 3-6). She then indicates that she agrees with this approach**
6 **(page 11, line 10). Do you agree with Ms. Randt?**

7 **A.** No. While Ms. Randt correctly describes the process by which Con Edison allocates
8 the T&D revenue increase, we do not agree that this approach "balances the rate
9 increase to all classes" (Randt Direct, page 11, lines 12-13). The rate increase
10 should be based on the underlying costs of each customer class. Allocating the
11 increase on the basis of forecasted revenues does not meet this criteria. Indeed,
12 allocating the increase on the basis of forecasted revenues presumes that the
13 forecasted sales are accurate. Both Con Edison and NYPA are aggressively
14 pursuing programs to manage load growth. While Con Edison has adjusted the
15 forecasted loads to reflect the projected impacts of the Con Edison programs, the
16 actual impact is uncertain and the impact of NYPA's programs is not accounted for.
17 Consequently, we would say that rather than balancing the increase to all classes,
18 the methodology capriciously assigns the increase to all classes. In the absence of a
19 cost based allocation, we suggest an equal percentage applied to all classes would
20 better balance the rate increase.

21

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1 V. Transmission Congestion Revenues

2 **Q. Did Staff provide an analysis of the reasonableness of the current treatment**
3 **afforded NYPA with respect to Transmission Congestion Revenues?**

4 A. Yes, Staff witness Mr. Padula sought to determine whether it was reasonable to
5 continue to exclude NYPA from recovery of Transmission Congestion Contract
6 ("TCC") auction revenues and congestion rents (collectively "Transmission
7 Congestion Revenues"). Mr. Padula concluded that, over the period from January
8 2005 through June 2008, NYPA had received more than its proportionate share of
9 Con Edison's total Transmission Congestion Revenues, by virtue of its congestion
10 payments that were reimbursed by Con Edison.

11 **Q. How does Mr. Padula define Transmission Congestion Revenues?**

12 A. Just as we did in our direct testimony, Mr. Padula adds the two components of TCC
13 auction revenues, and rents from NYPA's grandfathered TCCs.

14 **Q. Please describe Mr. Padula's analysis.**

15 A. Mr. Padula described the test for a reasonable recovery of congestion revenues as
16 follows: "TCC revenues should be allocated to rate classes in the same manner that
17 those classes are contributing to the costs of transmission facilities." Specifically,
18 with respect to NYPA, he sought to compare the total of congestion revenues paid to
19 "an allocation based on cost contribution to the transmission facilities to determine
20 the reasonableness of the current allocation." (Padula direct, page 12, lines 12-15).

21 **Q. Do you agree with the standard for reasonableness proposed by Mr. Padula?**

22 A. Yes, it is the same standard we suggested in our direct testimony.

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1 **Q. Do you agree with the results of Mr. Padula's analysis?**

2 A. No. Mr. Padula ignored a critical component of the allocation of cost. While NYPA,
3 and the Con Edison Native Load rate classes each pay for the transmission system
4 in proportion to their respective transmission allocators, each pay 100% of their
5 respective congestion costs. NYPA's costs are reimbursed via a 2000 Agreement
6 with Con Edison in which NYPA's grandfathered TCCs were turned over to Con
7 Edison. Con Edison's Native Load customers are reimbursed via TCC auction
8 revenues, and the congestion rent surplus. The total transmission-related cost is the
9 sum of the allocation of the transmission revenue requirement, plus congestion
10 costs. Thus, the net allocators must be adjusted to reflect both components: the
11 ECOS transmission allocator, and the 100% share of individual congestion costs.

12 **Q. Why is this important?**

13 A. It is important because NYPA incurs a much higher proportion of congestion costs,
14 in comparison with its allocation of the transmission revenue requirement, than does
15 Con Edison's Native Load. For example, while NYPA is responsible for 13.7% of
16 total transmission revenue requirement in 2006, it incurred approximately 52% of
17 total 2006 congestion costs on the Con Edison system. Thus, the respective
18 contribution to the total transmission revenue requirement of both NYPA and the
19 Con Edison Native Load is the weighted average of the ECOS transmission
20 allocation plus the incurred congestion costs for each. As we pointed out in our
21 direct testimony, the correct test for reasonableness of the allocation of
22 Transmission Congestion Revenues is whether the net congestion revenues equals

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1 the share of the transmission cost paid by each rate class. That is exactly what our
2 proposed allocator does – we propose to first subtract the Native Load congestion
3 costs from the total of TCC auction revenues and net congestion rents, then allocate
4 the remaining "surplus" to both NYPA and Native Load in proportion to the ECOS
5 allocator (which, of course, is the proportion of the transmission revenue
6 requirement allocated to each rate class). Our test meets the definition of
7 reasonableness suggested by Mr. Padula.

8 **Q. How do you respond to Mr. Padula's testimony that NYPA already receives a**
9 **disproportionate share of Transmission Congestion Revenues?**

10 A. Mr. Padula argues that NYPA received approximately 27% of the Company's
11 Transmission Congestion Revenues over the period January 2007 through June
12 2008. (Padula direct, pages 12-13). He compares that 27% with NYPA's
13 transmission allocator of 13.7%, and bases his conclusion on that comparison. But,
14 since NYPA's congestion costs are greater than those of Con Edison Native Load,
15 that conclusion is erroneous.

16 **Q. Are you able to determine the correct weighted average of transmission**
17 **allocator and congestion costs?**

18 A. No, because Con Edison does not provide an updated ECOS that would allow such
19 a calculation. We do not know, for example, what the transmission portion of the
20 revenue requirement is for the 2006 test year.

21 **Q. Does this prevent an appropriate comparison of the congestion revenues?**

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1 A. No, the test we proposed in our direct testimony is the appropriate comparison. We
2 simply propose that both NYPA, and Con Edison Native Load customers be first
3 compensated for congestion costs, and the excess be shared in proportion to the
4 manner in which the transmission system is paid for. The transmission allocator is
5 the correct basis for the allocation of the surplus congestion revenues.

6 **Q. On page 11 of his testimony, Mr. Padula supports his claim that NYPA**
7 **receives a disproportionate share of Transmission Congestion Revenues by**
8 **referring to NYPA's grandfathered agreement with Con Edison which he**
9 **describes as an agreement that "no other customer class" has with respect to**
10 **congestion costs. Do you have any comment?**

11 A: Yes. The claim is totally irrelevant to a sound analysis of this issue. NYPA's
12 grandfathered transmission agreement that was used for deliveries to NYPA's
13 governmental and economic development customers has no bearing on the
14 Transmission Congestion Revenue analysis. First, NYPA's grandfathered
15 agreement with Con Edison, like all such pre-existing transmission agreements, was
16 accorded "grandfathered" status at the creation of the NYISO. NYPA subsequently
17 converted this agreement to TCCs in accordance with NYISO rules. *But the same is*
18 *true of Con Edison:* because of its status as a New York transmission owner ("TO"),
19 Con Edison, since the creation of the NYISO, receives TCCs for its Native Load (i.e.
20 Existing Transmission Capacity for Native Load or ETCNL) like other New York TOs
21 with native load responsibilities which are auctioned per NYISO rules.

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1 Second, just as NYPA's grandfathered agreement serves to reimburse NYPA for
2 congestion costs incurred based on scheduled imports into the Con Edison service
3 territory, Con Edison's Native Load TCCs shield its Native Load customers from
4 congestion costs.¹ There is no special treatment for NYPA customers as compared
5 to Con Edison's Native Load customers. Each customer group was afforded the
6 same protections.

7 **Q. Does this conclude your rebuttal testimony?**

8 **A. Yes.**

¹ Also offsetting Native Load congestion costs are auction revenues from Residual Transmission Capacity ("RTC") TCCs and the surplus congestion rents from the NYPA grandfathered TCCs as Mr. Padula acknowledges in his analysis on page 13 of his Direct Testimony.

1 MR. LEVENSON: Your Honor, the panel is
2 available for cross-examination.

3 JUDGE LYNCH: Is there agreement on the
4 order?

5 CROSS EXAMINATION

6 BY MR. VAN ORT:

7 Q. Good morning, panel.

8 A. (Panel) Good morning.

9 Q. If you could take a moment and turn to page 17 of
10 your direct testimony. Specifically I am looking at
11 line 7 and 8. Have you got that location?

12 A. (Chamberlin) Yes.

13 Q. Can you point us to any provisions in NYISO
14 documents or tariffs that state that the approach you
15 are referring to was used to allocate TCCs?

16 A. (Chamberlin) I don't know if I can sitting here
17 today, but that's my understanding of the understanding
18 of the general approach towards the development of the
19 native load TCCs that were allocated when the NYISO was
20 performed. The intention was to hedge the congestion
21 costs of native load.

22 Q. Page 17, on line 7. It states, "When the NYISO
23 was formed Con Edison was granted a set of TCCs that
24 were thought to be sufficient to hedge the congestion

1 costs of its native load customers."

2 My question was asking whether or not you are
3 familiar with any documents that support that?

4 A. (Chamberlin) I reviewed a number of documents
5 including a number of NYISO documents describing the
6 transition that occurred when the NYISO was formed and
7 describing the development and auction process,
8 etcetera, for TCCs.

9 And that's my general understanding. I can't
10 refer you to a specific document and page number of that
11 document today. It's my general understanding of the
12 intent.

13 Q. I am almost afraid to ask this question, would
14 you agree subject to check there are no such documents
15 that memorialize that?

16 A. (Chamberlin) No. Again, had you asked me that as
17 a data request, I would have tried to find that as a
18 specific reference that formed that basis, but that is
19 my general understanding what the intent was as
20 described by NYISO and a variety of other parties that
21 participated in the process.

22 Q. Are you familiar with subject to check?

23 MR. GUTIERREZ: Objection, Your Honor. The
24 witness already said he referred to numerous NYISO

1 documents and came to the general understanding and
2 can't point to any specific document or page.

3 MR. LEVENSON: Also note that Staff
4 proffered no discovery to the NYPA panel. These matters
5 could have been inquired upon earlier.

6 JUDGE LYNCH: He asked him a question
7 subject to check. If he won't take it subject to check,
8 he won't take it subject to check. That's fine. I take
9 it he didn't.

10 BY MR. VAN ORT:

11 Q. On page 17, line 11 you state that in 2000 NYPA
12 assigned to Con Edison NYPA's original TCCs within Con
13 Edison's service territory allocated to it by the NYISO.

14 Do you see that?

15 A. (Chamberlin) Yes.

16 Q. The TCCs that you referred to, are they the TCCs
17 that were allocated to NYPA that were related to the
18 grandfathered 1989 delivery service contracts?

19 A. (Chamberlin) The TCCs I am referring to are what
20 generally have been referred to as the grandfathered
21 NYPA TCCs that flow from, I suppose, you could say that
22 agreement.

23 Q. Thank you. Is it correct that those TCCs relate
24 to rights on transmission assets that Con Edison owns?

1 A. (Chamberlin) That is correct.

2 Q. Do you have a copy of the May 11, 2000 agreement
3 between Con Edison and NYPA, which was premarked as
4 Exhibit -- marked for identification as Exhibit 419?

5 A. (Chamberlin) I don't have a copy of it with me.
6 I am familiar with the agreement.

7 MR. GUTIERREZ: Can counsel provide that to
8 the witness.

9 Q. What I am doing, I want to direct your attention
10 to subsection E of the settlement terms.

11 A. (Chamberlin) I have it.

12 Q. Can you please read what that section says.

13 A. (Chamberlin) Subsection E says, "NYPA will retain
14 the grandfathered physical rights associated with
15 contract numbers 217 and 218. To the extent that NYPA
16 has other NYPA sources located within New York City
17 those sources will be treated the same as the
18 grandfathered rights associated with contract numbers
19 217 and 218 and consistent with the terms of the 1989
20 agreements."

21 Q. Does NYPA receive any revenues from TCCs outside
22 of the 2000 agreement?

23 MR. GUTIERREZ: Can counsel be more specific
24 as to which part of the NYISO system. There is the

1 entire New York control area where there could be TCC
2 revenues.

3 MR. VAN ORT: I am asking that question in
4 general. We can pare it down as need to.

5 MR. GUTIERREZ: I have to object.

6 JUDGE LYNCH: No, you don't.

7 MR. GUTIERREZ: I object, Your Honor, that
8 the -- this case is subject to -- the TCCs relevant to
9 this case are the ones in Con Edison service territory.

10 JUDGE LYNCH: Let me take a look at the
11 testimony.

12 I am asking counsel, what's referred to as
13 residual TCCs?

14 MR. GUTIERREZ: What I was describing were
15 all the TCCs and related revenues that are basically
16 south of East Fishkill, which is generally Con Edison
17 service territory.

18 JUDGE LYNCH: I am trying to figure out
19 whether the question is relevant to the direct
20 testimony.

21 MR. VAN ORT: I will withdraw the question
22 and ask another question. Might help the panel.

23 Q. Isn't it true that NYPA retains all the
24 congestion revenues associated with the rights on Con

1 Edison's transmission essentially that are related to
2 contract numbers 217 and 218?

3 A. (Chamberlin) I believe that's correct.

4 Q. Is it also correct that NYPA does not assign all
5 the related TCC rights to Con Ed? Again, I am referring
6 to the 1989 agreement.

7 A. (Chamberlin) I agree that NYPA retains the TCCs
8 or the right to transmit associated with contract
9 numbers 217 and 218, which is Poletti and KYAC.

10 So within Zone J all the TCCs that flow from
11 outside Zone J into Zone J. The contract associated
12 with the 1989 agreement that NYPA was being protected
13 under, all of those were assigned to Con Edison in
14 return for the right to have NYPA's congestion costs
15 reimbursed out of those revenues.

16 Q. Turning to page 19 of your direct testimony,
17 specifically I am looking at the statement beginning on
18 line 23 where you state that "Con Edison's native load
19 congestion costs are fully hedged to the extent the TCC
20 auction proceeds and congestion rents exceed those
21 congestion costs."

22 Do you see that?

23 A. (Chamberlin) Yes.

24 Q. Can you tell us how often it is the case that TCC

1 auction proceeds and congestion rents exceed congestion
2 costs for Con Edison's native load customers?

3 A. (Chamberlin) It's been true for every year I
4 looked at and it would seem to me that it would be
5 logical for it always to be true because the TCC
6 revenues are associated with the same paths that produce
7 the congestion costs.

8 So, it seems -- number one, it's always been
9 true. It's certainly true in the test year and it would
10 seem illogical to me it would not be true.

11 Q. Can you tell us whether that changes at all on an
12 hourly or monthly basis?

13 A. (Chamberlin) If you are asking me can there be an
14 hour or a month in which native load congestion costs
15 could exceed TCC revenues and congestion rents, I guess
16 I don't know the answer to that.

17 Certainly over the course of the year it's been
18 true, but the revenues would exceed the native load
19 congestion costs.

20 Q. Have you done any studies to determine how often
21 this may occur?

22 A. (Chamberlin) I have looked at the data during the
23 test year and two years preceding that. I think I
24 looked at it back in the 2000 case that was resolved in

1 2002. It was true in all of those years.

2 I haven't done -- as I say, I haven't done a
3 study of whether that happens to be true in every month
4 or not. To a certain extent I think that would depend
5 on how the revenues were allocated and NYISO billing and
6 things like that, but I don't know.

7 Q. What data are you referring to? What data did
8 you say you looked at?

9 A. (Chamberlin) We asked Con Ed to provide its total
10 congestion revenue, native load congestion costs and
11 congestion rents for 2005, '06, '07. I looked at those.
12 I recall looking at it earlier in I think it was 2002.

13 Q. Turning to page 21 of your testimony, I am
14 looking at the sentence beginning on line 24 and
15 continues over to page 22, line 1.

16 Do you see that?

17 A. (Chamberlin) Yes.

18 Q. Can you explain how you determine those numbers.

19 A. (Chamberlin) Certainly. We asked Con Edison what
20 the congestion costs associated with native load was.
21 Those were the numbers they provided.

22 I think the specific form of the question was,
23 please provide us with total native load congestion
24 costs. These were the numbers provided to us.

1 Q. The 116.5 million for 2005 and 51 million for
2 2006 were sums that Con Edison calculated?

3 A. (Chamberlin) They are sums Con Edison provided to
4 us. I don't know that they calculated them.

5 Q. Or someone else, those numbers, yeah.

6 Are you familiar with how much of Con Ed's load
7 is on retail access?

8 A. (Chamberlin) We asked them that question. I
9 believe the answer was something like 40 to 50 percent.

10 Depends on how you measure it, whether it's
11 energy or demand or customers.

12 JUDGE LYNCH: You say 40 to 50?

13 MR. CHAMBERLIN: That's my recollection.
14 Could go back and verify. It was a significant amount.

15 BY MR. VAN ORT:

16 Q. Now, isn't it correct that this retail access
17 load would pay congestion through the energy prices it
18 pays to the ESCOs servicing it?

19 A. (Chamberlin) I think that depends on how the
20 ESCOs are charging the retail access customers. And I
21 don't know the answer to that. Congestion could be
22 included in total price or could be broken out. I don't
23 know.

24 Q. But going to the heart of it, isn't it your

1 understanding they pay that as part of the price whether
2 it's broken out or --

3 A. (Chamberlin) I presume the ESCO is not absorbing
4 the congestion costs.

5 JUDGE LYNCH: Let me interrupt for a second
6 and ask: The 40 to 50 percent figure you just gave,
7 does that conflict in any way with the 61 percent on
8 line 10 on page 22?

9 THE WITNESS: So the 40 to 50 percent could
10 be my faulty memory. 61 percent is what we say in the
11 testimony.

12 JUDGE LYNCH: Thank you.

13 MR. CHAMBERLIN: I remember it as a
14 significant number, but forgot the percentage.

15 JUDGE LYNCH: I am all done. Thanks. I
16 didn't want to leave that area with that.

17 BY MR. VAN ORT:

18 Q. We are in the same vicinity. Can you tell us are
19 the congestion payments included in the total congestion
20 numbers that you have stated on page 22, line 1?

21 A. (Chamberlin) When you say "congestion payments,"
22 do you mean the congestion charges that ESCOs are
23 passing on to retail access customers? Is that what you
24 are asking?

1 Q. Yes.

2 A. (Chamberlin) I don't know. Retail access
3 customers charge what they charge.

4 Again, the question we asked Con Edison was,
5 please provide us with total congestion costs associated
6 with native load. And the numbers that I used were from
7 that response.

8 MR. LUBLING: Which response was that?

9 THE WITNESS: I don't know the data. I
10 think it was --

11 MR. GUTIERREZ: Con Edison can ask that when
12 they are up for cross.

13 MR. VAN ORT: Is that an objection?

14 MR. LUBLING: I withdraw the comment. I am
15 just trying to find it.

16 BY MR. VAN ORT:

17 Q. Looking at line 6 on page 22, you state that
18 congestion costs are flowed through the MAC.

19 Can you tell us what you mean by that.

20 A. (Chamberlin) That the congestion costs incurred
21 by native load customers are recovered in the MAC.
22 That's my understanding.

23 Again, I think that was -- we tried to clarify
24 that with Con Ed. I believe that was their response.

1 Again, I am referring to a data request. I don't
2 have the number off the top of my head.

3 Q. Is that data request included as one of your
4 exhibits?

5 A. (Chamberlin) I don't think so.

6 Q. Turning to page 7, line 18 of your rebuttal, you
7 have the phrase "congestion revenues paid." Can you
8 tell us what you mean by that.

9 A. (Chamberlin) Can you give me the page reference
10 again.

11 Q. Page 7, line 18, total congestion revenues paid.

12 A. (Chamberlin) You are asking me what I mean by
13 that expression, total congestion revenues paid?

14 Q. Correct.

15 A. (Chamberlin) I mean the congestion costs incurred
16 by NYPA and reimbursed to NYPA from Con Edison -- I am
17 sorry. I think I need to clarify that.

18 What he did is he took the total of the
19 congestion -- total of the congestion reimbursements and
20 any allocation of the TCC auction revenues.

21 Q. Who are you referring to, he?

22 A. (Chamberlin) Mr. Padula. This section is
23 describing the comparison Mr. Padula made in his
24 testimony. Specifically he was comparing the fairness

1 of the reimbursement of congestion rents and TCC
2 revenues with the portion of the transmission system
3 that was paid for by NYPA and Con Ed native load
4 customers, respectively.

5 Q. Turning to line 16 on page 8 of your rebuttal.
6 You state that "NYPA incurred approximately 52 percent
7 of the total 2006 congestion costs on the Con Edison
8 system."

9 Can you explain how you arrived at that
10 percentage.

11 A. (Chamberlin) I took the congestion costs that
12 were incurred by NYPA and added to them the congestion
13 costs that were incurred by Con Ed native load
14 customers. That formed the denominator.

15 And then the ratio of the 52 percent is just the
16 NYPA congestion costs divided by the total of NYPA and
17 Con Ed congestion costs.

18 MR. VAN ORT: One moment, Judge. That's all
19 we have, Judge.

20 MR. LUBLING: I have two or three, Your
21 Honor.

22 BY MR. LUBLING:

23 Q. So, you testified that you asked Con Edison for
24 all its congestion costs and all its congestion

1 revenues. And that's what you base your numbers on,
2 correct?

3 A. (Chamberlin) Correct, in part. I mean we also
4 had information about NYPA congestion costs and
5 revenues.

6 Q. Do you recall that you asked -- now let me just
7 ask you: When Con Ed doesn't purchase energy from
8 another party through which -- and uses transmissions
9 lines -- it purchases directly from the market, is there
10 not a congestion rent component in the day-ahead market
11 price?

12 A. (Chamberlin) There can be a congestion rent
13 component in day-ahead market price. However, for
14 ratemaking purposes that's all classified as production
15 costs.

16 Q. That's correct, but all I am asking is: When Con
17 Edison purchases from the market energy at \$60 a
18 megawatt hour, part of that to get it to its load is
19 congestion?

20 A. (Chamberlin) If Con Ed is purchasing it in the
21 market and bringing it in to Zone J, there will be a
22 separate congestion cost which is charged by the NYISO
23 to Con Ed.

24 If Con Ed is instead buying it in the day-ahead

1 market in some other place there could be congestion
2 built into it but, again, we are not allocating
3 hypothetical costs. We are allocating actual costs.

4 Q. I understand. Do you recall that you actually
5 asked Con Edison, please provide the total day-ahead
6 market congestion costs incurred by Con Ed on behalf of
7 native load customers in 2005, 2006, 2007.

8 Do you recall that?

9 Let me tell you Con Edison's response was we are
10 unable to separately identify the congestion cost
11 imbedded in our day-ahead purchases.

12 Do you recall that?

13 A. (Chamberlin) Yes.

14 Q. So that if I look at Exhibit 206 where you have a
15 summary of all the proceeds and costs, you are missing
16 one component because Con Ed was unable to identify what
17 congestion costs it pays in day-ahead market purchases;
18 is that correct?

19 A. (Chamberlin) I will agree that depending on where
20 Con Edison buys energy there could be a congestion
21 component within it, but, again, we are not allocating
22 hypotheticals. We are allocating actual congestion
23 costs as billed by the NYISO.

24 Q. If Con Edison had a response to your question,

1 which showed -- you asked to provide the total day-ahead
2 market congestion costs incurred on behalf of native
3 load customers. Had we given you numbers actually
4 incurred through ISO, you would have added to table 206;
5 is that correct?

6 A. (Chamberlin) I would have had they been actual
7 congestion costs as recorded by the NYISO.

8 Q. Right, and Con Ed said it had no such record?

9 A. (Chamberlin) It can also be true to the extent
10 NYPA -- to the extent that NYPA is purchasing energy in
11 congested markets, like Zone J, then there would also be
12 that same kind of, call it, hypothetical congestion
13 costs imbedded in those energy purchases.

14 And those costs are also not included in this
15 table because this table is an allocation of actual
16 costs, not hypothetical.

17 Q. I understand that, but are you saying that NYPA
18 doesn't incur any actual costs from the ISO from
19 congestion?

20 MR. GUTIERREZ: Asked and answered, Your
21 Honor.

22 Q. When NYPA or Con Edison buy in the day-ahead
23 market are you saying they don't incur any congestion
24 caused by the NYISO?

1 A. (Chamberlin) I will agree that when either Con Ed
2 or NYPA buy in that market that there is a component of
3 congestion, which is imbedded in that production cost.

4 I don't know how easy it would be to go back and
5 look at a particular year at what that was. I don't
6 know whether you can. You said you couldn't.

7 Q. There was another question where you asked what
8 Con Edison does with all the excess congestion rents.
9 And then it said did NYPA share in any of those?

10 And Con Ed said excess congestion rates are
11 included in MAC -- I think that's what you referred to,
12 but it also said, "Since the excess congestion rents are
13 credited in the TSC rate, NYPA shares a portion of these
14 rents via reduced rate for every megawatt hour subject
15 to TSC charges."

16 Do you recall that?

17 MR. LEVENSON: Can Counsel clarify where he
18 is reading.

19 MR. LUBLING: I am reading from a response
20 Con Ed gave to NYPA. I am asking him whether he agrees
21 with that.

22 MR. GUTIERREZ: Can you provide the witness
23 with that response.

24 MR. LUBLING: 120.

1 A. (Chamberlin) I remember the question and
2 response. I do agree with that.

3 I think it's important to point out, though, that
4 out of the total NYPA revenues paid to Con Edison of
5 roughly \$400 million, on average about 1 million flows
6 from the transmission service charge.

7 A component of that transmission service charge
8 may be that reduced benefit from the excess congestion
9 of rents, but I think it's an -- I don't know what the
10 exact amount is. It's significantly less than \$1
11 million a year. That would make it significantly less
12 than a quarter of one percent. I don't know how much
13 less.

14 I think for the purpose of the core argument we
15 are making in terms of fairness of the allocation of the
16 congestion revenues, I think that doesn't matter.

17 BY MR. LUBLING:

18 Q. But you didn't include it in your Exhibit 206,
19 which shows how all the rents and the costs are
20 allocated, because you say that it's, I guess, to you
21 irrelevant because it's less than \$1 million?

22 A. (Chamberlin) I don't mean to say \$1 million is a
23 trivial amount of money.

24 However, the issue is that \$1 million is the

1 total -- roughly on average approximately the amount
2 that NYPA pays Con Edison in the transmission service
3 charge.

4 And that service charge represents a number of
5 things, one of which is that excess congestion rent. So
6 I took a small number and rounded it to zero, I suppose.

7 Q. It was small in the past, but it could change in
8 the future?

9 A. (Chamberlin) The problem is that NYPA -- or the
10 situation is that NYPA doesn't pay a significant amount
11 of transmission service charge to Con Edison. I believe
12 it only applies to the out of Con Ed service territory
13 wheeling kind of load --

14 Q. Wheelthroughs?

15 A. (Chamberlin) Yes. In terms of the core issue
16 with respect to NYPA's government and business load in
17 Con Edison's service territory it's not a significant
18 amount.

19 Q. One final question. Would you agree that when
20 the 2000 agreement, the settlement agreement between Con
21 Ed and NYPA, the May 11, 2000 agreement, when it was
22 signed and sent to the ISO, would you agree it was
23 contemplated NYPA would serve its load from its
24 generation, capacity generation? And that's why NYPA

1 retained the rights to 217 and 218?

2 A. (Chamberlin) I don't know if I can respond to
3 that. The agreement itself, I know what it says. I
4 think it speaks for itself.

5 I don't know whether that's an interpretation
6 that you would have to get from somebody who was a party
7 to the initial agreement or whatever. I wasn't--

8 Q. I will accept that.

9 MR. LUBLING: Your Honor, we would like to
10 mark some NYPA responses. And that's -- and we will
11 show it to this panel, of course, and to NYPA counsel.
12 Responses 15, 16, 39, 40, 44 and 45. And that's about
13 TCCs.

14 And then there is the capital structure and
15 that's 28 and 29, and spending and reliability, and
16 that's 5 and 7 to 14. And a work paper from Maureen
17 Nihill, DO3 allocator.

18 JUDGE JACK: Number in series.

19 MR. RICHTER: The data responses in sequence
20 are 5, 7 through 16, inclusive, 39 through 41,
21 inclusive, 44 to 45, inclusive, and NYPA's work paper
22 for DO3 allocator.

23 JUDGE JACK: No 28 and 29?

24 MR. RICHTER: You are absolutely right. 28

1 and 29 are also in the package.

2 JUDGE LYNCH: Off the record.

3 (Off the record.)

4 (Exhibit 452 marked for identification.)

5 JUDGE LYNCH: Back on the record. That's
6 452. We've had an off the record discussion to make
7 sure everybody understands what all the responses that
8 are in the exhibit. Mr. Lubling indicated he has no
9 further cross.

10 One minute, please. On page 31 of your
11 direct testimony I have two questions. The first
12 question is on line 9 there is a reference there to the
13 Commission disallowing approximately 8 percent.

14 Do you see that?

15 MR. BENNETT: Yes.

16 JUDGE LYNCH: And 8 percent of what?

17 MR. BENNETT: It was 8 percent of
18 construction expenditures or capital expenditures, but I
19 am not sure exactly over which period or for how many
20 years.

21 MR. LUBLING: 8 percent over the rate year?

22 MR. BENNETT: Just over the rate year.

23 JUDGE LYNCH: On that same page you are
24 continuing a discussion that begins in the middle of

1 line 16, if the company believes that a reduction, and
2 so on.

3 Do you see that?

4 MR. BENNETT: Yes, I do.

5 JUDGE LYNCH: Under your proposal when would
6 that demonstration be made?

7 MR. BENNETT: We weren't that specific.

8 JUDGE LYNCH: I understand. That's why I am
9 asking the question.

10 MR. BENNETT: I can't answer the question.
11 Well, there was an assumption that the company would be
12 able to come in, either in a rate case or in some other
13 type of proceeding, but I don't know what that would be.

14 JUDGE LYNCH: It wouldn't be in this case.

15 MR. BENNETT: No, sir. That was not the
16 thought here.

17 JUDGE LYNCH: I have no questions on your
18 rebuttal.

19 Redirect?

20 MR. LEVENSON: Can we take a couple minutes.

21 JUDGE LYNCH: Any estimate how much time you
22 might need?

23 MR. LEVENSON: Between five and ten minutes.

24 JUDGE LYNCH: Why don't we say we will

1 reconvene at ten minutes after noon based on the clock
2 on the back wall.

3 (Recess taken.)

4 JUDGE LYNCH: Redirect.

5 MR. GUTIERREZ: Yes, Your Honor. One or two
6 questions.

7 REDIRECT EXAMINATION

8 BY MR. GUTIERREZ:

9 Q. Panel, do you recall a series of questions from
10 Staff and Con Edison regarding contracts 217 and 218
11 that were in paragraph E of the 2000 agreement?

12 A. (Chamberlin) Yes, I do.

13 Q. Do you have anything you wanted to clarify with
14 respect to those agreements?

15 A. (Chamberlin) I think I referred in response to
16 one of those questions that the contracts 217 and 218
17 were also TCCs that had not been turned over to Con
18 Edison.

19 Of course, that's not right. They are not TCCs.
20 They are grandfathered physical rights. There are not
21 TCC revenues or congestion rents associated with them.

22 MR. GUTIERREZ: Thank you. That's all, Your
23 Honor.

24 JUDGE LYNCH: Anything else?

1 Okay, thank you very much, panel. You are
2 excused.

3 HELMUTH SCHULTZ, after first having been
4 duly sworn, was examined and testified as follows:

5 JUDGE LYNCH: Please proceed.

6 MR. WALTERS: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MR. WALTERS:

9 Q. Good afternoon, Mr. Schultz. I present to you
10 the direct testimony of Helmuth Schultz CPA on behalf of
11 the New York State Consumer Protection Board.

12 Do you have that in front of you?

13 A. Yes, I do.

14 Q. This testimony consists of 96 pages and a 12-page
15 appendix I; is that true?

16 A. That is correct.

17 Q. And was this testimony prepared by yourself or
18 under your direction?

19 A. Yes, it was.

20 Q. Are these -- do you have any corrections to this
21 testimony?

22 A. Not that I am aware of.

23 Q. Are the statements you make therein true today as
24 they were at the time of the prefiling?

1 A. Yes.

2 MR. WALTERS: Your Honor, I would move the
3 direct testimony of Helmuth Schultz be entered into the
4 record as if given orally.

5 JUDGE JACK: Motion is granted.

6 (The following is the prefiled direct
7 testimony of Helmuth Schultz:)

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1 INTRODUCTION

2 Q. What is your name, occupation and business address?

3 A. My name is Helmuth W. Schultz, III, I am a Certified Public Accountant
4 licensed in the State of Michigan and a senior regulatory analyst in the
5 firm Larkin & Associates, PLLC, Certified Public Accountants, with offices
6 at 15728 Farmington Road, Livonia, Michigan 48154.

7
8 Q. Please describe the firm Larkin & Associates, PLLC.

9 A. Larkin & Associates, PLLC, is a Certified Public Accounting and
10 Regulatory Consulting Firm. The firm performs independent regulatory
11 consulting primarily for public service/utility commission staffs and
12 consumer interest groups (public counsels, public advocates, consumer
13 counsels, attorneys general, etc.). Larkin & Associates, PLLC has
14 extensive experience in the utility regulatory field as expert witnesses in
15 over 600 regulatory proceedings, including numerous electric, water and
16 wastewater, gas and telephone utility cases.

17
18 Q. Have you previously filed testimony with the New York State Public
19 Service Commission ("PSC" or "Commission")?

20 A. Yes. I submitted testimony in 2007 in Case 06-G-1332, regarding
21 Consolidated Edison Company of New York, Inc.'s ("Con Edison" or
22 "Company") natural gas operations and in Case 07-E-0523, regarding Con
23 Edison's electric operations.

1 Q. Have you prepared attachments describing your qualifications and
2 experience?

3 A. Yes. I have included Attachment I, which is a summary of my regulatory
4 experience and qualifications.

5

6 Q. What is the subject of your testimony?

7 A. My testimony relates to selected operations and maintenance expenses in
8 Con Edison's 2008 rate filing for its electric operations.

9

10 Q. Do you have any exhibits supporting your testimony?

11 A. Yes. I have Exhibit___(LA-1), containing Schedules 1 through 12.
12 Schedule 1 presents the impact on revenue requirement resulting from
13 each of the adjustments I am recommending in this testimony. Schedules
14 2-12 support several of my proposed adjustments to the Company's filing.
15 Exhibit___(LA-2), Schedule 1 consists of a list of all information responses
16 that were referenced in this testimony and the corresponding page
17 number of my testimony. Exhibit___(LA-2), Schedule 2 consists of the
18 actual responses to those information requests.

19

20 Q. On whose behalf are you testifying?

21 A. Larkin & Associates, PLLC was retained by the New York State Consumer
22 Protection Board ("CPB").

1 GENERAL OVERVIEW

2 Q. Do you have any general observations regarding the Company's filing?

3 A. The Company's filing reflects significant increases in proposed spending
4 for numerous operations and maintenance programs. In several respects,
5 the filing is better organized and, along with the responses to information
6 requests, contains more supporting information than in Case 07-E-0523.
7 However, in many instances, the Company's filing and some of the
8 responses to discovery, provided limited information and inadequate
9 supporting documentation for the requested expenses in the rate year.

10

11 Q. What did you mean when you said that the filing provided limited
12 information?

13 A. This is best illustrated by the presentation of the Infrastructure Investment
14 Panel. This submission, despite 284 pages of testimony and 28 exhibits,
15 lacked sufficient detail for the reader or the Commission to readily identify
16 how the requested funding was determined. As shown on CPB
17 Exhibit__(LA-1), Schedule 12, that Panel is requesting an increase of
18 \$82.6 million over the test year O&M expense of \$80.7 million, for a total
19 request of \$163.3 million for the comparable programs identified in
20 Company Exhibit__(IIP-3), Exhibit__(IIP-5) and Exhibit__(IIP-7) . A 100%
21 increase is significant and any change requested should be adequately
22 supported with readily available documentation.

1 The least detailed portion of the Company's filing is the work
2 papers. It is expected that the work papers would provide a significant
3 amount of detail in support of the information being summarized in the
4 testimony and exhibits. In reviewing the work papers for the three exhibits
5 identified above, the only added detail was a breakout of labor dollars and
6 other dollars for the test year and the rate year. However, numbers on a
7 piece of paper are not supporting documentation.

8 Even with the information in the testimony, exhibits and the work
9 papers, it was not possible to readily determine how the rate year costs
10 were derived by the Company. For example, the Company in
11 Exhibit__(IIP-3), requested that SSO Staffing – New Facilities be
12 increased from \$315,000 in 2007 to \$5,212,000 in the rate year.
13 Exhibit__(IIP-10) and the work papers together indicated that the new cost
14 would reflect an increase of 37 employees at a labor cost of \$4,372,000
15 (\$118,162 per employee) and that the costs for operating supplies and
16 expenses at the facilities would be \$600,000 (\$150,000 per facility). There
17 is no explanation or calculation showing how the \$118,162 per employee
18 was determined and/or how the \$150,000 of expense per facility was
19 determined. The absence of any detailed explanation raises substantial
20 questions about the reasonableness of these unsupported assumptions.
21 The concern is particularly apparent since a total non-labor cost of
22 \$600,000 for each of the six new facilities, should have resulted in non-
23 labor expense per facilities of \$100,000.

1 Q. What did you mean when you said that some of the discovery responses
2 provided limited information?

3 A. In several instances, the Company was requested to provide specific
4 information and instead provided non-responsive answers. For example,
5 CPB IR 49 specifically requested the number of employees in the test year,
6 the number of employees reflected in the program changes and the
7 number of employees in the rate year included in the health care costs
8 shown on Exhibit__(HJR-1), Page 1. The response indicated that the
9 number of participants for the rate year was based on the February 2008
10 employee participant level of 13,377. The number for the test year was
11 not provided. Instead the response referred to the Company response to
12 CPB IR 55. The response to CPR IR 55 did provide the employee
13 complement for the test year but that is not the same as the number of
14 employee participants in the health care program. Not all employees
15 participate in the plan.

16

17 Q. Did you ask for additional information to explain how various costs and/or
18 quantities may have been determined?

19 A. Yes. Some requests were made, but even with the high number of
20 information requests made in this case by the CPB, Staff of the
21 Department of Public Service ("DPS Staff") and other parties, there are
22 still a great number of assumptions that are not supported by the
23 Company filing or information responses.

1 Q. Could you explain your statement that Con Edison failed to supply
2 supporting documentation?

3 A. Supporting documentation to an analyst, is a document that can
4 substantiate a claim and/or an expense. The Company's filing and the
5 responses to discovery often include a number of calculations using a
6 specific cost but there is a lack of supporting documentation within the
7 filing that details how that cost was developed. There is a difference
8 between supporting documentation (i.e., invoices, quotes, studies, etc.)
9 and numbers on a piece of paper and/or a calculation. A calculation in
10 many cases is helpful but does not constitute supporting documentation.
11 A prime example is CPB IR 101, which requested supporting
12 documentation for the insurance cost estimates made by the Company.
13 The response includes the previously provided insurance budget, but the
14 Company did not provide any supporting and objective documentation
15 such as letters from its insurance agent or any premium notices.

16

17 Q. Should Con Edison supply supporting documentation when requested?

18 A. Yes. While in some cases, supporting documentation was provided as
19 requested, in others it was not. The fact that some respondents supplied
20 the requested information or at least offered to make it available made it
21 obvious to us that there is no confusion as to what constitutes "supporting
22 documents." Documentation should be provided when requested by
23 parties, not subsequently through follow-up requests or motions to compel.

1 CPB Counsel advises me that since the Company is requesting an
2 increase in rates, it has the burden of proof. Failure to supply supporting
3 documentation means the Company failed to meet the burden of proof as
4 required. It should not be the responsibility of the CPB or other parties to
5 have to repeatedly request supporting documents or request the
6 Commission to order the Company to supply the documents because that
7 in essence shifts the burden of proof and delays the process. I note that
8 in the State of Vermont, if a Company fails to provide the requested
9 information when first asked, the Company is precluded from entering the
10 information into the record thereafter.

11

12 Q. Have you requested specific information to be supplied more than once?

13 A. Yes. To test the Company's position, I asked twice for supporting
14 documentation for manhole inspections, first in CPB IR 88 and then in
15 CPB IR 102. No supporting documentation was provided in response to
16 CPB IR 88. The Company's response to CPB IR 102 was "Refer to
17 response to CPB-11- 88 part b." Therefore, the Company did not comply
18 with my request for supporting information.

19 As detailed in my testimony later, on a case-by-case basis, where
20 information necessary to support the Company's request was not provided,
21 I often made adjustments to Con Edison's proposal to reflect that fact.

22

1 LABOR

2 Q. Are there concerns with the labor (payroll) expense reflected in the
3 Company's request?

4 A. Yes. The initial filing reflected \$570,410,000 of what has been identified
5 as "Company Labor" projected for the rate year. That reflects a net
6 increase of 18.5%, or \$89,113,000 over the test year payroll expense of
7 \$481,297,000. There is a concern with the Company's proposed
8 normalization adjustment, the amount of payroll added for program
9 changes, the escalation of payroll, the compensatory pay, test year
10 overtime and the variable pay.

11

12 Q. Why did you state the Company "identified" the payroll expense request
13 as "Company Labor"?

14 A. The Company has included contract labor dollars in the program changes
15 requested on the line identified as "Company Labor." Contract labor is not
16 actually Company labor.

17

18 Q. How did the Company determine its forecast of labor expense?

19 A. The Company began with the test year electric operations labor expense
20 of \$481,297,000. Then, the test year amount was increased to reflect the
21 impact of a normalization of \$7,307,000, representing the cost of
22 approximately 79 employees added during the year or expected to be
23 added subsequently, as well as a reclassification to operations expense,

1 of costs that were charged to capital in the test year. Next, a program
2 change adjustment of \$40,631,000 is proposed for 429 additional
3 employees, along with an increase in the cost of existing work crews, an
4 increase in overtime, a reclassification of payroll previously treated as
5 capital that is now being charged to operations expense, and payments
6 made for contract workers. The labor request was then increased another
7 \$41,175,000 for pay raises net of the Company's calculated productivity
8 savings.

9 The Company has made separate labor adjustments for the
10 savings associated with the Automated Meter Reading/Advanced Meter
11 Initiative ("AMR/AMI") Program that is a reduction to the Company's
12 additions described above. The Company has also filed an update that
13 increases its labor request by another \$5,032,000. Overall, the net update
14 request is not considered reasonable because the labor included in the
15 filing is considered excessive.

16
17 Normalization Adjustments

18 Q. What are your concerns with the normalization adjustments?

19 A. The normalization adjustments include an increase to test year labor for
20 positions filled during the year, for which a full year of compensation is
21 purportedly not reflected in the test year. It also represents compensation
22 for positions that are vacant as of the end of the test year. Finally, the
23 adjustment shifts \$1,748,000 of labor that was capital labor in the test year

1 to O&M expense in the rate year because the Company claims
2 maintenance in 2007 was essentially curtailed to shift labor dollars to high
3 priority capital projects. These adjustments have not been sufficiently
4 justified by the Company and are not considered to be appropriate.

5

6 Q. Why did you state that the Company has not sufficiently justified the
7 normalization adjustment?

8 A. The Company's testimony on this issue is limited and in some cases
9 questionable. In addition, the related exhibits provide a very broad
10 generalization and the workpapers only show numbers without any real
11 detail and/or justification. The testimony states, without any detail, that the
12 normalization dollars are for vacant positions, positions that were filled
13 during the test year, positions that were filled subsequent to the test year
14 and for a shifting of labor that was capitalized in the test year to O&M in
15 the rate year. The workpapers, in some cases, only show a description
16 and a dollar amount, and in other cases there is a summary of the jobs
17 that need to be filled with the associated dollar requirement.

18

19 Q. Why is the adjustment not considered to be appropriate?

20 A. First, the Company fails to reflect the fact that in the test year, vacancies
21 occurred and an adjustment wasn't made to remove the labor dollars for
22 employees that left during the test year that were not replaced. Next, the
23 Company assumes that all the normalized positions will in fact be filled for

1 an entire year. I reviewed the responses to CPB IR 58, CPB IR 59, CPB
2 IR 66 and DPS IR 45Rev, to determine whether the Company's
3 assumption had any merit. That analysis concluded that the Company
4 had not demonstrated that a number of positions had been filled or were
5 even listed as vacant as of June 30, 2008. Furthermore, CPB IR 61
6 requested supporting documentation for the calculated adjustment but the
7 response did not provide the requested detail. For example, the Company
8 failed to provide support for the annual salary for any of the various
9 positions listed in the calculation and there was no detail available to verify
10 the period of time that was being normalized. The problem with the
11 normalization as it was determined is compounded further by the labor
12 escalation adjustment which in effect duplicates the normalization.

13

14 Q. Why is it necessary to know whether a position was filled or not?

15 A. If the position is not filled, the Company should not be able to include
16 compensation in rates for the unfilled position. In an attempt to verify the
17 hiring of the positions being normalized, I reviewed listings of the hires and
18 transfers, provided in response to CPB IR 58 and 59, for 2007 and
19 through June 2008. A number of the positions could not be verified. For
20 example, the Accounting Panel testimony stated that for Finance, two
21 Senior Tax Accountant positions were filled in January 2008, and that a
22 Vice President, a Director and an Analyst were hired after the historic test
23 year 2007. Two tax accountants were hired (in March and May), as well

1 as an analyst, but the list of new hires provided by the Company did not
2 include a Vice President or Director. A Vice President was located in the
3 list of employee transfers, but that illustrates another problem because
4 that individual would have compensation in the rate year in two different
5 positions. This type of problem was common among the various
6 departments being normalized.

7 The Company's response to CPB IR 130 (DPS IR 45REV) included
8 a list of positions requested and allowed in Case 07-E-0523. It was noted
9 that a large number of the positions were not filled as of July 2008, despite
10 the fact that funding for those positions was included in rates that went
11 into effect on April 1, 2008.

12

13 Q. Do you have a concern with the Company's attempt to reclassify test year
14 labor from capital to O&M expense?

15 A. Yes. The Company's presentation changes the labor classification in the
16 amount of \$1.748 million, consisting of a calculation based on positions
17 totaling \$848,000 plus another \$900,000 labeled as "Non-recurring shift of
18 work from capital to O&M." Although supporting detail was requested in
19 CPB IR 61, it was not provided. Con Edison has attempted to justify this
20 shift in labor from capital to expense by cherry-picking a few programs,
21 despite the fact that the Company's requested increase in rates is driven,
22 in part, by its proposed increase in capital work. Overall, the Company's
23 proposed adjustment is not adequately supported and is not appropriate

1 because it attempts to reclassify some capital project costs on a
2 piecemeal basis. This selective reclassification of costs could be viewed
3 as an attempt by the Company to change the capitalization rate without
4 identifying it as a proposed change in the filing.

5

6 Q. How is the normalization adjustment duplicated by the labor escalation
7 adjustment?

8 A. The normalization adjustment reflects a full year of compensation for
9 employees added during the test year and after the test year. However,
10 the adjustment does not remove compensation in the test year for
11 employees who left before the test year ended. The escalation
12 adjustment duplicates the normalization adjustment by using end-of-year
13 employee counts.

14 As shown on Con Edison's Exhibit__(AP-5), Schedule 2, Page 1,
15 the Company calculates the effective escalation rate based on December
16 31, 2007 compensation, which reflects the compensation of the average
17 number of employees during 2007. The projected March 31, 2010, payroll
18 in the calculation uses the end-of-year employee counts. Because the
19 number of employees increases throughout the year, the number of
20 employees used in the escalation calculation is greater than the average
21 for the test year. This effectively factors in a normalization of employees
22 into the escalation factor (i.e. the use of a higher number of employees
23 inflates the rate year dollars and that in turn increase the percentage

1 change in compensation). Therefore, the escalation factor is double
2 counting the Company normalization adjustment. On CPB Exhibit__(LA-
3 1), Schedule 3, I have recalculated the escalation factor to determine the
4 approximate impact on expenses from including a normalizing factor in the
5 escalation factor, leaving everything else the same. Using the
6 approximate electric O&M expense in relation to Total Company Payroll;
7 the Company's use of the year-end employee levels overstates electric
8 operations expense by approximately \$5.3 million.

9
10 Q. Are you recommending an adjustment to the labor normalization?

11 A. Yes. First there is no justification and/or support for the reclassification of
12 the \$1.748 million from capital to O&M. I also recommend that \$5.3
13 million of the remaining \$5.559 million of the normalization be disallowed
14 to avoid a duplication of the impact of the escalation adjustment. Overall, I
15 recommend that the Company's labor normalization be reduced by \$7.048
16 million.

17
18 Program Change

19 Q. Would you explain your concerns with the Company's proposed program
20 change adjustment?

21 A. Yes. The Company has requested the addition of approximately 429
22 positions to accommodate its proposed changes in operations. The
23 proposed program changes would affect 16 different organizational groups.

1 There is a concern whether the increase in employees is justified. In
2 addition, there are concerns regarding the Company's proposals to
3 increase payroll expense for additional work for existing crews, increase
4 overtime, reclassify costs not previously expensed, and improperly classify
5 payments to contractors as "Company Labor."

6

7 Q. What do you mean the Company increased payroll for additional work for
8 existing crews?

9 A. The response to CPB IR 66 (DPS IR 165) provided a detailed listing of the
10 components of the labor program change adjustment of \$40,631,000.
11 Included in this listing are three lines totaling \$2,970,000 which indicate
12 that the additional dollars are for work "by existing crews". The Company
13 testimony regarding the adjustment, referenced in the response, provides
14 no explanation as to why additional dollars are included in the program
15 change adjustment. In fact, some of the pages referenced discuss capital
16 projects. The Company does not classify the additional dollars for existing
17 crews as overtime or as capital dollars being reclassified. Overall, the
18 adjustment for additional dollars is not supported and therefore, the
19 \$2,970,000 should be disallowed.

20

21 Q. Please explain your concerns regarding the overtime dollars included in
22 the program change adjustment?

1 A. The Company has increased its test year overtime for electric operations
2 by \$2,345,000 before applying the escalation factor. This proposal has
3 two components, neither of which is adequately supported. First, the
4 Company has only provided a reference to testimony for \$1,158,000 of the
5 requested extra overtime in the Company response to CPB IR 66.
6 However, the pages referenced make no mention of the fact that the
7 Company is increasing overtime to perform the program changes
8 identified. The other \$1,187,000 requested, has "N/A" as a reference to
9 testimony, so there is no testimony justifying this change.

10 The next concern with this request is that the Company, according
11 to the response to CPB IR 67, cannot provide any information regarding
12 the level of overtime in any year for electric operations. That concern is
13 compounded by the fact that overtime for the whole Company in the 2007
14 test year is higher than the 2006 overtime, which in turn was significantly
15 greater than in 2005 due to storm-related work.

16 The final concern is that overtime has consistently increased
17 despite a continued increase in the number of employees. At some point
18 in time, the Company has to stop increasing employees and/or stop
19 increasing overtime. There has to be some efficiency gains from one or
20 the other.

21 Overall, the proposed increase in overtime is not supported by
22 testimony and is therefore not justified given the significant increase in

1 employees requested. Accordingly, an adjustment of \$2,345,000 should
2 be made to remove this unsupported change.

3

4 Q. Is your concern about the reclassification of payroll from capital to O&M
5 expense for program changes the same as the concern you previously
6 articulated regarding the reclassification of dollars in the normalization
7 adjustment?

8 A. Yes. The response to CPB IR 66 states that \$955,000 of payroll dollars is
9 being reclassified to O&M expense. Once again, the referenced testimony
10 discusses the program in general and does not mention that the dollars
11 reflected are being reclassified to O&M from "capital" or "other." The
12 response describes the reclassification as additional cost for emergency
13 personnel to address the anticipated increase in stray voltage work
14 (\$490,000), a change in accounting allocation (\$190,000) and a change
15 from capital expense program (\$271,000). Given the increase in capital
16 work and the Company's failure to specifically address the reason for this
17 proposal, there is no justification for reclassifying the dollars from capital to
18 expense. Accordingly, the program change adjustment should be reduced
19 by \$955,000.

20

21 Q. Did the Company's program change adjustment include contract labor in
22 the "Company Labor" category for the rate year?

1 A. Yes. The response to CPB IR 66 specifically identifies \$3,446,000 of
2 contract labor as part of the \$40,631,000 program change adjustment to
3 "Company Labor." However, the testimony referenced does not mention
4 the use of contractors to perform the work requested. Contract Labor is a
5 separate cost and has separate adjustments as shown on line 19 of
6 Company Exhibit__(AP -5), Schedule 1, Page 3. If the cost for contract
7 labor was justified by the Company, which I believe it was not, then the
8 request should have been shown under the heading of "contract labor" on
9 line 19. The Company failed to properly identify the requested \$3,446,000
10 in testimony or its work papers, and its exhibits provide only a reference to
11 contractors performing some inspections. Therefore, the program change
12 adjustment to "Company Labor" should be reduced by \$3,446,000 to
13 remove the unsupported contract labor dollars.

14

15 Q. Does the Company's testimony provide sufficient information about the
16 429 added positions?

17 A. No. The Company's testimony generally describes a number of positions,
18 the various exhibits provide some additional information, and discovery
19 responses provide further detail. In its testimony and discovery responses,
20 the Company refers to the PSC's decision in Case 07-E-0523 for
21 justification of employee additions. The problem is that while the
22 Commission's decision authorized additional positions either specifically or
23 in general, there is no evidence in this case that the Company is actually

1 hiring the positions it contends were authorized in the PSC's Order.
2 Between December 2006, which is the end of the test year in Case 07-E-
3 0523, and December 2007, the end of the current test year, the Company
4 added a net of 379 positions. Based on the response to CPB IR 66, Con
5 Edison is requesting compensation for 429 positions in addition to
6 approximately 45 normalized positions that were purportedly hired after
7 the end of 2007. That means the Company is proposing to add
8 approximately 853 positions since December 2006. Since a significant
9 portion of the information included in this filing is a carryover from the last
10 case and a number of the positions requested were purportedly approved
11 in the last case, I question how the number of additional positions
12 authorized in Case 07-E-0523 does not encompass a significant portion of
13 the 379 positions added during 2007.

14

15 Q. Why is it a problem if the Company hires positions that were not requested
16 and/or allowed in a previous case?

17 A. If the Company has authorization to fill specific positions and instead fills
18 other positions, ratepayers will pay for positions that were not authorized
19 and/or whose necessity was not evaluated. In addition, ratepayers will
20 continue to pay for positions that are supposed to be filled but have not yet
21 been filled.

22

1 Q. Could you provide an example of where you have a concern regarding the
2 carryover of labor dollars for program changes for employee additions?

3 A. Yes. In Case 07-E-0523, the Customer Operations Panel requested 36
4 Customer Service Representatives ("CSRs"). The PSC's Order allowed
5 18 CSRs. The Company's Customer Operations Panel in this case is
6 requesting an additional 24 CSRs. Based on the response to CPB IRs
7 58 and 59, the Company in 2007 hired 112 CSRs and through June of
8 2008, the Company hired another 68 CSRs. The significant number of
9 CSRs hired raises a concern as to whether the Company is
10 supplementing its allowed positions with other positions. Although I do not
11 believe that all of the CSRs hired are still employed, the net increase in
12 the number of CSRs cannot be determined because the Company stated
13 in its response to CPB IRs 58 and 59, that it cannot provide vacancy
14 information.

15 Another example concerns Customer Field Representatives
16 ("CFRs"). The Company requested, and was allowed, 15 CFRs in Case
17 07-E-0523. In this case, the Company is requesting a program change for
18 the same 15 CFRs as well as normalization of 27 who were on the payroll
19 for a portion of 2007. Yet in 2007, the Company hired 174 CFRs and
20 through June of 2008, it had hired an additional 67 CFRs. Con Edison
21 admittedly has hired in excess of the 15 authorized positions by
22 normalizing 27 positions and has still requested the same 15 positions
23 again in this case. The Company also seeks funding for whatever added

1 compensation is included for the net remaining CFRs from the 174 who
2 were hired during 2007. Arguably, there should be a reduction to 2007
3 labor expense for the CFRs who left during 2007.

4 Additionally, the response to CPB IR 130 (DPS IR 45REV), lists
5 numerous positions allowed in rates effective April 1, 2008, that had not
6 been filled as of July 2008. It is not appropriate for ratepayers to pay for
7 employees that do not exist because the Company employee projections
8 are overly optimistic.

9
10 Q. What is the total reduction for labor for program changes that you are
11 recommending?

12 A. The Company has requested an increase of \$40.631 million for program
13 changes. I previously recommended a \$9.716 million reduction to the
14 Company's proposal for program changes, and will recommend an
15 additional \$14.549 million reduction to other program changes for payroll-
16 related expenses later on in my testimony. My recommendation would
17 allow an increase of \$16.366 million for program changes, which is still
18 significant and considered reasonable, particularly when the escalation
19 adjustment is considered.

20

21 Labor Escalation

22 Q. What is your concern with the labor escalation adjustment made by the
23 Company?

1 A. Con Edison applies the escalation rate to all payroll expense, as if there is
2 no variability to the different components of compensation. In fact,
3 however, overtime fluctuates from year to year as does variable pay. It is
4 not appropriate to assume the historical compensation for various
5 components of compensation will increase at the same percentage as
6 base pay. In addition, the Company calculation of the escalation rate
7 used a different year end employee count than what was identified in the
8 responses to CPB IR 54 and 55. As discussed previously, the employee
9 count used is also based on year-end levels instead of the average for the
10 year and incorporating variable pay in the escalation calculation
11 overstates the escalation adjustment.

12

13 Q. What is the difference in the employee count that you found?

14 A. The responses to CPB IR 55 and DPS IR 431 show the December
15 employee count for weekly and management employees to be 9,109 and
16 4,675, respectively. The Company in its calculation on Exhibit__(AP-5),
17 Schedule 2, Page 2, reflected a weekly and management count of 9,127
18 and 4,670, respectively. Under the assumption that that everything else
19 was acceptable, which I do not support, this variance in the employee
20 count alone would overstate labor expense in the rate year by \$610,000.

21

22 Q. How does the inclusion of variable pay in the escalation calculation
23 overstate the escalation rate?

1 A. The variable pay reflected in the Company's calculation, net of productivity,
2 is \$29.1 million (DPS IR 505), representing an increase of approximately
3 55% over the level in the test year of \$18.759 million (DPS IR 421).
4 Reflecting the impact of an increase of 55% as the Company has done on
5 Exhibit__(AP-5), Schedule 2, Page 1, significantly impacts the labor
6 escalation rate. On CPB Exhibit__(LA-1), Schedule 4, I have recalculated
7 the escalation rate, again under the assumption that everything else was
8 not adjusted. The result as seen on Schedule 4, is a .75% difference. If
9 this were the only change to the Company's request, it would reduce the
10 Company's request by \$3.967 million.

11

12 Q. What adjustment are you recommending?

13 A. The Company's escalation adjustment should be reduced \$3.967 to
14 properly reflect the productivity savings when calculated without the
15 variable pay component. This properly and effectively reduces the
16 Company escalation/normalization rate including productivity, from 7.78%
17 to 7.03%.

18

19 Compensatory Time

20 Q. Why is compensatory time a concern?

21 A. Compensatory time is authorized overtime for non-union personnel
22 including management. It includes emergency overtime but the Company
23 cannot quantify the amount of emergency overtime incurred in each year.

1 In 2004, compensatory pay was \$23.316 million; in the 2006 test year, it
2 was \$33.233 million and in 2007, it increased by 2.4% to \$34.017 million.
3 The 42.5% increase in the three-year period 2004 to 2006 is significant.
4 In addition, the 2.4% increase from 2006 to 2007 is substantial with
5 respect to the Company's use of a 7.78% escalation rate for this cost.

6 The Company did not adequately justify this large increase in Case
7 07-E-0523. In response to CPB IR 1(k) in that proceeding, it stated: "The
8 Company does not maintain data identifying compensatory time for
9 electric, gas or steam operations individually." If the Company cannot
10 separate the overtime among its different operations, there is virtually no
11 way for the Company, or the Commission, to assess whether the
12 compensatory time is attributable to non-recurring events, whether it is
13 reasonable and/or justified and what level should be paid by electric
14 ratepayers.

15

16 Q. Did you raise this issue in Case 07-E-0523?

17 A. Yes. The Administrative Law Judge (ALJ) disagreed with my assertion
18 noting that the Company stated that the increase in the number of
19 employees will not impact overtime, that compensatory overtime will be
20 required and new employees need to be up to speed. In addition, the ALJ
21 indicated that I made my recommendation without knowing what steps the
22 Company would take to analyze overtime. The Company's testimony
23 references these statements by the ALJ, but does not address the fact

1 that the Company attributed the increase in compensatory time in 2006
2 overtime to storms.

3 A proper analysis of overtime is not possible in the absence of data
4 that identifies the extent to which overtime is attributable to each of the
5 Company's operations. In response to CPB IR 67 in this proceeding, Con
6 Edison again stated that the overtime and compensatory time for electric
7 operations is not available. Since the Company cannot properly identify
8 what overtime was incurred by what operation, it cannot adequately
9 analyze that expense.

10

11 Q. Does a similar problem exist with union overtime?

12 A. Yes. In Case 07-E-0523, the response to CPB IR 1(aa) indicated that
13 union overtime in 2004 was \$92.181 million and \$127.753 million in 2006,
14 an increase of 38.6% over a two-year period. The response to CPB IR 67
15 in this proceeding shows that the 2007 overtime increased 1.6% since
16 2006. It is not appropriate to build into rates, an increase in overtime that
17 has been attributed to storms, nor is it appropriate to escalate overtime at
18 the Company's calculated escalation rate when the dollar impact of the
19 increase in overtime in 2007 was less than the dollar impact of the
20 increase in compensation. Such escalation is even less appropriate
21 because the Company has increased the test year overtime as part of the
22 Company's program changes.

1 As explained previously, the Company cannot specifically identify
2 how much overtime is actually attributable to electric operations (See
3 response to CPB IR 131), and therefore, has not met its burden of proof.
4 If overtime is justified, it should be attributable to a specific cause and/or
5 event. If that cause and/or event can be identified, the cost should be
6 directly assigned to the operation that created the need for the overtime.
7 Further, based on 2007 data, there is no justification for increasing
8 overtime expense at the Company's proposed escalation rate.

9 Overtime is an expected cost of operations but the level of overtime
10 should not be simply accepted as part of normal operations and should be
11 subject to review and control. The Company's inability to separate
12 overtime among the various operations means it is essentially unable to
13 know the cause and effect of any event on the cost of operations. The
14 Company's request for compensatory overtime and union overtime has
15 not been substantiated with any evidence and therefore an adjustment is
16 recommended.

17

18 Q. Did you inquire as to why the overtime increased?

19 A. Yes. The Company's response to CPB IR 122 stated that the increase
20 from 2005 to 2006 was due to emergencies and weather. The
21 explanations indicated that the test year overtime for stray voltage testing
22 and repairs declined and no other detail was provided.

23

1 Q. Are you recommending an adjustment to projected compensatory time
2 and overtime costs for the rate year?

3 A. Yes. Removing the 7.03% escalation applied to the \$65.361 million of
4 estimated electric operations compensatory time and overtime expense in
5 the test year, reduces the Company's projected compensatory time and
6 overtime costs by \$4.595 million. The estimated electric operations
7 compensatory time and overtime of \$65.361 million is based on the 2007
8 total cost for compensatory time and overtime of \$163.821 million
9 (response to CPB IR 67), multiplied by the ratio of test year electric O&M
10 expense of \$481.297 million, to the total Company test year payroll of
11 \$1,206.333 million as shown on Company Exhibit__ (AP-5), Schedule 2,
12 Page 1. The adjustment is necessary because overtime and
13 compensatory time is not specifically identifiable to electric operations and
14 the application of a variable amount is not supported by the record.

15

16 Q. Is another adjustment for electric operations compensatory time and
17 overtime required?

18 A. A second adjustment may be justified but because the Company cannot
19 identify the compensatory time and overtime associated with electric
20 operations and neither the Company, interested parties nor the
21 Commission are able to evaluate the reasonableness of the estimated
22 \$65.361 million of overtime included in the test year. This is an area

1 requiring further research and investigation by the Commission to ensure
2 that rates are just and reasonable.

3 Variable Pay

4 Q. What is your concern with the Company's proposal regarding variable
5 pay?

6 A. The Company's filing includes the cost of its variable pay program despite
7 the fact that the Commission specifically disallowed that cost in Case 07-
8 E-0523. The Management Variable Pay program allows for payment of
9 additional compensation to non-officer management employees on the
10 presumption that it enhances corporate financial and operational results.
11 The problem is that the Company has no real historical measurements
12 and the most recent goals were not sufficient to justify ratepayer funding of
13 incentive compensation.

14

15 Q. Why do you contend that the Company goals do not justify including the
16 cost of incentive compensation in rates?

17 A. The Company requested a rate increase last year and is requesting an
18 additional substantial increase this year. That suggests that the Company
19 was unable to achieve goals including an improvement in performance.
20 However, that is not reflected in the Company's payment of Variable
21 Compensation, according to the response to CPB IR 47. Variable
22 Compensation for Con Edison's electric operations was \$8.083 million in
23 2006 and increased to \$14.733 million in 2007. Apparently, the Company

1 feels it achieved more than its target because its incentive compensation
2 reward increased by 82%.

3 However, the goals that were set for 2006 and 2007 were not
4 sufficient since the income target was well below the income required to
5 meet the Company's allowed return on equity. In 2006, the Company
6 achieved ten of twelve Key Indicators of its Performance Measures. In
7 2007, the target for nine of the ten Key Indicators remained the same and
8 even though the tenth indicator target was increased, it was not raised
9 above the level achieved in 2006. It is noteworthy that according to the
10 response to CPB IR 37, before 2006, the Company did not use specific
11 financial and operating objectives or goals for its variable pay program.

12 Another real concern is that some major performance benchmarks
13 of interest to ratepayers are not incorporated in the incentive plan goals.
14 Items such SAIDI, CAIDI and SAIFI are not reflected in the goals, nor are
15 costs-per-customer. Incentive compensation is compensation that is paid
16 for achievement of goals providing financial and operating benefits. To be
17 even considered for partial inclusion in rates, the incentive compensation
18 must have goals that require a true incentive for improvement and/or
19 achievement on measures that benefit ratepayers.

20

21 Q. Are there other concerns with the Company's design of this program?

22 A. Yes. The first concern is that according to the response to CPB IR 1(h) in
23 Case 07-E-0523, the program awards "management employees with at

1 least satisfactory performance." According to CPB IR 54 and 55 there
2 were an average of 4,622 management employees at the Company in
3 2007 and according to CPB IR 46 only 87, less than 2%, did not receive
4 incentive compensation. That would mean that 98.1% of Company
5 management performed satisfactorily and were eligible for variable
6 (incentive) compensation.

7 However, base compensation for management employees should
8 assume satisfactory performance. Variable pay, bonus pay, or incentive
9 compensation should be only awarded for performance that is over and
10 above the satisfactory performance that should be expected of an
11 employee and that results in a benefit to shareholders and ratepayers
12 alike.

13 Therefore, it would not be appropriate to include in the Company's
14 compensation request for electric operations, \$14,733,000 for its variable
15 pay program and it is not appropriate to escalate that amount on the
16 assumption that a similar payment will occur in the rate year.

17
18 Q. Is the information supplied by Company witness' McCullough sufficient to
19 justify some incentive compensation in rates?

20 A. No. Mr. McCullough provided a very limited analysis of selective
21 employee's compensation levels. His comparison of total compensation
22 ignores the fact that total compensation in other jurisdictions may include
23 incentive compensation, but the incentive compensation paid may be

1 partially or completely excluded from rates (See the response to CPB IR
2 29). Also, in response to CPB IR 27Rev, Mr. McCullough indicated that
3 the analysis did not take into consideration the other benefits provided to
4 employees. In fact, the revised response added that the overwhelming
5 majority of cash compensation analyses do not include an associated
6 analysis of benefit plans. In my opinion, a proper comparison and
7 determination of the reasonableness of employee compensation and/or
8 the appropriateness of ratepayer funding of such compensation, must
9 include consideration of the full spectrum of employee benefits. Talented
10 managers can be attracted and retained by a strong benefit package
11 including retirement plans and/or health care options, as well as through
12 cash compensation.

13
14 Q. What adjustment are you recommending for variable pay?

15 A. According to the response to CPB IR 47, the test year includes actual
16 payments under the variable pay program of \$14,733,000. The payout
17 was \$18.759 million for Con Edison as a whole, including \$14.733 million
18 for electric operations. I recommend that the entire \$14.733 million be
19 disallowed because the Company has not provided sufficient justification
20 for charging ratepayers this compensation and there is no clear evidence
21 that provides any indication that ratepayers benefited from the goals
22 underlying the program. I also recommend that the 7.03% adjusted
23 escalation of the \$14.733 million, or \$1.076 million, be disallowed. The

1 removal of variable pay requires removal of all escalation associated with
2 variable pay.

3

4 Q. Please summarize your recommended adjustments to the Company's
5 projection of payroll expense.

6 A. As shown on CBP Exhibit__(LA-1), Schedules 1 and 2, the Company's
7 payroll request should be reduced \$7.048 million for unjustified
8 normalization costs, \$24.265 million for unsupported program changes,
9 unsupported escalation of \$11.344, and \$14.733 million for unsupported
10 variable pay, for a total reduction of \$57.390 million.

11

12 OTHER COMPENSATION EXPENSE

13 Q. What concerns have you identified with the Company's request regarding
14 "Other compensation"?

15 A. "Other Compensation" expense of \$6.021 million results from the
16 allocation of \$5.724 million of Long Term Incentive Plan costs to electric
17 operations plus \$297,000 of escalation. This cost was not allowed by the
18 Commission in Case 07-E-0523 because it is compensation that has not
19 been supported by a showing that the performance of management has
20 produced specific benefits for ratepayers. I support the Commission's
21 decision to remove this incentive compensation from rates for the same
22 reason that I recommended the disallowance of the Variable Pay. For the
23 same reasons found by the Commission in Case 07-E-0523, the \$6.021

1 million costs of "other compensation" should not be recovered from
2 ratepayers in this case.

3 I note that even if the Company, in the future, were able to provide
4 sufficient evidence of a quantifiable benefit and show that customer
5 service had improved, the cost of this added compensation should not be
6 the sole responsibility of ratepayers because the benefit that is derived will
7 flow through to shareholders as well.

8

9 EMPLOYEE WELFARE EXPENSE

10 Q. Are there concerns that you have identified with the Company's request
11 regarding employee benefits?

12 A. Yes. To the extent an adjustment is made to remove payroll dollars, a
13 commensurate adjustment should be made to reduce employee benefits.
14 In addition, I have concerns with the Company's capitalization of costs,
15 and the significant increase in health care costs including the fact that the
16 employee contribution was not proportionately increased.

17

18 Q. Please explain your concern with the capitalization of costs.

19 A. The Company's response to DPS IR 178 states that the only costs subject
20 to capitalization are group life insurance and health care costs. Thus, the
21 Company proposes to expense \$29.848 million of employee benefit costs
22 in their entirety. Generally accepted accounting principles state that the
23 cost of an asset includes direct and indirect costs incurred by an entity in

1 constructing its own assets. The FERC Uniform Systems of Accounts in
2 identifying components of construction costs states, that labor includes the
3 pay and expenses of employees of the utility engaged in construction work,
4 and related workmen's compensation insurance, payroll taxes and similar
5 items of expense. Capitalization of health insurance and group life
6 insurance costs by the Company along with payroll taxes is appropriate
7 because each of these costs has a direct relationship to the capitalized
8 payroll. The Company has recognized this direct relationship in
9 projecting rate year employee welfare expense, by its use of the labor
10 escalation rate for many of the benefits that are not capitalized. For
11 example, the work papers for employee welfare expense specifically
12 identify a direct relationship to payroll for the Thrift Savings Plan and have
13 identified a partial labor relationship for the Stock Purchase Plan,
14 Employee Publications and Communications and Occupational
15 Supplement.

16

17 Q. Is it appropriate to exclude expenses directly related to payroll from
18 capitalization?

19 A. No. In fact, even indirect expenses could also be capitalized. There is no
20 question that the Thrift Savings Plan expense should be subject to
21 capitalization. The contributions to the plan have a direct connection to
22 payroll, since if there was no payroll there would not be an expense for the
23 Thrift Savings Plan.

1 Q. Are you aware of why the Company is not capitalizing the Thrift Savings
2 Plan costs?

3 A. No, and based on the response to CPB IR 72, neither is the Company's
4 Accounting Panel.

5

6 Q. Should an adjustment be made to the rate year employee welfare
7 expense?

8 A. Yes. The electric operations' cost in total should be reduced \$5,121,491
9 (\$15,614,303 x 32.8%, the effective Company capitalization rate) to reflect
10 the appropriate capitalization of the Thrift Savings Plan expense.
11 Although I have not made an adjustment for the \$14.234 million of
12 remaining benefits not capitalized, I recommend that the Commission
13 consider doing so.

14

15 Q. Please explain your concern with the projected increase in health care
16 costs.

17 A. The Company has reflected an increase of 24.8% for medical costs over a
18 27-month period. I do not dispute the fact that health care costs typically
19 increase at a rate in excess of general inflation. However, I do have a
20 concern regarding the percentage increase reflected by the Company and
21 the fact that the increase is not proportionally offset by employee
22 contributions. Another concern is that while the Company has projected
23 an increase in costs, including an increase in the number of participants,

1 the Company did not factor in any savings from changes to the health care
2 program.

3

4 Q. Should plan changes and some savings be considered?

5 A. Yes. In response to CPB IR 50, Con Edison contends that the savings
6 resulting from any new changes to the health care program would be long
7 term and not experienced in the rate year. This response ignores the fact
8 that it is reasonable to expect savings in the rate year from changes in the
9 health care programs that were implemented in previous years, unless the
10 Company has not taken any action in recent years to reduce the cost of
11 healthcare. Since the implementation of cost savings is an ongoing
12 process, it is reasonable to expect some impact on rate year costs from
13 changes implemented in 2007 and planned for 2008.

14

15 Q. Would you discuss your concerns with the 24.8% increase in health care
16 costs that was projected by the Company?

17 A. Yes. First, Company witness Mr. Hector Reyes states on page 4 of his
18 testimony that the Company is using a trend inflation rate of 8%. The use
19 of an 8% annual inflation rate over a 27-month period would increase
20 costs by 19% not 24.8%. The reason that the increase projected by the
21 Company exceeds 19%, is because other factors have been included in
22 the Company's calculation, such as an increase in the number of
23 employees as of February 2008. This is potentially problematic because

1 the Company also has a separate "health care and other" benefit
2 adjustment for program changes that technically captures the increase in
3 the number of employees. Therefore, by using the February 2008
4 employee participant number in projecting health care costs, the Company
5 appears to be double-counting some costs.

6 Next, while health care costs are projected to increase 24.8%, the
7 employee contributions are forecast to increase only 15.9%. Employee
8 contributions should be based on a percentage sharing and unless the
9 Company plan has reduced that sharing or doesn't follow that standard,
10 the projected employee contributions for the rate year are understated.

11

12 Q. What is your recommendation regarding healthcare costs?

13 A. Given today's challenging economy and the fact that there is undoubtedly
14 a large number of ratepayers who do not even have health insurance, it is
15 only appropriate that the net cost be limited to the 8% increase that Mr.
16 Reyes stated the Company was requesting. As shown on CPB
17 Exhibit__(LA-1), Schedule 5, the use of an annual rate of 8% over the 27-
18 month period results in a net cost of \$76,755,572. The Company's net
19 request of \$83,195,886 should be reduced \$6,440,314. This adjustment
20 would reduce my concerns regarding the potential double count for
21 employee additions, the Company's failure to recognize any impact for
22 cost savings implemented that had not yet been reflected in the test year

1 costs and the disparity between the increase in costs and the insufficient
2 increase in employee contributions.

3 INSURANCE

4 Q. Are you recommending an adjustment to the Company's request for
5 insurance expense?

6 A. Yes. I am recommending two adjustments. First, the Company has
7 assumed that there will be a net increase of approximately 41% in
8 insurance expense. That increase is not supported by the historical trend
9 and the Company failed to supply supporting documentation to show that
10 there will be an increase in premiums. Therefore, I recommend that the
11 \$8.975 million added as a program change by the Company be disallowed.
12 The second adjustment removes \$5.0 million of insurance for protecting
13 directors and officers from any claims for actions and/or decisions that
14 they have made or failed to make. The protection that is provided to
15 directors and officers from this insurance is of no direct benefit to
16 ratepayers and therefore, the cost for this coverage should not be charged
17 to ratepayers. Thus, the Company's rate year insurance expense should
18 be reduced a total of \$13.978 million.

19

20 Q. What do you mean the historical trend does not support an increase in
21 insurance expense?

22 A. In Case 07-E-0523, the CPB and DPS Staff opposed the Company's
23 request for an increase in insurance expense because during the period

1 2004 – 2006, the cost of property insurance and liability insurance
2 declined. In response to DPS IR 374, the Company supplied the historical
3 costs for 2005 – 2007, which once again showed that a decline occurred
4 in 2007. The DPS Staff request also asked for source documents
5 supporting the escalation rates used by the Company and the response
6 simply referred to the Company's work papers for insurance. The only
7 documentation in the work papers was the budget numbers for 2008.
8 Numbers alone are not supporting documentation. The Company has
9 failed to justify an increase in premiums for insurance. Costs have
10 declined each year since 2004 so it evident that that a downward
11 adjustment to the test year expense is warranted, rather than the increase
12 as proposed by the Company.

13

14 Q. Is it possible that the Company received notices that its premiums were
15 increasing?

16 A. That is possible. However, the Company was requested in CPB IR 101 to
17 provide supporting documentation to verify the cost increase reflected in
18 the filing and the response provided only budgeted numbers, essentially
19 the estimated costs being requested. The Company did not provide the
20 supporting documentation for the cost estimates as they were specifically
21 requested to do. Con Edison had the opportunity to prove its case and
22 failed to do so. Accordingly, an adjustment to reduce the cost back to the
23 test year level should be made.

1 Q. Could you explain further why the cost of directors and officers' liability
2 insurance should be disallowed?

3 A. Yes. Directors and officers liability ("DOL") insurance represents 16.2% of
4 the total insurance expense for electric operations. This insurance is
5 designed to protect directors and officers from actions deemed as
6 inappropriate that they may have participated in and/or from decisions that
7 they made. Essentially, the cost of this insurance protects shareholders
8 from their decision in appointing directors who are in turn responsible for
9 hiring the officers of the Company. Generally, it is shareholders who will
10 make a claim against the directors and/or officers, therefore, the insurance
11 ultimately will provide protection to the shareholder. If a claim was to be
12 made and a liability determined, the most significant payment would be
13 paid to shareholders, with ratepayers receiving nothing. Further, the
14 ratepayer does not decide who is in charge at the Company, the
15 shareholder does. Therefore, the shareholder should be responsible for
16 costs associated with mitigating the risk of their decision.

17 Next, the Company has not provided any justification for ratepayers
18 to be responsible for 100% of the cost of DOL insurance. In fact, the
19 information that has been supplied suggests that the coverage is
20 excessive and that the benefit, if any, to ratepayers is minimal at best.

21 Finally, the fact that this expense represents 16.2% of the total cost
22 of corporate insurance (i.e. excluding employee health & welfare
23 insurance) cannot be ignored. The significance of the cost of this

1 coverage in relation to the insurance that covers plant and public liability,
2 should be a concern to the Commission.

3

4 Q. Did you recommend an adjustment in for DOL insurance in Case 07-E-
5 0523?

6 A. Yes. The Commission did not adopt my recommendation, although it
7 stated that if adequate support for such an adjustment was provided, the
8 Commission would entertain capping the cost that ratepayers would be
9 expected to pay. As I demonstrate herein, there is more than sufficient
10 support to cap and/or remove the cost of DOL insurance from rates in its
11 entirety.

12

13 Q. Please summarize the Company's justification for ratepayers to fund DOL
14 insurance.

15 A. The Company claims the cost of DOL insurance is necessary to attract
16 and retain directors and officers. In response to CPB IR 17, it stated that
17 support for this assertion is in the testimony of Robert Hoglund and the
18 Towers Perrin Study provided in response to CPB IR 6. Also, the
19 Company in response to CPB IR 13 provided a list of recent settlements
20 as justification for the level of coverage that was obtained.

21 Q. Is DOL insurance necessary to attract competent individuals?

22 A. Directors and officers are compensated for their time, and they receive
23 generous benefit packages, including generous stock options. If they are

1 being paid by ratepayers for their competence, it is unreasonable for
2 ratepayers to pay again, to insulate these individuals from their personal
3 responsibility for inappropriate actions, negligence, errors and/or
4 omissions. If Directors and Officers provide the performance for which
5 ratepayers are paying, the level of insurance coverage should be
6 minimized.

7 Even if DOL insurance is determined to be necessary to attract
8 excellent employees, the benefit of the insurance goes to shareholders not
9 ratepayers. I am not aware of any settlement ever being paid directly to
10 ratepayers. Ratepayers should not be required to pay for something that
11 does not provide a benefit to them, especially when the real beneficiary is
12 the shareholders. In fact, in CPB IR 12, the Company was asked if they
13 would continue the insurance coverage if some or all of the cost was not
14 borne by ratepayers. The response stated the Company would continue
15 the coverage.

16
17 Q. Does the list of recent settlements justify the level of insurance maintained
18 by the Company?

19 A. No. Since ratepayers have no control over who is appointed as directors
20 and officers, it is reasonable to conclude that stockholders have made
21 their decision based on the integrity of the directors and officers. This
22 listing that identifies the various settlements is headed up by Enron
23 Corporation, WorldCom, Inc., Tyco International, etc. I would like to think

1 that the shareholders of Consolidated Edison have more confidence in the
2 directors and officers that they have appointed, than the directors and
3 officers from a number of the companies on this list that contributed to the
4 high level of settlements identified. This list does not provide justification
5 for \$300 million of coverage purchased by the Company for what
6 ratepayers have to assume are competent directors and officers.

7

8 Q. Does the Towers Perrin Study justify the level of insurance maintained by
9 the Company or ratepayers funding the cost?

10 A. No. The study on page 16 indicates that the median DOL coverage for
11 companies with over \$10 billion of assets is \$105 million. On page 18, the
12 median DOL coverage for utilities is quantified as \$70 million. On page 36,
13 the study shows the average premium for utilities in 2006 was \$1.718
14 million. That information suggests that the \$300 million coverage is
15 excessive for the Company. In fact, in an email from Marsh USA Inc. to
16 the Company provided in response to CPB IR 15, the median coverage for
17 comparable companies and Fortune 500 Utility Companies was identified
18 as \$140 million and \$187 million, respectively.

19 The Towers Perrin Study also included important information
20 regarding the claims filed and the settlement of those claims. On page 53
21 of the study, it indicates that 49% of claims against public companies were
22 made by shareholders and 21% of claims were made by employees. In
23 settling the claims, shareholder claims were settled at an average of \$24

1 million while employee settlements averaged \$130,494 (page 55). The
2 study also indicated that defense costs for shareholder claims were more
3 than double any of the other possible claimants. Thus, the preponderance
4 of claims are shareholder related, which means that most, if not all the
5 costs should be borne by shareholders.

6 For all of these reasons, the \$5 million of costs for DOL insurance
7 included in the Company's request should be disallowed.
8

9 SUBSTATION OPERATIONS O&M PROGRAMS

10 Q. What changes are being requested for substation operations O&M?

11 A. The Company, on Exhibit__ (IIP-3), is requesting an increase for
12 normalization and program changes of \$12.712 million. As shown on CPB
13 Exhibit__(LA-1), Schedule 6, the increase consists of \$8.022 million for
14 labor and \$4.69 million of other costs. General explanations of the cost
15 and increases can be found in the Infrastructure Investment Panel's
16 testimony, the exhibits (referred to as white papers) and to a very limited
17 degree the work papers.
18

19 Q. Did the white paper exhibits and work papers provide sufficient detail to
20 justify the program requests?

21 A. No. The white paper exhibits and/or the work papers included general
22 descriptions of the various programs, often very similar to the testimony,

1 and numbers, respectively. There was no detail indicating how the costs
2 were derived or supporting documentation for cost estimates.

3

4 Q. Did you ask for more information?

5 A. Yes. The Company was requested in CPB IR 78 and CPB IR 79 to
6 provide additional information for the various programs within the
7 Substation Operations O&M Program category. The response to CPB IR
8 78 provided the information requested. The response to CPB IR 79,
9 despite requesting supporting documentation for costs, provided only
10 descriptions and/or calculations. Supporting documentation for the cost
11 estimates for four of the programs was requested. One program
12 consisted entirely of labor, so no support was available. However, the
13 other three programs included \$3.267 million of added non-labor costs
14 and no supporting documentation was provided. Supporting
15 documentation is not just numbers on paper or a company explanation.
16 Instead, it is a document that supports the unit cost of the new cost
17 requested.

18 DPS Staff also posed a number of requests for internal
19 documentation. The responses, again, did not provide any internal
20 documents to justify the cost and/or the program.

21

22 Q. Could you discuss some specific concerns regarding the requested
23 increase in Substation Operations O&M Program costs?

1 A. Yes. A total of 53 new positions are requested for projects entitled "SSO
2 Staffing – New Facilities" and "Operator Staff Augmentation for Existing
3 Facilities." The majority (\$5.749 million) of the \$6.132 million in labor
4 being requested for these projects was included in the current 2009 rate
5 year. Based on what is included in rates that were effective April 1, 2008,
6 the majority of the 53 positions should have been filled already. However,
7 based on a review of the Company response to CPB IRs 58 and 59, it
8 appears that only 5 of the 33 requested operator positions were filled. I
9 have to use the term "appears" because there are no "operators" identified
10 in the list of 2008 hires, only "operator mechanics" and none of the five
11 were at the stations identified in the SSO Staffing program. I also point
12 out that despite a number of new hires referred to as general utility
13 workers, I could not locate any description that would suggest those
14 positions could be "operators." In addition, the Field Operation Trainers
15 for the Substation Operations projects that are included in rate year 2009
16 costs to be paid by ratepayers, have not been hired based on the
17 response to CPB IR 58 and 59. Finally, the response to CPB IR 130 (DPS
18 IR 45REV) indicates that 58 positions for Substation Operations allowed in
19 rates effective April 1, 2008, have not been filled as of July 2008.

20 In addition, no supporting documentation for the Bus Enclosure,
21 Corrective Maintenance Normalization and Structural/Integrity cost
22 estimates was provided as requested. In fact, the response to CPB IR 79
23 stated that the cost estimates are based on "Supervisor station

1 inspections." The Company wouldn't pay a vendor on a best guess and it
2 is not appropriate for ratepayers to have to pay costs based on a best
3 guess. The Company could obtain quotes, estimate or even retrieve
4 previous invoice to support the costs being requested but they have not
5 done so.

6

7 Q. Are you recommending an adjustment to Substation Operations O&M
8 Program costs?

9 A. Yes. I am recommending that the Company's projection of substation
10 operations non-labor O&M costs be reduced by \$1.634 million due to the
11 Company's failure to properly substantiate these costs. The adjustment
12 removes 50% of the non-labor costs for three programs. The specific
13 programs, as shown on Exhibit__ (LA-1), Schedule 5, are Bus Enclosure,
14 Corrective Maintenance Normalization and Structural Integrity/Station
15 Betterment. An adjustment may also be justified for the Dynamic Feeder
16 Rating System, Flame Retardant Clothing and Advanced Control Systems
17 program costs, because of the Company's failure to provide the internal
18 documentation requested by DPS Staff as justification for the costs
19 requested.

20

21 Q. Are you recommending a labor adjustment to Substation Operations O&M
22 Program costs?

1 A. Yes. As discussed previously, the \$848,000 Correction Maintenance
2 Normalization should be disallowed. I am also recommending that \$3.143
3 million (50%) of the labor costs previously allowed in rates, be disallowed
4 in the rate year because the Company has not filled the positions as of
5 July 2008, and there are concerns that these positions will continue to be
6 vacant.

7

8 SYSTEM & TRANSMISSION O&M PROGRAMS

9 Q. Does the Company request changes for its System and Transmission
10 Operations?

11 A. Yes. The Company, on Exhibit__ (IIP-5), is requesting an increase of
12 \$11.597 million. The increase consists of \$6.365 million for labor and
13 \$5.232 million for other costs. Again, general explanations of the cost and
14 the increases could be found in the Infrastructure Investment Panel's
15 testimony for most of the programs, the exhibits and the work papers. No
16 specific testimony was provided for a number of the programs.

17

18 Q. Are there specific programs about which you have concerns?

19 A. Yes. The Company indicated in response to DPS IR 469 and CPB IR 85
20 that the Sequence and Scheduling position was filled. However, despite
21 claiming that the position would result in savings in overtime expense,
22 such savings was not reflected in the filing. It is not appropriate for
23 ratepayers to fund a position based in part on a claim that it will result in

1 savings, without also reflecting the savings in rates. The response to CPB
2 IR 130 (DPS IR 45REV) identifies this position as being filled in May 2008,
3 one month after ratepayers began paying for this position.

4 I also have a concern regarding the Company's proposed costs for
5 Coating Refurbishment, which is based on an average cost of \$2,000 per
6 foot and 750 feet. The response to CPB IR 86a states that the costs of
7 this project is not driven by a footage target and that the average O&M
8 program trenching of 503 feet per year was performed over the last three
9 years at an average cost for the O&M program of \$1,582 per foot. In 2007
10 though, the O&M Program average was \$1,061 per foot. The Company
11 has not provided justification for the use of a rate of \$2,000 per foot and it
12 has not provided any justification for the 750 feet estimate in the rate year.
13 I recommend a cost of \$800,000 be allowed based on the O&M Program
14 average trenching cost per foot of \$1,582 and the O&M Program average
15 trenching of 503 feet. This reduces the non-labor cost request by
16 \$700,000.

17 In addition, the Feeder Emergencies request is considered
18 excessive. Based on the response to CPB IR 86d, the five-year average
19 cost for this program is \$7,276,519. The Company is requesting
20 \$7,826,000 in the rate year, instead of the test year 2007 costs, which
21 were only \$4,808,461. Interestingly, the Company did not request an
22 adjustment in Case 07-E-0523 because the test year 2006 cost of \$11.444
23 million was considered "adequate." The 2006 and 2007 costs were

1 significantly different than the previous three years, which averaged
2 \$6,710,030. It is not appropriate for the Company to include in rates,
3 expenses for an extraordinarily high year and not adjust that amount until
4 the experience of the test year reveals low costs, at which time it seeks to
5 base its request on an estimate that exceeds average costs over a
6 multiple year period. Ratepayers are now paying for Feeder Emergencies
7 based on \$11,444,044 plus escalation. An adjustment to the Company's
8 request is necessary. I recommend a reduction of \$550,000 to the non-
9 labor increase of \$1.257 million. The adjustment reduces the rate year
10 cost to the \$7.276 million five-year average.

11

12 Q. Would you please explain any concerns that you have with the labor
13 requested in the Company's projected System & Transmission Operations
14 O&M Program costs?

15 A. As discussed in my testimony regarding labor expense, I recommend the
16 removal of the Normalized Human Resource request of \$2.322 million
17 (included in the \$5.3 million normalization adjustment) because the
18 Company escalation calculations use of year-end employee counts
19 effectively normalizes the test year, thereby resulting in a duplication of
20 payroll costs. In addition to the justification for that adjustment that I
21 previously provided, I would add that the response to CPB IR 61 and 62
22 showing how the Company arrived at the requested \$2.322 million, is a
23 concern. The Company's request essentially says that since employees

1 left during 2007 and it plans to fill the positions in 2008, compensation
2 should be provided beyond that reflected in the test year, and an extra
3 \$900,000 should be provided for money charged to capital work in 2007
4 that it wants charged to O&M expense in 2008. This request is very one-
5 sided. As previously discussed, the Company has not removed the cost
6 of any employee who is no longer employed by Con Edison and will not be
7 replaced, and it is shifting capitalized costs to expense, despite the
8 requested increase in capital work, without providing proper justification.

9 In addition to the normalization cost disallowance, I am also
10 recommending that the labor costs for the Manhole Inspections and the
11 Perfluorocarbon Tracer (PFT) Patrols be reduced based on discrepancies
12 between the information supplied in discovery responses and the
13 Company's filing. The Company has requested \$500,000 of labor for
14 each program. The response to CPB IR 130 (DPS IR 45Rev) indicates
15 that all the positions requested were filled on April 25, 2008. However, the
16 pay rate identified in that document is substantially less than that in the
17 Company's request. In addition, there is concern that the supporting
18 information is inconsistent because the responses to CPB IR 58 and 59
19 indicate that mechanics hired in 2008 were not hired on April 25, 2008,
20 and were not System and Transmission Operations employees. The
21 response shows that general utility workers were hired on April 25, 2008,
22 for System and Transmission Operations, which may explain the
23 discrepancy in compensation. Based on the pay rate identified in the

1 response to CPB IR 130, I am recommending that the Company's labor
2 request for Manhole Inspections and PFT Patrols each be reduced
3 \$350,000 for a total reduction of \$700,000.

4

5 Q. Are there any other concerns that you identified with the Company's
6 System and Transmission Operations Labor request?

7 A. Yes. I question the proposed NYISO employee addition and the
8 Conductor Repair additions. The costs for these positions were approved
9 in Case 07-E-0523 and included in rates as of April 1, 2008, yet the
10 positions have not been filled as of July 2008. While I have not
11 recommended an adjustment for this labor, the Commission may want to
12 consider one since it is not appropriate for the Company to include
13 employee compensation in rates unless it is known that the positions will
14 in fact be filled as requested.

15

16 Q. Please summarize your recommendation regarding the Company's
17 projected System & Transmission Operations O&M Program costs?

18 A. I am recommending that that the Company's projections for non-labor
19 costs be reduced by \$1.250 million because justification for the costs of
20 the Coating Refurbishment Program and the Feeder Emergencies
21 program projects was insufficient. The specific program recommendations
22 are shown on CPB Exhibit__ (LA-1), Schedule 7. The adjustment for

1 normalized labor and program change labor costs are \$2.322 million and
2 \$700,000, respectively.

3

4 ELECTRIC OPERATIONS O&M PROGRAMS

5 Q. Did you review the Company's request for the costs of its Electric
6 Operations O&M Programs?

7 A. I reviewed the various programs with a focus on the most significant
8 proposed cost increases. Con Edison has requested an increase of
9 \$58.245 million for Electric Operations O&M Programs. This significant
10 increase consists of \$23.292 million in labor and \$34.953 of non-labor
11 costs are summarized on CPB Exhibit__(LA-1), Schedule 8.

12 In an attempt to evaluate these programs, a specific request was
13 made in CPB IR 74 for the historical costs over the last five years and for
14 a quantification of the labor cost included in the test year and the rate year
15 for the specific programs identified on Company Exhibit__(IIP-7). The
16 Company response to the inquiries regarding historical costs and labor
17 costs was significantly different despite the fact that the requests were
18 worded the same. The request relating to historical costs was not
19 responded to as requested. Instead, a broad general cost comparison
20 was provided making it impossible to evaluate the Company's request for
21 the specific programs that were detailed on Company Exhibit__(IIP-7). In
22 contrast, the request regarding labor costs was responded to exactly as
23 requested and provided the respective labor dollars by the respective

1 programs on Company Exhibit__(IIP-7). The Company should not be
2 permitted to benefit from its failure to properly respond to information
3 requests.

4
5 Support Economic Growth

6 Q. Did you review the Company's request for costs for programs supporting
7 economic growth?

8 A. Yes. The Company's request for a \$2.655 million increase was reviewed
9 with the focus on specific programs, with cost being the primary concern.
10 One program of concern is the SMART Electric Technologies program.
11 CPB IR 80 requested a breakdown of the cost and an explanation as to
12 why the Company feels it is required to encourage economic growth in
13 commercial refrigeration. The response stated that a breakdown of
14 program costs is not available and no decision has been made on the
15 commercial refrigeration program. Simply said, the cost request for this
16 program is a guess. Thus, the requested \$92,000 of labor and \$500,000
17 of non-labor costs should not be allowed.

18 The other program of concern is the Company's request for the
19 Customer Focused Service Ruling Program. This program seeks 12 new
20 engineers, and based on the response to CPB IR 80, two were filled in
21 2007 and five in 2008. The concern is that this program is one of many
22 that required additional engineers and that were to begin in the rate year
23 that began April 1, 2008. Based on the response to CPB IR 58 and 59,

1 the Company has hired four associate engineers, six engineers and five
2 senior engineers as of June 30, 2008, for a total of 15 engineers. With the
3 significant number required to be hired and only 15 hired to date,
4 ratepayers are paying for engineers currently that are not on the payroll
5 and there is doubt that the full complement of engineers being requested
6 in the various programs will in fact be hired when rate year 2010 begins on
7 April 1, 2009. As discussed in the labor section, this does not appear to
8 be an isolated problem.

9

10 Q. Are there any other adjustments to the Support Economic Growth
11 programs?

12 A. At this time, the only adjustment I propose is to reduce the Company's
13 request by \$592,000 for the SMART Electric Technologies program.

14

15 System and Component Performance

16 Q. What program costs is the Company requesting for System and
17 Component Performance?

18 A. The Company is requesting an increase of \$7.671 million, consisting of
19 \$6.245 million of labor and \$1.426 million of non-labor costs.

20

21 Q. Are there concerns with the cost requested?

22 A. Yes. First, the Remote Monitoring System (RMS) Response Group
23 requests the addition of 14 inspectors and based on the response to CPB

1 IR 81, none have been hired yet. The Electrical Engineering Support
2 Program is planning on adding three supervisors and 12 engineering
3 technicians and the exhibit suggest that an additional supervisor and four
4 engineering technicians will be required for field engineering and quality
5 assurance. The response to CPB IR 81 states none have been hired.
6 There is not evidence that the Vault Repair mechanics that are purportedly
7 required were hired and the increase in non-labor costs is questionable.

8

9 Q. Please elaborate on your concerns.

10 A. Based on the Company's failure to fill the positions allowed in rates
11 effective April 1, 2008, I am concerned that the labor requests for the RMS
12 Response Group, the Electrical Engineering Support Program and the
13 Vault Program may be overly optimistic.

14 There is an additional concern regarding the proposed increase in
15 expense for the Electrical Engineering Support Program. The justification
16 provided by the Company in response to DPS IR 260, suggests that the
17 driving factor for the increase in employees is the capital program.
18 However, capitalized labor for this project is increasing by only \$308,000
19 while the O&M expense is projected to increase by \$1.896 million. The
20 response to CPB IR 100 questioned how the increase in employees was
21 justified. The Company's response stated that the supervisors and
22 engineers along with added overtime was required "for its new and

1 incremental Capital programs." Thus, if the increase occurs, it should be
2 classified as capital costs and not O&M expense.

3 Finally, the Company performed 37 vault repairs in 2007, at a cost
4 of \$2.591 million (response to CPB IR 81). The Company expects to
5 complete an additional 28 repairs in the rate year, for a total of 65 repairs.
6 In my opinion, the Company has not supported the expectation that 65
7 repairs will be performed in the rate year. The Company's projected
8 increase should be reduced by at least 50% or 14 repairs.

9

10 Q. What adjustment are you recommending to the rate year for the System
11 and Component Performance?

12 A. I am recommending that the new labor costs for the RMS Response
13 Group and the Electrical Engineering Support programs be reduced by
14 50% or \$910,000 and \$948,000, respectively. The Vault Repairs labor
15 and non-labor increase should also be reduced by 50% or \$636,000 and
16 \$343,000, respectively. This reduces the System and Component
17 Performance request for labor by \$2.494 million and non-labor \$343,000,
18 for a grand total of \$2.837 million.

19

20 Public Safety and Environmental

21 Q. What change is being requested for the Public Safety and Environmental
22 program?

1 A. The Company is requesting an increase of \$37.627 million above the
2 comparable test year expense level of \$35.073 million. The primary
3 drivers are overhead inspections, underground inspections, mobile stray
4 voltage testing, vault cleaning and central quality assurance. I will discuss
5 the individual programs that are primarily responsible for this significant
6 increase.

7

8 Five-Year Overhead ("OH") Inspection Program

9 Q. Is the Company's request for an increase of \$3.226 million for overhead
10 inspections reasonable?

11 A. The Company's request for this program in Case 07-E-0523 was \$5.443
12 million and was determined by the Commission to be unsupported. An
13 allowance of \$1.089 million was granted. The reason the cost is
14 significantly less in this case is that the Company identified certain cost
15 components that were originally overestimated (CPB IR 82a). An
16 additional concern is that the Company did not incur any costs in 2006 or
17 2007 for overhead inspections.

18 According to the Company Exhibit__(IIP-18), the Company must
19 conduct 282,000 pole inspections at a cost of \$53 per pole over five years.
20 That equates to \$14.946 million or \$2.989 million a year. This is less than
21 the exhibit amount of \$3.226 million a year. The Company has provided
22 no information to substantiate its new cost estimate and there is concern
23 that the cost may be overstated as it was in Case 07-E-0523.

1 Q. Are you recommending an adjustment to the OH Inspection request?

2 A. Yes. Even though the Commission took notice of the Company's failure to
3 support its costs in Case 07-E-0523, the Company has again prepared its
4 request without including supporting documentation for its proposed unit
5 cost. The Company should not be allowed to arbitrarily insert costs in the
6 rate year without supplying adequate information as to how the cost was
7 developed.

8 The Company's requested increase consists of \$2.916 million in
9 labor and \$310,000 of non-labor costs. The arbitrary use of a \$53 per
10 pole cost is not supported by the Company. The response to CPB IR 82b
11 refers to a contract and identifies a cost-per-inspection that explains the
12 non-labor cost component. However, no detail is provided for the labor
13 costs. Additionally, the response to DPS IR 46, that provides details on
14 the incremental labor being requested in this case, does not identify any
15 labor for overhead inspections. Accordingly, the Company's estimate for
16 labor for this project is not sufficiently supported.

17

18 Q. What is your recommended adjustment to the OH Inspection request?

19 A. I am recommending that the projected rate year labor cost increase of
20 \$2.916 million be reduced by \$1.458 million or 50% because of Con
21 Edison's failure to adequately supply information that could be utilized to
22 determine the reasonableness of the Company's estimate.

23

1 5-Year Underground Structure Inspection Program

2 Q. What did you determine from your review of the underground inspection
3 cost request?

4 A. The Company is requesting \$23.829 million in costs in the rate year
5 compared to the indicated \$12.347 million of test year costs. The
6 Company's request is based on the estimated 59,000 remaining
7 inspections of a five-year inspection program. According to the response
8 to CPB IR 2(d) in Case 07-E-0523, the Company spent \$0 in 2004, \$8.5
9 million in 2005 and \$6.8 million in 2006 for underground inspections.
10 Company Exhibit__(IIP-7) and Exhibit__(IIP-18) indicate that in 2007, the
11 Company expensed either \$12.347 million or \$12.322 million to perform
12 36,300 inspections. Company Exhibit__(IIP-18) also indicated that there
13 are a total of 272,027 inspections to be performed in the five-year cycle
14 and at the end of 2007, 126,000 had been completed. Using that
15 information along with the Commission's decision that 75,447 were to be
16 performed in rate year 2009, I would agree with the Company's estimate
17 that there would be a need to perform approximately 59,000 inspections to
18 complete the current five-year cycle and proportionately begin the next
19 five-year cycle.

20
21 Q. Does that mean that you agree with the Company's estimate of the cost
22 for underground inspections in the rate year?

1 A. No. The requested rate year expense of \$23.829 million assumes an
2 average inspection cost of \$403.88, compared to a 2007 average of
3 \$340.14. There is no justification for the Company to increase the cost
4 per inspection especially given the fact that the Company is escalating its
5 labor and the non-labor expense. The Company projected the program
6 costs in determining its program change adjustments, so in essence, the
7 Company's use of a projected cost rate along with the escalation would
8 result in a double dip.

9

10 Q. What adjustment are you recommending?

11 A. The Company's request for \$23.829 million should be reduced \$3.761
12 million to \$20.068 million.

13

14 Q. How did you determine your adjustment?

15 A. I determined the average cost for inspections for 2007 to be \$340.14
16 instead of the \$403.88 assumed by the Company, and then multiplied that
17 unit cost by 59,000 inspections, resulting in a total cost of \$20.068 million.

18

19 Annual Stray Voltage Program

20 Q. Are there concerns with the Company's request for \$8.892 million for the
21 Annual Stray Voltage Program?

22 A. Yes, there is some concern with the cost projection. The Company's
23 testimony states that an increase of \$1.538 million (20.9%) is being sought

1 but that the Company is seeking approval to substitute mobile stray
2 voltage testing for manual stray voltage testing. In addition, the
3 Company's response to CPB IR 82e stated that the cost of the Annual
4 Stray Voltage Program in this proceeding is less than in Case 07-E-0523
5 because "the awarded contracts for stray voltage testing were lower than
6 initially expected." As was noted in my earlier discussion of the overhead
7 inspection program, the annual stray voltage program is another instance
8 where the Company has presented a different unit cost than in the last
9 case. This further illustrates the importance of supporting documents for
10 the cost estimates.

11 Another concern with the Company's request is the apparent
12 inconsistency in the information supplied. The Company Exhibit__(IIP-18)
13 states that the cost increase is attributable to the increased detection rate
14 of stray voltage events. In contrast, the response to CPB IR 82e states
15 that the annual stray voltage testing program costs have decreased
16 because "the historical numbers of stray voltage found through the Annual
17 program have decreased by over 25%."

18 I am also concerned that once again the Company has double
19 dipped in their request. The projected cost of the program change is not
20 based on historical cost-per-unit, but instead on a new contract rate for
21 2008. The escalation factor according to Company testimony, increases
22 the historic year costs through the rate year. By increasing the contract
23 rate beyond the test year and then applying an escalation factor that is

1 intended to be applied to the historic year, Con Edison has essentially
2 double counted the increase in costs since the test year.

3 Finally, I am concerned that the Company may conduct far less
4 manual stray voltage testing in the rate year than it projects in its filing. By
5 Petition dated March 25, 2008 in Case 04-M-0159 (Investigation of the
6 Safety of Con Edison's Transmission and Distribution Systems), Con
7 Edison asked the Commission for permission to use mobile stray voltage
8 diction in lieu of manual stray voltage testing. If the Commission approves
9 this request, Con Edison is expected to substantially reduce the volume of
10 its stray voltage testing, thereby obviating the need for ratepayers to fund
11 the amount requested.

12

13 Q. Should the escalation applied to the new Company estimate be removed?

14 A. No. While that may be easier, it would not be equitable, because the use
15 of only the contract escalation would deprive the Company of any allowed
16 escalation for 2009 and the first part of 2010.

17

18 Q. Are you recommending an adjustment to the Company's request for
19 \$8.892 million?

20 A. Yes. No cost justification has been provided for a \$1.538 million increase
21 over the test year level of \$7.354 million for Stray Voltage testing,
22 especially considering the facts that the same level of testing is assumed
23 in both periods and that the increase is attributable to double counting the

1 2008 escalation in the cost-per-unit. Since escalation is intended to be
2 applied to test year costs and the same 742,002 structures are assumed
3 to be tested in the rate year as in the test year, no program change
4 adjustment should be made. Accordingly, I recommend that the \$1.538
5 million increase be disallowed, thereby reducing labor \$271,000 and non-
6 labor costs \$1.267 million.

7 I also recommend that the Commission ensure that any shortfall of
8 actual spending on the manual stray voltage program from the amount
9 provided in rates in this proceeding, be returned for the benefit of
10 ratepayers. This protection is necessary since the PSC is currently
11 considering Con Edison's request to substitute mobile stray voltage testing
12 for manual testing.

13

14 Mobile Stray Voltage Testing

15 Q. Do you have any concerns about the Company's proposed Mobile Stray
16 Voltage Testing Program?

17 A. Yes. The Company has requested an increase of \$9.753 million over the
18 test year expense of \$11.321 million for a total request of \$21.074 million
19 plus escalation. The growth is attributed to increasing the number of
20 annual scans performed from 5.5 to 12. In Case 07-E-0523, the Company
21 was allowed \$14.883 million plus escalation to perform 12 system scans.
22 The Company is requesting an increase of \$6.191 million (\$21.074-
23 \$14.883) or 41.6%, for what is essentially one year of inflation. Again,

1 there is the concern that the Company has increased the cost-per-scan
2 and then applied escalation, effectively double counting the impact of
3 increasing per-unit costs.

4

5 Q. What did you determine from your review of the mobile stray voltage
6 detection program cost request?

7 A. The Company is increasing the cost-per-scan for contractors and support
8 management while reflecting a cost decrease per scan for electricians,
9 site-safety, emergency response and contractor support. Essentially, the
10 Company is offsetting the cost savings, derived from the program's
11 increased inspections that in turn reduced the number of shocks and the
12 required costs to correct the stray voltage sites detected. The Company
13 has indicated that a decline in shocks has occurred. With a decline in
14 shocks it would be anticipated that there could be a decline in cost for
15 repairs and standby charges. Therefore, the reduction in costs reflected
16 by the Company for making repairs is considered appropriate. The
17 problem is that the Company has offset the reduction in costs for making
18 repairs by increasing the average contractor cost-per-scan cost from
19 \$681,000 per scan ($\$3,748,000/5.5$ scans) to \$872,000 per scan
20 ($\$10,460,000/12$ scans). Con Edison has also increased its labor to
21 manage the increased number of scans. In 2007, the cost to manage 5.5
22 scans was \$32,000, but the cost in the rate year is projected to be

1 \$225,000 for 12 scans. The increase in oversight cost appears excessive
2 considering the perceived success of the program.

3 Q. Does the Company have any explanation for the significant increase in
4 costs for the mobile stray voltage detection program?

5 A. Based on the response to CPB IR 82e, the Company is increasing the
6 cost-per-scan for contractors because the costs to run the mobile voltage
7 detection vehicles was underestimated and the contract that was awarded
8 to operate the vehicles had a significantly higher cost than expected.

9
10 Q. What adjustment are you recommending to the Company's request for
11 \$21.074 million?

12 A. My initial recommendation would be to reduce the Company's contractor
13 cost for mobile testing and ultimately the total request by \$2.282 million.
14 This was determined by multiplying the 2007 cost per scan of \$681,460 by
15 12 scans for a total contractor cost of \$8.178 million. That \$8.178 million
16 cost estimate is \$2.282 million less than the Company's requested amount
17 for contractor mobile testing of \$10.46 million. Because the Company did
18 not include any supporting documents in their filing to justify the increase
19 requested and because using a 2008 cost would result in a duplication of
20 part of the escalation application, my recommended adjustment is
21 considered to be conservative in comparison to the alternative adjustment.

22
23 Q. What alternative adjustment are you referring to?

1 A. As an alternative, I would recommend that the cost increase for this
2 program for the rate year be limited to what the Commission allowed for
3 the current 2009 rate year plus one year of inflation. The per-scan amount
4 that the Commission found to be reasonable in Case 07-E-0523, was
5 essentially a 2006 expense level that was then inflated to the expected
6 2009 expense level by the approved labor and non-labor escalation
7 factors. Similarly, the 2010 rate year amount could be established at the
8 approved amount for the 2009 rate year inflated by approximately 3%.
9 This approach would result in a recommended base cost of \$15.329
10 million (\$14.883 million x 1.03) resulting in a recommended reduction of
11 \$5.745 million to the Company's request of \$21.074 million. As I stated
12 previously, my primary recommendation is conservative in comparison to
13 this alternative.

14

15 Network Transformer Vault Cleaning Program

16 Q. Did you review the cost request for the Network Transformer Vault
17 Cleaning Program?

18 A. Yes. The Company is requesting \$6.951 million plus escalation for the
19 rate year to fund this cleaning program which would be performed on a
20 five-year cycle. This represents an increase of \$6.836 million over the test
21 year expense of \$115,000. The cost proposal assumes that seven
22 contractor crews at a cost of \$2,000 per day per crew, will be required to
23 clean approximately 5,064 structures. In addition to the seven contractor

1 crews, the Company is requesting labor to support the crews at an annual
2 cost of \$707,000. The Company was allowed \$4.357 million for this
3 project in Case 07-E-0523 based on the costs that could be determined
4 through a calculation.

5

6 Q. What are your concerns with the Company's request?

7 A. The Company was requested in CPB IR 82f to provide supporting
8 documentation for the vault cleaning costs. A calculation was provided,
9 but once again no supporting documentation was submitted and the
10 numbers in the calculation differ from the numbers in the Exhibit__ (IIP-18).

11 Also, as with many other program costs, the response to DPS IR
12 45REV indicates that the 10 positions allowed in Case 07-E-0523 have
13 not been filled as of July 2008.

14

15 Q. Are you recommending an adjustment to the Company's request for
16 \$6.951 million?

17 A. Yes. Because the Company has failed to support its cost estimate with
18 documentation, as requested, the proposed costs are considered to be
19 unsupported guesses. In addition, the low level of spending on this
20 project in 2007 and the fact that the Company has not yet filled the
21 associated positions although they are being funded by ratepayers,
22 demonstrates that this project is not a priority for the Company. The
23 Company's request should be reduced to what is known and measurable

1 and that is the \$115,000 expensed in 2007. I recommend that the entire
2 increase of \$6.836 million (\$826,000 of labor and \$6,010,000 of non-labor
3 costs) be disallowed for failure to provide supporting documentation for
4 the cost estimate and based on the level of historical spending (none in
5 2006 and \$115,000 in 2007).

6

7 Central Quality Assurance Program

8 Q. Did you review the cost request for the Central Quality Assurance
9 Program?

10 A. Yes. The Company is requesting \$4.587 million plus escalation for the
11 rate year for Quality Assurance. This request represents an increase of
12 \$4.397 million over the test year expense of \$190,000. The increase
13 consists of \$3.646 million of labor costs and \$751,000 of non-labor. The
14 increase in cost is attributed to an expansion of an existing program.

15

16 Q. Do you have concerns with the cost requested for the Central Quality
17 Assurance Program?

18 A. Yes. The Company's request is identified as Phase Two of a program
19 implemented in the first quarter of 2007. The second phase provides for
20 an almost doubling of the employees participating in the program from 21
21 in 2007 to 41 in 2008. In addition to this substantial increase in personnel,
22 the Company proposes to change its accounting for these costs.
23 According to the response to CPB IR 82a and 82h, in the test year,

1 approximately 15% of the cost was expensed and the remaining 85% was
2 charged to capital projects. Now, however, the Company proposes to
3 expense 100% of the cost. Company testimony and exhibits did not
4 provide any support for this change in accounting, therefore no justification
5 has been provided.

6 In addition, I did not find evidence that any of the 40 positions
7 referred to as Quality Assurance positions in CPB IR 82h had been filled
8 during the first six months of 2008. There is no justification for increasing
9 the cost of this program for new employees that have not yet been hired.
10 Finally, the Company was requested in CPB IR 82h to provide supporting
11 documentation for the non-labor costs requested and no information was
12 provided. Thus, no justification for the non-labor cost increase has been
13 submitted.

14

15 Q. Should the Company's request for \$4.587 million be adjusted?

16 A. Yes. The Company has failed to support its cost estimate and to justify a
17 change in accounting for Quality Assurance costs. As a result, the
18 \$751,000 of new non-labor costs should be disallowed. Also, there is no
19 evidence justifying the increase in employees so the employee costs
20 should be limited to the 21 currently on staff. Finally, I recommend that
21 the cost included in the rate year be limited to the 15% previously
22 expensed. Therefore, the Company's program change adjustment of
23 \$4.397 million should be reduced by the \$751,000 of unsupported non-

1 labor costs and the labor increase should be reduced by \$3.373 million.

2 The labor adjustment allows the 21 positions filled using the historic 15%

3 expense rate for a total expense of \$273,000 ($\$3.545 \text{ million} \times 50\% \times$

4 15%)

5

6 Q. What is your total proposed adjustment to the Company's request for
7 Public Safety & Environmental cost?

8 A. I recommend that the Company's cost projection for these projects be
9 reduced by \$14.071 million for non-labor and \$5.928 million for labor.

10

11 Storm Hardening & Response

12 Q. What increase in cost is being requested for the Storm Hardening and
13 Response program?

14 A. The Company is requesting that the test year expense of \$15.715 million
15 be increased by \$5.337 million to \$21.052 million. The major reasons for
16 this increase are the proposed initiation of programs for customer
17 response, danger tree removal, overhead planning and a rear lot pole
18 removal program. In addition, there is a 14% increase in line clearance
19 and a 26% increase in the double wood program costs. The specific
20 program costs of greatest concern will be discussed separately.

21

1 Customer Service Response Program

2 Q. What are your concerns with the Customer Service Response request?

3 A. The Company's explanation of the costs of this program is confusing and
4 inconsistent, and therefore raises serious questions regarding the
5 appropriateness of this request. For example, in response to CPB IR 83a,
6 the Company indicates that this new program for which \$418,000 of cost
7 plus escalation was approved in Case 07-E-0523, has not filled 3 of the 6
8 positions currently in rates. However, the response to DPS IR 45REV
9 indicates that all 6 positions have been filled.

10 Similarly, in Exhibit__ IIP 20, the Company says that the requested
11 \$388,000 cost for this program is based on 6 full-time employees and 11
12 Equivalent Employees (EOT) and non-labor costs. The response to CPB
13 IR 83b, confirms that the cost calculation is based on 6 CSR's and 11
14 EOTs but provides no indication of non-labor costs.

15 In addition, the response to CPB IR 83b indicates that the salary of
16 each CSR is \$73,000, whereas the response to CPB IR 66 (DPS IR 165)
17 shows that the labor for the Customer Response Program is based on 6
18 CSR's each with an annual salary several times larger than the salary
19 above. The response to CPB IR 66 makes no reference to any portion of
20 the cost being overtime-related in contrast to what was indicated in
21 Exhibit__ IIP 20 and CPB IR 83b. These numerous inconsistencies raise
22 uncertainty about the appropriateness of this request.

23

1 Q. Are you recommending an adjustment to the Customer Service Response
2 requested increase of \$388,000?

3 A. Yes. I accept the Company's representation that 6 CSRs have been hired
4 for this program but disagree with its proposed annual compensation rate
5 and the overtime request. Based on the response to CPB IR 83b, the
6 CSR salary is \$73,000 and 25.8% of the associated costs should be
7 allocated to electric operations. Therefore, the cost of 6 CSRs would be
8 \$113,004 ($\$73,000 \times 6 \times 25.8\%$). Thus, an adjustment of \$275,000 is
9 required to reduce the Company's request of \$388,000 to \$113,000.

10

11 Danger Tree Removal

12 Q. What are your concerns with the danger tree removal request?

13 A. The Company, on Exhibit__(IIP 7), under the program caption "Storm
14 Hardening and Response," is requesting \$634,000 plus escalation for
15 danger tree removal. This request, based on Company Exhibit__(IIP-20)
16 assumes a "2010 cost per unit" for various size trees with the overall
17 average cost-per-tree being \$704. The use of a 2010 cost is inappropriate
18 since the Company also applies an escalation factor to its cost estimate.

19

20 Q. What adjustment are you recommending for the danger tree removal
21 request?

22 A. The Company in response to DPS IR 138.1, provided the year-to-date
23 costs for 2008 and an estimate of the costs of trees identified for removal.

1 The average cost of tree removal thus far in 2008 is \$526 per tree.
2 Including the cost of removing those trees that have been targeted for
3 removal, reduces the overall average cost to \$435 per tree. Both rates
4 are significantly less than the 2010 rate of \$704 identified in Exhibit__ (IIP-
5 20). I recommend use of the average cost of \$435 per tree to offset the
6 possible double count from the escalation application. Accepting the 900
7 tree count proposed by the Company at a rate of \$435 per tree, results in
8 a rate year expense of \$391,500. That requires a reduction of \$242,500
9 to the Company's request of \$634,000.

10

11 Distribution Line Clearance

12 Q. What are your concerns with the line clearance request?

13 A. The Company, on Exhibit__(IIP 7), under the program caption "Storm
14 Hardening and Response," has reflected a program change adjustment of
15 \$1.904 million for distribution line clearance, thereby increasing the test
16 year cost from \$13.529 million to \$15.433 million plus escalation.
17 Company Exhibit__(IIP-20) provides a detailed summary that enables the
18 reader to determine how the rate year amount was determined. However,
19 I have several concerns with the Company's cost projection.

20 First, the Company's cost calculation states that the rate year costs
21 are based on "2010 Dollars." As explained previously, this approach
22 coupled with an escalation adjustment results in a double count. Next,
23 information supplied in the response to CPB IR 83e indicates that the

1 costs used by the Company in its calculation are excessive. That
2 response provides three quotes that on a weighted basis had an average
3 cost of approximately \$4,000 per trim-mile. This indicates that the \$5,361
4 cost per trim-mile used by the Company is overstated. In addition, the
5 Time and Equipment cost estimate of \$2.109 million is 7.3% more than the
6 three-year average of \$1.966 million that was purportedly used to set the
7 projected rate. This confirms my concern that some escalation was
8 factored into the original estimate, so the application of an escalation rate
9 would lead to ratepayers paying twice for the same cost.

10

11 Q. Why was the Company's cost per mile estimate for trimming overstated?

12 A. The Company's response to CPB IR 83c provided supporting
13 documentation for the danger tree rates used by the Company. The
14 quotes provided were different than the ones provided as justification for
15 the estimate of line clearance costs. In reviewing the two sets of quotes, I
16 noted that the per-mile cost for clearance used in developing the cost
17 estimate was greater than the per-mile cost in the support provided for line
18 clearance. It would not be appropriate to ignore this information even
19 though the Company did not provide it as justification for the line
20 clearance rate per mile. By adding in the extra two quotes in the
21 weighted average, I determined that the Company's estimated rate per
22 mile of \$5,361 for line clearance is overstated by \$323 per mile. The \$323

1 difference multiplied by 1,600 miles suggests that Con Edison's 2010
2 estimate is overstated by \$516,800.

3

4 Q. Do you have a recommendation regarding Con Edison's proposed
5 spending for line clearance?

6 A. Yes. I am recommending a two step adjustment. First, the Company's
7 2010 cost estimate should be reduced by \$500,000 for the excess per-
8 mile cost included in the 2010 projection. Next, to avoid any double count
9 with escalation, I am recommending as part of the escalation adjustment
10 that the escalation be reduced \$801,000 ($\$15.433 \text{ million} \times 5.19\%$, the
11 Company escalation rate). That is a conservative adjustment given the
12 fact that any labor dollars included in the \$15.433 million request have
13 been increased by 7.78% escalation and accounts for the overstatement
14 of the Time and Equipment cost estimate.

15

16 Double Wood Program

17 Q. Do you have concerns with the Double Wood Program cost request?

18 A. Yes. The Company has requested \$2.648 million for the rate year.
19 Company Exhibit__(IIP-7) shows that this represents an increase of
20 \$540,000 over the 2007 test year expense of \$2.108 million. In reviewing
21 the decision in Case 07-E-0523, at page 79, I noted that on exceptions to
22 the Recommended Decision, the Company claimed to have spent over \$4
23 million to remove double wood in 2007. This significant difference in the

1 Company's representation of the amount of expense in 2007 has not been
2 explained.

3 Another concern is that the Company's justification in Company
4 Exhibit__(IIP-18), states in two paragraphs that it is subject to fines from
5 municipalities for not promptly removing the double poles. Other
6 information in the exhibit, including that there are more than 3,600 poles
7 which have Company attachments and that 280 additional double poles
8 are placed annually, suggests that this has been a cumulative problem
9 that has developed over a number of years. According to the response to
10 CPB IR 83j, no fines have been paid by the Company from 2003 to date.
11 The threat of fines is possible, but the fact that no fines have been paid in
12 more than five years, suggests that the Company's concern should be
13 discounted.

14 Additionally, I still contend as I did in Case 07-E-0523, that the
15 costs for this program are capital in nature and should not be expensed.

16 Finally, I am concerned with the Company's response to CPB IR
17 83l, in which the Company essentially says that if it doesn't receive
18 funding for a program, it won't perform the work. The response also
19 states that double poles were allowed to accumulate because the 2004
20 rate case did not provide funding for the transfer of equipment to a new
21 pole.

22

1 Q. Are you recommending an adjustment to projected expense for the
2 Double Wood Program?

3 A. Yes. Because there appears to be uncertainty as to what the real test
4 year cost is and because the Company allowed the double pole problem
5 to occur and grow, I am recommending that the Company be provided the
6 \$2.108 million that they have represented to be the 2007 test year
7 expense. A reduction of \$540,000 is recommended.

8

9 Q. What is the total adjustment to the Company's request for Storm
10 Hardening & Response cost?

11 A. The total adjustment for the programs discussed above is a reduction of
12 \$1.283 million of non-labor costs, \$801,000 of escalation and \$275,000 of
13 labor costs.

14

15 Process Improvement

16 Q. Are there any concerns with the Process Improvement program request?

17 A. The Company is requesting an increase of \$4.955 million above the
18 comparable test year expense of \$9.131 million for the fourteen programs
19 listed on Exhibit__(IIP-7). I will identify some concerns that were noted.
20 The Engineering Contractor – Vendor Layouts program includes an
21 increase of \$221,000 for non-labor costs associated with the addition of 12
22 engineering technicians. The projected expense is the same that was
23 requested and allowed in Case 07-E-0523. However, the Company has

1 not filled all the positions that were planned. That means the associated
2 cost increase is not justified.

3 Another concern is with the Enhanced Project Planning program.
4 The Company is requesting an increase of \$1.536 million over the test
5 year expense of \$7.822 million. The program requirements provided by
6 the Company on Exhibit__(IIP-25) suggest that eight additional positions
7 are required. The response to CPB IR 84f shows that since December
8 2007, the employee count has declined by two positions.

9 Finally, another concern is that the Technical Support /NYC
10 Regulatory Liaison Program and the Field Auditing & Quality Control
11 Program were approved for \$376,000 and \$563,000, respectively in Case
12 07-E-0523. The respective costs were projected to continue at the level
13 beyond rate year 2009. Now the Company is estimating that the costs for
14 rate year 2010 for the Technical Support /NYC Regulatory Liaison
15 Program and the Field Auditing & Quality Control Program will be
16 \$220,000 and \$394,000, respectively. To the extent that the new
17 estimates represent the true cost of the programs, ratepayers are currently
18 paying in excess of what is required for those programs. The point is that
19 the Company's filing is overly optimistic throughout. It assumes that
20 employees will be added and vacancies won't occur. It asks for non-labor
21 funding without substantiating the estimates with supporting
22 documentation.

23

1 Q. Are you recommending an adjustment to the Company's Process
2 Improvement program request?

3 A. Yes. The Company is requesting an increase of \$4.955 million above the
4 test year expense, with \$3.287 million of the increase attributed to labor.
5 Because the Company has failed to fill the positions allowed in Case 07-E-
6 0523 and has assumed there are no vacancies, I am recommending that
7 the labor request be reduced by 50% or \$1.643 million.

8

9 FACILITIES EXPENSE

10 Q. Please summarize the Company's request regarding projected facilities
11 expense.

12 A. The Company's Shared Services Panel has reflected the proposed rate
13 year O&M expenses for facilities and security on Exhibit__ (SSP-2),
14 Exhibit__ (SSP-3), Exhibit__ (SSP-4) and Exhibit__ (SSP-5). The test
15 year costs for the various programs are \$9.295 million and the requested
16 expense level is \$33.167 million. The increase of \$23.872 million is
17 significant.

18

19 Q. What is driving the increase in costs for facilities?

20 A. The Company is having to undergo significant renovations of its facilities
21 to comply with local building requirements. While some costs are being
22 capitalized, others are being expensed. Based on the Company's
23 arguments in Case 07-E-0523 and the information supplied in this case,

1 there are differences of opinion on whether some of the costs the
2 Company is expensing could instead be capitalized. For example, the
3 DPS Staff in DPS IR 343 asked for an explanation as to why Local Law 11
4 costs could not be spread over more than a single rate year. The
5 response suggested that in accordance with Generally Accepted
6 Accounting Principles ("GAAP") the amounts expended are expensed as
7 they are incurred. The response continues by stating that in rate filings,
8 the Company "expects" to record these costs in the year when they are
9 incurred. I believe the operative word is "expects." There are a number of
10 factors that apply when asserting that something is done in accordance
11 with GAAP. One factor is the Company's expectations. Judgment is also
12 part of GAAP and may, of course, differ among parties.

13 In my opinion, a significant portion of the facility costs could be
14 capitalized under two different scenarios. First, a basic concept of GAAP
15 is that when a significant amount of expenditures are made that will
16 extend the life of an asset and/or provide a benefit over future periods, the
17 cost should be capitalized. My opinion is the costs should be capitalized
18 and amortized over the periods in which the benefits occur.

19 Second, Con Edison and the Commission can make use of the
20 special rules of Financial Accounting Standard 71 ("FAS 71"), which is
21 specific to regulated industries and has been utilized by utilities and
22 regulatory agencies for years to account for costs differently than in
23 unregulated operations. Utilities often use FAS 71 to recover unusual

1 costs incurred between rate cases that otherwise would be expensed.
2 Prime examples are unusual storm costs and recovery of accounting
3 changes that unregulated entities would be required to write-off
4 immediately. The Commission could use tools made available under FAS
5 71 to require facility costs to be deferred for recovery and amortized to
6 ratepayers over a period of time.

7

8 Q. Are there other concerns with the Company's request?

9 A. Yes. The increase in projected expense is for costs incurred as the result
10 of capital projects that will provide improvements to facilities that will be
11 used over a period of time. Some costs are for improvements to the
12 property that one would expect to be capital costs. It is not appropriate to
13 establish rates with one-time costs. If rates are set that include the costs
14 in question and they are not adjusted after the year the project is
15 completed, ratepayers will continue to pay costs that the Company is no
16 longer incurring. This is a significant consideration when the projected
17 expense requested is three and one-half the times the historical expense
18 level.

19

20 Q. What is your recommendation regarding Exhibit__ (SSP-2)?

21 A. The \$10.610 million of program change cost identified on Exhibit__ (SSP-
22 2) that are associated with the work performed at Corporate Headquarters

1 includes costs that should either be capitalized, or deferred and written off
2 over an extended period of time.

3 The first concern is with the Air Quality Improvements of \$924,000.
4 The increase of \$763,000 over the test year is significant and includes the
5 removal of mold and insulation. Under EITF No. 90-8, costs to mitigate or
6 prevent environmental contamination that improve the property should be
7 capitalized. The Company in response to CPB IR 113 confirmed that
8 environmental containment is a part of this project; however, since
9 sufficient information is not available, I am not adjusting the Company's
10 request for Air Quality Improvements at this time.

11 Next, Local Law 10-11 includes environmental costs (i.e. caulk
12 removal) that will mitigate or prevent contamination. As stated above, the
13 Company could defer these costs and amortize them over the future
14 periods in which benefits from the project will be received. I am
15 recommending that the costs for Local Law 10-11 be deferred, including
16 the projected costs for the next two years, and that the current year's
17 costs be amortized over a five-year period. This would reduce the current
18 years expense \$800,000 ($\$1 \text{ million} / 5 = \$200,000$ allowed). An
19 adjustment of \$649,000 ($\$800,000 \times 81.14\%$) million is required for electric
20 operations.

21 The cost of the Building Infrastructure Restoration Programs total
22 \$1.288 million in the rate year. The Company testifies that the life
23 expectancy of assets is being approached and that upgrading the assets

1 will ensure continual operation and use of the facilities. If the costs
2 increase the life expectancy of the assets, the costs should be capitalized.
3 I am only recommending that the Cooling Towers Restoration cost of
4 \$630,000 be amortized over five years, reducing the Company's request
5 \$504,000. An adjustment of \$408,946 ($\$504,000 \times 81.14\%$) million is
6 required for electric operations.

7 I also recommend an adjustment to the cost projection for floor
8 renovations. The cost associated with the relocation of employees in the
9 rate year is \$7.655 million compared to \$226,000 in the test year 2007. In
10 reviewing the response to CPB IR 113, I am of the opinion that the \$4.895
11 million ($\$5.76 \text{ million} - \0.865 million) of construction costs and furniture
12 are capital costs and should be excluded from O&M expense. An
13 adjustment of \$3.972 million ($\$4.895 \text{ million} \times 81.14\%$) is required for
14 electric operations.

15

16 Q. What is your recommendation for Exhibit__ (SSP-3)?

17 A. The \$11.761 million of program change cost identified on Exhibit__ (SSP-
18 3) is associated with other capital work performed at other locations. I
19 have the same concerns regarding the various programs but my primary
20 concern is the rent increase from \$6.75 million in the test year to \$16.317
21 million in the rate year. First, the white paper for the rent and tax increase
22 shown on Exhibit__ (SSP-3), page 8 of 9, indicates that the cost is \$8.317
23 million not the \$16.317 million included in the Company adjustment. The

1 response to CPB IR 114 requested detail on the \$8.317 million on
2 Exhibit__ (SSP-3), page 8 of 9, and the information supplied suggests that
3 the \$8.317 million amount is correct. The additional \$8 million is not
4 supported by the filing and should be adjusted. An adjustment of \$6.491
5 million ($\$8.0 \times 81.14\%$) is required for electric operations.

6

7 CUSTOMER OPERATIONS

8 Q. Did you review the Company's request regarding Customer Operations?

9 A. Yes. A review was made of the testimony, exhibits and workpapers of the
10 Customer Operations ("CO") Panel, as well as the Panel's responses to
11 information requests. Based on my analysis, I am recommending an
12 adjustment of \$447,169 to the Company's proposal (\$274,000 for CSRs
13 and \$173,169 of escalation). The requested increase of \$5.524 million, as
14 shown on CPB Exhibit__(LA-1), Schedule 9, is driven by the requested
15 increase for Customer Service Representatives (Exhibit__ (CO-10)),
16 Customer Field Representatives (Exhibit__ (CO-18)), the Competitive
17 Market Customer Service System (Exhibit__ (CO-14)) and the Bill
18 Redesign (Exhibit__ (CO-16)).

19

20 Q. Are there some concerns that you have identified from your review?

21 A. Yes. As I indicated previously in this testimony, Con Edison's proposal to
22 add 18 Customer Service Representatives ("CSRs") has been eclipsed.
23 The Company was provided funding for an additional 18 CSRs in Case

1 07-E-0523 and has hired those 18 plus at least another 29 CSRs since
2 January 2007. Based on the response to CPB IR 92b, the 2006 test year
3 in Case 07-E-0523 included an average of 549 CSRs, and the 2007 test
4 year had an average of 557 CSRs, indicating an average addition of 8
5 CSRs. The Company now requests full ratepayer funding for 18 CFR's as
6 if none were added after the 2006 test year. In my opinion, the request
7 duplicates approximately 8 positions that were added positions since 2006.
8 Proportionately, the Company's request should be reduced at least
9 \$274,000 (\$651,000/19 requested including a supervisor, yields a per
10 CSR cost of \$34,263. Therefore, the total cost of the 8 CSRs added in
11 2007 is \$274,000.)

12 I also recommend an adjustment to the Company's Bill Redesign
13 request. Based on the supporting documentation supplied in response to
14 CPB IR 93, the increase in costs reflects projected dollars using
15 forecasted costs per unit. Since the Company also escalates the cost of
16 this project for projected inflation, it has essentially double-counted the
17 effects of inflation. To be appropriate, an escalation factor should be
18 applied to 2007 costs. Based on the Company's response to the
19 information request, the approximate increase in the cost of envelopes is
20 15.7% over the "current cost" per unit. Therefore, I am recommending
21 that the escalation of 5.19% or \$173,169 (\$3,336,594 x 5.195%) not be
22 allowed.

23

1 STEAM OPERATIONS

2 Q. Did you review the Electric Production Panel's testimony and exhibits?

3 A. Yes. The Electric Production Panel has requested an increase of \$10.898
4 million for steam operations. This includes the following major cost
5 increases: \$2.6 million for major maintenance; \$2.5 million for Unit 6
6 turbine rewind; \$350,000 for boiler cleaning; \$2.244 million for gas turbine
7 inspections and repairs; and, \$2.94 million for facilities maintenance, stack
8 painting and repair.

9

10 Q. Do you have any concerns with the Company's request?

11 A. Yes. Con Edison was requested in CPB IR 91 to provide supporting
12 documentation for the boiler cleaning, the gas turbine maintenance and
13 the facilities maintenance, but did not provide the requested support.
14 Instead, an explanation was provided that the estimate was based on
15 experience and a contract estimate; however, that contract estimate was
16 not provided.

17 Another concern is that the request appears inconsistent with the
18 Company's actual spending in the current rate year. In Case 07-E-0523,
19 Con Edison requested and was allowed a total of \$585,000 for boiler
20 cleaning and \$2.969 million for gas turbine work, an increase over the test
21 year of \$350,000 and \$2.244 million, respectively. The problem is that
22 Con Edison's 2008 budget, which encompasses 75% of the rate year
23 ending March 31, 2009, has only \$200,000 budgeted for boiler cleaning

1 and \$1.689 million budgeted for the gas turbine work. One would expect,
2 that based on what the Company requested, there should be a higher
3 expense budget for 2008. Therefore, it appears the Company's estimates
4 in Case 07-E-0523 were overstated or there is no longer a plan to expend
5 the money at the level intended. In the current rate case, the Company
6 has asked for the same increases, although Con Edison claims that the
7 \$350,000 for cleaning is for a different unit and the \$2.244 million for gas
8 turbine repairs is for the second year of a three-year maintenance plan.
9 The problem is that there is no evidence that the Company will spend the
10 amounts requested.

11 In addition, the cost requested is not reflective of historical
12 spending. The 2010 boiler cleaning request of \$474,000 exceeds the
13 \$359,000 that was spent in 2006 and 2007, combined. The \$4.225 million
14 requested for overhauls in 2010 exceeds the \$2.939 million that was the
15 total actual expense for 2006 and 2007, combined. The same concern
16 applies to the requests for gas turbine maintenance and facilities
17 maintenance.

18 One other concern is that the Company's filing is either inconsistent
19 with the purported supporting exhibits or the filing includes incorrect
20 amounts. For example the Exhibit__(EEP-2) pages 2, 3, 4 and 6 rate year
21 funding amounts match the Company's request. But Exhibit__(EEP-2)
22 pages 5, 7 and 8 match the increases requested and not the total rate
23 year funding requested.

1 Q. Did you voice similar concerns with the projected costs in Case 07-E-
2 0523?

3 A. Yes. The ALJ and the Commission stated that the Company's testimony
4 adequately supported its request. I recommend that the Commission
5 require hard evidence in this case and not rely solely on the Company's
6 unsupported testimony.

7 On CPB Exhibit__(LA-1), Schedule 10, I have summarized some
8 relevant historical and budget information. The response to CPB IR 13a in
9 Case 07-E-0523 provides three years of historical costs and the 2007
10 budget for seven of the major program costs. The 2007 actual amounts
11 and the requested amounts on my exhibit are from the Company's filing.
12 These data demonstrate that the boiler cleaning request of \$474,000 has
13 not been achieved in any of the previous four years. Similarly, the gas
14 turbine maintenance request of \$2.889 million has not been achieved in
15 any of the previous four years. The Company's request for six of the
16 seven programs exceeds the four-year average expense for that program.
17 Overall, in 2007, Con Edison budgeted \$16.03 million for the seven major
18 programs and expended \$12.602 million, with only one program being
19 over budget.

20 The other fact that the Commission should consider is that the
21 Company was requested in CPB IR 91 to provide supporting
22 documentation for three of the programs, identified earlier, with a

1 projected total cost of \$7.358 million, yet no supporting documentation
2 was provided.

3

4 Q. Are you recommending an adjustment to the requested increase in
5 expense for Electric Operations by the Electric Production Panel?

6 A. Yes. The facilities maintenance request of \$3.995 million is considered
7 excessive. As shown on CPB Exhibit__(LA-1), Schedule 10, the four-year
8 average amount expended was \$2.494 million. I am recommending that
9 the Company's request be reduced \$1.501 million to the historical average
10 of \$2.494 million, due to the absence of supporting documentation that
11 would justify an expenditure level in excess of the historical spending.

12 I am also recommending that the boiler cleaning request of
13 \$474,000 million be reduced \$274,000 to the amount budgeted for each of
14 the years 2007 and 2008. That \$200,000 is approximately the four-year
15 average expense of \$209,000. This adjustment is warranted since the
16 Company failed to provide the requested supporting documentation for the
17 expense and there is no evidence that Company will spend in excess of
18 what is budgeted and/or historically spent.

19 The request for \$7.293 million for major maintenance is considered
20 questionable. The Company requested \$7.442 million in the last case and
21 budgeted \$7.5 million for 2008 which suggests that the estimate may be
22 reasonable. However, the Company budgeted \$7.5 million in 2007 but
23 only spent \$4.693 million. Based on the facts that over the last four years

1 the average expended for major maintenance was \$4.44 million and the
2 Company only spent \$4.693 million in 2007 when \$7.5 million was
3 budgeted, I am recommending a reduction of \$2.293 million to the
4 Company's request of \$7.293 million, resulting in a recommended
5 expense of \$5.000 million. That recommended expense exceeds both the
6 2007 spending and the four-year historical average expense.

7 Finally, the increase of \$2.500 million to a total request of \$4.225
8 million for scheduled overhauls should be reduced. Historically, the
9 Company has spent on average \$2.012 million for scheduled overhauls.
10 In 2007, the Company budgeted \$3.675 million but only expended \$1.725
11 million. The 2008 budget is \$1.605 million. The historical average is
12 representative of spending for scheduled overhauls and an adjustment of
13 \$2 million would reduce the request to \$2.225 million, an amount that
14 exceeds the 2007 spending and the average spending but is more
15 reasonable than an unsupported \$4.225 million.

16 Overall, the Electric Production Panel's request for Steam
17 Operations should be reduced a total of \$6.068 million.

18
19 INTERFERENCE COSTS

20 Q. What is the Company requesting for Interference O&M costs in the rate
21 year?

22 A. The Company originally requested that the test year non-labor expense of
23 \$51.482 million be increased by \$44.748 million for a total request of

1 \$96.230 million, an increase of approximately 87%. The Company's
2 update reduced that request by \$2.764 million, to \$93.466 million,
3 resulting in an increase of approximately 82% over spending in the test
4 year.

5

6 Q. How was the Company's estimate determined?

7 A. Con Edison estimated interference costs of \$77.663 million excluding
8 Lower Manhattan, and for \$13.849 million for Lower Manhattan, and then
9 escalated those costs by \$4.747 million for projected inflation. The
10 Company's estimate for interference costs, excluding Lower Manhattan, is
11 based on a formula and New York City's Commitment Plan for capital
12 expenditures. The formula in this case is the same as used in Case 07-E-
13 0523, but the methodology for some of the factors within the formula have
14 been modified. One modification is the use of the City's January
15 Commitment Plan instead of its Capital Commitment Plan as explained in
16 the response to CPB IR 75. The use of the different commitment plan
17 resulted in an increase in the Company's cost estimate. The Company
18 increased this factor even more as explained in the response to DPS IR
19 249.

20

21 Q. What are your concerns with this estimate?

22 A. The City's Commitment Plan for capital expenditures is
23 uncharacteristically high in comparison to historical levels. Based on a

1 comparison of the annual commitment amounts for a specific time period,
2 the passage of time can impact the estimated commitment significantly.
3 For example, the City Commitment Plan for 2009 increased from \$1.337
4 billion in Case 07-E-0523 to \$1.91 billion in this case. Another concern,
5 which I also voiced in Case 07-E-0523, is that the initial request of \$96.23
6 million for the rate year is significantly higher than the five-year average
7 actual cost of \$57.958 million.

8 The amounts requested by Con Edison are based on an estimate
9 of costs by New York City and assume that the City will complete a far
10 larger number of projects than it has historically. This concern is
11 compounded by the fact that in 2006 and 2007, actual expenditures on a
12 percentage basis were significantly less than the budgeted amount based
13 on the City's Commitment Plan.

14
15 Q. What was decided in Case 07-E-0523 with respect to your concerns?

16 A. The ALJ and the Commission both stated my reliance on historical results
17 was not sufficient. However, the ALJ made reference to the fact that the
18 2006 results were out of line with previous periods and absent a
19 demonstration that my recommendation was more reasonable, the DPS
20 Staff/Company estimate should be used.

21

22 Q. Why should the Commission give your recommendation further
23 consideration in this proceeding?

1 A. The projected increase in interference cost is again significant. As shown
2 on CPB Exhibit__(LA-1), Schedule 11, the 2002-2005 actual expenditures
3 by the Company ranged from 91.06% to 122.33% of the budgeted amount
4 that was based on the City's Commitment. In 2006, that actual expense
5 as a percentage of budget decreased significantly to 74.16%. In 2007,
6 actual expenditures were 78.16% of budget. For 2008, data through June
7 30 show that spending is 38.66% of the annual budget, which is
8 equivalent to 77.32% at an annualized rate. The significant deviations
9 from projected expenditures for the years 2006-2008 year to date should
10 not be ignored.

11

12 Q. What about the Commission's decision to return for the benefit of
13 ratepayers, any portion of the approved amount that is not spent for
14 interference projects?

15 A. I am in full agreement with that determination. However, rates should not
16 be established based on inflated costs, particularly in consideration of the
17 magnitude of the requested rate increase, the price of electricity and
18 today's challenging economy. Further, ratepayers should not be
19 responsible for providing working capital to the Company in advance
20 without receiving any credit for the advance of funds. The increase in
21 projected interference expense is significant and until the Company can
22 show that interference expenses will in fact increase to the level requested,
23 a lower, more realistic amount should be reflected in rates. In Case 07-E-

1 0523, the Company was allowed \$92 million and in the first 3 months of
2 that rate year April 1, 2008 through June 30, 2008, Con Edison spent
3 \$17.276 million (DPS IR 442), \$69.104 million at an annualized rate, or
4 \$22.896 million less than what was authorized.

5

6 Q. What adjustment should be made to the Company's request for
7 interference costs?

8 A. I recommend that the initial Interference cost request of \$96.23 million be
9 reduced \$22.66 million to \$73.57 million, based on the average of the
10 2006 and 2007 actual-to-budget data. The \$73.57 million amount is
11 approximately 27% more than the Company's average actual interference
12 expense of \$57.958 million for the years 2003-2007.

13

14 ESCALATION

15 Q. Are you taking exception to the escalation applied by the Company in
16 projecting its rate year costs?

17 A. Yes. Some costs should be escalated to reflect projected inflation.
18 However, some projected costs should not be escalated. In addition,
19 some costs may be subject to inflation, but because the costs fluctuate
20 from year to year, the application of an escalation factor is not appropriate.

21

22 Q. What costs should not be escalated?

1 A. Interference costs are based on projections, and escalating those
2 projections would effectively double-count inflation. My Interference
3 adjustment already removed 23.5% of the \$4.747 million projected
4 escalation for interference, or \$1.116 million. The remaining \$3.631
5 million should also be excluded from cost of service.

6 Next, I question the appropriateness of escalation on injuries and
7 damages expense. Injuries and damages fluctuate from year to year and
8 there is no evidence that the costs vary from year to year based on
9 inflation. That expense is not tied to inflation like materials and supplies.
10 No justification exists for escalating that projected expense. A reduction of
11 \$2.069 million to the Company's projection should be made.

12 As shown on CPB Exhibit (LA-1), Schedule 1, that would result in a total
13 reduction for escalation of \$6.674 million.

14

15 Q. Does this complete your prefilled testimony?

16 A. Yes, it does.

**APPENDIX I
QUALIFICATIONS OF HELMUTH W. SCHULTZ, III**

Mr. Schultz received a Bachelor of Science in Accounting from Ferris State College in 1975. He maintains extensive continuing professional education in accounting, auditing, and taxation. Mr. Schultz is a member of the Michigan Association of Certified Public Accountants

Mr. Schultz was employed with the firm of Larkin, Chapski & Co., C.P.A.s, as a Junior Accountant, in 1975. He was promoted to Senior Accountant in 1976. As such, he assisted in the supervision and performance of audits and accounting duties of various types of businesses. He has assisted in the implementation and revision of accounting systems for various businesses, including manufacturing, service and sales companies, credit unions and railroads.

In 1978, Mr. Schultz became the audit manager for Larkin, Chapski & Co. His duties included supervision of all audit work done by the firm. Mr. Schultz also represents clients before various state and IRS auditors. He has advised clients on the sale of their businesses and has analyzed the profitability of product lines and made recommendations based upon his analysis. Mr. Schultz has supervised the audit procedures performed in connection with a wide variety of inventories, including railroads, a publications distributor and warehouse for Ford and GM, and various retail establishments.

Mr. Schultz has performed work in the field of utility regulation on behalf of public service commission staffs, state attorney generals and consumer groups concerning regulatory matters before regulatory agencies in Alaska, Arizona, California, Connecticut, Delaware, Florida, Georgia, Kentucky, Kansas, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, Nevada, North Dakota, Ohio, Pennsylvania, Rhode Island, Texas, Utah, Vermont and Virginia. He has presented expert testimony in regulatory hearings on behalf of utility commission staffs and intervenors on numerous occasions.

Partial list of utility cases participated in:

U-5331	Consumers Power Co. Michigan Public Service Commission
Docket No. 770491-TP	Winter Park Telephone Co. Florida Public Service Commission

Case Nos. U-5125 and U-5125(R)	Michigan Bell Telephone Co. Michigan Public Service Commission
Case No. 77-554-EL-AIR	Ohio Edison Company Public Utility Commission of Ohio
Case No. 79-231-EL-FAC	Cleveland Electric Illuminating Public Utility Commission of Ohio
Case No. U-6794	Michigan Consolidated Gas Refunds Michigan Public Service Commission
Docket No. 820294-TP	Southern Bell Telephone and Telegraph Co. Florida Public Service Commission
Case No. 8738	Columbia Gas of Kentucky, Inc. Kentucky Public Service Commission
82-165-EL-EFC	Toledo Edison Company Public Utility Commission of Ohio
Case No. 82-168-EL-EFC	Cleveland Electric Illuminating Company, Public Utility Commission of Ohio
Case No. U-6794	Michigan Consolidated Gas Company Phase II, Michigan Public Service Commission
Docket No. 830012-EU	Tampa Electric Company, Florida Public Service Commission
Case No. ER-83-206	Arkansas Power & Light Company, Missouri Public Service Commission
Case No. U-4758	The Detroit Edison Company - (Refunds), Michigan Public Service Commission
Case No. 8836	Kentucky American Water Company, Kentucky Public Service Commission

Case No. 8839	Western Kentucky Gas Company, Kentucky Public Service Commission
Case No. U-7650	Consumers Power Company - Partial and Immediate Michigan Public Service Commission
Case No. U-7650	Consumers Power Company - Final Michigan Public Service Commission
U-4620	Mississippi Power & Light Company Mississippi Public Service Commission
Docket No. R-850021	Duquesne Light Company Pennsylvania Public Utility Commission
Docket No. R-860378	Duquesne Light Company Pennsylvania Public Utility Commission
Docket No. 87-01-03	Connecticut Natural Gas State of Connecticut Department of Public Utility Control
Docket No. 87-01-02	Southern New England Telephone State of Connecticut Department of Public Utility Control
Docket No. 3673-U	Georgia Power Company Georgia Public Service Commission
Docket No. U-8747	Anchorage Water and Wastewater Utility Alaska Public Utilities Commission
Docket No. 8363	El Paso Electric Company The Public Utility Commission of Texas
Docket No. 881167-EI	Gulf Power Company Florida Public Service Commission
Docket No. R-891364	Philadelphia Electric Company

	Pennsylvania Office of the Consumer Advocate
Docket No. 89-08-11	The United Illuminating Company The Office of Consumer Counsel and the Attorney General of the State of Connecticut
Docket No. 9165	El Paso Electric Company The Public Utility Commission of Texas
Case No. U-9372	Consumers Power Company Before the Michigan Public Service Commission
Docket No. 891345-EI	Gulf Power Company Florida Public Service Commission
ER89110912J	Jersey Central Power & Light Company Board of Public Utilities Commissioners
Docket No. 890509-WU	Florida Cities Water Company, Golden Gate Division Florida Public Service Commission
Case No. 90-041	Union Light, Heat and Power Company Kentucky Public Service Commission
Docket No. R-901595	Equitable Gas Company Pennsylvania Consumer Counsel
Docket No. 5428	Green Mountain Power Corporation Vermont Department of Public Service
Docket No. 90-10	Artesian Water Company Delaware Public Service Commission
Docket No. 900329-WS	Southern States Utilities, Inc. Florida Public Service Commission
Case No. PUE900034	Commonwealth Gas Services, Inc. Virginia Public Service Commission

Docket No. 90-1037* (DEAA Phase)	Nevada Power Company - Fuel Public Service Commission of Nevada
Docket No. 5491**	Central Vermont Public Service Corporation Vermont Department of Public Service
Docket No. U-1551-89-102	Southwest Gas Corporation - Fuel Before the Arizona Corporation Commission
	Southwest Gas Corporation - Audit of Gas Procurement Practices and Purchased Gas Costs
Docket No. U-1551-90-322	Southwest Gas Corporation Before the Arizona Corporation Commission
Docket No. 176-717-U	United Cities Gas Company Kansas Corporation Commission
Docket No. 5532	Green Mountain Power Corporation Vermont Department of Public Service
Docket No. 910890-EI	Florida Power Corporation Florida Public Service Commission
Docket No. 920324-EI	Tampa Electric Company Florida Public Service Commission
Docket No. 92-06-05	United Illuminating Company The Office of Consumer Counsel and the Attorney General of the State of Connecticut
Docket No. C-913540	Philadelphia Electric Co. Before the Pennsylvania Public Utility Commission
Docket No. 92-47	The Diamond State Telephone Company Before the Public Service Commission of the State of Delaware
Docket No. 92-11-11	Connecticut Light & Power Company State of Connecticut

	Department of Public Utility Control
Docket No. 93-02-04	Connecticut Natural Gas Corporation State of Connecticut Department of Public Utility Control
Docket No. 93-02-04	Connecticut Natural Gas Corporation (Supplemental) State of Connecticut Department of Public Utility Control
Docket No. 93-08-06	SNET America, Inc. State of Connecticut Department of Public Utility Control
Docket No. 93-057-01**	Mountain Fuel Supply Company Before the Public Service Commission of Utah
Docket No. 94-105-EL-EFC	Dayton Power & Light Company Before the Public Utilities Commission of Ohio
Case No. 399-94-297**	Montana-Dakota Utilities Before the North Dakota Public Service Commission
Docket No. G008/C-91-942	Minnegasco Minnesota Department of Public Service
Docket No. R-00932670	Pennsylvania American Water Company Before the Pennsylvania Public Utility Commission
Docket No. 12700	El Paso Electric Company Public Utility Commission of Texas
Case No. 94-E-0334	Consolidated Edison Company Before the New York Department of Public Service
Docket No. 2216	Narragansett Bay Commission

	On Behalf of the Division of Public Utilities and Carriers, Before the Rhode Island Public Utilities Commission
Docket No. 2216	Narragansett Bay Commission - Surrebuttal On Behalf of the Division of Public Utilities and Carriers, Before the Rhode Island Public Utilities Commission
Case No. PU-314-94-688	U.S. West Application for Transfer of Local Exchanges Before the North Dakota Public Service Commission
Docket No. 95-02-07	Connecticut Natural Gas Corporation State of Connecticut Department of Public Utility Control
Docket No. 95-03-01	Southern New England Telephone Company State of Connecticut Department of Public Utility Control
Docket No. U-1933-95-317	Tucson Electric Power Before the Arizona Corporation Commission
Docket No. 5863*	Central Vermont Public Service Corporation Before the Vermont Public Service Board
Docket No. 96-01-26**	Bridgeport Hydraulic Company State of Connecticut Department of Public Utility Control
Docket Nos. 5841/ 5859	Citizens Utilities Company Before Vermont Public Service Board
Docket No. 5983	Green Mountain Power Corporation Before Vermont Public Service Board

Case No. PUE960296**	Virginia Electric and Power Company Before the Commonwealth of Virginia State Corporation Commission
Docket No. 97-12-21	Southern Connecticut Gas Company State of Connecticut Department of Public Utility Control
Docket No. 97-035-01	PacifiCorp, dba Utah Power & Light Company Before the Public Service Commission of Utah
Docket No. G-03493A-98-0705*	Black Mountain Gas Division of Northern States Power Company, Page Operations Before the Arizona Corporation Commission
Docket No. 98-10-07	United Illuminating Company State of Connecticut Department of Public Utility Control
Docket No. 99-01-05	Connecticut Light & Power Company State of Connecticut Department of Public Utility Control
Docket No. 99-04-18	Southern Connecticut Gas Company State of Connecticut Department of Public Utility Control
Docket No. 99-09-03	Connecticut Natural Gas Corporation State of Connecticut Department of Public Utility Control
Docket No. 980007-0013-003	Intercoastal Utilities, Inc. St. John County - Florida
Docket No. 99-035-10	PacifiCorp dba Utah Power & Light Company Before the Public Service Commission of Utah
Docket No. 6332 **	Citizens Utilities Company - Vermont Electric Division Before the Vermont Public Service Board

Docket No. G-01551A-00-0309	Southwest Gas Corporation Before the Arizona Corporation Commission
Docket No. 6460**	Central Vermont Public Service Corporation Before the Vermont Public Service Board
Docket No. 01-035-01*	PacifiCorp dba Utah Power & Light Company Before the Public Service Commission of Utah
Docket No. 01-05-19 Phase I	Yankee Gas Services Company State of Connecticut Department of Public Utility Control
Docket No. 010949-EI	Gulf Power Company Before the Florida Office of the Public Counsel
Docket No. 2001-0007-0023	Intercoastal Utilities, Inc. St. Johns County - Florida
Docket No. 6596	Citizens Utilities Company - Vermont Electric Division Before the Vermont Public Service Board
Docket Nos. R. 01-09-001 I. 01-09-002	Verizon California Incorporated Before the California Public Utilities Commission
Docket No. 99-02-05	Connecticut Light & Power Company State of Connecticut Department of Public Utility Control
Docket No. 99-03-04	United Illuminating Company State of Connecticut Department of Public Utility Control
Docket No. 5841/5859	Citizens Utilities Company Before the Vermont Public Service Board
Docket No. 6120/6460	Central Vermont Public Service Corporation Before the Vermont Public Service Board

Docket No. 020384-GU Tampa Electric Company d/b/a/ Peoples Gas System
Before the Florida Public Service Commission

Docket No. 03-07-02 Connecticut Light & Power Company
State of Connecticut
Department of Public Utility Control

Docket No. 6914 Shoreham Telephone Company
Before the Vermont Public Service Board

Docket No. 04-06-01 Yankee Gas Services Company
State of Connecticut
Department of Public Utility Control

Docket Nos. 6946/6988 Central Vermont Public Service Corporation
Before the Vermont Public Service Board

Docket No. 04-035-42** PacifiCorp dba Utah Power & Light Company
Before the Public Service Commission of Utah

Docket No. 050045-EI** Florida Power & Light Company
Before the Florida Public Service Commission

Docket No. 050078-EI** Progress Energy Florida, Inc.
Before the Florida Public Service Commission

Docket No. 05-03-17 The Southern Connecticut Gas Company
State of Connecticut
Department of Public Utility Control

Docket No. 05-06-04 United Illuminating Company
State of Connecticut
Department of Public Utility Control

Docket No. A.05-08-021 San Gabriel Valley Water Company, Fontana
Water Division
Before the California Public Utilities Commission

Docket NO. 7120 **	Vermont Electric Cooperative Before the Vermont Public Service Board
Docket No. 7191 **	Central Vermont Public Service Corporation Before the Vermont Public Service Board
Docket No. 06-035-21 **	PacifiCorp Before the Public Service Commission of Utah
Docket No. 7160	Vermont Gas Systems Before the Vermont Public Service Board
Docket No. 6850/6853 **	Vermont Electric Cooperative/Citizens Communications Company Before the Vermont Public Service Board
Docket No. 06-03-04** Phase 1	Connecticut Natural Gas Corporation Connecticut Department of Public Utility Control
Application 06-05-025	Request for Order Authorizing the Sale by Thames GmbH of up to 100% of the Common Stock of American Water Works Company, Inc., Resulting in Change of Control of California- American Water Company Before the California Public Utilities Commission
Docket No. 06-12-02PH01**	Yankee Gas Company State of Connecticut Department of Public Utility Control
Case 06-G-1332**	Consolidated Edison Company of New York, Inc. Before the NYS Public Service Commission
Case 07-E-0523	Consolidated Edison Company of New York, Inc. Before the NYS Public Service Commission
Docket No. 07-07-01	Connecticut Light & Power Company Connecticut Department of Public Utility Control
Docket No. 07-035-93	Rocky Mountain Power Company

Before the Public Service Commission of Utah

Docket No. 07-057-13

Questar
Before the Public Service Commission of Utah

- * Certain issues stipulated, portion of testimony withdrawn.
- ** Case settled.

1 BY MR. WALTERS:

2 Q. Mr. Schultz, in addition to the direct testimony
3 that you filed you also filed two exhibits; is that
4 correct?

5 A. Yes, sir.

6 Q. Do you have those exhibits in front of you?

7 A. Yes, sir.

8 Q. Are these exhibits prepared by yourself or under
9 your direction?

10 A. The first exhibit was prepared by me. The second
11 exhibit consists of responses to interrogatories.

12 Q. In which you relied on in your testimony?

13 A. Yes, sir.

14 Q. We will take that one at a time. First is an
15 exhibit prefiled 193 which is identified as exhibit LA-1
16 schedule 1 through 12.

17 Do you recognize that, sir?

18 A. Yes, sir.

19 Q. In addition to Exhibit 193 you also sponsored
20 Exhibit 194, which consists of IRs utilized by yourself
21 in preparing the testimony; is that correct?

22 A. Yes, sir.

23 MR. WALTERS: Exhibit 194, Your Honor,
24 consists of confidential sections and non-confidential

1 sections. The confidential sections are marked as
2 schedule 5 to Exhibit 194, LA-2, Schedule 5, Exhibit 194
3 and LA-2, schedule 2E.

4 I will present Your Honor with the confidential
5 sections initially.

6 Q. In addition to that sponsored Exhibit 194 there's
7 prefiled exhibits consisting of schedule 1 through 4; is
8 that correct?

9 A. That is correct.

10 Q. Are those exhibits true today at the time --
11 specifically LA-1, is that true today in the time you
12 created that exhibit?

13 A. Yes.

14 MR. WALTERS: Your Honor, the witness is
15 available for cross-examination.

16 CROSS EXAMINATION

17 BY MS. KRAYESKE:

18 Q. Good afternoon, Mr. Schultz. How are you today?

19 A. Just fine, thank you.

20 Q. Con Edison had an electric rate case in 2007,
21 correct?

22 A. That's correct.

23 Q. And the historic year for this case is 2007,
24 correct?

1 A. That is correct.

2 Q. The Commission issued an order in March 2008
3 approving some of the items from the 2007 rate case,
4 correct?

5 A. That is correct.

6 Q. Any of the funding provided in the 2008 -- March
7 2008 would not have been in the 2007 historic year for
8 this case, correct?

9 A. That would be correct.

10 Q. Now, in several places in your testimony you
11 claim that the company did not provide sufficient
12 information, correct?

13 A. That is correct.

14 Q. I would like to have you take a look at your
15 response to Con Edison question number 20.

16 A. I have that.

17 Q. This is an answer that you provided to Con
18 Edison, correct?

19 A. That is correct.

20 MS. KRAYESKE: Your Honor, I would like this
21 marked for identification as Exhibit 453, please.

22 JUDGE JACK: Be so marked.

23 (Exhibit 453 marked for identification.)

24 Q. Now, CPB asked Con Edison approximately 130

1 discovery questions, correct?

2 A. I will take your word for it.

3 Q. A number of the questions had multiple parts;
4 isn't that correct?

5 A. That is correct.

6 Q. In total, you probably asked about 180 questions,
7 correct?

8 A. I haven't calculated the number.

9 Q. You'll accept that subject to check?

10 A. I'll accept that subject to check.

11 Q. You claim that the company did not -- in this
12 response to CPB 20, out of that 180 questions you claim
13 that the company for CPB's questions did not provide
14 sufficient information in response to seven of those
15 questions, correct?

16 A. What I said is that this is some of the
17 identified responses where I felt that they were not
18 sufficiently responded to but not all is what it says in
19 the response.

20 Q. But this is what you identified in this discovery
21 response, correct?

22 A. That is correct. There is others that were --
23 may have been identified specifically in the -- in my
24 testimony that I did not refer to in this response.

1 Q. Okay. We will get to that.

2 These seven or ten or 15 were out of
3 approximately 180 questions, correct?

4 A. Based upon your numbers that you provided, that's
5 approximately right.

6 Q. I would like you to turn to page -- I would like
7 you to turn to page 76 of your testimony regarding
8 double wood poles.

9 I would like to also refer you to what's been
10 premarked as Exhibit 65, which is the company's IIP, one
11 of their exhibits. And I am looking at page 48 and 49
12 of that exhibit. If you do not have it I can provide
13 you with a copy of that.

14 A. You will have to do that.

15 JUDGE JACK: That was number 65, Counselor?

16 MS. KRAYESKE: That was Exhibit 65, Your
17 Honor, and I am looking at specifically pages 48 and 49
18 of that.

19 Q. Do you have that, Mr. Schultz?

20 A. I have it.

21 Q. Do you know if there are different types of
22 equipment that are on poles?

23 A. Most definitely.

24 Q. There are transformers, correct?

1 A. There is a variety of things on poles. I will
2 admit to that.

3 Q. Now, in order to remove the equipment from one
4 pole to the other pole you have to remove all of the
5 equipment, correct?

6 A. You would hope that's what you do, yes.

7 Q. Now, would you accept subject to check that as
8 part of the company's 2005 rate plan there was not
9 adequate funding to transfer all of the equipment from
10 one pole to the next pole?

11 A. That's my understanding from company testimony
12 and information supplied in responses.

13 Q. And you would also accept subject to check that
14 the company is actually fixing the double wood poles.
15 It's just at a slower rate because there wasn't enough
16 funding for each pole?

17 A. That's what the response says. That's one of the
18 things I identified as a concern in my testimony is that
19 the company stated we didn't have the money to do the
20 work so we didn't do it.

21 Q. The company is doing the work. It's just not
22 doing it at the rate that it originally said because
23 there was not enough funding?

24 A. That's what I am trying to say. We don't have

1 enough money to do all the work on a timely basis so we
2 just do what we can with the funding we have designated
3 for that.

4 And then we will do the rest when we get more
5 money is essentially what the company has said.

6 Q. The company has the flexibility to prioritize
7 these projects, correct?

8 A. That is correct, and if the company believes that
9 this was a high priority project, you would expect that
10 they would shift some funds from something else over to
11 do the project and get it done so that the backlog that
12 was created wouldn't have been created to the extent
13 that it was.

14 Q. Do you believe the double wood pole is a higher
15 priority than a substation, Mr. Schultz?

16 A. Well, I guess it depends on whose perspective you
17 are looking at it. I mean you might have one department
18 in the company that says the substation is more
19 important. And you might have the people who are
20 working on the poles that say poles are more important.

21 The fact is the company has said it's very
22 important. Otherwise we could get fines for not
23 removing the poles. They have identified it as an
24 important issue but haven't taken action as if it was

1 that important.

2 Q. Okay. Now, in response to CPB -- to the
3 company's request to CPB number 20 you identified that
4 79 C, D, and E were not fully responsive, correct?

5 A. That is correct.

6 Q. Now, you didn't specifically state what your
7 issue with these responses was, correct?

8 A. Well, the question in the testimony that's
9 referred to had to do with supporting documentation. I
10 was trying to be specific with respect to supporting
11 documentation.

12 There has been a problem, I guess, in the last
13 case the company was asked for supporting documentation.
14 And I took issue with the fact that documents that would
15 constitute supporting documentation was not provided.

16 Q. Okay --

17 A. In this case they provided some additional
18 information when asked for it in some responses where
19 supporting documentation was requested, but in other
20 responses they failed to do.

21 Q. We are going to get to the supporting
22 documentation in a minute.

23 Now, there was -- the response to CPB question 79
24 was four and-a-half pages, correct?

1 A. I would have to check the response specifically.
2 I don't have it right in front of me.

3 Q. Here's a copy of the response.

4 In addition, that response referred you to
5 several other company responses that were provided to
6 staff as well, correct?

7 If you take a look at that response it's 79C.
8 The company referred to Staff 476, correct?

9 A. Yes.

10 Q. And then 476 is in the record, and you can accept
11 this subject to check as exhibit 179 -- and that's 169,
12 and that's pages 1350 through 1354.

13 Now, 79 D and E referred you to other responses,
14 Staff 388, Staff 473, Staff 476 and CPB 61, correct?

15 A. I haven't seen them all in here, but I have seen
16 some of them you made reference, yes.

17 MS. KRAYESKE: I would like to mark the
18 responses to Staff 388 and 473 as Exhibit 454 for
19 identification, Your Honor.

20 JUDGE JACK: This is company responses to
21 Staff interrogatories 388 and 473. It will be marked
22 for identification as Number 454.

23 (Exhibit 454 marked for identification.)

24 MR. WALTERS: Your Honor, just with respect

1 to this exhibit, I would question why the company didn't
2 enter this in at the time of their infrastructure
3 panel's testimony. I understand what counsel is driving
4 at and what her point is, but it seems like we have had
5 precedence in this case anyway for entering discovery
6 responses through certain panels. This is not a
7 response that Mr. Schultz provided.

8 MS. KRAYESKE: Mr. Walters, in response to
9 79C, 79D and 79E, they referred to those responses. Had
10 Mr. Schultz put in a complete set of the responses, it
11 would have included that. I am trying to make the
12 record as clear as possible as to what the responses
13 are.

14 MR. WALTERS: As I said --

15 JUDGE JACK: We are just marking it for
16 identification right now.

17 MR. WALTERS: Okay.

18 BY MS. KRAYESKE:

19 Q. Now, on page 5 of your testimony, line 15, you
20 state the company did not provide an answer on the
21 number of participants in the health care plan assumed
22 for the rate year, correct?

23 MR. WALTERS: Could you repeat that, Ms.
24 Krayeske.

1 JUDGE JACK: Reference.

2 Q. Page 5, lines 1 to 15. Are you there?

3 A. Yes.

4 Q. Now, you stated that company did not provide an
5 answer on the number of participants in the health care
6 plan assumed for the rate year, correct?

7 A. That is correct.

8 Q. Now, on -- in what's been marked for
9 identification as -- premarked for identification as
10 Exhibit 194 in the company's response to CPB 49, the
11 company noted it had used the February 2008 number of
12 participants in the plan, correct?

13 A. I don't recall it being the number of
14 participants in the plan.

15 JUDGE LYNCH: Where is this, in 194?

16 MS. KRAYESKE: It's CPB 49.

17 A. Okay. In looking at the response the question
18 was how many --

19 Q. Excuse me. I asked the question and it says the
20 company said it used the February 2008 number of
21 participants in the plan; isn't that correct?

22 A. The response says the number of participants was
23 13,377. It doesn't say the number of the participants
24 in the plan.

1 Q. Can you read the sentence before that, Mr.
2 Schultz.

3 A. It says the number of participants -- for health
4 insurance costs the number of participants as of
5 February 2008 was used to project the cost for the rate
6 year ending March 31, 2010.

7 Q. The company explained to you they used the number
8 of participants, that were 13,377 as of February 2008,
9 to project for the rate year 2010, correct?

10 A. It says for health insurance costs the number of
11 participants as of February 2008 was used to project the
12 costs for the rate year ending March 31, 2010.

13 Q. So, now, in response to CPB 55, the company
14 provided you with a number of employees as of February
15 2008, correct?

16 A. That is correct.

17 Q. That number was 13,876, correct?

18 A. Say that again.

19 Q. The number was 13 -- for the number of employees
20 that was in response to CPB 55, not CPB 49, the company
21 had on board as of February 2008 was 13,876, correct?

22 A. That is correct.

23 Q. Now, you could have used a ratio of these two
24 numbers to determine the number of employees

1 participating in the health care program, correct?

2 You had the number that the company used as of
3 February 2008 and the number of participants and you had
4 the number of actual employees, correct?

5 A. If push came to shove, that would be a number I
6 could have used.

7 Q. Right.

8 A. I mean the request was test year amount and for
9 the program change effect and the rate year column was
10 requested. And I only had provided to me the
11 information as of February 2008, which is none of the
12 above.

13 Q. The company explained, again, the number of
14 participants that it used to project for the -- number
15 of participants for the rate year in health care plan.
16 Didn't we just go over this?

17 A. It identified the number being used, yes.

18 Q. That is correct. If you would have figured out a
19 percentage, the fallout percentage from the ratio of the
20 number of participants in February 2008 and the number
21 of actual employees would have been about 96.4 percent,
22 correct?

23 A. That would have been a calculation as of February
24 2008. That doesn't mean it's applicable to the test

1 year. Anything could have changed. I mean there's a
2 lot of differences --

3 JUDGE LYNCH: You need to slow down. Let me
4 ask both of you to bring it down a notch. Slow down and
5 relax. Nobody needs to yell. Microphones work great.
6 Thank you.

7 A. The test year. Between the test year and going
8 forward there was an increase in employees. That
9 increase could be -- the difference in the change for
10 employees from point A to point B could be different
11 than the participants from point A to point B.

12 There are various things that can affect that.
13 For instance, additional employees may -- new employees
14 may not require coverage. So that could affect it.
15 There are variables.

16 I was looking for different points in time to get
17 an idea so that I could make a determination of the
18 reasonableness of the rate year.

19 Q. But you didn't specifically ask that question,
20 did you?

21 A. I specifically asked for information that
22 pertained to another period of time other than February
23 2008.

24 Q. When you got this response and you had a problem

1 with it, you didn't contact the company, did you?

2 A. No, I didn't.

3 MS. KRAYESKE: I would like to mark for
4 identification four other responses, CPB's response to
5 question 23, 32, 38 and 41. That would be marked for
6 identification as Exhibit 455.

7 JUDGE JACK: The CPB response to company's
8 questions 23, 32, 38 and 41 will be marked for
9 identification as Exhibit 455.

10 (Exhibit 455 marked for identification.)

11 A. I have that.

12 Q. Those are the responses you provided the company
13 with, correct?

14 A. Yes.

15 Q. You would agree with me if you capitalize an item
16 it would lower the revenue requirement now, correct?

17 A. Yes, it should have that impact on it.

18 Q. For example, for the thrift savings plan, by
19 capitalizing the cost as you suggest, once it's
20 capitalized the company would get a return on and of
21 these costs, correct?

22 A. That is correct.

23 Q. As a result the customer would be paying more for
24 these costs in the long term, correct?

1 A. I don't know. I haven't made a calculation to
2 that extent. The point of that adjustment is a point
3 that --

4 MS. KRAYESKE: Your Honor, I object. I just
5 asked him if the customer would be paying more for these
6 costs in the long term and he answered that.

7 Now he is getting to what the point of his
8 adjustment is. The point of his adjustment is explained
9 in his testimony.

10 JUDGE JACK: Once again, we said if you want
11 a yes or no answer, ask for a yes or no answer. You did
12 not ask for one. If he wants to expand on his answer he
13 can expand on his answer.

14 A. The point of the adjustment is to point out the
15 fact that these are costs that follow payroll. Payroll
16 is capitalized. The company even stated in a response
17 they don't know why the company doesn't capitalize these
18 costs.

19 The thing is that's a standard practice in the
20 industry is that overhead costs related to payroll would
21 follow the payroll cost. And for some reason the
22 company wasn't doing this.

23 Q. Should the company be consistent from year to
24 year in its accounting, Mr. Schultz?

1 A. The company should be consistent, but the company
2 should also, if it's going to make a claim in other
3 areas that it's following FERC, it's following GAAP,
4 that it should also follow GAAP and FERC in this area.

5 Q. Now, Mr. Schultz, I would like to talk about
6 insurance for a minute. The company in its July update
7 lowered its request for insurance by approximately 1.7
8 million to 29.7 million; is that correct?

9 A. Yes, I believe that's correct.

10 Q. Would you agree that the purpose of the
11 adjustment was to lower the escalation rate from 10
12 percent to 7 percent?

13 A. I believe that was a factor cited, yes.

14 Q. And is it also correct the company further
15 reduced its insurance request in the formal update that
16 was entered in September?

17 A. I think I saw something to that effect, yes.

18 Q. Should your corresponding adjustment also be
19 changed?

20 A. My adjustment was to take it to a certain dollar
21 level. The actual dollar adjustment would be changed,
22 yes, but dollars to be included in rates shouldn't be
23 changed from what I am recommending originally.

24 Q. Now, I am going to have Mr. Acevedo hand you two

1 documents right now. One is company's response to CPB
2 88 for your reference and another is two discovery
3 requests.

4 The two discovery requests are CPB's responses to
5 Con Edison's questions 17 and 21 I would like marked for
6 identification as Exhibit, I believe, 456.

7 JUDGE LYNCH: I have 17 and 21; is that
8 correct?

9 MS. KRAYESKE: That is correct, Your Honor.

10 JUDGE JACK: That will be marked for
11 identification as Number 456.

12 (Exhibit 456 marked for identification.)

13 MS. KRAYESKE: Thank you, Your Honor.

14 Q. Let me know when you are ready.

15 A. These are the same.

16 JUDGE JACK: Could you direct us where you
17 find 88.

18 MS. KRAYESKE: In exhibit --

19 MR. WALTERS: It's about halfway. I
20 apologize for the voluminous exhibit.

21 Q. Page 7, lines 13 to 18 of your testimony, you
22 state that you twice asked for supporting documentation
23 for manhole inspections, correct?

24 A. Yes.

1 Q. I would like you to take a look at what's CPB 88.

2 A. Yes.

3 JUDGE LYNCH: Part of Exhibit 194.

4 Q. Now, in question CPB 88 B you asked for detailed
5 calculation of how the rate year cost for manhole
6 inspections was to be determined and to provide
7 supporting documentation, correct?

8 A. That is correct.

9 Q. I would like to go to the response to 88 B. If
10 you look across the columns, the company provided the
11 man-hour rate for transmission operations, correct, of
12 \$74?

13 A. That is correct.

14 Q. And it provided the labor unit -- labor hours per
15 unit of 24 for transmission operations, correct?

16 A. That is correct.

17 Q. That brought you to a total cost per unit for
18 transmission operations for union employees of \$1776,
19 correct?

20 A. That is correct.

21 Q. The company also provided you with transportation
22 costs associated with this manhole inspection, correct?

23 A. That is correct.

24 Q. With a man-hour rate of \$97 times two hours for a

1 unit cost of \$194, correct?

2 A. That is correct.

3 Q. The company provided a total labor cost of almost
4 \$2,000, correct?

5 A. That is correct.

6 Q. And the company said that its materials and
7 supplies were about 175. I assume that's thousand,
8 correct?

9 A. Yes, I believe so.

10 Q. And that the total program cost is about 950,000,
11 right? Total cost was 950,000?

12 A. That's what it says.

13 Q. Right.

14 A. What it doesn't show, it doesn't give me the
15 supporting documentation.

16 Q. So in CPB question 21 and the information that
17 was provided here, there is a bit of information that's
18 on this that gives you a lot of the pricing of this
19 program, correct?

20 A. That's correct.

21 Q. So now in responses to CPB 21 you said that two
22 pieces of information were not provided for 88 B,
23 correct?

24 JUDGE LYNCH: You are now talking about 456.

1 Q. In Exhibit 456, you stated two pieces of
2 information were not provided in 88 B?

3 A. I identify two, yes.

4 Q. One of them is no support for the man-hour rate
5 and no support for \$77,000 of materials, correct?

6 A. That is correct.

7 Q. Now, in the materials costs in the comment in the
8 comment field on that exhibit, that document, the
9 company noted that materials charges included asbestos
10 removal kits, waste disposal PE, and new tape coats;
11 isn't that correct?

12 A. Where was that again?

13 JUDGE LYNCH: Back in 194.

14 Q. If you go to the comment field you just read
15 across here, you go to the comment field.

16 A. Yes, I see that.

17 Q. As to the materials costs, should the company --
18 to justify the \$77,000 expense, should the company have
19 provided a receipt or purchase order? What is it the
20 company didn't provide in this response?

21 A. What the company didn't provide -- and I'll start
22 right from the -- going from the left to the right since
23 we addressed them both. Man-hour rate, I took issue
24 with that.

1 And company in rebuttal testimony says that rate
2 includes overheads for supervisors. It said it included
3 transportation costs and included materials.

4 And the problem I had, first of all, was I don't
5 know what's in the \$74. I made a comparison to the
6 individuals, the employees that were supposed to be
7 doing this work, and their labor rate was significantly
8 less than the \$74 listed. So, I took exception to that.

9 That was the response to the company. The
10 problem with that response and company's rebuttal is
11 transportation has a separate component in here.
12 Materials has a separate component.

13 So there is nothing to tell me. There is only
14 one item that could possibly be raising the \$15 an hour
15 to \$74 an hour or whatever the rate was for the
16 individuals would be then the supervisors.

17 And there was no indication that the supervisors
18 were going to be -- additional supervisors going to be
19 hired.

20 JUDGE LYNCH: Mr. Schultz, do you want
21 anybody to be able to rely on your testimony?

22 THE WITNESS: I'm sorry, I will slow down.

23 JUDGE LYNCH: If you don't, the reporter
24 can't get it.

1 THE WITNESS: I am sorry.

2 A. The point is is that there is no detail that
3 tells me how the company came up with \$74 an hour. And
4 that is one of the problems.

5 There is no detail that tells me how they came up
6 with the transportation rate. The materials and
7 supplies that the company has a number in there. They
8 say it's for various things.

9 The company needs to have included a description
10 of what they are. And when supporting documentation is
11 requested, they can provide a quote or previous invoice
12 to show that the costs they have factored in to the
13 materials and supplies is a cost that is -- can be
14 identified as known and measurable.

15 Q. Now, you didn't ask the company for the basis of
16 the man-hour rate, did you?

17 A. I asked them to provide supporting documentation
18 for the numbers that were included. It wasn't provided.

19 Q. You didn't specifically ask the company a
20 discovery request for the man-hour rate, did you? The
21 derivation of the man-hour rate, did you?

22 A. I would have to go looking at 101 to see -- 102
23 to see if it specifically referenced it.

24 Q. Did you --

1 A. I don't know off the top of my head.

2 Q. Did you --

3 A. The point is a request was made and company did
4 not provide it.

5 Q. Did you call the company or have your attorney
6 call the company to tell the company that the
7 derivations of the numbers you were looking for was not
8 provided?

9 A. No, I didn't. I don't typically have to do that
10 when I do a rate case.

11 Q. Did you ever let the company know that the
12 documentation that you had asked for was not provided
13 except in your rebuttal testimony -- in your testimony?

14 A. If I were to rely -- no, I did not specifically
15 state or make a complaint to the company about it.

16 However, I would say this was round two for me.
17 The company knows when I ask for supporting
18 documentation I expect supporting documentation, and --

19 Q. I am curious how is the company supposed to know
20 when it provides you with all this information,
21 including what the materials cost are comprised of that
22 you were looking for receipts, for purchase orders or
23 other documentations like that? How is the company
24 supposed to know that unless there is a subsequent

1 question asked or phone call made? I am curious.

2 A. We could refer back. I mean as you made
3 reference back to the last case, I specifically said in
4 the last case that supporting documentation consists of
5 estimates, quotes, and other information.

6 I mean I identified it in the last case. The
7 company knows from the last case that when I ask for
8 support they should be able to reference that.

9 Instead, the company indicated that he didn't ask
10 for it a second time. We should just forget about it.
11 We don't have to give it to him.

12 Q. Do you believe supporting documentation is some
13 kind of sheet for each employee working on each one of
14 the projects? Is that what you consider to be
15 supporting documentation as to the labor costs?

16 A. The company should have some detail to identify
17 how they come up with labor costs. That labor cost --
18 typically what I see when I ask for support, how they
19 came up with labor for a program or project, the company
20 will have a document that says we had somebody at this
21 number of hours.

22 And they will have this is hourly rate that they
23 have. And typically you will see on top of that and
24 then they will say here's the overheads that are

1 included.

2 In other cases where there is an overhead rate
3 that is automatically put into the hourly rate, the
4 company will provide some information to identify this
5 is a base rate inclusive of overhead rate.

6 The information supplied by the company in this
7 case is, I would have to say, significantly inferior to
8 what I am accustomed to seeing.

9 Q. Mr. Schultz, I can hand you this to look at. It
10 is confidential because it does include employee
11 information. This is one week's double-sided worth of
12 documents of the employees performing manhole
13 inspections. I can hand you this. It doesn't include
14 employee names, but I can hand this to you.

15 Would you have wanted this for one year, three
16 years, would you want this for five years?

17 A. No. Typically when I ask for some type of
18 information similar to this what I'd get is a sample
19 that would provide me the information that shows me this
20 is how it was done.

21 Q. Did you ask for that sample?

22 A. I asked for the supporting documentation to the
23 rates that were used. That's what would be support for
24 that. I mean --

1 MS. KRAYESKE: I have nothing further, Your
2 Honor.

3 JUDGE LYNCH: I would like to ask a
4 question. When you say what you are used to typically,
5 where is that? Is this --

6 THE WITNESS: I testify all around the
7 country.

8 JUDGE LYNCH: Is your experience the typical
9 -- does it include New York?

10 THE WITNESS: This is my second time
11 testifying here. I think the fourth time I participated
12 in a case in New York. For instance, I do a lot of work
13 in Vermont, your next-door neighbor here and --

14 JUDGE LYNCH: I am just asking you when you
15 say typical, I am asking is that based on doing a lot of
16 work in New York or is it based on doing a lot of work
17 outside of New York?

18 THE WITNESS: Outside of New York, sir.

19 MR. WALTERS: I also direct you to his
20 appendix, direct testimony. It doesn't directly answer
21 your question, but that outlines his various
22 jurisdictions in which he testified.

23 JUDGE LYNCH: Thank you.

24 JUDGE JACK: Any other cross-examination at

1 this time?

2 JUDGE LYNCH: Hold on. I didn't look at my
3 questions.

4 On page 49, line 6 -- actually lines 4
5 through 6, is there anything missing at the end of that
6 sentence?

7 THE WITNESS: No.

8 JUDGE LYNCH: Okay. So that's not 750 feet
9 per year?

10 THE WITNESS: Actually that is what it
11 pertains to is 750 feet per year.

12 JUDGE LYNCH: Page 63 you refer in the first
13 full paragraph to case 04-M-0159. Are you familiar with
14 that proceeding?

15 THE WITNESS: Not in depth. I know that it
16 took place.

17 JUDGE LYNCH: Okay, thank you. On page 70,
18 please. This could be -- I haven't studied the exhibit
19 enough, but if you help me. I'm concerned there is an
20 inconsistency between the 40 referred to on line 6 and
21 21 referred to on line 20. Maybe you could fill in the
22 blanks.

23 As I said, I read the testimony but didn't
24 study the exhibits. Maybe this is my fault.

1 THE WITNESS: Actually looking back at it,
2 that 40 probably should be 20--

3 MS. KRAYESKE: Your Honor--

4 THE WITNESS: --because it states on the
5 previous page that the increase was going from 21 to 41
6 and the difference between the two is 20 and I state
7 later on line 20 that the 21 are currently on staff.

8 MS. KRAYESKE: Can I ask the two corrections
9 be handmarked into the testimony exhibit itself so this
10 way there is no confusion later on.

11 JUDGE LYNCH: I only thought there was one.

12 MS. KRAYESKE: I thought he added the per
13 year.

14 JUDGE LYNCH: We haven't done that in the
15 other instances.

16 MS. KRAYESKE: All right.

17 JUDGE LYNCH: 40 becomes 20; is that
18 correct?

19 THE WITNESS: That is correct.

20 JUDGE LYNCH: I actually did understand it.

21 On page 77, there is a sentence on line 16
22 through most of line 18 about your concern about the
23 company not performing work for which it doesn't receive
24 revenues.

1 I am paraphrasing. Do you see that?

2 THE WITNESS: Yes, sir.

3 JUDGE LYNCH: Why does this concern you?

4 THE WITNESS: I think this touches a little
5 bit on discussion I had with counsel earlier. If a
6 company feels a job needs to be performed, even though
7 they don't have enough dollars in rates to, they should
8 still perform that job if it's required to provide safe
9 and reliable service to the customers.

10 JUDGE LYNCH: What if they asked for the
11 money and money was denied for that purpose? They
12 should still spend the money?

13 THE WITNESS: I guess you would have to look
14 at the facts and circumstances at the time the reason
15 why it was denied. I would want to know that.

16 JUDGE LYNCH: Say it was denied because
17 rates are too high and we need to ameliorate impact on
18 customers. So this year you are not going to get that
19 money for that program.

20 THE WITNESS: Okay. If that were the case
21 then I guess when the new case comes around if the
22 Commission determines that the money should be made
23 available to perform the service, that work has to be
24 done, they will grant that at a level they feel is

1 necessary to accomplish the task.

2 JUDGE LYNCH: If the company didn't get the
3 money because it was going to have harsh customer
4 impacts and the company doesn't do the work, you would
5 not be concerned; is that right? Am I understanding you
6 correctly?

7 You could say it however you want. I want
8 to make sure I understand what you are telling me.

9 THE WITNESS: I am not sure if I followed
10 your question.

11 JUDGE LYNCH: The hypothetical was the
12 company asked for something that it thinks is important.
13 Other parties disagree. The Commission ultimately
14 decides it can't fund the program because it is too
15 expensive.

16 In those circumstances should the company --
17 even if the company thinks it's needed for safe and
18 reliable service, you're saying should it nevertheless
19 do it or is it free from incurring those costs?

20 THE WITNESS: I would -- and it would be my
21 opinion that if the company felt strong enough the cost
22 was necessary, they should perform the work whether it's
23 in rates or not. You see that time and time again.

24 Prime example would be the company might be

1 allowed \$9 million for tree trimming, but because of the
2 circumstances that are within a rate year that are the
3 year that rates are now in effect, they may find it's
4 necessary to perform additional tree trimming. So they
5 may perform \$11 million worth. That is something that
6 is done.

7 JUDGE LYNCH: I understand that. It's a
8 slightly different situation. What I am talking about
9 is there is a specific request to do the work. Request
10 after due consideration is denied.

11 It's not a difference between forecast -- I
12 mean this was a conscious decision not to fund the
13 program.

14 THE WITNESS: Again, I would fall back on
15 the tree trimming example, because I've encountered
16 that, where the company may have come in one year and
17 said we need \$12 million to do tree trimming.

18 And the Commission in that jurisdiction
19 says, no, we are only going to give you 9, but the
20 company went ahead and did the trimming at a level above
21 the 9 because they felt it was necessary.

22 JUDGE LYNCH: What if they gave them zero?

23 THE WITNESS: That might take a little more
24 consideration. If we are not talking about the tree

1 trimming. We are talking about double poles.

2 JUDGE LYNCH: I am not talking about
3 anything specific. I am talking about principals.

4 THE WITNESS: If they gave them zero I think
5 in reality they would have to give some consideration to
6 what the company performed. At least give them some
7 historical level of what they have been performing with
8 some growth, maybe.

9 JUDGE LYNCH: On page 84 in the middle of
10 that page, on lines 12 through 14, you make reference of
11 an adjustment of \$3.972 million. Can you point out to
12 me where that is shown on your Exhibit 193 schedule one.

13 THE WITNESS: On schedule one under the
14 caption facilities, there is a line that says MAC floor
15 renovations. That's the 3.972.

16 JUDGE LYNCH: I have a couple more just like
17 that, that will save me time later. Page 85, looks like
18 lines 4 and 5, there is reference to an adjustment of
19 6.491.

20 THE WITNESS: Yes, I see that.

21 JUDGE LYNCH: I am looking for also on the
22 same schedule.

23 THE WITNESS: Actually it's -- if you look
24 at where that MAC floor renovation is, it's the line

1 that's right under it.

2 JUDGE LYNCH: That's a 6.

3 THE WITNESS: Yes.

4 JUDGE LYNCH: That's my problem. I thought
5 it was a 5.

6 I don't have any further questions.

7 MR. WALTERS: If I could just have a couple
8 minutes with the witness.

9 JUDGE JACK: Go right ahead.

10 (Off the record.)

11 Any redirect?

12 MR. WALTERS: No redirect, Your Honor.

13 JUDGE JACK: Mr. Schultz, thank you for your
14 testimony. You are excused..

15 GREGG COLLAR, after first having been duly
16 sworn, was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. WALTERS:

19 Q. Good afternoon, Mr. Collar. I present to you the
20 direct testimony of Greg Collar, which was prefiled on
21 September 8, 2008. I would ask you whether this
22 document was created by yourself or under your
23 direction?

24 A. Yes, it was.

1 Q. And do you have any corrections at this time to
2 your direct testimony?

3 A. Not at this time, no.

4 Q. If I were to ask you the same questions today as
5 on September 8th, would your answers be the same?

6 A. Yes.

7 MR. WALTERS: Your Honor, I move the direct
8 testimony of Gregg Collar be entered into the record as
9 if given orally.

10 JUDGE LYNCH: Motion is granted.

11 (The following is the prefiled direct
12 testimony of Gregg Collar:)

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1 Q. Please state your name and title.

2 A. My name is Gregg Collar. I am a Project Manager for the New York State
3 Consumer Protection Board ("CPB").

4
5 Q. Mr. Collar, please briefly summarize your qualifications and educational
6 background.

7 A. I received a B.A. in Mathematics from Hartwick College in 1995. From February
8 1998 through June 2000, I was employed by TeleTech in Denver, Colorado
9 where I held various positions of increasing responsibility. Most recently, I
10 worked in the Corporate office as a National Resource Analyst where I was
11 responsible for developing call volume forecasts based upon my analysis of
12 historical data for multiple call centers across the country and producing monthly
13 reports for upper management. I was employed by ICG Communications, also
14 located in Denver, Colorado, from June 2000 to May 2002, where I managed the
15 completion of facility work and testing performed by operations personnel to
16 ensure timely order provisioning for medium and large customers nationwide.
17 From February 2003 to March 2005, I was employed as a Network Technology
18 Analyst for the New York State Environmental Facilities Corporation.

19 Since May 2005, I have been employed by the CPB as a Project Manager
20 in the Utility Intervention and New Technologies Unit. My responsibilities include
21 analyzing programs to assist low-income utility customers and service quality
22 performance programs for all New York State utilities; identifying reforms that
23 should be made to these initiatives to enhance their effectiveness; representing

1 the CPB in collaborative proceedings, negotiations and other meetings regarding
2 low-income programs and other key issues; serving as the CPB's representative
3 to the Low-Income Forum on Energy; researching and drafting formal documents
4 advocating the CPB's position to be submitted to the Public Service Commission
5 ("PSC" or "Commission"); and serving as the CPB's representative on the Board
6 of Directors of the telecommunications Targeted Accessibility Fund, which
7 oversees public benefit programs including Lifeline. I served as the CPB's
8 representative in Case 01-M-0075 regarding National Grid's low-income
9 assistance program and Cases 05-E-0934 and 05-G-0935 relating to Central
10 Hudson's low-income program. I also contributed to the CPB's work in Case 06-
11 E-0894 concerning the electric power outage of Consolidated Edison of New
12 York Inc's. ("Con Edison") Long Island City Electric Network and Case 08-S-0153
13 concerning the investigation of the prudence of Con Edison regarding the July
14 2007 steam pipe rupture, by conducting research and drafting documents.

15
16 Q. Mr. Collar, have you previously testified before the PSC?

17 A. No, I have not.

18
19 Q. What is the purpose of your testimony?

20 A. The purpose of my testimony is two-fold. First, I present the CPB's position
21 regarding Con Edison's programs to assist its low-income customers. I explain
22 why the Company's proposal should be modified to ensure that the Customer
23 Charge for low-income customers is no more than \$6.50 per month, and to

1 include an arrears forgiveness program. Second, I address the Company's
2 proposal regarding Informational and Institutional Advertising expense, and
3 demonstrate that the 1977 Statement of Policy on Advertising and Promotional
4 Practices of Public Utilities ("Policy Statement") relied upon by the Commission
5 in Case 07-E-0523 is still applicable.

6
7 Q. Are you sponsoring any exhibits associated with your testimony?

8 A. Yes. I am sponsoring Exhibit__(GCC) which consists of the response to an
9 Information Request ("IR") relied upon in my testimony.

10
11 **LOW-INCOME PROGRAM**

12 Q. Are you familiar with the residential low-income program currently offered by Con
13 Edison for its electric customers?

14 A. Yes. Since 2000, the Company has provided a monthly discount for low-income
15 customers in service classification ("SC")-1 and SC-7. The monthly Customer
16 Charge for SC-1 and SC-7 service is currently \$12.42. Customers who qualify
17 for the low-income program, are eligible to receive a reduction of \$5.92 to this
18 monthly charge, so their monthly Customer Charge is \$6.50.

19 To qualify for this program, customers must be enrolled in Con Edison's
20 Direct Vendor or Utility Guarantee Program or receive benefits under
21 Supplemental Security Income ("SSI"), Temporary Assistance to Needy
22 Persons/Families, Safety Net Assistance, Food Stamps or have received a Home
23 Energy Assistance Program ("HEAP") grant in the preceding 12 months. As of

1 August 2008, the most recent time for which data are available, the program
2 serves 219,026 low-income customers (per response to CPB IR No. 68), 218,411
3 in SC-1 and 615 in SC-7. The current level of funding for the program is \$17.4
4 million, pursuant to the PSC's Order in Con Edison's most recent rate case, Case
5 07-E-0523. At the \$17.4 million funding level, the \$5.92 monthly reduction could
6 be made available to approximately 245,000 customers for a full year. However,
7 contrary to the Commission's intention in the previous rate case and based on
8 current enrollment, approximately \$1.9 million is not being used to assist low-
9 income customers.

10

11 Q. What is Con Edison's proposal in this case regarding this low-income program?

12 A. The Company proposes to continue the program at the same \$17.4 million
13 funding level as adopted in the current Rate Plan and provide a reduction of
14 \$5.92 to the Customer Charge adopted in this case for low-income customers in
15 both SC-1 and SC-7. The Company recommends that the Customer Charge
16 increase from \$12.42 to \$14.90 (20% increase), and the Customer Charge paid
17 by qualified low-income customers increase from \$6.50 to \$8.98 (38% increase).

18

19 Q. What is your position on the Company's proposal?

20 A. The CPB recommends continuation of the program to provide low-income
21 customers a discount on the monthly Customer Charge. This program provides
22 a welcome bill reduction to vulnerable individuals and families who have been
23 identified as most in need of financial assistance. However, Con Edison's

1 proposed discount should be modified, as described below. Additionally, the
2 CPB recommends that Con Edison's low-income assistance program be
3 augmented to include an arrears forgiveness component.

4

5 Q. What is the CPB's position regarding the amount of the discount to be provided
6 to low-income customers?

7 A. The CPB recommends that the SC-1 and SC-7 Customer Charge for low-income
8 customers remain at \$6.50. As explained by CPB Witness Niazi, the
9 undiscounted SC-1 and SC-7 Customer Charge should remain at the current
10 level of \$12.42. If that recommendation is adopted by the Commission, the PSC
11 should also maintain the current low-income discount at \$5.92.

12 In the event that the CPB's primary recommendation regarding the
13 undiscounted SC-1 and SC-7 Customer Charge is not adopted, resulting in an
14 increase in that charge, the discounted SC-1 and SC-7 Customer Charge for low-
15 income customers should remain at \$6.50. This would require a larger discount,
16 and additional funding for the low-income program. I also note that the CPB is
17 testifying that a substantial reduction in the amount of the rate increase proposed
18 by Con Edison is warranted.

19

20 Q. Why does the CPB oppose the Company's proposal to maintain the current
21 \$5.92 low-income discount, thereby increasing the monthly Customer Charge for
22 low-income residential customers by \$2.48?

1 A. Energy bills represent a disproportionate share of income for low-income
2 customers. Recent dramatic increases in the price of electricity have increased
3 that burden. Increasing the amount of the Customer Charge paid by low-income
4 customers would exacerbate it even further.

5
6 Q. Please elaborate on your earlier statement that Con Edison's low-income
7 program should be augmented to include an arrears forgiveness component.

8 A. In view of the burden low-income customers are experiencing from record high
9 energy prices and difficult economic conditions, as well as the experience of two
10 other utilities in New York State as described below, the CPB supports an
11 expansion of Con Edison's current low-income program to further assist
12 customers who are unable to pay their monthly electric bill in full.

13

14 Q. What are the basic elements of an arrears forgiveness program?

15 A. An arrears forgiveness program allows low-income customers unable to pay their
16 bills in full, to reduce their monthly bill and pay off their past due balances.
17 Customers in an arrears forgiveness program begin to decrease their arrears and
18 avoid suspension or termination of their service, to which they may otherwise
19 have been susceptible if the program did not exist. The loss of electric service
20 presents health and safety risks and retaining as many customers as possible
21 with an arrears forgiveness program is in the public interest. The implementation
22 of this program can provide savings to Con Edison by reducing the Company's
23 uncollectible expenses and costs associated with credit and collection activity,

1 implementation of repeated deferred payment arrangements, and costs
2 associated with the termination and subsequent restoration of service.

3

4 Q. Please describe the arrears forgiveness programs adopted by other utilities in
5 New York State.

6 A. National Grid's Low Income AffordAbility Program includes an arrears
7 forgiveness component, under which participants receive arrears forgiveness of
8 \$20 for each month they make their required monthly payment. Customer
9 participation is limited to twenty-four months and is designed to encourage
10 regular payment and sustain program participation. Customers approved for
11 HEAP who are in arrears, have a history of broken payment arrangements and
12 have a negative monthly cash flow are eligible to participate. Customers may
13 also qualify for the program if they are approved for HEAP and are referred by
14 local human service agencies and/or Company consumer advocates, and are
15 current on their account but unable to afford necessary medication, proper
16 nutrition, or some other life necessity. Electric customers are responsible for
17 paying 95% percent of their total average bill each month. The 5% reduction is
18 deferred to the customers' arrears each month. A customer must also meet a
19 minimum budget amount each month and not exceed the arrears balance criteria
20 to be eligible to participate.

21 The monthly arrears forgiveness component of National Grid's Low
22 Income AffordAbility Program is designed to provide a benefit to all program
23 participants, even those that may eventually leave or be removed from the

1 program by encouraging regular payment and sustaining participation in the
2 program. National Grid explains that customers who participate in the
3 AffordAbility program "will have virtually eliminated all outstanding balances owed
4 at the completion of the program." The ability of customers to eliminate their
5 arrears within the two-year period will enable more low-income customers to
6 participate in the program over time. The program is also expected to reduce
7 uncollectible expense and other costs currently borne by the utility.

8
9 Q. Do any other utilities in the State have an arrears forgiveness program?

10 A. Yes. Central Hudson's Enhanced Powerful Opportunities Program ("EPOP")
11 also includes an arrears forgiveness component. This program suspends
12 collection activity on a participating customer's pre-program arrears and one
13 twenty-fourth (1/24) of a participating customer's arrears balance, up to a
14 maximum of \$100 per month, is forgiven each month the customer pays current
15 charges on time and in full. A customer failing to make a payment of current
16 charges on time and in full does not receive arrears forgiveness for that month
17 but may continue in the program for future months by paying the late bill and any
18 associated late payment charges. Participants may enroll in the arrears
19 forgiveness program for up to 24 months. Eligible participants must be enrolled
20 in the EPOP discounted budget billing plan, be a primary electric customer of
21 Central Hudson, have a minimum of \$100 past due and also be a HEAP
22 recipient. Central Hudson has seen an increase in enrollment in the program
23 each quarter since September 2007:

1 Q. What is your recommendation for Con Edison?

2 A. The CPB recommends that an arrears forgiveness program be established for
3 Con Edison, which includes the following key components. First, the eligibility
4 criteria should be generally consistent with the existing eligibility requirements for
5 Con Edison's Low Income Program, except that participants must have an
6 arrears balance in a specified range. This range should be established so that
7 the arrears forgiveness program applies to customers who are most likely to
8 benefit from such an initiative, as was done for the utilities identified above.
9 Second, participants should be required to pay a certain allocated budgeted
10 amount each month in order to receive the monthly arrears forgiveness benefit.
11 Any participant who fails to make a monthly payment twice in the two year
12 period, defaults off the program but may re-enter the program again within the
13 two year period once all missed payments are paid in full. Third, the arrears
14 forgiveness program should provide a monthly arrears discount to participants
15 who satisfy program requirements, as opposed to a yearly benefit that has been
16 implemented by some utilities in the past. The monthly benefit encourages
17 regular and full payments each month, thereby sustaining customer participation
18 in the program. In addition, customer participation in the arrears forgiveness
19 program should be limited to 24 months. As outlined in National Grid and Central
20 Hudson's program, participants should be able to virtually eliminate their
21 outstanding balances after two years, if they abide by the guidelines. This will
22 enable more low-income customers to participate in the program over time and
23 help them meet their obligations.

1 The CPB recommends that approximately \$5 million be provided to fund
2 this program. Since Con Edison currently provides \$17.4 million for its low-
3 income customer charge reduction but is spending only \$15.5 million, the CPB's
4 low-income proposal would require approximately \$3 million in additional funding.
5 If implemented as intended, this program would help more consumers retain
6 electric service from Con Edison and reduce the Company's uncollectibles,
7 benefits which are not included in the direct cost of the program.

8
9 Q. Do you have specific recommendations regarding program parameters?

10 A. Not at this time. Specific program details should be established in consideration
11 of the bill-payment practices of customers currently participating in the
12 Company's Low-Income Program, including an assessment of customers'
13 arrears balance and how that balance has changed over time. This analysis
14 would determine customers who are best suited to benefit from the program.
15 The CPB requested information on arrearage amounts for SC-1 and SC-7 low-
16 income customers as of the beginning of the current rate year and for the most
17 recent billing period in CPB IR No. 69, but was informed that Con Edison does
18 not keep records of arrearage amounts at historical points in time. Similarly, in
19 response to other CPB IRs requesting the uncollectible rate and the total amount
20 of disconnections of low income participants, the Company's response was that
21 they do not track or maintain that information.

22 Accordingly, I recommend that the PSC establish a collaborative
23 proceeding, to meet within 60 days of the Commission's Order, to review

1 available data and establish the remaining parameters of an arrears forgiveness
2 program, including identifying customers who could most benefit from such a
3 program. Interested parties would submit a proposal for consideration by the
4 Commission, so that an arrears forgiveness program could be implemented by
5 July 1, 2009.

6
7 **INFORMATIONAL AND INSTITUTIONAL ADVERTISING**

8 Q. Please summarize Con Edison's proposal regarding informational and
9 institutional advertising expenditures.

10 A. Con Edison is requesting \$17.14 million of ratepayer funding for informational
11 and institutional advertising. This does not include \$3.631 million requested for
12 advertising as part of the outreach and education budget.

13
14 Q. Do you concur with the Company's request?

15 A. No. Con Edison's proposal is not consistent with PSC policy. The PSC's Policy
16 Statement first adopted in 1972 and later modified in 1977, specifies that
17 advertising expenditures with a promotional bent are to be funded solely by
18 shareholders, and establishes a percentage of total revenues - 0.06% - that are
19 to be allotted for ratepayer funded informational and institutional advertising. The
20 Commission concluded that a percentage allowance helps minimize the costs of
21 regulation since it obviates the need to investigate the content of each
22 advertisement, and helps ensure that rates are just and reasonable.

23

1 Q. Has the Commission affirmed this policy recently?

2 A. Yes. The Commission most recently used this policy in Con Edison's last rate
3 case, Case 07-E-0523, where it included \$4.47 million in the Company's revenue
4 requirement for informational and institutional advertising. The PSC also
5 indicated that the evaluation of these types of costs remains a subjective
6 endeavor and that reliance on the guidelines established by the 1977 Policy
7 Statement continues to have merit.

8

9 Q. Is the Policy Statement outdated and in need of modification?

10 A. No. The Policy Statement still serves a useful purpose in ensuring that
11 ratepayers are not required to fund unnecessary advertising initiatives. Further,
12 many of the concerns identified in the PSC's 1977 Policy Statement are
13 applicable today, particularly regarding the need to ensure that rates are just and
14 reasonable, particularly in difficult economic circumstances.

15

16 Q. Are you aware of the fact that at the time of its adoption the Commission defined
17 operating revenue for purposes of the formula to include both delivery and
18 commodity related revenues?

19 A. Yes. I am aware of the fact that at the time the Policy Statement was adopted,
20 both delivery and commodity revenues were included in the formula. After the
21 energy industry was restructured, however, the PSC's 0.06% factor is applicable
22 only to delivery revenues. This is reasonable, since customers of regulated
23 delivery service should generally not be required to fund informational and

1 institutional advertising related to non-regulated services, such as electricity
2 commodity services, whether provided by ESCOs or Con Edison. ESCOs, which
3 provide approximately 46.5% of the electricity consumed by Con Edison's
4 delivery customers, are able to conduct advertising for the services they provide.
5 Further, in view of the extremely challenging economic conditions faced by New
6 Yorkers, now is not the time to relax this long-standing Commission policy.

7
8 Q. Has Con Edison demonstrated that strict adherence to the Policy Statement
9 would jeopardize Con Edison's ability to provide safe and reliable service?

10 A. No. The company has failed to demonstrate that strict adherence to the Policy
11 Statement compromises its ability to provide its customers with safe and reliable
12 service.

13
14 Q. Please summarize your position on informational and institutional advertising

15 A. I recommend that the amount of ratepayer funded informational and institutional
16 advertising be determined by the Commission's Policy Statement. Utilizing the
17 Company's projected revenues from Exhibit (AP-9) would result in ratepayer
18 funding of approximately \$4.99 million, representing a \$12.15 million reduction
19 from the amount proposed by the Company.

20
21 Q. Does that conclude your testimony?

22 A. Yes.

1 BY MR. WALTERS:

2 Q. In addition to the direct testimony you prepared
3 an exhibit marked -- premarked as 191. Do you have that
4 in front of you?

5 A. Yes.

6 Q. And do you have any -- the exhibit consists of an
7 IR response relied on in your testimony; is that
8 correct?

9 A. Yes.

10 MR. WALTERS: Your Honor, I understand there
11 is no cross-examination for the witness.

12 JUDGE LYNCH: Let's just confirm that for
13 the record.

14 MR. WALTERS: Confirm that for the record?

15 JUDGE LYNCH: Bench has no questions,
16 either.

17 MR. WALTERS: Thank you, Your Honor.

18 JUDGE LYNCH: Thank you. You are excused.

19 There are other items that parties have that
20 they need to address on the record.

21 MS. KRAYESKE: Yes, Your Honor. The first
22 -- I have two. Mr. Richter may have some. Some other
23 people may have some more.

24 Yesterday -- the Company's response to IIP

1 30 or company's Exhibit IIP 30 marked for identification
2 as Exhibit 315, there was a page on it there that said
3 confidential. It is no longer being considered
4 confidential. So you asked that we provide the parties
5 with a copy of the first page of this Exhibit 315 with
6 the confidential marking removed. I have that and I
7 would like to provide that to everybody.

8 JUDGE LYNCH: Thank you.

9 (Off the record.)

10 JUDGE LYNCH: Is there a problem with 428?

11 MR. DOWLING: That interrogatory response
12 was incorrect as originally distributed. We have a
13 correct response to offer at this point.

14 MS. KRAYESKE: Your Honor, it's one page as
15 an attachment to one of the responses. I believe it was
16 to CPA 7. We can have this marked as another exhibit
17 with the affidavit and the correct page.

18 JUDGE LYNCH: Off the record.

19 (Off the record.)

20 JUDGE LYNCH: We have had an off the record
21 discussion. Exhibit 428 that was marked for
22 identification the other day had a page with an error in
23 it.

24 And how many pages were in that document,

1 does anybody know?

2 MS. KRAYESKE: There were a number of pages.

3 JUDGE LYNCH: A number of pages in the
4 document. On one of them there was an error. What's
5 been handed out as a substitution page and this becomes
6 part of -- will be substituted in Exhibit 428.

7 MR. VAN ORT: Is this a correction noted on
8 the record the other day or?

9 MR. DOWLING: It was not -- to my
10 recollection, this correction was not. We became aware
11 of this subsequently to the cross-examination.

12 MR. VAN ORT: Can you show us what it is.
13 Talking in the abstract doesn't really help much.

14 JUDGE LYNCH: The other day when Ms. Luthin
15 was here there were some responses to company discovery
16 requests by Consolidated Edison. And the package was
17 marked as Exhibit 428 for identification.

18 On the first page of 428 there is question 3
19 and the answer. And the answer was response, see the
20 chart below. And it's been determined after she left
21 the stand that this was the wrong table. And it's been
22 proposed this afternoon that there be a substitution for
23 that table.

24 I had indicated earlier -- I don't remember

1 whether on or off the record -- what we should do is
2 simply substitute the new table for the old table, but
3 it's apparent at this time that there may be process or
4 fairness issues associated with that.

5 So what we should do is have some discussion
6 now about what would be the risks associated with making
7 the substitution we discussed earlier.

8 Are there parties that want to be heard?

9 Mr. Kramer.

10 MR. KRAMER: Your Honor, obviously we
11 haven't had a chance to look at it until just now.

12 JUDGE LYNCH: Would Staff like some time to
13 look at it?

14 MR. VAN ORT: Let me just amplify what we
15 are talking about, earlier concern, we have no
16 supporting testimony in the record.

17 JUDGE LYNCH: These were responses to
18 discovery requests.

19 MR. VAN ORT: Right, but they weren't
20 offered previously. My understanding is what Mr.
21 Dowling indicated earlier there is no testimony that
22 would respond to that as to address these issues
23 specifically in the record.

24 JUDGE LYNCH: I think what we should do --

1 are there others that want to be heard? I think what we
2 should do is we will not substitute it. Give it a
3 different number. It won't be moved into evidence
4 today.

5 And I think there is a couple other -- we
6 could provide a short amount of time for -- let me ask
7 Mr. Dowling. What's your suggestion based on what you
8 have just heard?

9 MR. DOWLING: This document was not our
10 exhibit. This was our interrogatory response, which the
11 company proposed to make an exhibit. And I have no
12 opinion about whether it should be an exhibit or not. I
13 am indifferent to whether it's an exhibit, but I think
14 it's a correct number. If the company wants that as an
15 exhibit, the correct numbers should be in the record.

16 JUDGE LYNCH: It was after the response was
17 marked as an exhibit that error was identified?

18 MR. DOWLING: Yes.

19 JUDGE LYNCH: Ms. Krayeske, do you have a
20 suggestion, or Mr. Richter?

21 MS. KRAYESKE: The company believes the
22 correct information should be placed into the record so
23 the record is complete on this. Once we were made aware
24 there was an error in the response we were okay with

1 putting it in the record.

2 If you would like to put it in as a separate
3 exhibit and withhold it until people get a chance to
4 look at it and move it into the record later, that is
5 okay with the company.

6 JUDGE LYNCH: Would that approach be
7 agreeable to Staff?

8 MR. VAN ORT: It would. We haven't had an
9 opportunity to look at it.

10 JUDGE LYNCH: What we are going to do then,
11 CPA IR response question 3 CPA members is going to be
12 457 for identification.

13 (Exhibit 457 marked for identification.)

14 Are there other matters?

15 MR. KRAMER: I have a quick one, I think,
16 Your Honor. There was a request that Exhibit 362 be
17 copied and provided to everyone and I believe the
18 reporter, as well.

19 If I recall from last evening there was --

20 JUDGE LYNCH: Just go ahead and say it.

21 MR. KRAMER: -- a response to -- it's
22 company response to Staff IR DPS 624 and that was
23 provided after Mr. Oates had testified, I believe, last
24 week, perhaps even Monday or Wednesday of last week.

1 JUDGE LYNCH: That would be great. This is
2 one that the reporter will mark.

3 MR. LEVENSON: Your Honor, just a question.
4 Also exhibit-related. We noticed in the transcript that
5 one of the exhibits, a trial exhibit, was listed as
6 unidentified and from Tuesday or the second day of the
7 hearing.

8 JUDGE LYNCH: What's the number, do you
9 know?

10 MR. LEVENSON: Exhibit 371.

11 JUDGE LYNCH: I have response to New York
12 Power Authority concerning the percentage of meters
13 estimated for Con Ed and NYPA customers.

14 MR. LEVENSON: NYPA 85, right? Are you
15 going to be composing an extended version of this
16 exhibit list or is it upon the parties to--

17 JUDGE LYNCH: I have no such plans
18 currently.

19 MR. LEVENSON: Okay.

20 MR. VAN ORT: Although I haven't looked at
21 the transcript, historically an exhibit list was
22 attached to --

23 JUDGE LYNCH: This is an instance where we
24 need to make a correction or modification. So there is

1 no misunderstanding we have got it down. The purpose of
2 putting together the earlier list was to save about a
3 day of time in the hearing room and I don't have that
4 incentive going forward, so, in all seriousness.

5 Other things.

6 MR. RICHTER: Yesterday Mr. Loughney on
7 behalf of the City put in an affidavit for witness Dr.
8 Rosenberg, and also put in responses to two questions
9 that Your Honor had posed to Dr. Rosenberg in light of
10 the fact he was not going to be testifying in person.

11 The company reserved the opportunity to
12 evaluate those two documents and my report is as
13 follows. The company has no comment or objection with
14 respect to Dr. Rosenberg's affidavit, which included
15 some corrections.

16 With respect to the responses to the two
17 questions that you posed, we have no objection or
18 comment on the second response, but we do have an
19 objection to the first response.

20 JUDGE LYNCH: Do we know the exhibit number?

21 MR. LOUGHNEY: 449.

22 MR. RICHTER: In the Company's view
23 everything after the first sentence of the response
24 should be stricken for the following reasons.

1 Number one, how we understand the response
2 you were looking for, the understanding of the meaning
3 in the statement of Dr. Rosenberg's initial testimony,
4 and the way we read the balance of the response that
5 follows the first sentence is, number one, it refers to
6 documents that were later submitted as part of the
7 Company's rebuttal testimony; number two, it takes the
8 opportunity to characterize an exhibit associated with
9 that testimony differently from the way the Company's
10 rate panel explained that exhibit; and number three, the
11 way we read in particular the last sentence of that
12 response it appears to be new proposals or proposals
13 being made beyond the scope of -- new proposals being
14 made by Dr. Rosenberg and again which we think goes
15 beyond the information you were requesting.

16 JUDGE LYNCH: Mr. Loughney.

17 MR. LOUGHNEY: Your Honor, I don't feel
18 comfortable making changes to Dr. Rosenberg's answer. I
19 think I would prefer that we strike the question and
20 answer and just go with the second one. This was done
21 in response to your question, Your Honor. And Mr.
22 Richter is recommending a change to an answer I got from
23 my witness.

24 So I think if we strike the first question

1 and answer I think I can clarify in brief the cost of
2 service study that would be Dr. Rosenberg's
3 recommendation, but I am just not comfortable changing
4 it. I understand what Mr. Richter is saying and --

5 JUDGE LYNCH: Okay. That result wouldn't be
6 satisfactory to me. I wanted to know what he was
7 thinking, so put it in brief. I think based on
8 everything I heard that it's fair.

9 If I had asked the question in the hearing
10 room I wouldn't have accepted anything beyond the first
11 sentence. So 449 will be modified to strike everything
12 beyond -- I am pretty sure that's the way it would have
13 turned out. There would have been a discussion about
14 whether this is -- again, I have tried to ask questions
15 to make sure I understand things. I have tried hard and
16 may not have succeeded, not to lean in any party's --
17 one way or the other in terms of for a party or against
18 a party.

19 And I think the best or fairest approach
20 under all these circumstances is to just strike
21 everything after Exhibit 215 schedule five.

22 Is there anything I am missing, Mr.
23 Loughney?

24 MR. VAN ORT: You are talking about on that

1 question alone or both questions?

2 JUDGE LYNCH: Just that question. That
3 answer from the words in the alternative through the
4 words original study is used period.

5 Mr. Loughney was going to say something
6 else.

7 MR. LOUGHNEY: I accept -- Your Honor, it's
8 easier for me to accept your ruling than me to recommend
9 we take his answer apart. I accept your ruling.

10 JUDGE LYNCH: Glad I could help. What I
11 have to do is find the original exhibit. This is mine.

12 Mr. Dowling, I apologize. We should have
13 dealt with all your issues at one time.

14 MR. DOWLING: That's fine, Your Honor.

15 We have further corrections to make to Ms.
16 Luthin's testimony, substitution of one number to that
17 page. I have an affidavit to that fact.

18 (Off the record.)

19 JUDGE LYNCH: There had been some discussion
20 earlier that the company had reserved the right to
21 consider whether it had any objections to Dr.
22 Rosenberg's affidavit and it indicated that it did not.

23 Staff also has indicated that it has no
24 objections to those changes and it reserved the right to

1 do that, as well.

2 Are there other matters that need to be
3 discussed from the parties' perspective?

4 MR. KRAMER: Yes, Your Honor.

5 There is a -- we need to discuss the
6 testimony, how we are going to react to the testimony of
7 the process going forward, I suppose is a better way to
8 put it, of the testimony that Mr. Hoglund read into the
9 record Monday morning.

10 JUDGE LYNCH: Yes.

11 MR. KRAMER: I think we have had some
12 conversations with the company on this and at this time
13 we would like to discuss a couple things. One is that
14 we have two documents that we would like to have marked
15 for identification to be included in the record.

16 Also, I would like to talk about -- this
17 goes more towards the process -- Staff would like the
18 opportunity to do some discovery, ask interrogatories of
19 the company regarding Mr. Hoglund's testimony.

20 At this point I really can't say what extent
21 that is or areas are, but obviously we are talking about
22 the testimony that he read into the record on Monday.

23 JUDGE LYNCH: I assume, based on the
24 responses to the discovery, then you would want to make

1 a further procedural proposal at that time?

2 MR. KRAMER: Right. Obviously, as I
3 mentioned, we're not certain as to what or the extent of
4 IRs might be, but we would need a process to perhaps at
5 least put those in the record. We don't anticipate the
6 need to call Mr. Hoglund back.

7 JUDGE LYNCH: When you say those.

8 MR. KRAMER: The Company's responses to IRs.

9 JUDGE LYNCH: Do you have in mind what
10 period of time you will need to tender the requests --
11 and I am not trying -- I am trying to play it through.

12 MR. KRAMER: I understand, Your Honor.

13 JUDGE LYNCH: You may have follow-up
14 questions.

15 MR. KRAMER: Right. That's the point. We
16 could get the requests to the company and obviously
17 serve the other parties in the next week.

18 And obviously we will have to wait and see
19 what the Company's responses are before we decide
20 whether there's a need for follow-up. So obviously this
21 is an ongoing process that's hard to say how far it
22 would go, but at least one initial round of
23 interrogatories to the company sometime next week.

24 JUDGE LYNCH: The two documents you wanted

1 to mark, did you want to mark them when you do discovery
2 or mark them now? What was Staff planning?

3 MR. KRAMER: Prefer to mark them now.

4 JUDGE LYNCH: Has the company seen these?

5 MR. KRAMER: No, your Honor, that's my
6 understanding.

7 JUDGE LYNCH: Okay. Are there other parties
8 that want to weigh in on this discussion about what the
9 process ought to be?

10 Let me ask one further question of Staff.

11 MR. KRAMER: Sure.

12 JUDGE LYNCH: Now, my description of the
13 testimony that Mr. Hoglund put in that he read into the
14 record is that it updated and supplemented the rebuttal
15 in terms of the impacts of the economics of the current
16 situation. The rebuttal, I view that as a snapshot.

17 A week ago or whenever it was he provided
18 another snapshot. I think I have discussed this. Has
19 Staff given consideration to whether we need to have
20 further snapshots as the case moves toward a decision
21 that's beneficial to the Commission or is that
22 practical? Or what's your thoughts on that?

23 MR. KRAMER: Can I have a moment, Your
24 Honor.

1 JUDGE LYNCH: Sure. I am just asking. I am
2 not pushing at this point, but I am trying to anticipate
3 what the Commission would want.

4 Has Staff thought about this further?

5 MR. KRAMER: Yes, we have, Your Honor. We
6 appreciate the unique circumstances here and try to give
7 you background and maybe perhaps towards the end have
8 some sort of idea as to a process.

9 Obviously, generally the statement of policy
10 on test periods in major rate proceedings would control
11 here as far as known changes and the timing of those
12 updates for known changes, which I believe is a brief on
13 exceptions.

14 This is a little unusual and we recognize
15 that. The witness, Mr. Hoglund, did indicate at this
16 time the testimony and the events and the issues that he
17 described in that testimony he read into the record on
18 Monday did not impact the Company's request for rate
19 relief in this proceeding.

20 Noting those two things, we understand that
21 Commission may have some interest in -- down the line --
22 and information regarding the economic situation that we
23 appear to be in at this point. And we have -- obviously
24 no one here knows and perhaps no one on the outside of

1 this room knows what may happen in the future, what
2 impact might be on the company's request in this case.

3 So, we explained that we wanted an
4 opportunity to do some investigation, ask Mr. Hoglund
5 some IRs and hope to get those out next week. We may
6 need the chance to follow up on those questions. And we
7 may need the opportunity to file some testimony or rebut
8 the assertions.

9 I suppose, with all that being said, we are
10 interested in a fair process, one that recognizes the
11 interest of the company, Staff and the other parties, an
12 opportunity if things do need to be updated, and those
13 are outside the policy statement period, that Staff and
14 the other parties be afforded the opportunity to respond
15 to any information which indicates that the Company's
16 request in this case has changed.

17 And we would also expect obviously the
18 company would notify us immediately -- timely, I would
19 say immediately, when it becomes aware of these changes
20 that it wants to bring to the attention of the
21 Commission and Your Honors.

22 JUDGE LYNCH: Let me ask --

23 MR. RICHTER: Can I just understand in terms
24 of what you described. In terms of the Judge's question

1 whether or not there should be further snapshot all I
2 heard was if the company decides it wants to provide a
3 further snapshot, let everyone know immediately and we
4 have to figure out what to do at that time.

5 MR. KRAMER: That seems to be the most
6 flexible way to do that without hamstringing the
7 parties, the company and perhaps the judges and
8 Commission into something that may turn out to be
9 unwieldy three or four months from now.

10 I guess the idea is to remain flexible but
11 keep in mind Staff and the other parties have certain
12 interests and we'd like to make sure those are preserved
13 and we have the right to respond to anything.

14 JUDGE LYNCH: Let me ask -- none of us are
15 Commissioners so it's always hard to imagine what they
16 will want. I am assuming that the Commission may want
17 to know not only for purposes of knowing what the
18 impacts are on the company, but in terms of assessing
19 the impacts on customers.

20 MR. KRAMER: Sure, Your Honor. I agree with
21 that. If you will recall, Staff did prepare ahead of
22 time some cross-examination questions on impacts
23 resulting from the economic situation that we are in,
24 which might actually result in a lower revenue

1 requirement.

2 JUDGE LYNCH: I remember that.

3 MR. KRAMER: We have done some of that.

4 Obviously, yes, we are not looking at it from one point
5 of view. We are interested in the total result, total
6 impacts to customers and perhaps on the revenue
7 requirement.

8 JUDGE LYNCH: Okay. Let me add also that
9 obviously to the extent we get any instructions to get
10 additional information you shouldn't be surprised if you
11 hear from us.

12 I have nothing specific in mind at this
13 point in time, but that's always another possibility,
14 even if the company didn't seek to update its revenue
15 requirement, it could be interested in getting
16 additional information.

17 Let me throw that out as a possibility. I
18 have no specific instructions or plans in this regard,
19 but I am trying to think through something that we have
20 never been through before.

21 MR. LOUGHNEY: I am not sure exactly where
22 we are going. Sounds like we are -- at least Mr.
23 Richter was interpreting this as open-ended invitation
24 for the company to update as long as they provide enough

1 notice.

2 MR. RICHTER: I'm trying to understand what
3 Staff was proposing at this point in time.

4 MR. LOUGHNEY: Getting back to the
5 discussion, the updating for the company on certain
6 costs or something, if we are going to go down that road
7 there may be a whole a lot of things that need to be
8 updated.

9 For example, a rise in unemployment, that
10 would be a concern of the Commission. Maybe we should
11 wait until the Commission decides they need the
12 information rather than providing -- sounded like just
13 the company with an opportunity to update when they
14 thought they needed it.

15 JUDGE LYNCH: I think Mr. Kramer was
16 referring to the fact that known and measurable changes
17 can be introduced into the policy statement by the
18 company in brief on exceptions. My understanding was
19 that was the context in which he mentioned it, not
20 anything broader than that.

21 MR. LOUGHNEY: Was Mr. Hoglund's testimony
22 provided under the known and measurable?

23 JUDGE LYNCH: That was provided at my
24 request.

1 MR. KRAMER: Right, Your Honor. That's a
2 fair characterization of what Staff would like in this
3 proceeding.

4 I mean obviously if we were doing this last
5 year we would object strenuously to an open-ended -- to
6 a situation where the company provide any updates beyond
7 what's allowed in the policy statement.

8 JUDGE LYNCH: I am focusing on very unusual
9 circumstances that my parents went through when they
10 were young children. And so -- a lot of our parents
11 went through as young children and talk about the days,
12 the early '30s or whatever.

13 It's a very unusual situation and I just
14 don't -- I want to be as prepared as possible to deal
15 with that.

16 MR. KRAMER: Right, Your Honor. Just to be
17 absolutely clear and maybe to address Mr. Loughney's
18 comments, at this point Staff's view is that the
19 material that was placed into the record orally by
20 Mr. Hoglund on Monday does not impact the Company's
21 revenue requirement at this time.

22 So if there is something they believe that
23 changes and does impact their revenue requirement, and
24 it's something that they alert us to immediately, we are

1 able to do discovery, provide it on the record or --

2 JUDGE LYNCH: You are actually getting into
3 something that I wasn't really asking about. What I am
4 talking more about is just in general as we try to keep
5 abreast of changes. And even if we keep abreast of them
6 how to decide what it means for the rate year, where it
7 gets very difficult.

8 So I think, in the short run, to the extent
9 Staff has questions it should pursue that. If you get
10 answers and need additional information you should
11 pursue that and then we ought to have some kind of an
12 okay, now where are we, what are we going to do, a
13 couple of weeks out.

14 MR. RICHTER: I do have something I would
15 like to suggest, but I would first appreciate if --
16 Westchester spoke last week on behalf of all parties.
17 Any of the other parties have thoughts to add to
18 Staff's?

19 MR. GLASS: I am just speaking for
20 Westchester. I am just concerned about opening up a
21 Pandora's box on this. And I am more concerned, even
22 though it hasn't affected or the company has not
23 indicated this was intended to change their request, I
24 am concerned it may have an impact on somebody's outlook

1 as to the ROE.

2 We are concerned about that issue but do not
3 have a solution at the moment. Probably support Staff's
4 position for the time being.

5 MR. LEVENSON: As for NYPA, I am trying to
6 understand the process. Under the policy statement does
7 Con Ed have a right to always update certain things?

8 JUDGE LYNCH: Yes. Up to a point in time.

9 MR. LEVENSON: Has that time passed?

10 JUDGE LYNCH: It's the period known and
11 measurable changes. Anybody in the room here can
12 correct me. I have my copy here if you'd like to see
13 it, although it has a lot of ink on it. I think it
14 talks about known and measurable changes can be made as
15 late as brief on exceptions because they can readily be
16 verified by Staff.

17 In other words, if they actually had a
18 recent tax bill in hand in January that's different than
19 what's been discussed, that would be considered. It's
20 not a change in estimates. It's a known and measurable
21 change. It's very -- the other thing, it's a policy
22 statement. It's not a rule. So it's guidance. And the
23 Commission follows it even though it's from 1977. It
24 still came up in this case.

1 Comes up all the time, but I am not speaking
2 authoritatively on it. I suggest you take a look at it
3 and read it. Says what it says.

4 MR. KRAMER: It's an old policy statement.
5 May not -- certainly not available as far as I know on
6 our website.

7 JUDGE LYNCH: It's in a blue book.

8 MR. KRAMER: I have a copy here. I can
9 e-mail out a PDF of it to the parties if that's helpful.
10 It's very specific as to what can be updated and when.

11 MR. GLASS: Does it require the company to
12 update something that may go the other way?

13 JUDGE LYNCH: I suggest that people read it.
14 It's 17 NYPSC 25R. And what people say it says doesn't
15 really matter. It's what it says. Just keep in mind
16 it's not a rule. It's a policy statement. And there is
17 a distinction.

18 MR. DIAMANTOPOULOS: Your Honor, if I may be
19 heard, as well. We recognize that Mr. Hoglund indicated
20 no revenue requirement effect based on his live direct
21 testimony.

22 And so I guess at this point our only
23 concern would be that we -- all parties -- be afforded
24 the opportunity to respond to the extent that the

1 company puts in any further update.

2 JUDGE LYNCH: That I can't agree to because
3 if it's a known and measurable change of the kind I just
4 described, there isn't any process for that under the
5 policy statement.

6 So, if they, for example, came in on January
7 10 and said here's an actual bill that's higher than
8 what we have been estimating or replaced as part of our
9 estimate for something, in the normal course of business
10 that would be considered without there being any further
11 process.

12 Parties would certainly be aware the
13 information was filed but there wouldn't be any hearings
14 on it because it's known and verifiable. It's actual
15 data. Again, this is governed by the policy statement.
16 It's nothing new.

17 MR. DIAMANTOPOULOS: It's something we would
18 be allowed to address in our briefs on exceptions,
19 correct?

20 JUDGE LYNCH: If it's in the brief on
21 exceptions, I suppose there could be responses on it in
22 briefs opposing exceptions. I think that's probably why
23 it goes in the first brief rather than in the second
24 one.

1 Again, read it because I am about on one
2 and-a-half cylinders now.

3 MR. KRAMER: . Obviously, this is a difficult
4 situation. Something very unusual. Staff does not want
5 to see ourselves or the other parties disadvantaged.

6 JUDGE LYNCH: Nor do we.

7 MR. KRAMER: We appreciate you need to react
8 to questions perhaps from the Commissioners on the
9 economic situation and what it might mean to the company
10 and customers, frankly.

11 JUDGE LYNCH: Let me ask if we can wrap this
12 up.

13 Mr. Richter, you have something else,
14 please.

15 MR. RICHTER: The comment I have is we all
16 need to react and reserve our rights to react to the
17 extent we get additional advice from Commissioners about
18 what to do should the company feel that it's necessary
19 to do something additional further on down the road,
20 whether it's the letter of the policy statement, to the
21 extent something happened down the road.

22 JUDGE LYNCH: I'm not trying to --

23 MR. RICHTER: I acknowledge that. I will
24 tread carefully here because we have all had a full last

1 ten days or so. I know we have all been in this room
2 especially Counsel, etcetera.

3 I guess one thing the company feels, I
4 think, pretty strongly about is we completed the hearing
5 now and Mr. Hoglund put in additional testimony. And we
6 understand parties may have discovery. Staff and we are
7 going to respond as expeditiously as possible.

8 I am concerned about the openendedness of --
9 the continuing openendedness of a process of how to wrap
10 up the ramifications of the testimony that Mr. Hoglund
11 put in.

12 I guess maybe as a general comment, without
13 a specific proposal, is maybe just general from the
14 bench or agreement or otherwise, that in terms of
15 getting discovery requests out, in terms of the company
16 getting responses back, in terms of whether or not there
17 is followup, in terms of whether or not somebody else
18 feels the need to ask Mr. Hoglund further questions or
19 put their own witness on, I really think at this point
20 in time we need to be working towards bringing that to
21 resolution within the current schedule so that it
22 doesn't result in a change in the briefing dates for the
23 case.

24 And if some other process is needed, but I

1 guess from a process standpoint and company is going to
2 work as expeditiously as possible to get the information
3 people request of us and respond appropriately. I guess
4 we would like to put that point on the table, that
5 whatever process people are working under now, they want
6 discovery, they are reserving their rights, we should
7 all be geared up doing so that we stay on track with the
8 procedural schedule that's been established in this
9 case.

10 I thought I heard a comment last Monday when
11 this came up about possibly having to move the
12 suspension date in this case. We've seen no basis for
13 that whatsoever based upon what's happened to date.

14 So I ask whatever process, even if left
15 somewhat vague at this point in time, that we are geared
16 to wrapping this up within the existing framework.

17 JUDGE LYNCH: I think Staff offered to get
18 out its requests, its first full set of requests.

19 MR. KRAMER: Sometime next week, Your Honor.

20 JUDGE LYNCH: If they can get everything
21 they have to you by next Friday, it's a week from today,
22 is that okay? Is that what Staff agreed to?

23 MR. KRAMER: That's it, right.

24 JUDGE LYNCH: Company agreed to respond the

1 following Friday.

2 MR. RICHTER: We don't -- we are going to
3 get the answers out as quickly as we can. We don't know
4 how detailed the information is, but it's in our
5 interest. And believe me we are going to work to get
6 the responses.

7 JUDGE LYNCH: Do you have a concern about
8 taking a week to ask the question?

9 MR. RICHTER: If they get them out
10 earlier --

11 MR. KRAMER: Take a lot of time and I'm not
12 trying to set a distinct schedule for cutoff. We are
13 going to get them out as soon as we can. We are not
14 going to wait until we have 10 and then -- if we have
15 some ready Monday we will send them out.

16 MR. RICHTER: That would be helpful.

17 JUDGE LYNCH: I will schedule a conference
18 call two weeks from today to get a status report. We
19 will put out a number.

20 MS. KRAYESKE: If you schedule a time I can
21 get a number.

22 JUDGE LYNCH: I have to look at my schedule,
23 but I think that's the best way would be to get a report
24 at that time about where things stand and what makes

1 sense.

2 MR. LEVENSON: What's the date for that
3 report?

4 JUDGE LYNCH: Two weeks from today, roughly.
5 Might be 13 days from today. Might be Thursday or
6 Friday. Just not sure. I don't have my book with me.

7 Does that seem reasonable in terms of
8 addressing this?

9 MR. RICHTER: Yes.

10 MR. KRAMER: Your Honor, there is one more
11 matter. We have got two documents, Standard & Poor's
12 documents Staff would like to put into the record.

13 JUDGE LYNCH: Hand them out.

14 MR. KRAMER: We have given copies recently
15 to the company and start handing these out now.

16 JUDGE LYNCH: Two documents have been handed
17 out. First is Standard & Poor's 2007 Adjusted Key US
18 Industrial and Utility Financial Ratios, dated 8/28/08.
19 This is 458 for identification.

20 (Exhibit 458 marked for identification.)

21 Second document is Standard & Poor's
22 Positive Rating Trends for US Electric Utilities During
23 Third Quarter of 2008. And if I didn't say it's dated
24 October 17, 2008. And this is 459 for identification.

1 (Exhibit 459 marked for identification.)

2 MR. RICHTER: The company has no objection
3 to these items being marked at this time. Just note in
4 the context of the fluid process we are working under
5 right now once the company's financial experts see this
6 we might have one additional document marked. We will
7 talk about that as the process goes along.

8 JUDGE LYNCH: Thank you.

9 Mr. Dowling.

10 MR. DOWLING: Yes. I have an affidavit from
11 Ms. Luthin concerning a correction to her testimony,
12 which was given on Tuesday.

13 JUDGE LYNCH: Fine. You handed out the
14 affidavit?

15 MR. DOWLING: Yes, I have.

16 JUDGE LYNCH: If there is no objection, what
17 I would like to do is mark this as 460 for
18 identification.

19 (Exhibit 460 marked for identification.)

20 Is there anything else to be said about this
21 document? Okay.

22 The next order of business is -- with the
23 exception of 457, which is not going into evidence today
24 -- are there any objections to any of the exhibits?

1 MR. VAN ORT: Before we get to that point,
2 as I mentioned earlier, when we had the Staff
3 infrastructure investment panel up here we inadvertently
4 did not include the surrebuttal testimony and exhibit of
5 the Staff infrastructure investment panel.

6 The other day -- I believe it was Wednesday
7 -- in the discussion on the record, I believe counsel
8 for the company indicated that there would be no
9 opposition to the admission of these in the record. And
10 no party indicated any cross, but we didn't reserve an
11 exhibit number for the testimony. And I would obviously
12 have to prepare an affidavit at this point, I believe,
13 but we have no exhibit number for the testimony.

14 JUDGE LYNCH: Okay. What I will do I will
15 reserve the number 461 for the affidavit and the
16 prefiled surrebuttal for the Department of Public
17 Service Staff infrastructure investment panel.

18 MR. VAN ORT: Exhibit would be 461.

19 JUDGE LYNCH: Fine, I forgot that. So, I
20 have to modify my comment. At this point in time 457,
21 461 and 462 are not going into evidence. And action
22 will have to be taken on those in the future.

23 (Exhibits 461 and 462 reserved.)

24 And with those exceptions are there any

1 objections to moving into evidence any other document
2 which has been marked for identification in this case?

3 MR. RICHTER: Company has one, Your Honor.
4 It's exhibit 384. And it was an NYECC data response
5 counsel marked during his cross-examination of -- I
6 believe was the Company's customer operations panel.

7 Company had objected at that time to marking
8 that exhibit as it was improper for NYECC to attempt to
9 introduce Mr. Bomke's responses into evidence through
10 our customer operations panel.

11 That information contained on that response
12 certainly could have been introduced by Mr. Bomke in
13 conjunction with his direct testimony when it was
14 submitted. And I think that was probably the -- may
15 have been the only instance through the course of this
16 proceeding a party sought to use during
17 cross-examination a response from their own witness,
18 which really would be nothing more than opportunity for
19 in that certain situation Mr. Bomke, I guess, to have an
20 unfair advantage or improper opportunity basically to
21 supplement his testimony with self-serving information.

22 We don't think that exhibit should be
23 admitted in to evidence and therefore thereby available
24 to be referenced in briefs.

1 JUDGE LYNCH: Let me ask: I have taken out
2 my copy and what I have written on it -- this is not the
3 official copy. It's my copy. Says 384 redacted.

4 Was there a complete version that was
5 marked, Mr. Diamantopoulos?

6 MR. DIAMANTOPOULOS: I believe, Your Honor,
7 that we provided both a redacted and unredacted version.
8 No. Actually my recollection we only submitted the
9 redacted version of the document.

10 JUDGE LYNCH: One second. Yes. Go ahead.

11 MR. DIAMANTOPOULOS: As to Mr. Richter's
12 assertion that Mr. Bomke could have provided this
13 information with his testimony, the document that was
14 marked for identification as Exhibit 384 was in response
15 to a Con Edison data request which came after Mr. Bomke
16 filed his direct testimony.

17 And it's directly referenced testimony on
18 pages 17 and 18 provided by Mr. Bomke in which the data
19 request challenged the testimony. And so we believe
20 that this information would be helpful to the judges and
21 to the Commissioners in deciding that issue.

22 MR. RICHTER: If I can briefly respond. Of
23 course it came after Mr. Bomke's testimony was filed.
24 It was a discovery request by the company to further

1 understand Mr. Bomke's proposal.

2 On the one hand, it doesn't mean information
3 couldn't have been included as part of his initial
4 testimony. And on the other hand, under Mr.
5 Diamantopoulos' theory, it would turn the discovery
6 process where any party was responding to discovery from
7 a party attempting to understand their testimony as
8 saying we didn't have the automatic right to introduce
9 that into evidence to complete the record. And I think
10 that goes well beyond the practice before this
11 Commission.

12 MR. DIAMANTOPOULOS: May I be heard, Your
13 Honor?

14 JUDGE LYNCH: Yes. This will be it, though.

15 MR. DIAMANTOPOULOS: Thank you, Your Honor.

16 JUDGE LYNCH: This will be it for everybody.

17 MR. DIAMANTOPOULOS: Thank you, Your Honor.

18 What I wanted to say was that the
19 information that was provided to the company -- Mr.
20 Bomke was not asked any questions about this issue in
21 his -- when he took the stand. He was not
22 cross-examined on this issue.

23 And the reason the company doesn't, I
24 believe, does not want this response in the record is

1 because it essentially --

2 MR. RICHTER: I think counsel is testifying.
3 Goes beyond a procedural motion. I am really concerned
4 it also might be disclosing confidential information
5 which --

6 MR. DIAMANTOPOULOS: No, the confidential
7 information in the document is essentially the names,
8 addresses of the -- and the account numbers.

9 JUDGE LYNCH: Okay. Thanks.

10 MR. DIAMANTOPOULOS: Which have not been
11 disclosed.

12 JUDGE LYNCH: Thank you. We are going to
13 confer. We need five minutes.

14 (Off the record.)

15 JUDGE LYNCH: The Judges have conferred. We
16 rule that Exhibit 384 for identification will not be
17 moved into evidence. And the basic reasons for this are
18 two and I think we are closely related.

19 The first is that as a practical matter, as
20 Mr. Richter mentions, if you -- if we adopt a policy of
21 allowing this kind of exhibit to come in, every party
22 will then be -- would then have to have an equal right
23 to update the record based on its responses to
24 interrogatory requests.

1 And related to that also is that the
2 process, while not perfect, provides for the Company's
3 direct filing, the direct testimony of Staff and
4 intervenors, and then an opportunity for rebuttal by the
5 company and for responsive testimony by all the parties
6 to each other.

7 There can be unusual situations where we
8 would deviate from that, such as in the case where there
9 was a material error in the underlying information, and
10 we provided for that here. We don't have those kinds of
11 circumstances.

12 So, in conclusion, lots of information would
13 be helpful, but we can only get a certain amount of
14 information in the record under the process that's
15 established. So, 384 will not be introduced into
16 evidence.

17 MR. RICHTER: Thank you, Your Honor.

18 JUDGE LYNCH: With that, let me say also
19 that all of the other exhibits that have been marked
20 with the exception of 457, 461 and 462 on which we are
21 not taking any action today, that all the other
22 documents are received into evidence.

23 (Document received in evidence.)

24 MR. VAN ORT: Judge, one moment.

1 Earlier this week and because of the
2 testimony that was stricken, Exhibit 72 was eliminated
3 from that list.

4 JUDGE LYNCH: Okay. We are trying to get
5 that.

6 MR. VAN ORT: If you recall, the witness'
7 testimony was stricken and I believe his rebuttal
8 testimony that Mr. Heslin --

9 JUDGE JACK: Wasn't that exhibit simply
10 withdrawn?

11 MS. KRAYESKE: It was part of the
12 infrastructure panel.

13 JUDGE LYNCH: What number is that?

14 MR. VAN ORT: Premarked as 72, IIP 27.

15 JUDGE LYNCH: Right, I just have that as
16 blank on my list. Let me add that if people have their
17 exhibit list, I also have Exhibit 309 as blank.

18 MS. KRAYESKE: That is correct, Your Honor.

19 JUDGE LYNCH: I am making sure everybody
20 else understands that.

21 And on 315 the word "confidential" can be
22 crossed out because Ms. Krayeske circulated the revised
23 version earlier today that removes the word
24 confidential.

1 And under the descriptions on page 22 of the
2 outline, the Exhibit 323, the reference to "draft
3 confidential" should be stricken.

4 Under 324 the bold language there, IPP 30,
5 and so forth, that should be stricken.

6 So, those are the only other ones I have.
7 Mr. Van Ort, I appreciate you bringing that up so the
8 record could reflect while some documents were marked in
9 a certain way, the manner in which they were marked
10 changed during the proceeding.

11 MR. GLASS: I have some sort of note that
12 322, 323, 324 are in the wrong order.

13 MS. KRAYESKE: Mr. Glass, the Judges
14 previously requested that some of the company's
15 infrastructure panel rebuttal exhibits were not in the
16 right order. And I made an offer yesterday to the
17 parties if anybody wanted them in the proper order I
18 would try to get copies before we left today.

19 Staff was the only party that took me up on
20 that request. If you would like one, then you are going
21 to have to get one when we get back.

22 MR. GLASS: No problem. I will speak to you
23 if I need it.

24 JUDGE LYNCH: We have distributed earlier

1 today -- distributed what's described as a draft outline
2 for trial briefs. It has today's date on it.

3 What this basically reflects is that the
4 judges are interested in trying to ensure that arguments
5 concerning certain issues in the case be presented in a
6 way where we know exactly where to look in any brief to
7 find information on those topics.

8 We have no interest in limiting parties'
9 abilities to brief any issue they think is important.
10 What we have -- so, in some cases there is a number one,
11 two, three, four. Those are issues that are specified
12 and then there is opportunity for any other issues that
13 fall under that message heading. And parties can put
14 them in whatever order they want.

15 We are just not far enough along to be able
16 to come up with one list of how everything would be
17 organized. Based on information that's been discussed
18 during the hearings and before the hearings that we
19 requested in terms of reconciling the Company's position
20 with Staff's position and identifying other revenue
21 requirement impacts raised by other parties and also
22 non-revenue requirement issues, this was our rough cut
23 at what we thought were the issues that we would require
24 the parties to follow in the standard outline.

1 And obviously if there are any material
2 oversights, we would want to rectify that. If there are
3 any errors, we would want to rectify that.

4 MR. VAN ORT: Couple corrections to your
5 outline. It's fine the way it's laid out.

6 JUDGE LYNCH: We will do a go-around.

7 MR. VAN ORT: On the property taxes you are
8 showing 96.7. We believe it's 86.7.

9 JUDGE LYNCH: Could you -- this is under
10 other operating revenues?

11 MR. VAN ORT: Taxes other than income taxes.

12 JUDGE LYNCH: 86.7 million. That's the
13 difference between Staff and the company. That's my
14 understanding.

15 MR. VAN ORT: On the second page under
16 revenue allocation rate design, Mr. Fogel probably would
17 appreciate the way it was laid out, but it's ECOS not
18 ESCOs.

19 JUDGE LYNCH: I apologize.

20 Other parties have comments?

21 Mr. Glass, do you have something?

22 MR. LOUGHNEY: More of a question, Your
23 Honor. There is a whole bunch of issues sort of beneath
24 the surface, so to speak. Not revenue

1 requirement-related. I am thinking of Westchester rate
2 study, short power, those sorts of things.

3 Are you just going to classify those under
4 other issues?

5 JUDGE LYNCH: No. I would say short power
6 is revenue allocation in rate design. I would say the
7 issue about whether there ought to be a Westchester
8 district is in that area, as well.

9 MR. LOUGHNEY: What about something like
10 mandatory submetering rate design?

11 JUDGE LYNCH: I really don't know. I just
12 haven't gotten that far.

13 MR. LOUGHNEY: I'm thinking maybe we should
14 provide you with a list of some of the issues and decide
15 whether or not we need to create other big categories.
16 I think that's what we did in the steam case.

17 MS. KRAYESKE: What I was going to suggest
18 is maybe between now and sometime next week, not today,
19 that the parties -- the company will take a crack at
20 trying to put things in subcategories where it says all
21 other rate of return issues and put A, B, C and D.

22 And send that around to the parties and get
23 back to you and discuss that with you. This way you can
24 have something that basically everybody is putting the

1 same issue in the same spot.

2 JUDGE LYNCH: That would be even more
3 helpful. As I said, we weren't far enough along between
4 yesterday and today to put that together.

5 The only reason we are able to put this
6 together is because the parties have been cooperating in
7 working on the numbers and what things mean.

8 To the extent the parties want to do that --
9 the only thing is briefs are being written. So it needs
10 to be done quickly.

11 MS. KRAYESKE: Some point next week. We can
12 work on this Monday, Tuesday, Wednesday with the
13 parties.

14 JUDGE LYNCH: Any other corrections anybody
15 is aware of?

16 The other thing I was going to ask the
17 parties, I mentioned procedural history is not
18 necessary. It's easy enough for us to write it up.

19 Parties can focus on the issues. If anybody
20 wants to say anything about that feel free, but you
21 don't have to spend -- everybody doesn't have to spend a
22 day putting together what we can do.

23 The other is if people could use a table of
24 contents, particularly if the document is more than 20

1 pages.

2 A lot of people don't do that. Let me just
3 say, in a general way, some people have thought they are
4 working on an issue and an issue is captioned what the
5 roof should look like.

6 And then all of a sudden on page 13 there is
7 a footnote about what the plumbing should look like.
8 And those are the ones that drive me crazy because when
9 I am looking for plumbing I want to find plumbing. When
10 I am looking for the roof, I want to find the roof.

11 When people go off issue and expect us to
12 put it all together in this big, huge jigsaw puzzle, we
13 want to try to join issue and get all the relevant
14 information in one place. Please try to help us do
15 that.

16 I just put it on here and I am not insisting
17 on anything. It's very, very helpful, not just for the
18 judges. It's also true for Commissioners and senior
19 staff. If they are prepping for meetings and so forth
20 to discuss specific issues, it helps them too, so.

21 MS. KRAYESKE: We will endeavor to get a
22 table of contents out soon.

23 JUDGE LYNCH: Mr. Kane, were there any
24 number errors you saw?

1 MR. KANE: Staff pointed out just the
2 property tax number. We are in agreement.

3 JUDGE LYNCH: I want to emphasize there is
4 absolutely no interest here in limiting parties' ability
5 to brief the issues that are important to them.

6 And this is not an indication that some
7 issues are unimportant. It's just that in terms of
8 dollars we think we flagged what are the big dollar
9 issues.

10 And since also there's a lot of money
11 involved in the case, makes sense to know what the
12 matters are and focus on them.

13 Anything else?

14 MR. KRAMER: One more thing, Your Honor.
15 Very minor -- not minor issue. I know you discussed it
16 on the record a couple of times in the last few days.
17 Staff motion to strike is still pending, correct?

18 JUDGE LYNCH: Absolutely.

19 MR. KRAMER: Great. Thank you. Just a
20 clarification.

21 MR. RICHTER: We noted it wasn't on the
22 outline, but it will be added next week.

23 JUDGE LYNCH: What will?

24 MR. RICHTER: General equipment.

1 JUDGE LYNCH: Where does that go?

2 MR. RICHTER: I assume under rate base.

3 JUDGE LYNCH: I couldn't break that out. I
4 didn't remember what the number was.

5 Is there anything else? If not, it's 3:14
6 on Friday and we are adjourned. Thank you very much,
7 everyone.

8 (Hearing concluded.)

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