STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 09-E-0428 – 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-0152 - Comprehensive Management Audit of Consolidated Edison Company of New York, Inc.

ORDER ESTABLISHING THREE-YEAR ELECTRIC RATE PLAN

(Issued and Effective March 26, 2010)

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of New York on March 25, 2010

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
Robert E. Curry, Jr.
James L. Larocca

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BY THE COMMISSION:

INTRODUCTION

On May 8, 2009, Consolidated Edison Company of New York, Inc. (Con Edison or the Company) filed to increase its electric rates. In its May 8th filing, the Company proposed revisions to the electric tariff schedules and estimated that they would produce an increase of approximately $854.4 million, or 7.4% on a total bill basis (19.5% increase in delivery rates). By Order Suspending Major Rate Filing, issued May 18, 2009 in Case 09-E-0428, we instituted a proceeding to investigate and audit the Company's May 8th rate filing.[1]

This order adopts the terms set forth in a Joint Proposal filed in the rate proceeding on November 24, 2009 by Con Edison and Staff of the Department of Public Service (Staff). The following active parties have also executed the Joint Proposal: the City of New York (City) and the Metropolitan Transportation Authority (MTA), the New York Power Authority (NYPA), the Small Customer Marketer Coalition (SCMC), the Retail Energy Supply Association (RESA), Consumer Power Advocates (CPA), the E-Cubed Company, LLC on behalf of the Joint Supporters (E-Cubed), Pace Energy and Climate Center (Pace), and the New York Energy Consumers Council (NYECC)(collectively, the Signatory Parties); in all, eleven Signatory Parties. Other active parties who participated in the proceedings have indicated that, although declining to become signatory parties, they do not oppose implementation of the terms of the Joint Proposal. These parties include the County of Westchester, the New York State Consumer Protection Board (CPB) and the Utility Workers Union of America, AFL-CIO, Local 1-2.

The rate proceeding occurs in the larger context of the on-going recessionary economic times and, for Con Edison, the completion of a comprehensive management and operations audit performed by the Liberty Consulting Group (Liberty audit).[2] Although the Liberty audit is separate from the rate proceeding, the Joint Proposal's provisions provide a response to several recommendations contained in the audit. Also austerity measures we initiated in 2008 will continue, as modified, in the three-year electric rate plan (Electric Rate Plan). Efforts to contain

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[1] Case 09-E-0428 is referred to generally in this order as "the rate case" or "the rate proceeding."

[2] Case 08-M-0152, referred to generally in this order as "the Liberty audit" or "the management audit."

capital construction costs while assuring safe and reliable service are also evident in the terms of the Joint Proposal.

The Joint Proposal establishes a three-year rate plan designed to be equivalent to a revenue increase of $540.8 million in revenues on an annual basis starting on April 1, 2010; an additional $306.5 million on April 1, 2011; and an additional $280.2 million on April 1, 2012. To mitigate the impact on customers of the first year rate increase, the parties proposed, and we are providing for, the three rate increases to be implemented on a levelized basis set at $420.4 million in each year. On average, the overall bill impact of these rate changes equates to an increase of approximately 3.6% in each year. Further, the Company will continue to recover $248.8 million of its annual revenue requirement through the Rate Adjustment Clause (RAC) mechanism pending a determination in Case 09-M-0114.[3] Lastly, concurrent with this order we are resolving the audit of over-spending on capital projects that remained open from Case 07-E-0523.[4] As a consequence, the Rate Year 1 increase will be offset by a one-time credit of a $36.4 million customer benefit, as discussed below and more thoroughly in the order in that case.

PROCEDURAL HISTORY

Following issuance of the May 18, 2009 Suspension Order, a procedural conference was convened on June 2, 2009, before Administrative Law Judges Kevin Casutto and William Bouteiller assigned as litigation judges, and Jeffrey Stockholm and Michelle Phillips assigned as settlement judges. On June 10, 2009, the

[3] Case 09-M-0114 - Proceeding on Motion of the Commission to Examine the Prudence of Certain Capital Program and Operation and Maintenance Expenditures by Consolidated Edison Company of New York, Inc.

[4] 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 – Staff Investigation of Capital Expenditures, Order Adopting Joint Proposal (issued and effective March 26, 2010).

litigation judges issued a ruling which, among other things, established a litigation schedule calling for updates to the rate filing on July 10, 2009, the submission of testimony on August 28, 2009, rebuttal testimony on September 18, 2009, and evidentiary hearings from October 26, 2009 through November 5, 2009. The parties filed their testimony as required by the schedule.

Parties to the proceeding engaged in extensive discovery, propounding approximately 1,500 interrogatories regarding proposed rates, projects, programs, cost estimates, and various other aspects of the Company’s business.

On June 9, 2009, Con Edison filed supplementary testimony, in accordance with our Order in Case 08-E-0539, addressing the Company’s future austerity plans and efforts to control its escalating property taxes.[5] On August 28, 2009, testimony responding to the Company’s case, with or without supporting exhibits, was filed by the City, NYECC, NYPA, Pace, Astoria Generating Company (Astoria), County of Westchester (Westchester), CPB, and Staff.

After conducting exploratory discussions with the settlement judges in attendance, the Company, Staff, and the intervenors elected to pursue formal settlement negotiations in an effort to reach agreement. On September 14, 2009, pursuant to 16 NYCRR 3.9, Con Edison filed with the Secretary a Notice of Impending Settlement Negotiations. The notice was served on all active parties to the proceeding. In addition, other active parties who participated in the negotiations, mediated by the settlement judges, included RESA, SCMC and E Cubed.

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[5] 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, Order Setting Electric Rates (issued and effective April 24, 2009).

During September and October 2009, the parties, with the settlement judges' assistance, met and reached agreement on the terms needed for a three-year rate plan. The negotiations were conducted in accordance with the applicable settlement procedures; appropriate and timely notification was provided to all interested parties.

Prior to the commencement of evidentiary hearings, by letter dated October 22, 2009, the Company informed the litigation judges that there was a high probability that the parties would produce and execute a joint proposal on or before November 18, 2009. The Company requested a suspension of the evidentiary hearing schedule and the adoption of a schedule for the submission of the Joint Proposal. By Notice issued October 22, 2009, the evidentiary hearings were canceled, and, by Ruling issued October 22, 2009, the litigation judges adopted alternative procedures to consider a Joint Proposal. The schedule included dates for filing statements in support and opposition, and a hearing on January 12, 2010.

The following parties filed statements in support of the Joint Proposal: Con Edison, Staff, the City, NYPA, SCMC, RESA, CPA, E-Cubed on behalf of the Joint Supporters, and NYECC. CPB filed a statement supporting certain aspects of the Joint Proposal. No statements in opposition were filed. Other active parties in this proceeding participated in the negotiations, but chose not to file any statements.

PUBLIC COMMENTS AND PUBLIC STATEMENT HEARINGS

During the course of this proceeding, more than 600 persons submitted public comments. A pre-printed text-on-postcards campaign resulted in 412 postcard comments stating opposition to any further rate increases being received. The postcards contain the same pre-printed text, some in Spanish.

A petition with 126 signatures was submitted by a Staten Island customer in opposition to any rate increase, expressing outrage that during this severe recession, and with a reported $1.2 billion profit in 2008, the Company is seeking further rate increases.

The Department's Opinion Line telephone message system received 57 comments in opposition to any rate increase.

The Town of Cortlandt filed a letter containing a duly adopted resolution of the Town Board in opposition to any rate increase for Con Edison. The Amalgamated Housing Corporation and the Park Reservoir Housing Corporation, two Bronx housing cooperatives, jointly filed a letter opposing any rate increase for Con Edison. A letter was received from the Council of New York Cooperatives & Condominiums in opposition to any rate increase, concluding, similar to other comments received, that 2010 is simply not the time to impose three years of double digit rate increases on New York ratepayers.

The Port Authority of New York and New Jersey (Port Authority) provided a comment on the proposed collaborative to redesign stand-by rates and enable distributed generation. Specifically, the Port Authority welcomes the opportunity to participate in the collaborative to discuss the importance of shore power for cruise ships with respect to maritime port facilities and their host communities, especially as it relates to the Brooklyn Cruise Terminal. Further, the Port Authority identified several environmental benefits that would accrue to surrounding communities from implementation of shore power facilities. Assembly Member Joan Millman (52nd District), New York City Council Member Brad Lander (39th District) and the Columbia Waterfront Neighborhood Association (Brooklyn) also each commented in support of the proposed collaborative to redesign stand-by rates to facilitate availability of shore power at marine port facilities, as did several citizens residing near the Brooklyn Cruise Terminal in Red Hook.

The Westchester County Board of Legislators provided a comment concerning the Company’s transmission vegetation management program, which also was addressed in public comments, summarized below.

A letter dated December 17, 2009 was also received from Utility Rate Analysis Consultants (URAC) commenting on a proposed tariff provision for master metering systems and Service Classification (SC) 9 (combining SC 4 and SC 9 into a new SC 9), concerning newly constructed residential multiple dwellings.[6] In responding to URAC, Con Edison stated that it is simply seeking to maintain status quo while merging SC 4 and SC 9 classes. Moreover, Con Edison emphasizes that we recently upheld the Company’s practice in a determination issued and effective November 16, 2009, denying a complaint made by URAC on behalf of a customer who was requesting that it be back billed at SC 8.[7]

In response to the URAC comments, the Company and Staff state that the proposed tariff change would further revise the provision of service rules. It would require that, prior to the provision of temporary electric service for the construction of a new, or renovation of an existing, multi-family residential building that will be master-metered, the Company must receive documentation from the developer. The documentation would consist of a copy of an application to submeter electricity at the

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[6] Master metering is the term used for one meter that supplies the entire requirements and areas of a building. An exchange of comments and responses ensued between URAC, Staff and the Company.

[7] Case 06-E-0371, In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR in Relation to Complaint Procedures -- Appeal by The Trump Organization of the Informal Decision Rendered In Favor of Consolidated Edison Company of New York, Inc., filed in C 26358, Commission Determination (issued November 16, 2009).

premises that has been filed with the Secretary to the Commission by, or on behalf of, the entity that is expected to be the customer upon the completion of construction. This tariff revision would ensure that the process to obtain the requisite authorization to submeter the premises has been initiated.

Lastly, Con Edison has agreed to make a good faith, reasonable effort to identify post-January 1, 1977 residential multi-family residential buildings currently taking service through a master-meter and identify a reasonable and practical means to notify owners of such buildings regarding submetering requirements.

Public statement hearings were held in Westchester County on January 11, 2010 and in New York City on January 13, 2010. Three people provided comments at the Westchester hearing, nominally opposed to any rate increase, but primarily opining upon the Company’s recent tree clearing activities along the Sprain Brook Parkway in the vicinity of Hartsdale and Irvington. These citizens complained of the Company’s clear cutting of trees along the parkway, resulting in severe adverse noise and visual impacts upon longtime residents and property owners in the immediate vicinity of the parkway. The Company, Staff and elected representatives are reviewing these issues apart from this proceeding.

Commissioners Robert E. Curry and Patricia Acampora presided with the Judge during the New York City public statement hearing at which nine people provided comments, all opposed to any rate increase. These people, several who are unemployed or on fixed incomes, noted the difficult recessionary times coupled with recent increases in local and state taxes are burdensome or impossible for people with limited incomes.

THE JOINT PROPOSAL[8]

The Joint Proposal contains a three-year rate plan designed to provide an annual revenue increase of $540.8 million in revenues starting on April 1, 2010; an additional revenue increase of $306.5 million on April 1, 2011; and an additional revenue increase of $280.2 million on April 1, 2012. To mitigate the impact of the first year rate increase on customers we are providing, consistent with the parties' proposal, that the three rate increases will be implemented on a levelized basis set at $420.4 million in each year. Further, the Company will continue to recover $248.8 million of its annual revenue requirement through the Rate Adjustment Clause (RAC) mechanism pending a determination in Case 09-M-0114.[9] As we have indicated, supra, this order reflects our concurrent adoption of the order in Case 07-E-0523;[10] as a result, the bill impacts in Rate Year 1 are mitigated by a pass back of $36.4 million of customer benefits as a one-time bill credit.

On average, the overall bill impact of these rate changes equates to an increase of approximately 3.6% in each year. For a typical New York City residential customer, that would be an increase of approximately $3.50 per month in each of the three rate years. For a typical Westchester residential customer, the increase is approximately $5.00 per month in each of the three rate years.

[8] This section of the Order highlights salient features of the Joint Proposal; it does not reiterate all its terms. The Joint Proposal is attached to and is a part of this Order. In it is the full recitation of the terms and provisions we are adopting.

[9] Case 09-M-0114, supra.

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

Year Three Delivery Rates and Revenue Decoupling Mechanism (RDM)

Because the levelized rate increases of $420.4 million per year would result in higher base rates at the end of the rate plan than would otherwise be supported by the cost of service, $133.5 million of the increase in the third year will be collected using class-specific temporary surcharges.

Regarding the third rate year, the RDM target includes the $133.5 million to be collected through surcharges. If the Company does not file for new base delivery rates to be effective within 15 days after the third rate year, the RDM targets for the rate year commencing April 1, 2013 will be restated to reflect the expiration of the temporary surcharges necessary to effectuate the levelized rate increases.

Capital Expenditures

The Company's capital spending has increased substantially in recent years due to such factors as the construction of new electric substations, increased costs for new equipment, replacements and renewals, and reliability initiatives. To control capital expenditures, the Joint Proposal provides Net Plant Targets for three categories of capital expenditures: 1) Transmission and Distribution (T&D); 2) Other (Capital Expenditures for Electric Production, Shared Services, and Municipal Infrastructure Support [Interference]); and 3) the Finance and Supply Chain Enterprise Resource Project (Enterprise Resource Project).[11]

[11] Joint Proposal, Section D. The Enterprise Resource Project is a computer upgrade project that is intended to manage all the information and functions of the Company from shared data sources. This project is intended to modernize the Company's finance and supply chain system infrastructure to improve reliability, timeliness, and transparency of finance and supply chain system information; to improve decision-making due to faster access to data; and to improve internal and external reporting capabilities.

During the term of the Electric Rate Plan, the Company is subject to the following Capital Spending Targets:

- T&D Category: $1.20 billion for Rate Year 1; $1.16 billion for Rate Year 2; $1.14 billion for Rate Year 3.
- Other Category: $220 million for Rate Year 1; $207 million for Rate Year 2; $195 million for Rate Year 3, comprising:

	RY 1 ($000)	RY 2 ($000)	RY 3 ($000)
Electric Production	$ 39,650	$ 35,750	$ 39,300
Shared Services	$142,100	$133,582	$117,639
Municipal Infrastructure Support	$ 38,000	$ 38,000	$ 38,000

If the Company's actual average net plant in service for each of the three categories of capital expenditures is less than that category's projected average plant-in-service balance for the first rate year (or collectively for the second and third years), the Company will defer the carrying costs associated with the difference for the benefit of ratepayers. If the Company exceeds the net plant-in-service targets, it must absorb the related carrying costs during the term of the rate plan.

Con Edison must justify the need for, the reasonableness of, and its inability to reasonably avoid any such over-target expenditures in its next rate case filing. In addition, the revenue requirement associated with any such Commission-approved over-target expenditures from Rate Year 1, after the term of the rate plan and for the book life of the investment, will be calculated based on an assumption that the over-target expenditures were not financed by both common equity and debt, but rather solely by debt.

Lastly, with regard to projects for which the Company receives grants from the Department of Energy pursuant to the federal stimulus program, such expenditures made by the Company will not be considered within the Capital Spending Targets or Net Plant Targets. Instead, the ratepayers' share of grant projects will be recovered through a separate cost recovery mechanism.[12]

Liberty Audit Impacts

In February 2008, we ordered a comprehensive management audit of Con Edison pursuant to PSL §66(19). The audit was concluded in spring 2009 and the consultant's final report was issued on August 7, 2009.[13] On August 21, 2009, we ordered the Company to submit an implementation plan addressing the final report's recommendations.[14] The Company provided a responsive filing, its Audit Implementation Plan, dated October 5, 2009. The Implementation Plan provides responses to each of the 92 recommendations contained in the Liberty audit report. The Company affirmed that the terms of the Joint Proposal will not adversely affect implementation of responses to the 92 Liberty audit recommendations.[15]

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[12] Cases 09-E-0310, In the Matter of the American Recovery and Reinvestment Act of 2009- Utility Filings for New York Economic Stimulus and 09-M-0074, In the Matter of Advanced Metering Infrastructure, Order Authorizing Recovery of Costs Associated with Stimulus Projects (issued July 27, 2009). In addition, the Capital Spending Targets and Net Plant Targets also are exclusive of (1) expenditures recovered outside of base rates, (2) Company expenditures on public policy projects that we specifically authorize or direct the Company to undertake, (3) Company expenditures on Municipal Infrastructure Support projects related to the federal stimulus projects conducted by the City, the City Water Tunnel #3 project, and new major projects (as defined in the Joint Proposal), and (4) Company capital expenditures recovered through alternative rate mechanism programs (Energy Efficiency Portfolio Standard) funded through the System Benefits Charge.

[13] The Liberty Audit final report, dated June 16, 2009, issued as a final report on August 7, 2009.

[14] Case 08-M-0152, Order Directing The Submission of an Implementation Plan (issued August 21, 2009).

[15] January 12, 2010 hearing transcript (T.), page 104, lines 12 – 21.

The Joint Proposal contains provisions addressing management accountability, operation and project excellence. They embody a Company commitment to improve in key areas and to address the Company's implementation of the Liberty audit report recommendations. Provisions of the Audit addressed by the Joint Proposal include; capital construction planning, including the development of second and third rate year construction programs; and requirements that the Company's planning and budgeting process will begin to correlate capital spending to the program objectives and benefits for customers. In addition, the Company will provide directives to its managers with responsibility for capital planning and budgeting advising them to consider the rate impacts on customers in their development of capital plans and budgets. The directives will also address system reliability, planning for future system requirements, project prioritization, and good utility practices.

The Company has committed in the Joint Proposal to produce an electric long-range planning study.[16]

The Liberty audit contains several recommendations regarding Con Edison's corporate culture. In an initial response to these recommendations, the Joint Proposal requires the Company to continue its efforts to identify changes to improve the overall culture of the enterprise, specifically to increase the Company's effectiveness and accountability to customers, community leaders, investors, other stakeholders, and the Commission. The Company will focus on opportunities to advance its prospects for operating and project excellence. Under the terms of the Joint Proposal, the Company's efforts to implement culture change and to achieve desired traits of business excellence will focus on management, departmental and executive leadership, and accountability.

Finally, as discussed in a subsequent section, the Joint Proposal earnings-sharing mechanism is adjusted to capture

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[16] Joint Proposal, Section L.7.

benefits achieved from implementation of the management audit recommendations.

Austerity Provisions

Con Edison initially identified austerity measures to reduce its rate request by $22.6 million, of which Con Edison asserts $18.1 million is attributable to a lower level of 2009 capital expenditures.[17] Staff’s prefiled testimony reflected total austerity-related cost reductions of $57.1 million, consisting of the $22.6 million Con Edison identified, plus an additional $34.5 million in operation and maintenance (O&M) expenditure reductions. The Joint Proposal’s revenue requirements reflect austerity-related cost reductions of $45.3 million in the first rate year, $38.3 million in the second rate year and $31.3 million in the third rate year.[18] Of these amounts, $18.1 million annually is attributable to a reduced level of capital expenditures. The remaining reductions will be achieved by reductions in O&M expenditures.

Expense and Cost Reconciliations

The Joint Proposal continues the reconciliation mechanisms currently in place for electric service.[19] A reconciliation is also provided for municipal infrastructure support expenses. The Joint Proposal provides for continuation of the reconciliation of property taxes, but with a modification of the current mechanism. If actual property tax expense in any rate year, excluding the effect of property tax refunds, varies from the projected expense, 80% of the variation would be deferred and either recovered from or credited to customers and the Company would pay or retain 20% of the variation, up to a maximum amount equivalent to ten basis points on common equity for each rate

[17] Rasmussen Supplemental Testimony, p.6.

[18] Joint Proposal, Section B.2.

[19] Joint Proposal, Section E.

year.[20] Beyond this limit, any variation in property taxes will be deferred for later recovery from or credit to consumers.

Allowed Rate of Return and Earnings Sharing

The Joint Proposal provides for a 10.15% return on equity on a 48% equity ratio, resulting in a 7.76% overall rate of return. In the first year, if the level of earnings exceeds a common equity return of 11.15%, 50% of earnings up to and including 12.149% will be deferred for the benefit of customers and the Company will retain the remaining 50%; 75% of any shared earnings above 12.15% and up to 13.149% will be deferred for the benefit of customers and the remaining 25% will be retained by the Company; and 90% of any earnings above 13.15% will be deferred for the benefit of customers and the remaining 10% will be retained by the Company.

A modified version of this mechanism is presented for the second and third rate years to reflect the potential benefits from the implementation of the Liberty audit report recommendations. In these years, on a cumulative basis, the earnings sharing begins at 10.65% and customers receive 60%. At the 12.15% level, customers receive 75% and at 13.15% level, customers receive 90%.

Tax Law Changes

Other provisions of the Joint Proposal recognize that various governmental entities could take action during the next several years to effectuate changes in taxes or other laws that could materially increase or decrease the Company’s tax costs above or below levels contemplated in the Joint Proposal. To protect customers and the Company from unforeseeable circumstances, the Joint Proposal permits the Company to defer the full amount of such changes as credits or debits to customers in

[20] Joint Proposal, Section F.3 provides for 86% customer/14% Company sharing of net property tax refunds recovered by Con Edison.

instances where the Commission does not otherwise address the treatment of such law changes and the impact of the change is an annual amount of $12.5 million or more.[21]

Revenue Allocation and Rate Design

The allocation of costs among Con Edison rate classes and particularly between the class of customers served by NYPA and other rate classes has been a longstanding contested matter. The Joint Proposal presents substantial progress toward, and a reasonable compromise to resolve, the cost allocation issues.

The NYPA class will be assigned an additional $7.2 million above the otherwise applicable rate increase in the first year and an additional $3.6 million in the third year. Those rate classes found to be providing a surplus are proportionately reduced by a total of $10.8 million to better align customer rates based upon the 2007 ECOS study. This allocation results in additional revenues from the NYPA class over the three-year term of approximately $25.2 million, as compared to $43.2 million had the results of the Company's embedded cost of service (ESCO) study been fully implemented. Additionally, to potentially mitigate or eliminate future disagreements regarding revenue requirement allocations, the Joint Proposal requires the Company to submit a new ECOS study with its next rate increase filing, using data no older than two years prior to the year in which the filing is made. In addition, the data must reflect the results of the multiple dwelling load diversity study that the Company is required to complete before its next rate case filing.

With respect to rate design matters, the SC 4 (commercial redistribution) and SC 9 (large commercial) classes will be redesignated to produce common delivery rates for those

[21] The $12.5 million threshold reflects an increase of $5 million from the $7.5 million threshold used for similar provisions in Con Edison electric multi-year rate plans over the past 10 years.

customers under a redesigned SC 9 rate schedule. Also, the conventional declining block rate structure in SC 1 (residential), SC 2 (small commercial), SC 7 (residential space heating), the redesigned SC 4/9, SC 8 (residential multiple dwelling redistribution) and SC 12 (residential multiple dwelling with space heating) will be replaced with a flat rate structure that will be phased in over a four- to five-year period, depending upon the service class (i.e., extending one or two years beyond the term of this rate plan).[22]

Further, the Company, in the May 2009 rate filing, proposed a process to address the unbundling of transmission and distribution rates. The Joint Proposal provides that prior to filing any petition for unbundling, the Company will convene a meeting of interested parties to discuss potential issues and the planned filing. The parties do not necessarily agree or acknowledge that the Company's rates should be unbundled. Instead, this provision allows the interested parties to provide input should the Company decide to pursue such a filing.

Depreciation Expense

The Joint Proposal includes a depreciation expense allowance that provides partial recovery of the existing reserve deficiency, rather than 100% recovery outside the tolerance band as initially proposed by the Company. In 2007,[23] the Company's depreciation study indicated a deficiency in excess of a 10% tolerance band of $154 million, for which we authorized recovery over 15 years (i.e., 13 years remaining). In this case, Con Edison reports an additional reserve deficiency above the tolerance band, for which the Company initially sought full recovery. Pursuant to the terms of the Joint Proposal, only half of the incremental deficiency will be amortized over 13 years.

[22] Four years for SC 1, SC 2, and SC 7; five years for SC 4 and SC 5.

[23] Case 07-E-0523.

Specifically, the allowed additional recovery will equal approximately $6.5 million annually, or 50% of the Company's incremental reserve deficiency that occurred since the 2007 case. Also, the amount of the reserve deficiency amortization approved in Case 07-E-0523, amounting to $10.8 million annually, will continue for 13 years, resulting in a total annual amount of recovery of the indicated reserve deficiency in each rate year of $17.3 million.

Low-Income Program

Con Edison's low-income program provides customers enrolled in one or more social services programs with a $7.68 discount applied to the customer charge. The program is currently funded for 245,000 participants; however, it was only serving approximately 217,000 customers in May 2009.[24] The current estimate of eligible customers is substantially higher (i.e., 375,000 eligible customers).

The Joint Proposal provides for an increase in the low-income program funding to establish an $8.50 discount on the customer charge for all eligible customers. The Company will also institute a program to waive reconnection fees and establish a collaborative to discuss an arrears forgiveness program. Further, the Company will maintain and/or enhance for customers the available avenues of enrollment and the Joint Proposal sets forth procedures for maintaining an annual reconciliation of the Company's records with the rolls of the City's Human Resources Administration and Westchester County Department of Social Services.

Business Incentive Rate

The Joint Proposal does not increase the amount of load that can be served under the existing Business Incentive Rate

[24] The low-income program expenses are reconciled through the RDM. Any money collected in rates that is not needed to fund the low-income program is subsequently returned to ratepayers.

(BIR) discount, which is currently 275 MWs, with 240 MWs allocated to the City and 35 MWs allocated to Westchester County. However, currently 128 MWs allocated to the City are not subscribed. The Joint Proposal provides that, if they remain unsubscribed, 5 of the 128 City-allocated MWs are transferred to Westchester. The transfer to Westchester is subject to the conditions contained in the Joint Proposal, and the 5 MWs may be reallocated to the City.[25]

The Joint Proposal also provides for a reallocation of 20 MWs from the City specifically to biomedical research customers in the City. Should Westchester request it, an additional reallocation of 3 MWs for biomedical research customers in Westchester will be provided by Con Edison, under the conditions specified in the Joint Proposal. In response to the development and implementation of business incubators in the City and Westchester, the Joint Proposal provides an expansion of Rider J-Business Incentive Rate to support such programs.

Performance Measures

The Joint Proposal continues the existing Reliability Performance Mechanism (RPM) and Customer Service Performance Mechanism (CSPM). The Joint Proposal maintains the established overall levels of financial exposure under the two mechanisms, with certain modifications to the performance metrics of each.

In addressing the RPM, the parties discussed the establishment of a new target for CAIDI.[26] Staff’s prefiled testimony stated that the two worst radial[27] CAIDI performance values were outliers that should be excluded for determining the target. The Joint Proposal excludes the two worst and the two best radial CAIDI performance values. In addition, to maintain consistency between radial targets, the Joint Proposal provides

[25] Joint Proposal, pp. 36-37.

[26] Customer Average Interruption Duration Index.

[27] Radial CAIDI refers to the above ground distribution system (poles and wires); primarily located in Westchester.

for this method to also be used to calculate the radial SAIFI target.[28]

Collaborative Studies and Reports

The Joint Proposal establishes the means for interested parties to explore several discrete aspects of the Company's rates and services, including distributed generation, energy efficiency, retail choice, metering and billing, and planning. Collaboratives and studies will be used to examine these matters during the next three years. Procedures are contemplated to bring such matters to an early resolution and, where appropriate, to us for action.

A standby rates collaborative will consider and evaluate the allocation of costs between contract and as-used demand charges, and whether and how charges should be modified to develop a cost-based electric standby rate that presents neither a barrier nor an unwarranted incentive for the installation and operation of distributed generation and cogeneration facilities.[29]

The 2009 State Energy Plan states that "[b]uilding efficiency could also be improved through the installation of environmentally beneficial distributed generation and combined heat and power (DG/CHP) resources located at customer sites."[30] The City's PLANYC establishes a goal to increase the amount of clean distributed generation used in New York City. The Joint Proposal creates a distributed generation collaborative for the Company and interested parties to discuss approaches to further these goals, including the deployment of wind, solar, CHP, micro-CHP, energy storage, and other alternative DG technologies. The collaborative will be chaired by Con Edison and it will begin in approximately 60 days. The parties will provide a report to the Secretary, as appropriate, within six months.

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[28] System Average Interruption Frequency Index.

[29] Joint Proposal, Section L.1.

[30] 2009 State Energy Plan, issued December 2009, p. 28.

The Joint Proposal also calls for a retail access collaborative to consider a rate-ready utility consolidated billing model. This collaborative will explore system modifications necessary to allow Energy Service Companies (ESCOs) to offer and bill for time-of-use, interval, and real time pricing products. The collaborative began in December 2009 with the stated intention of being completed within eight months and culminating (if the participants reach an agreement) in a proposal for our consideration.

In 2009, we directed Con Edison to initiate a collaborative to consider a process for providing building owners access to their buildings' energy usage data.[31] The Joint Proposal contains the parties' agreement on certain issues pertaining to building usage data. It provides that, within 15 days of receipt of a written request of a multi-family or commercial building owner or manager, Con Edison will provide aggregate building energy usage (in kWhs) and demand (in kW) for up to 24 months prior to the request. This information will be provided in aggregate form without revealing particular or identifiable customer information. In addition, the Company will provide, upon request of a multi-family owner or commercial building owner or manager, the account number, usage, and, if applicable, the demand information for each directly-metered tenant account for which the Company has received the customer's written consent to release such information.

The Company has been charging to expense the parking offense traffic violations and notices of violation costs it incurs. These charges have increased in recent years. The Joint Proposal creates a process for Staff to monitor the Company's efforts to limit, reduce or eliminate such expenses.

Marginal cost studies will be performed to enable the evaluation of the costs and benefits of the energy efficiency

[31] Case 08-E-0539, supra, Rate Order, pp. 321-324.

programs operating in Con Edison's service area. In response to the Liberty audit report recommendations, the Company is committed to producing an electric long-range planning study. The Joint Proposal requires the Company to use the analysis obtained from the long-range planning study to develop its estimate of distribution marginal costs, within 60 days of completion of the long-range planning study. The Joint Proposal provides that the resulting estimates will be transmitted to the Director of the Office of Regulatory Economics, along with any recommended revisions to the distribution marginal cost value adopted in the Energy Efficiency Order.[32] As discussed herein, we will require that this information be filed with the Secretary.

STATEMENTS IN SUPPORT

Con Edison states in support of the Joint Proposal that the revenue requirements reflect virtually no increase in the Company's overall cost of capital. Con Edison further states that the proposed rate increases are necessary to make infrastructure investments in the electric delivery system for the purpose of maintaining the system's viability and security and to satisfy increasing property tax expenses. The Company asserts that the Joint Proposal reflects the current economic circumstances and achieves a reasonable balance between the rate relief necessary to maintain safe and adequate service and rate mitigation for customers.

Additionally, Con Edison notes that the three-year rate plan will allow it to better address its implementation of the recommendations of the Liberty audit by freeing up resources that would otherwise be committed to annual rate filings. Further, Con Edison asserts, the Joint Proposal recognizes that continued

[32] Case 08-E-1003, Orange and Rockland Utilities, Inc. – Energy Efficiency Portfolio Standards, Order Approving "Fast Track" Utility Administered Electric Energy Efficiency Programs with Modifications (issued January 16, 2009).

substantial expenditures are necessary to ensure provision of safe reliable electric service as the Company continues to perform complex utility operations in its unique and high-cost service area.

In its statement supporting the Joint Proposal, Staff notes that through its participation in this case, Staff has sought to serve the public interest. By way of showing how its position relates to the results achieved, Staff detailed the changes relative to its litigation positions necessary to arrive at the settlement.

The Joint Proposal, Staff asserts, is well below the Company's initial rate request and is at the lower end of the range of likely results that litigation would achieve in this case. Staff describes a robust, intensive negotiation process that addressed all key issues. Staff asserts that the Joint Proposal's terms represent a comprehensive, reasonable and equitable resolution of all issues.

The signatory parties collectively state that the Joint Proposal represents a good compromise balancing the interests of the active participants. The Joint Proposal's terms, the signatory parties assert, protect customers and, on balance, are fair to shareholders. Moreover, they maintain that the Joint Proposal provides reasonable rates for the next three years, which some parties contend is a greater period than could be achieved through litigation. Continuing, the signatory parties assert that the Joint Proposal serves the public interest because the Electric Rate Plan allows the Company to use resources otherwise committed to annual rate proceedings to address the matters identified the Liberty audit, and the planned and predictable rates for the future will allow customers and the Company to plan accordingly.

Finally, the signatory parties state that the Joint Proposal furthers our public policy objectives and fulfills the statutory responsibility to establish just and reasonable rates while balancing shareholders' interests. Other benefits of the Joint Proposal identified by the signatory parties are that the Joint Proposal comports with relevant public policies, falls within the likely range of litigated outcomes, and fairly balances the relevant interests of parties and stakeholders, while avoiding the expenditure of resources to otherwise litigate the issues. In sum, the signatory parties, typically adversaries in rate proceedings such as this one, collectively support our adoption of the terms of the Joint Proposal to provide a fair resolution of the rate proposal and issues presented by Con Edison's May 8, 2009 filing.

The City describes the Joint Proposal as a compromise package of concessions and agreements that provides a base rate increase less than half the amount originally sought by Con Edison. It is satisfied that the Joint Proposal reasonably resolves all of the principal issues of concern and several ancillary matters.

Representative of the compromises and balancing of interests that are evident throughout the Joint Proposal, are the capital spending targets set forth in the Joint Proposal, according to NYPA. While less than the true "ceiling" that NYPA sought, the targets will significantly reduce the Company's spending over the next three rate years, it says. Moreover, NYPA states, by precluding the accrual of carrying charges on any expenditures exceeding the targets during the term of the Plan, the Joint Proposal will impose further limits on Con Edison by precluding the accrual of carrying charges on any expenditures exceeding the targets during the term of the Plan.

The Joint Supporters assert that the elimination of declining block rates will promote energy efficiency by no longer rewarding end-users for using more energy; in the long run, benefits of eliminating declining block rates will be worth the "upfront" costs that customers may face. Further, the Joint

Supporters state that, on balance in view of the challenges faced by Con Edison and its customers in these difficult economic times, a better result than this one could not be achieved through litigation.

CPA states that the Company has accepted a significant reduction in rate relief in exchange for the reduced revenue risk provided by the Electric Rate Plan. CPA also supports the treatment of revenue allocation and rate design in the Joint Proposal. The resolution provided by the terms of the Joint Proposal, in CPA’s view, is superior to the outcome that has resulted from litigation in the past.

RESA observes that the Joint Proposal fosters competitive energy markets by incorporating a number of provisions that positively affect the Company’s retail access program, including competitively neutral delivery rates, the flow-through of increased supply-related working capital costs through the Merchant Function Charge, and the update of supply related uncollectible costs. Additionally, RESA advocates adoption of the Joint Proposal’s provisions establishing a collaborative to consider the “Rate Ready Utility Consolidated Billing Model.”

The Small Customer Marketer Coalition also supports the Joint Proposal for its retail access and competitive energy market provisions.

The CPB supports the Joint Proposal's terms providing expansion of and enhancements to the low-income Program. Those terms provide significant additional funding for this program, a discount on the customer charge, a waiver of the reconnection fee, and a structure for a collaborative discussion among the parties that may lead to a proposal regarding an arrears forgiveness program.

DISCUSSION

On previous occasions, we have identified the criteria we use to evaluate whether a Joint Proposal is in the public interest.[33] The criteria include consideration of whether a proposal has won the support of ordinarily adversarial parties; comports with relevant public policies; falls within the likely range of litigated outcomes; fairly balances the relevant interests; provides a rational basis for decision and is supported by an adequate record; and is unopposed by any party. In this case, Staff and Con Edison, supported by nine other active parties, firmly assert the Joint Proposal fulfills all stated criteria outlined in our Settlement Guidelines.[34]

Initially, we acknowledge the agreement among (or lack of opposition from) the broad range of active parties and various interests who participated in this proceeding. The Joint Proposal's terms resolve nearly all issues presented in this proceeding, representing a process of compromise and balancing of interests among the parties. We find that the rates, terms and provisions of the Joint Proposal strike a proper balance between the interests of customers and investors.

We find that the three-year term for this Electric Rate Plan offers significant benefits to ratepayers and the Company.

[33] Case 90-M-0255, Proceeding on Settlement Procedures and Guidelines, Opinion No. 92-2 (issued March 24, 1992).

[34] Id.

For ratepayers, the benefits of knowing what their delivery rates will be over the next three years will make budgeting plans much more accurate and allow them to better arrange their activities. For the Company, the Electric Rate Plan will produce a more predictable revenue stream and the certainty to make investments necessary to continue the provision of safe and reliable service. Moreover, the Electric Rate Plan will allow the Company to direct resources that would otherwise be committed to annual electric rate cases to focus on operating the business and implementing the Liberty audit recommendations.

The Joint Proposal contains numerous provisions placing a strong emphasis on Con Edison's ability to manage its costs in an efficient and effective manner. It provides incentives and creative measures that encourage discipline within the corporate structure to these ends. For example, the Joint Proposal contains provisions intended to control capital expenditures, such as net plant targets, deferral of carrying costs, and the requirement of justification for any over-target expenditures that may occur. These provide a comprehensive framework that is likely to produce the desired result of controlling and curtailing the capital expenditures program, while continuing to assure safe and reliable service. The provisions pertaining to over-target expenditures in Rate Year 1 provide a substantial incentive for Con Edison to closely monitor and control its expenditure levels. These provisions provide a unique benefit to ratepayers by dramatically reducing the carrying charges related to over-target expenditures in future rates.

We are aware of the public's adverse reaction to any Con Edison rate increase. Customers have voiced substantial concern about the continually increasing rates for utility service, and they have shown how the current economic conditions are adversely affecting residents, local business, not-for-profit organizations and municipal governments. In view of the broader economic burdens on ratepayers during these recessionary times, we are greatly concerned that we provide all possible rate mitigation for customers while assuring continued safe and reliable service.

The Joint Proposal’s terms recognize potential ratepayer impacts, current economic conditions facing the State, and the service territory’s specific requirements. The Joint Proposal continues the fiscal “belt tightening” we required in 2009. It provides continued austerity measures, a 2% productivity imputation, mitigates the immediate impact of the rate increases on ratepayers through the levelization of the increases for over the next three years, and provides substantial expansion of the low-income Program.

The continuation of the productivity adjustment, an increase from the historic 1% adjustment, will benefit customers by capturing an additional $9.7 million annually in productivity gains reasonably expected from substantial increases in the Company’s ongoing investments in infrastructure and electric O&M.

The audit and investigation in this case concluded that a large number of the intended recipients of the current low-income program did not receive the available discount to the customer charge. The CPB is to be commended for bringing forward issues related to the low-income program. It is CPB’s prefiled testimony which identified that the program is currently undersubscribed because many eligible customers were not automatically enrolled, leading to substantial enhancements in the low-income program. As a result, the Joint Proposal’s terms provide a significant enhancement to the low-income program to correct its deficiencies and to ensure that no intended program beneficiaries are excluded.

Moreover, rather than apply the customer benefit resulting from the Joint Proposal in Case 07-E-0523 on a levelized basis over three years, we choose to apply all these funds to reduce customer bill impacts in Rate Year 1, as reflected in our concurrent Order in that case. Con Edison will pass back $36.4 million of customer benefits as a one time bill credit during the month of August or September 2010. This will provide some rate relief to ratepayers during these challenging fiscal times during a month that usage is generally greater, while enabling the Company to continue to provide safe and reliable service.

The Joint Proposal serves the long-term interests and viability of the Company, in part, by being responsive to recommendations contained in the Liberty audit report. We are impressed with the Joint Proposal's initial responses to the Liberty audit recommendations. By facilitating the improvements recommended by the Liberty audit, the Joint Proposal enhances the long-term interests and viability of the Company. At the same time, the Joint Proposal captures many of the benefits for ratepayers, as well. The terms of the Joint Proposal are responsive in addressing issues such as management accountability and operation and project excellence. For example, regarding the capital expenditures program, the Joint Proposal's terms include the development of second and third rate year construction programs and longer term planning. Also, the Company's planning and budgeting process will begin to correlate the capital spending to the program objectives and benefits for customers.

Regarding Con Edison's corporate culture, the Joint Proposal requires Company directives to its managers with responsibility for capital planning and budgeting, advising them to consider the rate impacts on customers in their development of capital plans and budgets. The directives will also address system reliability, planning for future system requirements, project prioritization, and good utility practices.

Additionally, the Joint Proposal requires the Company to continue its efforts to identify changes to improve the overall culture of the enterprise, and to increase the Company's effectiveness and accountability to its many stakeholders. The

Company's efforts to implement culture change and to achieve desired traits of business excellence will focus on management, departmental and executive leadership, and accountability. In order to encourage the Company's adoption and internalization of these goals, the terms of the Joint Proposal require the Company to develop individual and institutional performance targets, and periodically to provide status reports to Staff. While effectuating corporate cultural change is always a challenging process, we are optimistic that these provisions will encourage the desired effects.

Notwithstanding our optimism, we want to ensure the Company's continued progress in addressing the management audit recommendations during the pendency of this rate plan. In particular, we are concerned that the Company continues to make progress in addressing the cultural, environmental, financial and regulatory barriers to its success which were identified in the Liberty audit report. Indeed, the adoption of the multi-year rate plan proposed in the Joint Proposal will enable Con Edison to dedicate itself more effectively and comprehensively to the implementation of the Management Audit recommendations and to focus on more tangible work products like the development of an electric long-range planning study, cost drivers that are difficult to control, the effectuation of long-term and lasting improvements to the Company's corporate culture and addressing the barriers that were identified in the Liberty audit report.

The respite from annual rate cases will afford the Company an excellent opportunity to focus on these important improvement opportunities. The Commission has already established a periodic reporting mechanism for monitoring the Company's progress on the 92 recommendations in the Liberty audit report. To include an opportunity for all stakeholders to be apprised of and involved in the Company's progress on these recommendations and on the barriers issues, we here direct the Company to submit to all rate case parties on an annual basis, until it files its next rate case, a report sponsored by the Company’s executive management explaining the progress the Company has made in implementing the Liberty recommendations. The report should include and specifically address the recommendations to re-examine the Company’s corporate culture and efforts to overcome key barriers to success in order to maintain a viable enterprise.

The annual report we require here should explain and demonstrate how the Company’s implementation efforts concerning the Liberty audit have been and are being integrated into the Company’s business processes and corporate culture, how the implementation has benefited the Company's efficiency and operations, and how those efforts have benefited customers, specifically, identification of cost reductions and reliability improvements. The report should be provided annually on October 5 of each year, until the Company files its next rate case, in which case the Company will be obligated by the Public Service Law to report on the implementation of the Liberty audit report in its rate case testimony.

Following the submission of the Company’s annual report, the Department will convene a meeting where interested parties can receive a presentation by the Company on its progress, raise questions concerning the content of the annual report, and identify opportunities for modifications or improvements. We authorize Liberty to be re-engaged under the existing contract with Con Edison and the Department to independently review some or all of the Company's progress as deemed necessary. This overall approach is designed to enable the Commission, the Department and all interested parties to remain informed during the multi-year rate plan and to keep Con Edison focused on executing the improvement opportunities that were set forth in the Management Audit.

We find that the 10.15% return on equity is a reasonable outcome given the economic conditions and interest rate climate at the time the Joint Proposal was struck. Further, this rate of return is adequate to compensate the Company's investors for the risk inherent in this multi-year rate plan.

The earnings sharing mechanism will require the Company to share with customers achieved earnings above pre-established thresholds. This mechanism balances the views of parties who argued that consumer interests are better served by the imposition of relatively low sharing levels and the Company's claim that customers would derive greater benefit in the long term if such mechanisms are eliminated. The Company argued that elimination of such mechanisms would result in stronger earnings and efficiency incentives that could be captured for customer benefit in the long term.

The earnings sharing mechanism provides sufficient incentive for the Company to improve its cost controls and keep expense levels in check, while at the same time capturing some of the benefits of those cost controls for ratepayers during the rate plan term. We note that the Joint Proposal's earnings sharing provisions, while consistent with the provisions we recently adopted in the Orange and Rockland case,[35] are more favorable for customers than the Orange and Rockland provisions, due to the expected impacts resulting from implementation of the Liberty audit recommendations. The earnings sharing thresholds for Rate Year 2 and Rate Year 3 are lower than the threshold for Rate Year 1, and the customers' share of earnings above the threshold are higher, to capture for customers' benefit a greater portion of the savings that may be realized in Rate Year 2 or Rate Year 3 as

[35] Case 08-G-1398, Orange and Rockland Utilities, Inc. - Gas Service, Order Adopting Joint Proposal and Implementing a Three-Year Rate Plan (issued October 16, 2009).

a result of the Company's implementation of recommendations set forth in the Liberty audit.

The continuation of the Business Incentive Rate program, with the modifications and expansions described in the Joint Proposal, is expected to assist the City and Westchester in attracting and retaining business and fostering economic growth in the downstate area. This is an especially important goal in these times of economic recession and high unemployment.

We find that the Joint Proposal's treatment of depreciation expense, including the recovery of reserve deficiency recognized in our 2008 Rate Order and 50% of the incremental reserve deficiency accumulated since 2007 promotes the Company's long-term viability.

Property taxes continue to be a major driver of Con Edison's rates and needed rate increases. The property tax sharing and partial reconciliation provisions of the Joint Proposal provide an appropriate incentive mechanism for the Company to minimize its property tax expenses to the greatest extent possible. The Joint Proposal's terms regarding the property tax reconciliation and potential refunds furnish the Company a significant incentive both to contain its current property tax expenses and also to pursue fundamental taxation changes to benefit ratepayers.

The Joint Proposal provides Con Edison with municipal infrastructure O&M support recovery (other than Company labor) of $68.5 million in the first rate year, and $69.4 million and $70.7 million the second and third years, respectively. By comparison, the Company forecasted $92.3 million for the first year. Staff states that in recent years, the municipal infrastructure O&M expenditures have been much lower than the amounts requested by the Company. In addition, the terms of the Joint Proposal require, for all three rate years, a 100% reconciliation of municipal infrastructure under-expenditures and allow an 80%/20% customer/Company sharing of expenditures up to 30% over the amount allowed in rates, for a maximum deferral for later recovery from customers of $16.4 million in the first rate year.[36] We find these provisions to be reasonable.

Revenue allocation issues have been contentious in the past two litigated rate cases. We find that the terms of the Joint Proposal concerning the revenue allocation among the classes of customers are reasonable and appropriate. The Joint Proposal's terms phase in a NYPA customer realignment based upon the results of the 2007 ECOS study. This phase-in ensures that the NYPA customers will cover their deficiency without causing a rate change with unreasonable rate impacts.

Additionally, the Joint Proposal requires that the ECOS study underlying the Company's next rate filing be based upon data no more than two years prior to the year in which the filing is made. This requirement appropriately addresses concerns about the separation in time between the historical period used for the ECOS study and the rate period. Furthermore, the ECOS study must reflect data from a multiple dwelling load diversity study (to be performed by the Company). We find that these terms are reasonable, appropriate, and are likely reduce future disputes.

The Joint Proposal strengthens the Reliability Performance Mechanism and thereby advances our goal of ensuring reliable service. Under the Joint Proposal, the RPM provides a uniform outage threshold of 15% of network customers for a period of three hours or more for all networks and also changes the negative revenue adjustment to a range between $5 million to $15 million, based on the outage duration (three hours to greater than 12 hours).

[36] For Rate Year 2 and Rate Year 3, the Company will be allowed to continue deferring 80% of expenses beyond the 30% band for future recovery from customers only in three defined situations, all based upon new information arising after the date of the Joint Proposal. Joint Proposal, Appendix D.

The Joint Proposal also continues the Customer Service Performance Mechanism that measures Con Edison's performance in the following areas: PSC complaint rate, surveys of electric emergency callers, other non-emergency callers, visitors to the Company's service centers, and the call answer rate.[37] Any failure by the Company to achieve the specified targets will result in a revenue adjustment of up to $40 million annually. We note that the CSPM terms of the Joint Proposal eliminate several customer service measures that are self-reported by the Company and retain and reallocate amounts at risk to the measures of utility performance that best capture service quality.

The Joint Proposal introduces a tiered structure for all CSPM measures. Although the tiered structure reduces Con Edison's risk of incurring the maximum payment, it provides a continuing incentive for the Company to work to maintain good service, even if the initial threshold has been exceeded. The CSPM revisions help ensure that this program remains relevant to the current operating environment and provide an effective deterrent against poor performance. Moreover, each activity included in the Outage Notification Incentive Mechanism (ONIM) performance standard that fails to meet the applicable threshold performance will result in a revenue adjustment at twice the level initially set in the order adopting the ONIM.[38]

We find that the movement away from declining block rates to a flat rate structure is compatible and consistent with the State and Commission long-term energy efficiency policy to reduce electricity usage by 15% statewide by 2015.[39] Eliminating

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[37] Joint Proposal, Section H.1.d.

[38] Case 00-M-0095, Consolidated Edison, Inc. and Northeast Utilities, Order Approving Outage Notification Incentive Mechanism (issued April 23, 2002).

[39] Additionally, Con Edison and Orange and Rockland are the only two electric utilities under Commission jurisdiction that continue to have declining block delivery rates.

the declining block structure supports this energy policy by removing the economic disincentive for customers to conserve energy.

Under the terms of the Joint Proposal, a tariff provision to combine the SC4 and SC9 customer classes is proposed. In the context of this proposal, and in response to a comment from URAC, the Company indicates that its proposal includes several additional requirements that will be imposed on new customers in this class. It is suggested by Staff and the Company, and we agree, that these additional requirements are needed to facilitate the merger of these service classes by assuring that the process to obtain submetering authorization, where needed, has been initiated.

Regarding the Company’s use of the long-range planning study analysis to develop its estimate of distribution marginal costs, we decline to adopt the terms of the Joint Proposal providing that the resulting estimates, along with any recommended revisions to the distribution marginal cost value adopted in the Energy Efficiency Order, will be transmitted to the Director of the Office of Regulatory Economics. Instead, we direct that these distribution marginal cost estimates and any recommended revisions to the distribution marginal cost value must be filed with the Secretary.

Setting the Company’s electric delivery rates using the three-year rate plan has the advantage of avoiding annual rate filings and allows us to consider the Company’s programs and operations for an extended period. We are satisfied that a sufficient record was provided in this case and that DPS Staff and other interested parties performed a rigorous examination and investigation of the Company's operations in this rate proceeding. Furthermore, we find that the parties who executed and support the Joint Proposal used proper procedures to negotiate and arrive at the Joint Proposal.

In sum, we find that the terms of the Joint Proposal satisfy the Public Service Law requirements of safe and adequate service at just and reasonable rates. As discussed above, the Joint Proposal also meets the criteria set forth in our Settlement Guidelines.[40]

We commend the parties' efforts in negotiating the terms of this Joint Proposal. Having carefully reviewed the full record, including the statements in support of the active parties, comments by interested organizations and members of the public; and the recommendations of the judges and Advisory Staff, we are authorizing the Company to increase its annual electric revenues by $420.4 million on an annualized basis during the Electric Rate Plan. Taking into account the order issued concurrently in Case 07-E-0523, the Rate Year 1 bill impacts are mitigated by a pass back of $36.4 million of customer benefits as a one-time bill credit during the month of August or September 2010.

<u>The Commission orders</u>:

1. The rates, terms, conditions and provisions of the Joint Proposal filed in this proceeding on November 24, 2009 and attached hereto are adopted and incorporated as part of this order, except as modified herein with respect to the filing of distribution marginal cost information.

2. Consolidated Edison Company of New York, Inc. is directed to file cancellation supplements, effective on not less than one day's notice, on or before March 31, 2010, cancelling the tariff amendments and supplements listed in the Appendix to this order.

3. Consolidated Edison Company of New York, Inc. is directed to file on not less than one day's notice, to take effect on a temporary basis on April 1, 2010, such further tariff revisions as are necessary to effectuate the provisions adopted by

[40] Opinion No. 92-2, *supra*.

this order, including an annual $420.4 million revenue increase, representing the first year of the three year levelized annual revenue increases.

4. Consolidated Edison Company of New York, Inc. is also directed to file such further tariff changes as are necessary to effectuate the Rate Year 2 and Rate Year 3 rates provided for in this order as well as other rule changes in subsequent years as required by this order. Such further tariff changes shall be filed on not less than 30 days' notice to be effective on a temporary basis on April 1.

5. Consolidated Edison Company of New York, Inc. shall contemporaneously serve copies of its compliance filings on all active parties in this proceeding electronically and by first class mail. Any comments on each compliance filing must be received within 14 days of the filing and service. The amendments specified in each compliance filing will not become effective on a permanent basis unless and until they are approved by the Commission and will be subject to refund if any showing is made that the revisions are not in compliance.

6. The requirements of Public Service Law §66(12)(b)that newspaper publication be completed before the effective date of the amendments are waived with respect to the Rate Year 1 tariff changes, provided, however, that Consolidated Edison Company of New York, Inc. shall file with the Commission's Secretary, no later than six weeks following April 1, 2010, proof that a notice to the public of the changes proposed by the amendments and their effective date has been published once a week for four successive weeks in newspapers having general circulation in Consolidated Edison Company of New York, Inc.'s electric service territory. The requirements of Public Service Law §66(12)(b) are not waived with respect to the Rate Year 2 or Rate Year 3 filings or with respect to tariff filings in compliance with this order made in subsequent years.

7. The Company is directed to submit to all parties in Case 09-E-0428 an annual report sponsored by its executive management addressing the progress made in implementing the Liberty audit as described herein. Annual reports are due every October 5 until the Company files a major electric rate proceeding.

8. The Secretary may extend the deadlines set forth in this order.

9. These proceedings are continued.

By the Commission,

JACLYN A. BRILLING
Secretary

Attachments

Filing by: CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

Amendments to Schedule P.S.C. No. 9 – Electricity

Third Revised Leaves Nos. 4, 168-C, 168-D, 168-E, 231, 235, 277
Fourth Revised Leaf No. 95
Fifth Revised Leaves Nos. 229, 236
Sixth Revised Leaves Nos. 278, 301, 304
Seventh Revised Leaf No. 259-A
Ninth Revised Leaf No. 259
Tenth Revised Leaves Nos. 135, 237
Eleventh Revised Leaf No. 296-A
Twelfth Revised Leaves Nos. 234, 238
Thirteenth Revised Leaves Nos. 137, 230-A, 233-A
Fourteenth Revised Leaf No. 238-A
Fifteenth Revised Leaves Nos. 164, 210
Sixteenth Revised Leaf No. 272-A
Seventeenth Revised Leaves Nos. 3, 100, 251-A
Eighteenth Revised Leaf No. 89
Nineteenth Revised Leaves Nos. 202-A, 212-A, 240-A-1
Twentieth Revised Leaf No. 311-A-2
Twenty-Ninth Revised Leaves Nos. 96, 232, 264, 274, 313
Thirtieth Revised Leaf No. 230, 233, 240, 245, 262, 265, 272, 275, 311, 322
Thirty-First Revised Leaves Nos. 202, 314, 315
Thirty-Second Revised Leaves Nos. 212, 251

Supplement Nos. 75 and 78 to Schedule P.S.C. No. 9 – Electricity

Amendments to Schedule P.S.C. No. 2 – Retail Access

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Eighteenth Revised Leaf No. 18
Nineteenth Revised Leaf No. 23

Supplement Nos. 31 and 33 to Schedule P.S.C. No. 2 – Retail Access
Amendments to Schedule PASNY No. 4

Sixth Revised Leaf No. 10-C
Eighth Revised No. 6-D
Ninth Revised Leaves Nos. 6-A, 6-C, 6-E, 6-F
Twelfth Revised Leaf No. 4
Sixteenth Revised Leaf No. 5
Seventeenth Revised Leaf No. 3

Supplement Nos. 30 and 31 to Schedule PASNY No. 4

Amendments to Economic Development Delivery Service No. 2

Fourteenth Revised Leaves No. 4, 5

Supplement Nos. 26 and 27 to Economic Development Delivery Service No. 2

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 09-E-0428 – 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.

JOINT PROPOSAL

November 23, 2009

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 09-E-0428 – 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.

JOINT PROPOSAL

THIS JOINT PROPOSAL ("Proposal") is made as of the 23rd day of November 2009, by and among Consolidated Edison Company of New York, Inc. ("Con Edison" or the "Company"), New York State Department of Public Service Staff ("Staff"), New York Power Authority ("NYPA"), the City of New York (the "City" or "NYC"), Metropolitan Transportation Authority ("MTA"), Consumer Power Advocates ("CPA"), New York Energy Consumers Council, Inc. ("NYECC"), the Pace Energy and Climate Center ("Pace"), The E-Cubed Company, LLC ("E-Cubed") on behalf of the Joint Supporters, Small Customer Marketer Coalition ("SCMC"), the Retail Energy Supply Association ("RESA") and other parties whose signature pages are or will be attached to this Proposal (collectively referred to herein as the "Signatory Parties").

Procedural Setting

Con Edison is currently operating under an electric rate order that established new electric rates effective May 1, 2009.[1] On May 9, 2009, Con Edison filed new tariff leaves and supporting testimony for new rates and charges for electric service effective in April

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[1] Case 08-E-0539, Consolidated Edison Company of New York, Inc. – Electric Rates, *Order Setting Electric Rates* (issued April 24, 2009) ("2009 Electric Rate Order").

2010. In that filing, the Company also proposed terms for a three-year rate plan that would continue through March 31, 2013.

Consistent with established Commission practice, administrative law judges were appointed to conduct the rate proceeding to review the Company's rate filing. Parties to this proceeding engaged in discovery activities, submitting over 1,500 discovery requests on the Company's filing. On August 28, 2009, nine parties filed testimony in response to the Company's original filing. The Company filed 23 pieces of rebuttal and update testimony on September 18, 2009. Staff, NYPA, and County of Westchester ("Westchester") also filed rebuttal testimony.

The Commission also assigned settlement judges to the rate proceeding, who were present during the parties' negotiations. By notice dated September 11, 2009, Con Edison notified all parties of the commencement of settlement negotiations on September 22, 2009.[2] Settlement negotiations began on September 22, 2009. Settlement negotiations continued on September 25, 2009, October 1-2, 2009, October 6, 2009, October 8-9, 2009 and October 13-15, 2009, at which point a number of the parties agreed on the principles of a joint proposal. The negotiations were held either in person or via teleconference. Evidentiary hearings on the filing and the parties' testimony were scheduled to commence on October 26, 2009, but via notice issued by the Secretary on October 22, 2009, the hearing was cancelled because parties indicated that there was a high probability of achieving a joint proposal.

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[2] Copies of these notices were filed with the Secretary to the Commission ("Secretary").

All settlement negotiations were subject to the New York State Public Service Commission's ("Commission") Settlement Rules, 16 NYCRR § 3.9, and appropriate notices for negotiating sessions were provided.

The parties' negotiations have been successful and have resulted in this Proposal, which is presented to the Commission for its consideration.

Overall Framework

The Signatory Parties have developed a comprehensive set of terms and conditions for a three-year rate plan for Con Edison's electric service. These terms and conditions are set forth below and in the attached Appendices. Specifically, this Proposal addresses the following topics:

- **A. Term**
- **B. Electric Rates and Revenue Levels**
- **C. Computation and Disposition of Earnings**
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A. Term

The Signatory Parties recommend that the Commission adopt a three-year electric rate plan for Con Edison as set forth herein, commencing April 1, 2010 and continuing through March 31, 2013 ("Electric Rate Plan"). For the purposes of this Proposal, Rate Year means the 12-month period starting April 1 and ending March 31; Rate Year 1 ("RY1") means the 12-month period starting April 1, 2010 and ending March 31, 2011; Rate Year 2 ("RY2") means the 12-month period starting April 1, 2011 and ending March 31, 2012; and Rate Year 3 ("RY3") means the 12-month period starting April 1, 2012 and ending March 31, 2013. As hereinafter discussed, certain provisions of this Proposal will continue beyond RY3 (*e.g.*, the four- or five-year phase-in period for the flat rate design, discussed in Appendix I, requires filings by the Company in the two Rate Years following RY3).

B. Electric Rates and Revenue Levels

1. Rate Levels

This Proposal recommends increases to the Company's delivery service rates, including the fixed component of the Monthly Adjustment Clause ("MAC"), designed to produce an additional $540.8 million in revenues on an annual basis starting in RY1, an additional $306.5 million in revenues on an annual basis starting in RY2, and an additional $280.2 million in revenues on an annual basis starting in RY3.

The Signatory Parties propose that these three base rate increases be implemented on a levelized basis to mitigate the impact on customers of the RY1 increase. The annual levelized rate increases would be $420.4 million in revenues on an annual basis starting in RY1, an additional $420.4 million in revenues on an annual basis starting in RY2, and an additional $420.4 million in revenues on an annual basis starting in RY3.[3] The increase to each service class associated with the proposed additional revenues is shown in Appendix I.

Since the annual levelized rate increases would result in higher base rates at the end of the three-year term of the Electric Rate Plan than they would otherwise be under a non-levelized approach, $133.5 million of the levelized increase in RY3 will be collected in RY3 via class-specific temporary surcharges. Such surcharges would only be effective for the duration of RY3. The surcharges, which will be shown on statements filed separately from the Company's rate schedules, will be collected in the same manner as if they were collected in non-competitive delivery base rates. The Revenue Decoupling Mechanism ("RDM") target for RY3 will include the $133.5 million to be collected through the surcharges.

The rate increase for RY1 would take effect on April 1, 2010, the rate increase for RY2 would take effect on April 1, 2011, and the rate increase for RY3 would take effect on April 1, 2012. Furthermore, the Company will continue to recover on an annual basis $248.8 million through the Rate Adjustment Clause ("RAC") mechanism pending Commission determinations in Cases 07-E-0523 and 09-M-0114.

The major components of the revenue requirements underlying this Proposal are set forth in Appendix A.[4] These revenue requirements are net of the amortizations of

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[3] The levelized rate increases are inclusive of interest on the deferred rate increase calculated at the 2010 Other Customer-Provided Capital Rate of 4.2 percent.

[4] Concessions made by Signatory Parties on various issues do not preclude those parties from addressing such issues in future rate proceedings or in related proceedings. For example, the Company's support for this Proposal does not preclude the Company from generally challenging the exclusion of management variable pay and compensation-related equity grant expenses from rates. Moreover, the Company is not precluded from arguing in Case 08-M-0152, in addressing the recommendations of the Liberty Management Audit ("Liberty Audit"), that the Company may elect to not implement Liberty Audit

various customer credits and debits on the Company's books of account that have previously been deferred by the Company. The list of deferred customer credits and debits to be applied during the Electric Rate Plan is attached as Appendix B.

2. Austerity

The revenue requirements for RY1, RY2 and RY3 include the following austerity cost reductions, for which associated austerity measures are only partially identified as of the date of this Proposal: $45.3 million for RY1, $38.3 million for RY2, and $31.3 million for RY3.

Of these amounts, $18.1 million in cost reductions in each of the Rate Years is attributable to austerity measures undertaken by the Company in reducing its 2009 capital expenditures. The remaining austerity-related cost reductions, to be achieved through further reductions in O&M expenses, are as follows: $27.2 million in RY1; $20.2 million in RY2; and $13.2 million in RY3. The Company will file a report with the Secretary at least 60 days prior to the commencement of each of RY1, RY2 and RY3 indicating the Company's plan to achieve such cost reductions in the applicable Rate Year. The Company's management will be responsible for determining how best to achieve these cost reductions while maintaining reliability, service quality and safety.

3. Productivity

The revenue requirements for RY1, RY2, and RY3 each reflect an annual two (2) percent labor-productivity adjustment.

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recommendations relating to variable pay and other compensation where such costs are not recovered in rates. Further, the exclusion of fifty (50) percent of Directors and Officers ("D&O") insurance costs is subject solely to the Commission's determination on the Company's pending Petition for Rehearing, filed on May 26, 2009, in Case 08-E-0539, as further discussed in paragraph E.13.

4. Sales Forecasts

The sales and delivery revenue forecasts used to determine the revenue requirement for each of RY1, RY2 and RY3 are set forth in Appendix C.

5. Market Supply Charge and Monthly Adjustment Clause

The Company will continue to recover all prudently-incurred supply and supply-related costs, including, but not limited to, power purchase costs and the embedded costs of retained generation, through the Market Supply Charge ("MSC")/MAC mechanism.

6. Revenue Decoupling Mechanism

The RDM prescribed by the Commission in Cases 07-E-0523 and 08-E-0539, subject to the modifications described in paragraph J.3 below, will remain in effect unless and until changed by Commission order, except for restating RDM targets for the Rate Year commencing April 1, 2013, to reflect the expiration of the temporary surcharges discussed in paragraph B.1 above, if the Company does not file for new base delivery rates to be effective within fifteen (15) days after the expiration of RY3. These restated RDM targets will remain in effect until the next time base delivery rates are changed (*i.e.*, continuation of the RDM mechanism unless and until changed by the Commission is premised upon the RDM targets being reset each time base delivery rates are changed). Consistent with the RDM mechanism in effect: (i) any interim charges/credits associated with RDM reconciliations of actual versus targeted revenues for periods commencing on and after April 1, 2010 will become effective on the first day of the month in which they become effective and (ii) any RDM deferrals will accrue interest as specified in paragraph F.2 below. The costs of the Low-Income Program will be reconciled through the RDM as discussed in section K.

C. Computation and Disposition of Earnings

Following each of RY1, RY2 and RY3, Con Edison will compute the rate of return on common equity for its electric business for the preceding Rate Year. The Company will submit to the Secretary the computation of earnings no later than 60 days after the end of each Rate Year.

If the level of earned common equity return for RY1 exceeds 11.15 percent ("RY1 Earnings Sharing Threshold") as may be adjusted pursuant to paragraph E.14, the amount in excess of the RY1 Earnings Sharing Threshold will be deemed "shared earnings" for the purposes of this Proposal. For RY1, one-half of the revenue requirement equivalent of any shared earnings above 11.15 percent up to and including 12.149 percent will be deferred for the benefit of customers and the remaining one-half of any such shared earnings will be retained by the Company; seventy-five (75) percent of the revenue requirement equivalent of any shared earnings equal to or in excess of 12.15 percent up to and including 13.149 percent will be deferred for the benefit of customers and the remaining twenty-five (25) percent of any shared earnings will be retained by the Company; and ninety (90) percent of the revenue requirement equivalent of any shared earnings equal to or in excess of 13.15 percent will be deferred for the benefit of customers and the remaining ten (10) percent of any shared earnings will be retained by the Company.

As set forth in the following paragraph, the earnings sharing thresholds for RY2 and RY3 are lower than the threshold for RY1, and the customers' share of earnings above the threshold are higher, to capture for customers' benefit a greater portion of savings that may be realized in RY2 and/or RY3 as a result of the Company's implementation of recommendations set forth in the Liberty Audit, pursuant to the Commission's *Order Directing The Submission Of An Implementation Plan*, issued August 21, 2009, in Case 08-M-0152.[5]

Accordingly, if the level of earned common equity return for RY2 and RY3 on a cumulative basis exceeds 10.65 percent ("RY2-3 Earnings Sharing Threshold"), calculated as set forth below and as may be adjusted pursuant to paragraph E.14, the amount in excess of the RY2-3 Earnings Sharing Threshold will be deemed "shared earnings" for the purposes of this Proposal. For RY2 and RY3, sixty (60) percent of the revenue requirement equivalent of any shared earnings in excess of 10.65 percent up to and including 12.149 percent will be deferred for the benefit of customers and the remaining forty (40) percent of any such shared earnings will be retained by the Company; seventy-five (75) percent of the revenue requirement equivalent of any shared earnings equal to or in excess of 12.15 percent up to and including 13.149 percent will be deferred for the benefit of customers and the remaining twenty-five (25) percent of any shared earnings will be retained by the Company; and ninety (90) percent of the revenue requirement equivalent of any shared earnings equal to or in excess of 13.15 percent will be deferred for the benefit of customers and the remaining ten (10) percent of any shared earnings will be retained by the Company.

For each Rate Year, for purposes of determining whether the Company has earnings above the Earnings Sharing Threshold:

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[5] The Signatory Parties duly considered that implementation of the Liberty Audit may result in more efficient Company operations in RY2 and/or RY3 and designed the Electric Rate Plan to capture a reasonable share of such potential savings for customers through various provisions, including the earnings sharing provision for RY2 and RY3.

1. The calculation of return on common equity capital will be "per books," that is, computed from the Company's books of account for each Rate Year, excluding the effects of (i) Company incentives and performance-based revenue adjustments; (ii) the Company's share of property tax refunds earned during the applicable Rate Year; and (iii) any other Commission-approved ratemaking incentives and revenue adjustments in effect during the applicable Rate Year.

2. Such earnings computations will reflect the lesser of: (i) an equity ratio equal to 50.0 percent, or (ii) Con Edison's actual average common equity ratio. Con Edison's actual common equity ratio will exclude all components related to "other comprehensive income" that may be required by generally accepted accounting principles; such charges are recognized for financial accounting reporting purposes but are not recognized or realized for ratemaking purposes.

If the Company does not file for new base delivery rates to take effect within fifteen (15) days after the expiration of RY3, the earnings sharing thresholds will continue at the RY3 levels until reset by the Commission. Such calculation will be performed on an annual basis in the same manner as set forth above.

D. Capital Expenditures

1. Net Plant Targets

The revenue requirements for RY1, RY2 and RY3 are based on the net plant targets set forth in Appendix D for the following capital expenditure categories ("Average Plant In-Service Balances"): (1) Transmission and Distribution (excluding Municipal Infrastructure Support expenditures) ("T&D"); (2) Other (comprised of capital expenditures for Electric Production, Shared Services allocable to electric, and Municipal

Infrastructure Support ("Interference")); and (3) Finance and Supply Chain Enterprise Resource Project ("Enterprise Resource Project") allocable to electric.

2. <u>Net Plant Reconciliations</u>

The Company will defer the revenue requirement impact (*i.e.*, carrying costs, including depreciation, as identified in Appendix D) of the amount by which the Company's actual expenditures for capital programs result in average net plant (excluding removal costs) that is less than the Average Plant In-Service Balances (excluding removal costs), as set forth in Appendix D, for RY1, RY2 and RY3, for each capital expenditure category. The revenue requirement impact will be calculated by applying an annual carrying charge factor for the applicable Capital Expenditure category (see Appendix D) to the amount by which the actual was below the target.

The reconciliations to Average Plant In-Service Balances for RY2 and RY3 will be cumulative within each of the T&D and Other capital expenditure categories; that is, a carrying charge deferral will be required under this provision only if the actual average net plant balances for the 36-month period covered by the Electric Rate Plan for a category is below the target average net plant balances over such period for the category as shown on Appendix D.[6] The Enterprise Resource Project, which is projected to be in service before the end of the Electric Rate Plan, will be subject to reconciliation based on the average net plant balances for that project during the three-year period as shown on Appendix D.

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[6] The Company will not recover during the Electric Rate Plan the carrying charges associated with expenditures for capital programs in RY1 that cause the average net plant balances to exceed the RY1 Plant in-Service Target. Accordingly, such expenditures will be subtracted from the actual book plant balances used in the calculation of the carrying charge deferral.

3. Capital Spending Targets

During the term of the Electric Rate Plan, the Company will be subject to the following Capital Spending Targets (which include capitalized pensions and other capitalized overheads):

- T&D category: $1.20 billion for RY1; $1.16 billion for RY2; $1.14 billion for RY3.
- Other category: $220 million for RY1; $207 million for RY2; and $195 million for RY3, comprised of:

	RY1 ($1,000)	RY2 ($1,000)	RY3 ($1,000)
Electric Production	$39,650	$35,750	$39,300
Shared Services	$142,110	$133,582	$117,639
Municipal Infrastructure Support	$38,000	$38,000	$38,000

The amounts set forth in the above table reflect Electric's share of expenditures in these sub-categories (which excludes the Enterprise Resource Project). Separate from the Capital Spending Targets set forth above, the capital spending target for the Enterprise Resource Project is capped at $160 million on a Company-wide basis ($125 million for Electric). Expenditures in excess of this amount related to the implementation[7] of the Enterprise Resource Project will not be recoverable from customers.

By December 15, 2009, the Company will provide to Staff and interested parties its most recent projected expenditures underlying the above Capital Expenditure Targets by project and/or program for T&D, Electric Production, Shared Services, Municipal Infrastructure Support, and the Enterprise Resource Project for the calendar years 2010,

[7] Implementation of the Enterprise Resource Project is described in the Company's testimony and page 29 of Staff's Exhibit __ (AP-2) in Case 09-E-0428.

2011, 2012 and 2013 and for each of RY1, RY2 and RY3 ("Project/Program List"). The Company has the flexibility over the term of the Electric Rate Plan to modify the list, priority, nature, and scope of the capital projects identified in the Project/Program List, subject to the reporting and rate case demonstration provisions set forth below.

For RY1, if the Company makes aggregate capital expenditures above the T&D category Capital Spending Target and/or above the Other category Capital Spending Target, the Company will not accrue carrying charges on such amounts during the term of this Electric Rate Plan. For Rate Years commencing after RY3, the Company may request in its next base rate case to include such over-target RY1 expenditures in its revenue requirement. The Company's request must specifically address such over-target expenditures in its rate filing, including providing justification for the need for and reasonableness of such over-target expenditures and the Company's inability to reasonably avoid such over-target expenditures. Further, the revenue requirement associated with such Commission-approved over-target expenditures after RY3, for the life of the project, will be calculated based on the assumption that the over-target RY1 expenditures were not financed by common equity, but rather by debt (that is, the revenue requirement will reflect a carrying charge for the over-target RY1 expenditures that substitutes the Company's overall cost of debt for the Company's cost of equity). Moreover, to the extent that such expenditures are included in the Company's rate base, they shall be excluded from any calculation of earnings above the earnings sharing threshold during the Electric Rate Plan.

For RY2 and RY3 cumulatively, if the Company makes aggregate capital expenditures above the total T&D Capital Spending Targets for RY2 and RY3 and/or above the total Other Capital Spending Targets for RY2 and RY3, the Company will not accrue carrying charges on such over-target amounts during the term of this Electric Rate Plan. For Rate Years commencing after RY3, the Company may request in its next base rate case to include such over-target RY2 and RY3 expenditures in its revenue requirement. The Company's request must specifically address such over-target expenditures in its rate filing, including providing justification for the need for and reasonableness of such over-target expenditures and the Company's inability to reasonably avoid such over-target expenditures. Further, the revenue requirement after RY3 associated with such Commission-approved over-target expenditures will be calculated to include a carrying charge that reflects the overall cost of capital (*i.e.*, the Company will be allowed to earn an equity return on such investments) in future Rate Years.

The Capital Spending Targets and the Net Plant Targets are exclusive of capital expenditures made by the Company associated with projects for which the Company receives grants from the Department of Energy pursuant to the federal stimulus program, which amounts will be recovered through a separate cost recovery mechanism pursuant to the Commission's *Order Authorizing Recovery Of Costs Associated With Stimulus Projects,* issued July 27, 2009, in Cases 09-E-0310 and 09-M-0074, at least until the next time base electric delivery rates are set. The Capital Spending Targets and Net Plant Targets are also exclusive of (1) expenditures that are recovered outside of base rates (*e.g.*, customer-funded capital for expenditures on facilities in connection with activities such as excess distribution requests and interconnections); (2) Company expenditures on public policy projects that the Company is specifically authorized or directed to undertake by the Commission; (3) Company expenditures on Municipal Infrastructure Support projects related to federal stimulus projects conducted by the New York City, the City Water Tunnel #3 project (defined in paragraph E.2, footnote 10), and new major projects (as defined paragraph E.2); and (4) Company capital expenditures recovered through alternative rate mechanisms (*e.g.*, capital expenditures associated with Energy Efficiency Portfolio Standard ("EEPS") programs funded through the System Benefits Charge).

The Company may petition the Commission to adjust the Capital Spending Target for RY1 if and to the extent the Company demonstrates that such additional expenditures are or were caused by extraordinary circumstances, could not or cannot be funded within the Capital Spending Target, and are or were necessary for safe and reliable operation of the electric system.

4. <u>Annual Reports/Meetings</u>

The Company will meet with Staff and other interested parties to review its capital plans by December 15 prior to RY2 and RY3. The Company will also report on how its capital plans correlate capital spending and identifiable benefits to customers.

The Company will, for informational purposes, file with the Secretary and submit to the parties in this proceeding, subject to confidentiality concerns, by February 28, 2011, 2012, 2013 and 2014, a report on its expenditures during the prior calendar year for each Capital Expenditure category. The Company will schedule meetings with Staff and the interested parties to review the reports.

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

The annual report will provide (1) a list of all projects and/or programs reflected on the Project/Program List and in the Company's annual capital budgets that were eliminated, with supporting explanation; (2) a list of all new projects and/or programs that were added, with supporting explanation; (3) for all projects and/or programs, including new and eliminated projects and/or programs, the actual amount spent as compared to the forecasted budget amounts. To the extent the amount spent on a project or program varies from the forecasted amount by more than fifteen (15) percent, for projects or programs with a forecasted cost greater than $5 million but less than $25 million, or by more than ten (10) percent for projects or programs with a forecasted cost of $25 million or more, the Company shall provide an explanation of the reasons for the variance. For projects and programs that the Company forecasts an aggregate dollar amount to complete a certain number of units, the Company will identify in its Project/Program List those projects to be included in the annual report where the Company spent within ten (10) or fifteen (15) percent, as applicable, of the forecasted amount, but completed more or less units than projected, resulting in the unit cost variance of greater than fifteen (15) percent and include the actual number of units completed as compared to the forecasted level. Additionally, to the extent that the total amount spent in any Rate Year exceeds the Capital Spending Target set forth above, the Company shall provide an explanation of the reasons for the excess expenditures.

Quarterly budget status meetings with Staff will continue, at which, among other issues, the Company will report on its current expectations in meeting the annual Capital Spending Targets and Net Plant Targets described earlier in this section.

5. Capital Construction Planning Provisions

In its October 5, 2009 submission in Case 08-M-0152, the Company provided a plan to implement the Liberty Audit recommendations. That plan addresses the recommendations related to capital construction planning (*e.g.*, in developing the RY2 and RY3 construction programs, the planning and budgeting process will correlate capital spending to program objectives and benefits to customers). Con Edison will issue written directives to its managers with responsibility for capital planning and budgeting that direct them to consider rate impacts on customers in developing capital plans and budgets. These directives will be part of the Company's ongoing communications to its managers and employees regarding the budgeting process, which include directives that address maintaining reliability, planning for future system requirements, project prioritization and good utility practice.

6. Bulk Power Substation Security

The T&D capital expenditure budgets for RY1, RY2 and RY3 provide for security work on Company facilities at estimated amounts of $3.2 million, $4.3 million and $4.3 million, respectively. The Company agrees that these budgeted funds will only be spent on security, with a priority on upgrading bulk power substations and associated facilities at bulk power sites, and other facilities necessary to secure the bulk power system. The Company will work with Staff regarding these Critical Infrastructure facilities in order to reach mutual agreement as to the nature of the upgrades required. Detailed scoping documents of the upgrade plans will be provided to Staff by December

15, 2009. The Company will provide to Staff annual reports regarding work performed during the previous year and work planned for the following year. If the cost estimates for agreed-upon work demonstrate a cost materially above the projected $11.8 million spending target, the Company and Staff will work together to re-evaluate the nature and/or schedule of the work to be performed. Communications between Staff and the Company on matters respecting system security, including as it pertains to resource allocation, planning and annual reports, will be conducted with appropriate confidentiality safeguards.

E. <u>Reconciliations</u>

The Company will reconcile the following costs and related items to the levels provided in rates, as set forth in Appendix D. Variations subject to recovery from or to be credited to customers will be deferred on the Company's books of account over the term of the Electric Rate Plan, and the revenue requirement effects of such deferred debits and credits, as the case may be, will be addressed in future rate proceedings, except as addressed in paragraph E.14 below.

1. <u>Property Taxes</u>

If the level of actual expense for property taxes, excluding the effect of property tax refunds (as defined in paragraph F.3), varies in any Rate Year from the projected level provided in rates, which levels are set forth in Appendix D, eighty (80) percent of the variation will be deferred and either recovered from or credited to customers, subject to the following cap: the Company's twenty (20) percent share of property tax expenses above or below the level in rates is capped at an annual amount equal to ten (10) basis points on common equity for each Rate Year. The Company will defer on its books of account, for recovery from or credit to customers, one hundred (100) percent of the variation above or below the level at which the cap takes effect.

The Company will not be precluded from applying for a greater share of lower than forecasted property tax expenses (including the period beyond RY3) if its extraordinary efforts result in fundamental taxation changes and produce substantial net benefits to customers.

2. Municipal Infrastructure Support (Other Than Company Labor)

If actual non-Company labor Municipal Infrastructure Support expenses (*e.g.*, contractors' costs) vary from the level provided in rates for any Rate Year, which levels are set forth in Appendix D, one hundred (100) percent of the variation below the target will be deferred on the Company's books of account and credited to customers, and, eighty (80) percent of the variation above the target within a band of thirty (30) percent (*e.g.*, a maximum deferral of $16.4 million for RY1)[8] will be deferred on the Company's books of account and recovered from customers. Expenditures above the target plus thirty (30) percent are not recoverable from customers except as provided below for RY2 and RY3.

For RY2 and RY3, if actual non-Company labor Municipal Infrastructure Support expenses (*e.g.*, contractors' costs) vary from the level provided in rates above the target plus thirty (30) percent, and such increased expenses are due to (a) City projects that result from the award of federal stimulus funds granted after the date of this Proposal, (b) the City Water Tunnel #3 Project,[9] and/or (c) the construction of major new public works

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[8] RY1 rate allowance for interference of $68.5 million x 30 percent x 80 percent = $16.4 million.

[9] The New York City Department of Environmental Protection's ("DEP") City Water Tunnel #3 project consists of eleven different shaft locations and one street inter-tie location in Manhattan. This project includes 48-inch and 36-inch distribution mains and large regulating valve stations that create a high

or infrastructure projects that are developed and announced after the date of this Proposal, ("major" shall be defined as a public works project with a projected total cost in excess of $100 million), eighty (80) percent of the variation above the target plus thirty (30) percent that is attributable to the above-described projects will be deferred on the Company's books of account for future recovery from customers.

In addition, if there is a change in law, rules or customary practice relating to interference (*e.g.*, responsibility for costs associated with New York City transit projects), the Company will have the right to defer such incremental costs pursuant to paragraph M.4.

3. Pensions/OPEBs

Pursuant to the Commission's Pension Policy Statement,[10] the Company will reconcile its actual pensions/Other Post-Employment Benefits ("OPEBs") expenses and, in addition, tax benefits related to the Medicare subsidies to the level allowed in rates as set forth in Appendix D.

The Pension Policy Statement provides that companies may seek prospective interest accruals or rate base treatment for amounts funded above the cost recoveries

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potential to impact Company infrastructure assets. Some of the locations for the shaft piping and regulating stations involve relocation of Company oil filled pipe-type high voltage transmission cables, primary and secondary electric systems. This project has been underway since the 1970's and the eleven shafts have been installed but not connected to the City's 48" and 36" water main distribution system. The DEP is in the process of designing and awarding twelve projects to connect the shafts to the water distribution system as well as the inter-tie. Of the twelve locations, two have been designed, bid and awarded and are in the initial stages of construction; four (4) are in final design with bid dates projected for February 2010; one (1) is in preliminary design with a bid date of March 2010; three (3) are in preliminary design with a bid date of October 2010 and two (2) have neither design work started nor a bid date at this time. The DEP has an aggressive target date of 2013 for completing these projects.

[10] Case 91-M-0890, In the Matter of the Development of a Statement of Policy Concerning the Accounting and Ratemaking Treatment for Pensions and Post-Retirement Benefits Other Than Pensions, *Statement of Policy and Order Concerning the Accounting and Ratemaking Treatment for Pensions and Post-Retirement Benefits Other Than Pensions* (issued September 7, 1993) ("Pension Policy Statement").

included in rates.[11] During the term of the Electric Rate Plan, the Company may be required to fund its pension plan at a level above the rate allowance pursuant to the annual minimum pension funding requirements contained within the Pension Protection Act of 2006. The Company, its actuary and the parties are unable to predict with certainty if the minimum funding threshold will exceed rate recoveries during the term of the Electric Rate Plan. In lieu of a provision in this Proposal addressing the Company's additional financing requirements should it be required to fund its pension plan above the level provided in rates during the term of this Electric Rate Plan, the Proposal does not preclude the Company from petitioning the Commission to defer the financing costs associated with funding the pension plan at levels above the current rate allowance should funding above the rate allowance be required; the Company's right to obtain authority to defer such financing costs on its books of account will not be subject to requirements respecting materiality.

4. <u>Environmental Remediation</u>

If the level of actual expenditures for site investigation and remediation allocated to Con Edison's electric business,[12] including expenditures associated with former manufactured gas plant sites, Superfund and 1994 DEC Consent Order Appendix B sites, varies in any Rate Year from the level provided in rates, which levels are set forth in Appendix D, such variation will be deferred on the Company's books of account and recovered from or credited to customers. The deferred balances subject to interest will be

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[11] See Pension Policy Statement, Appendix A, page 16, footnote 3.

[12] These costs are the costs Con Edison incurs to investigate, remediate or pay damages (including natural resource damages, with respect to industrial and hazardous waste or contamination spills, discharges, and emissions) for which Con Edison is deemed responsible. These costs are net of insurance reimbursements (if any); nothing herein will require the Company to initiate or pursue litigation for purposes of obtaining insurance reimbursement, nor preclude or limit the Commission's authority to review the reasonableness of the Company's conduct in such matters.

reduced by accruals, insurance recoveries, associated reserves, deferred taxes and amounts included in rate base (see Appendix A).

5. Deferred Income Taxes – 263A

The Company and the Internal Revenue Service have an open audit issue concerning the Section 263A tax deduction claimed by Con Edison beginning with tax returns filed for 2002 and later years. At issue is the appropriate method(s) to be applied to different classes of plant in order to calculate the Section 263A deduction. Resolution of this matter is pending for all those tax years and may result in a disallowance of a portion of the tax deduction claimed by the Company. This Proposal continues the established 263A deferred tax balance that reflects the anticipated outcome of this dispute.

The Company will defer interest at a rate equivalent to the pre-tax rate of return of 11.0 percent on any difference between the actual deferred Section 263A tax benefits that result from the Section 263A deduction and the amount allowed by the Internal Revenue Service. The final Section 263A deduction reflected in rate base will recognize any related partial offset (*i.e.*, higher/lower tax deduction) impacting the MACRS rate base balances.

6. Long Term Debt Cost Rate

As set forth in Appendix A, the weighted average cost of long term debt during the term of the Electric Rate Plan is 5.65 percent. In light of recent disturbances in the financial markets, which have resulted in an unsettled auction market for the Company's variable rate tax exempt debt in particular, and a volatile interest rate environment in general, which makes forecasting the cost rates associated with future debt issues difficult, the Company will be allowed to true-up its actual weighted average cost of long term debt during RY2 and RY3 to the 5.65 percent cost rate reflected in Appendix A. In the event the Variable Rate or Auction Rate Debt is refinanced prior to April 1, 2013 (including under circumstances not contemplated by the Commission's order, issued March 12, 2009, in Case 08-M-1244, and therefore requiring Commission authorization), the Company will include its costs associated with the retirement and refinancing of the Variable Rate and Auction Rate Debt in the amounts to be reconciled.[13]

7. **Proceeds from the Sales of SO_2 Allowances**

If the level of proceeds from the sale of SO_2 allowances allocated to Electric varies in any Rate Year from the level provided in rates, which levels are set forth in Appendix D (*i.e.*, $1.37 million), such variation will be deferred on the Company's books of account and recovered from or credited to customers. The allocation of such proceeds between Steam and Electric will continue to be computed according to the method established in the *Order Determining Revenue Requirement And Rate Design*, issued September 22, 2006, in Case 05-S-1376.

8. **Major Storm Expenses Reserve**

The Company's annual revenue requirements provide funding for major storm expenses of $5.6 million in each of RY1, RY2, and RY3, incurred for major storms.[14] Cumulatively over the term of this Electric Rate Plan, the amounts provided for major storm costs total $16.8 million. To the extent that over the term of the Electric Rate Plan, the Company incurs cumulative incremental major storm damage expenses in excess of $16.8 million, the Company will defer on its books of account expenses in excess of the

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[13] If the Company refinances the Variable Rate or Auction Rate Debt, or issues new tax-exempt debt, it may require the use of one or more credit support measures, such as letters of credit or bond insurance.
[14] A "major storm" is defined in 16 NYCRR Part 97 as a period of adverse weather during which service interruptions affect at least ten (10) percent of the Company's customers within an operating area and/or results in customers being without electric service for durations of at least twenty-four (24) hours.

$16.8 million for future recovery from customers. To the extent that over the term of the Electric Rate Plan, the Company has incurred cumulative major storm damage expenses less than $16.8 million, the Company will defer any variation less than $16.8 million for the benefit of customers. All major storm expenses will be subject to Staff review.

9. ERRP Major Maintenance Cost Reserve

The Company's base rates reflect amounts for East River Repowering Project ("ERRP") Maintenance Costs of $7.5 million, $7.606 million and $7.739 million, in RY1, RY2 and RY3, respectively. To the extent that over the term of the Electric Rate Plan, the Company incurs cumulative ERRP Maintenance Costs more or less than the sum of the amounts provided in rates plus the reserve available as of April 1, 2010, the Company will defer any variation on its books of account for future recovery from or for the benefit of customers.

10. Other Transmission Revenues

The Company's revenue requirements include annual revenue targets for Transmission Congestion Contracts ("TCC") of $120 million; Transmission Service Charges ("TSC") of $15 million; and grandfathered transmission wheeling contracts ("GTWC") of $11.476 million as shown on Appendix C – Other Operating Revenues. Annual variations between the TCC, TSC and GTWC revenue targets and actual amounts will be passed back or recovered as appropriate through the MAC.

11. Brownfield Tax Credits

The Company's revenue requirements include New York State tax benefits from Brownfield environmental tax credits of $1.6 million annually, as shown on Appendix D. The Company will defer on its books of account all Brownfield tax credits as received and amortize to income $1.6 million annually.

12. NEIL Dividends

The Company's revenue requirements include dividends from its Nuclear Electric Insurance Limited ("NEIL") insurance policy of $3.5 million annually, as shown on Appendix D. Annual variations between the actual dividends received and the $3.5 million target will be passed back or recovered as appropriate through the MAC.

13. Additional Reconciliation/Deferral Provisions

In addition to the foregoing reconciliation provisions (*i.e.*, paragraphs E.1 through E.12), all other applicable existing reconciliations and/or deferral accounting will continue in effect through the term of this Electric Rate Plan and thereafter until modified or discontinued by the Commission, including, but not limited to, Financial Accounting Standards ("FAS") 109 taxes, Regional Greenhouse Gas Initiative ("RGGI") costs associated with Company-owned generation, System Benefits Charges, Renewable Portfolio Standard charges, Demand Side Management ("DSM") costs, MTA taxes, New York Public Service Law §18-a regulatory assessment, and the MSC/MAC mechanisms, as well as the cost of the Low-Income customer charge discount (discussed below).

The revenue requirements reflect the amortization of $3.0 million per Rate Year of World Trade Center ("WTC")-related capital costs that the Company has deferred, as set forth in Appendix B. The balance of the Company's WTC-related capital costs allocated to Electric will continue to be deferred in accordance with the 2009 Electric Rate Order,[15] and subject to interest at Con Edison's allowed pretax Allowance for Funds Used During Constriction rate of return. The Company will continue to seek recovery for all WTC costs from governmental agencies and insurance carriers. All recoveries will be

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[15] In accordance with the 2009 Electric Rate Order, the Company has utilized $91.57 million of unbilled revenue credits to write down deferred WTC O&M costs.

applied to reduce the deferred balance, except to the extent that the Company is required to use insurance proceeds to reimburse government entities.

The Company's Petition for Rehearing, filed on May 26, 2009, in Case 08-E-0539 on the issue of recovery of D&O insurance costs in rates is still pending. If the Commission grants the Company's request for recovery of any or all of such costs, the method of recovery shall be as set forth by the Commission. In the event that the Commission does not specify any method of recovery, the Company may defer for later recovery from customers the amount authorized by the Commission, with interest.

14. Limitations on Deferrals

For earnings above the RY1 Earnings Sharing Threshold or the RY2-3 Earnings Sharing Threshold, the Company will apply fifty (50) percent of its share of any such earnings to reduce deferred undercollections of pension and OPEBs, Municipal Infrastructure Support costs and property taxes, if any. This analysis will be performed annually; for RY2 and RY3, adjustments will be based on cumulative earnings for RY2 and RY3. The Company will apply the customers' share of earnings above the sharing threshold that would otherwise be deferred for the benefit of customers to first offset deferred debits. The customers' allocated share of shared earnings will be applied against deferred pension and OPEB costs, property taxes, WTC costs, Municipal Infrastructure Support costs and environmental remediation costs.

The Company's annual earnings report (see section C) will include a schedule showing deferrals written down with the Company's and the customers' respective shares of earnings above the earnings sharing thresholds.

F. Additional Rate Provisions

1. Depreciation Rates and Reserves

The average services lives, net salvage factors and life tables used in calculating the depreciation reserve and establishing the revenue requirements are set forth in Appendix E. In addition to the depreciation produced by application of the rates summarized in the Appendix, an additional amount of depreciation expense will be realized in connection with the partial recovery of the reserve variation proposed by the Company. The allowed recovery will equal $6,446,000 annually and was determined by applying fifty (50) percent to the Company's proposal for the recovery of the reserve deficiency based on a 13-year amortization period in connection with the amount in excess of the ten (10) percent tolerance band. In addition, the amount of the reserve deficiency amortization approved in Case 07-E-0523 amounting to $10,833,000 annually will continue for an additional thirteen (13) years.

2. Interest on Deferred Costs

The Company is required to record on its books of account various credits and debits that are to be charged or refunded to customers. Unless otherwise specified in this Proposal or by Commission Order, the Company will accrue interest on these book amounts, net of federal and state income taxes, at the Other Customer-Provided Capital Rate published by the Commission annually. FAS 109 and MTA tax deferrals are either offset by other balance sheet items or reflected in the Company's rate base and will not be subject to interest.

3. Property Tax Refunds and Credits

Property tax refunds allocated to Electric that are not reflected in this Electric Rate Plan and that result from the Company's efforts, including credits against tax payments or similar forms of tax reductions (intended to return or offset past overcharges or payments determined to have been in excess of the property tax liability appropriate for Con Edison), will be deferred for future disposition, except for an amount equal to fourteen (14) percent of the net refund or credit which will be retained by the Company. Incremental expenses incurred by the Company to achieve the property tax refunds or credits will be offset against the refund or credit before any allocation of the proceeds is calculated. The deferral and retention of property tax refunds and incentives will be subject to an annual showing in a report to the Secretary by the Company of its ongoing efforts to reduce its property tax burden, in March of each Rate Year. Additionally, the Company is not relieved of the requirements of 16 NYCRR Part 89 with respect to any refunds it receives.

4. <u>Allocation of Common Expenses/Plant</u>

During the term of the Electric Rate Plan, common expenses and common plant will be allocated according to the percentages reflected in the electric revenue requirement calculations, as shown in Appendix F. Should the Commission approve different common allocation percentages for gas and/or steam service prior to the next base rate case for the electric business, the resulting annual revenue requirement impact to Electric will be deferred for future recovery from or credit to customers.

G. <u>Reliability Performance Mechanism</u>

The Reliability Performance Mechanism set forth in Appendix G will be in effect for the term of the Electric Rate Plan and thereafter unless and until changed by the Commission.

H. Customer Service

1. Customer Service Performance Mechanism

The Customer Service Performance Mechanism ("CSPM") described herein will be in effect for the term of the Electric Rate Plan and thereafter unless and until changed by the Commission.

a. Operation of Mechanism

The CSPM establishes threshold performance levels for designated aspects of customer service. The areas of customer service and the potential revenue adjustments are set forth on Appendix H. Failure by the Company to achieve the specified targets will result in a revenue adjustment of up to $40 million annually. All revenue adjustments related to the CSPM will be deferred for the benefit of customers.

b. Exclusions

Abnormal operating conditions are deemed to occur during any period of emergency, catastrophe, strike, natural disaster, major storm, or other unusual event not in the Company's control affecting more than ten (10) percent of the customers in an operating area during any month. A major storm will have the same definition as set forth in Section E.8.

i) In the event abnormal operating conditions in one (1), two (2) or three (3) of the Company's six operating areas affect the Company's ability to perform any activity that is part of this CSPM, the data for the operating area(s) experiencing the abnormal operating conditions will be omitted from the calculation and the Company's results for any activity that is part of the CSPM that is affected by such abnormal operating conditions will be measured only by the data from the other operating area(s) for the period of the abnormal operating conditions.

ii) If abnormal operating conditions occur in more than three operating areas so that monthly results cannot be measured for a given activity, the month will be eliminated in the calculation of the actual annual average performance for that activity.

iii) In the event that abnormal operating conditions affecting the Company's ability to perform a given activity occur in more than three operating areas for an entire Rate Year, the activity will be inapplicable in that Rate Year and the associated revenue adjustment amount for that activity will also be inapplicable in that Rate Year.

iv) If changes in Company operations render it impractical to continue to measure performance in any activity, the measurement method and/or threshold standard will be revised or an alternative method or activity selected for the remainder of the period during which this CSPM is operative. Any such modifications must be mutually agreed to by Staff and the Company in writing. In the event Staff and the Company cannot agree to a modification, the revenue adjustment amount associated with the activity that can no longer be measured will be reallocated among the other activities for the remainder of the period during which this CSPM is operative, subject to Con Edison's right to petition the Commission to establish an alternative method or activity.

c. Reporting

The Company will prepare an annual report on its performance that will be filed with the Secretary by May 31 following each Rate Year. Each report will state: (i) any changes anticipated to be implemented in the following measurement period in any activity reflected in this Proposal, (ii) a summary of the effect of any of the exclusions described herein and/or any significant changes in operations which led to the reported performance level during the measurement period; and (iii) whether a revenue adjustment is applicable, and if so, the amount of the revenue adjustment. The Company will maintain sufficient records to support such reports.

d. Threshold Standards

The Company's threshold performance will be measured based on the Company's cumulative monthly performance for each Rate Year for the following four activities, except as otherwise noted.

i) Commission Complaints

Con Edison's Commission complaint performance measure will be the 12-month complaint rate reported by the Office of Consumer Services each year for the 12-month period ending in March, based on the number of complaints received. A complaint is a contact by a customer, applicant, or customer's or applicant's agent that follows a contact with the Company about the issue of concern as to which the Company, having been given a reasonable opportunity to address the matter, has not satisfied the customer. The issue of concern must be one within the Company's responsibility and control, including an action, practice or conduct of the Company or its employees, not matters within the responsibility or control of an alternative service provider. Complaints resulting from the price of electric energy and capacity or the operation of the Company's MSC and that do not otherwise present just cause for charging a complaint against the Company will not be counted as complaints for the purposes of the CSPM. One or more contacts by a rate consultant raising the same issue as to more than one account, whether such contacts are made at the same time or different times, will not be counted as more than one complaint if the issue is under consideration by the Department or the Commission and no Company deficiency is found. Contacts by customers about the Shared Meter Law will not be complaints if the contact is about the requirements of the Shared Meter Law and no Company deficiency is found. The annual report filed by the Company shall provide an accounting, without identifying specific customer information (*e.g.*, by listing complaints by reference number, without providing customer names), of any complaints that the Company believes should not be counted due to the provisions of this paragraph, and state the resulting adjusted Commission Complaint rate.

ii) Call Answer Rate

"Call Answer Rate" is the percentage of calls answered by a Company representative within thirty (30) seconds of the customer's request to speak to a representative between the hours of 9:00 AM and 5:00 PM Monday through Friday (excluding holidays). The performance rate is the sum of the system-wide number of calls answered by a representative within thirty (30) seconds divided by the sum of the system-wide number of calls answered by representatives.

iii) Satisfaction of Callers, Visitors, and Emergency Contacts

The average of the satisfaction index ratings on the semi-annual surveys (conducted during the second and fourth quarters) of emergency callers (electric only), Call Center callers (non-emergency), and Service Center and Walk-in Center visitors, separately conducted by Communication Research Associates or another professional survey organization during each Rate Year. The Company shall notify Staff of any process instituted by the Company to change its survey contractor. The Company shall notify Staff at least six (6) months prior to making any material change to its survey questionnaire or survey methodologies.

iv) Outage Notification

The specific activities for communicating with customers, the public, and other external interests during defined electric service outage events remain as described by the Commission in Case 00-M-0095.[16] For each activity noted in that Order, performance that fails to meet the applicable threshold performance standard will result in a revenue adjustment at twice the level set forth in that Order (e.g, for each failure to complete a communication activity within the required time, the negative adjustment would be increased from $150,000 to $300,000). The overall amount at risk for Outage Notification ($8 million, established in Case 07-E-0523) shall remain unchanged.

2. Outreach and Education

Con Edison will continue to develop and implement outreach and education activities, programs and materials that will aid its customers in understanding their rights and responsibilities as utility customers. The Company will continue to survey its customers and to include appropriate questions in the surveys to evaluate its customer outreach program and identify areas where its outreach efforts could be further strengthened or improved. The Company will file a summary and assessment of its customer education efforts with the Director of the Office of Consumer Services by September 30 of each Rate Year.

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[16] Case 00-M-0095, Joint Petition of Consolidated Edison, Inc. and Northeast Utilities for Approval of a Certificate of Merger, with All Assets Being Owned by a Single Holding Company, *Order Approving Outage Notification Incentive Mechanism* (issued April 23, 2002).

I. **Revenue Allocation**

The allocation of the delivery revenue increase for each Rate Year is explained in detail in Appendix I. The revenue allocation reflects, among other things, that the NYPA class will be assigned an additional $7,211,900 above its otherwise applicable rate increase in RY1, no additional assignment above its otherwise applicable rate increase in RY2, and a further $3,605,950 above its otherwise applicable rate increase in RY3, in resolution of the parties' disagreements regarding the Company's 2007 Embedded Cost of Service ("ECOS") Study solely the for purpose of this Proposal. The surplus/deficiency revenue adjustments allocable to each of the Con Edison classes, EDDS and NYPA, in each Rate Year, are shown on Appendix I, Table 1, and Column 2 of Table 2.

If the Company files for new base delivery rates to be effective on April 1, 2013, that filing will be premised upon a 2010 ECOS Study. For each year the Company delays in filing for new base delivery rates, the ECOS Study underlying the Company's filing will be premised upon a year that is no more than two (2) years prior to the year in which the filing is made (*e.g.*, if the Company files for new base delivery rates to be effective on April 1, 2014, the filing will be premised upon a 2011 ECOS Study). Regardless of when the Company files for new base delivery rates, the ECOS Study will reflect data from the multiple dwelling load diversity study being performed by the Company. The results of that study, which will be completed prior to the next rate case filing and will include data for a period extending beyond 2010, will be incorporated into the next ECOS Study.

J. **Rate Design**

1. **General Delivery Service**

This Proposal establishes new competitive and non-competitive electric delivery service rates, including changes to provisions of the MAC. These rates are based on total revenue requirements that reflect the costs of delivery facilities, without regard to the functionalization of those facilities as transmission or distribution. The same rates will apply to the same classes for delivery service rendered pursuant to the Full Service and Retail Access Schedules,[17] except as may have been (and may in the future be) necessary to implement rate unbundling. The Proposal does not address or preclude the Company from recovering certain costs through other mechanisms pursuant to Commission directives or authorizations (*e.g.*, pursuant to the 2009 Electric Rate Order, the Company will seek recovery of certain energy efficiency-related costs in Case 07-M-0548 (EEPS proceeding); the Company will recover costs associated with projects for which it receives grants from the Department of Energy through the separate surcharge authorized by the Commission's *Order Authorizing Recovery Of Costs Associated With Stimulus Projects*, issued July 27, 2009 in Cases 09-E-0310 and 09-M-0074).

The rates implementing this Proposal will be developed as set forth in Appendix I. The rate design reflects, among other things, that current rates will first be redesigned before rates are increased to reflect the following: (1) in RY1, Service Classification ("SC") 4 and 9 delivery rates at the current May 2009 rate level for SC 4 and 9 will be redesigned to provide for common delivery rates under a redesigned SC 9 rate schedule; and (2) the declining block rate structure in SC 1, 2, 7, redesigned 4/9, 8 and 12 will be

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[17] The delivery service rates will be set forth in the Full Service Schedule and incorporated by reference in the Retail Access Schedule.

replaced with a flat rate structure, which will be phased-in to certain classes over a four-year (for SC 1, SC 2 and SC 7) or five-year (SC 4 and SC 9) period (*i.e.*, extending one (1) or two (2) years beyond the term of the Electric Rate Plan), as explained in Appendix I, to mitigate and avoid abrupt changes in customer's bills.

If the Commission does not initiate a generic proceeding to consider unbundling transmission and distribution rates before the end of RY1, nothing in this Proposal shall be construed (a) to limit the Company's rights to pursue unbundling its transmission and distribution rates to be effective no earlier than April 1, 2013, and (b) to indicate the Signatory Parties' agreement or acknowledgement that the Company's transmission and distribution rates should be unbundled. Prior to filing any petition for unbundling, the Company will convene a meeting of interested parties to discuss the Company's planned filing.

2. <u>Business Incentive Rate</u>

The following changes will be made to the Company's Business Incentive Rate ("BIR") Program:

a. Transfer of Allocation. Currently, the Comprehensive Package Program under the BIR provides for 240 MW of BIR power to be allocated to NYC and 35 MW to be allocated to the Westchester. At this time, 128 MW of NYC's allocation and 2.2 MW of Westchester's allocation are unsubscribed. However, there are a number of entities in Westchester that qualify for and are or will receive a Comprehensive Package of Economic Incentives, as that term is defined in Section (A)(3)(b) of Rider J, that will need, in total, an allocation in excess of 7 MW. To address this situation, 5 MW of NYC's unsubscribed allocation is transferred to Westchester to accommodate these projects, subject to the following conditions:

i) To the extent the projects are canceled or terminated, the transfer or any portion thereof not utilized shall revert back to NYC; and

ii) If, at some future time, provided the BIR program remains in effect, NYC determines that it needs the 5 MW or a portion thereof for one of its own economic development projects, and Westchester has unsubscribed MWs, the amount required and available up to 5 MW shall be "returned" to NYC. If Westchester has no unsubscribed MW, Westchester shall not be required to terminate or reduce the allocation to any existing project. However, as such projects exit the BIR Program, the 5 MW will be reallocated to NYC before Westchester enrolls any new customers or projects into the BIR Program, or expands allocations to existing projects.

b. Expansion of Research Facility Access.

i) Section (A)(2)(b)(iii) of Rider J allocates 8 MW to not-for-profit institutions for biomedical research, and Section (A)(2)(d) of Rider J allocates an additional 12 MW to this same use. Under this Proposal, the total allocation for biomedical research is increased from 20 MW to 40 MW, with the additional 20 MW coming from NYC's unsubscribed allocation.

ii) The definition of Comprehensive Package of Economic Incentives set forth in Section (A)(3)(b)(iii), as applied to biomedical research facilities, shall be expanded to read as follows: (iii) low-cost financing conferred by the local municipality, state authorities, the federal government, or entities which are tasked to provide federal financing, stimulus funds, or make similar investments to not-for-profit institutions utilizing space for biomedical research as specified in section (A)(1)(c) of this Rider.

iii) The definition of "Biomedical Research" in Section (A)(3)(g) of Rider J will be revised to read as follows: "Biomedical Research" is defined as research and development on use of cellular and molecular processes with a goal of creating products and solving health-related problems. Biomedical research includes research and development within the following disciplines: bioscience (adapting traditional research to commercial goals, studying the molecular, cellular and genetic causes of disease); biomedical and biological engineering (integrating physical, chemical, mathematical, computational science, and engineering principles to study biology, medicine, behavior, and health); genomics (treatments based upon genetic manipulation); research instrumentation (screening, analysis, and computing used to assist in the research of disease and development of medicines and other treatments); translational medicine (application of research findings to commercially viable product development and to treatments that are directly applicable to human diseases); drug development (including research, development, and manufacturing of medicines and drug delivery), clinical research (studies of patient populations, analysis of treatments, and clinical trials); biomedical device development (development and manufacturing of medical instrumentation, supplies, imaging tools, and therapeutic devices); and biopharmacology (direct application of research to development of drug treatments).

iv) The eligibility rules for participation in the biomedical research allocation of the BIR Program, set forth in Section (A)(1)(c) of the Rider J, will be revised as follows: Not-for-profit institutions occupying newly constructed or converted space contained within newly constructed buildings, or space in additions to or renovations in existing buildings, where such space is solely or predominantly used for biomedical research. Service under this Rider will be made available to such space and to associated administrative space within such buildings upon a showing of expected economic development benefits, including new jobs, as a result of the provision of this Rider over the long term and a showing that National Institute of Health grants will not contribute towards the cost of electric service covered by this Rider.

v) If requested by Westchester during the term of this Electric Rate Plan, Con Edison will provide Westchester with up to an additional allocation of 3 MW of BIR for Biomedical Research provided that: (i) Con Edison has up to 3 MW of unsubscribed BIR available that is not expected to be subscribed in the Company's New and Vacant Program during the term of the Electric Rate Plan; and (ii) Westchester demonstrates that the potential Biomedical Research customer will provide incremental usage (*i.e.*, the customer would not have otherwise opened the facility in Westchester County but for the total economic package including the Biomedical allocation) and (iii) such customer otherwise qualifies as a Biomedical customer under the Company's tariff.

c. Business Incubator Programs. Rider J will be expanded to support the Business Incubator programs being developed and implemented in NYC and Westchester in accordance with the following parameters.

i) Scope. The expanded program shall apply to business incubators recognized by and receiving funding from a government entity or recognized by a government entity and receiving funding from another entity whose mission includes development of businesses in New York City or Westchester County. The expanded program shall also apply to start up and fledgling businesses who graduate from a Business Incubator program and continue to exist as a new business.

ii) **Definition**. Section (A)(3)(i) shall be added to Rider J to define "Business Incubator" as a facility that supports the launch and growth of start up and fledging businesses by providing: (i) a workspace at discounted rates; (ii) access to a network of successful entrepreneurs and support organizations through a program of events and an advisory board; and (iii) an array of targeted resources and services. The Business Incubator must receive funding from one or more governmental entities or other entities working with or recognized by either NYC or Westchester to develop businesses in Con Edison's service territory. A "Business Incubator Graduate" is defined as a start up or fledging business which was a resident in a Business Incubator and has left the Incubator in order to grow or expand its business. Businesses that are dismissed from the Incubator are excluded from this definition.

iii) **Allocation**. 12 MW shall be allocated to the business incubator component of the BIR Program, with 10 MW dedicated to Business Incubator and Business Incubator Graduates located in NYC and 2 MW dedicated to Business Incubator and Business Incubator Graduates located in Westchester County. The 10 MW for the NYC portion of the program shall come from NYC's unsubscribed allocation under the Comprehensive Package Program, and the 2 MW for the Westchester portion of the program shall come from the Company's New and Vacant program.

iv) **Eligibility**. The applicant must provide to Con Edison:

1. If a Business Incubator, documented proof of funding or other support from NYC, Westchester County, other government entity or another entity whose mission includes development of businesses in New York City or Westchester County;

2 If a Business Incubator Graduate, proof of "graduation" from a Business Incubator;

3. a certificate of incorporation or formation or its equivalent; and

4. an analysis of the amount of electricity needed.

The Business Incubator or Business Incubator Graduate will not be required to move into a new or vacant building, be a recipient of real property tax incentives, or energy rebates under the Energy Cost Savings Program, in order to qualify for an allocation under this component of the BIR Program, but all other applicable requirements in Rider J must be satisfied.

v) Application. A Business Incubator may apply for an allocation at any time. A Business Incubator Graduate must apply within sixty (60) days of leaving the Incubator and signing a deed or lease for commercial or research space and submit a copy of a signed lease or deed for the business location. Allocations are not transferable, unless the move is caused by reasons outside the recipient's control, including, but not limited to, a fire or other incident that renders the existing space uninhabitable, or a taking of the property by eminent domain. Applications to commence service under this component of the BIR Program that are dated after March 31, 2015 will not be accepted.

vi) Term. A Business Incubator will receive a BIR reduction for up to a fifteen-year term, with rate reductions being phased-out as described in the tariff (*i.e.*, ten-year term of full reduction and five-year phase-out of reduction) so long as it satisfies the eligibility requirements set forth above. A Business Incubator Graduate that satisfies the eligibility requirements set forth above will receive a BIR reduction for a nonrenewable five-year period, with no phase-out period. If the Business Incubator or Business Incubator Graduate is a tenant in a redistribution building, its usage must be a minimum of 10 kW. The maximum award to any Business Incubator will be 750 kW and the maximum award to any Business Incubator Graduate will be 500 kW.

vii) Mergers and Successors. If a Business Incubator Graduate receiving BIR reductions under this component of the BIR Program merges with another business, but it does not change the name of the business and remains at the same location, it will continue to be eligible to receive the BIR reduction for the remainder of its term. A Business Incubator Graduate receiving a BIR reduction as sole proprietor or partnership which incorporates the business and changes the name of that business shall also continue to receive a BIR reduction for the remainder of its term. Successor businesses will not be eligible to receive this BIR reduction.

viii) Energy Audits. Within six (6) months of signing a lease or obtaining a deed,

1. Business Incubators and Business Incubator Graduates using less than 100 kW per month (12-month average) will be required to provide Con Edison with a copy of an energy audit performed by a qualified energy audit firm (*e.g.*, a qualified energy audit firm under Con Edison's Small Business Direct Install Program). The customer will provide evidence of implementation of recommended energy efficiency measures or provide a reasonable basis for not implementing such recommendations.

2. Business Incubators and Business Incubator Graduates using 100 kW or more per month must provide proof of: (a) a completed energy audit by a qualified energy audit firm, (b) installation of the measures stated in the audit or a reasonable explanation as to why the recommended measure was not implemented, and (c) paid rebates, if any.

3 At least once every five (5) years, a Business Incubator must provide proof of: (a) a completed energy audit, (b) installation of the measures stated in the audit or a reasonable explanation as to why the recommended measure was not implemented, and (c) paid rebates, if any.

d. Tariff Leaves. Prior to submitting tariff leaves to the Commission to implement the foregoing changes as part of its RY1 compliance filing, Con Edison will provide drafts to the parties for review. The parties will have five (5) business days to review and provide comments on the proposed leaves to Con Edison.

3. <u>Tariff Changes</u>

A number of tariff changes will be made, as summarized below. The specific language of the changes will be shown on tariff leaves to be filed with the Commission. In addition, the Company commits to completing the conversion of its electric service tariff leaves to an electronic format using the Department of Public Service Electronic Tariff System prior to the end of RY2 as directed by the Commission (see 2009 Electric Rate Order, p. 249).

a. NYISO Weekly Billing. The New York Independent System Operator ("NYISO") is considering a change in its billing practices from monthly to weekly. If that change is implemented, the Company may experience an increase in its working capital requirements. If the change in NYISO billing is implemented during the term of this Electric Rate Plan and the Company experiences an increase in working capital requirements, the Company may recover such increase in working capital requirements through a tariff filing that would implement a change to the Merchant Function Charge to recover the incremental costs incurred and would include supporting material that demonstrates such incremental costs.

b. **Business Incentive Rate**. In addition to the tariff revisions that will be made to the BIR program set forth in paragraph J.2, Rider J will be modified to extend the deadline for accepting applications to commence service under BIR from March 31, 2010 to March 31, 2013, except as provided in Section J.2.c.v for the Business Incubator Program. A housekeeping change will also be made to Rider J to indicate that an energy efficiency audit, which is required by customers applying for service under Rider J, may be performed by the New York State Energy Research and Development Authority or other governmental authority administering energy efficiency programs or an independent third party or Customer personnel capable of performing a comparable audit. This will replace current language requiring audits comparable to Company audits that are no longer performed by the Company.

c. **Merging SC 4 and SC 9**. As a result of the merging of the SC 4 and 9 tariffs into a redesigned SC 9 tariff as explained in paragraph J.1, SC 4-Commercial and Industrial – Redistribution in the full service tariff, the corresponding service class contained in SC 14-RA of the Retail Access tariff, and the corresponding service class contained in SC 11 for customers who would otherwise be served under SC 4, will be eliminated. The special provisions contained within SC 4 will be consolidated with the special provisions under SC 9. As explained in Appendix I, former SC 4 customers and current SC 9 customers will now be served under the redesigned rates for non-time-of-day and time-of-day services set forth within the proposed SC 9 rate schedule. Conforming changes will also be made to other sections of the tariff to reflect the combination of the SC 4 and 9 classes, for example, any tariff references made to SC 4 would be changed to refer to SC 9.

d. Uncollectible Bill ("UB") Expense Associated with MSC/MAC. The uncollectible bill expense associated with MSC and Adjustment Factors-MSC charges contained in General Rule VIII(B)(6)(Other Charges and Adjustments – Merchant Function Charge) and the uncollectible bill expense associated with the MAC and Adjustment Factor-MAC charges contained in General Rule VII(B)(Monthly Adjustment Clause) will be modified to reflect a system UB factor of 0.76 percent.

e. Consolidation of SC 1 and SC 7. As explained in Appendix I, SC 1 and 7 will be consolidated into one common class under SC 1 in the Rate Year commencing April 1, 2013, and SC 7 will be eliminated at that time. In addition, SC 7 will be modified to discontinue accepting new customers under SC 7 at the commencement of RY1.

f. Rider H. Rider H Off-Peak Domestic Hot Water Storage Rate, which is applicable to SC 1 and 7 customers who elect to heat and store water off-peak, will be deleted as a Rider from the full service and retail access schedules and incorporated as Special Provision F within the SC 1 rate schedule. A new Special Provision F will be added to SC 7 to refer off-peak hot water storage customers to Special Provision F of SC 1 until SC 1 and 7 are combined into one common class in the Rate Year commencing April 1, 2013. The rate provisions contained under SC 1 Rate II voluntary time-of service will also be amended to reflect the rates that Special Provision F customers will be charged. As they do today, such customers will continue to pay for such service at the SC 1 Rate II off-peak energy delivery charge.

g. **Reconciliation of TSCs through the MAC**. The component of the MAC listed in General Information Section VII.B.1 and designated as item 27 will be revised to provide for the reconciliation through the MAC of the targeted Rate Year TSC revenues with actual Rate Year TSC revenues.

h. **Carrying Charge Percentage Increase for Interconnection Charges**. The annual carrying charge percentage associated with interconnection charges assessed under SC 11 and SC 14-RA will be increased from 11.4 percent to 12.1 percent to reflect updated costs.

i. **Modification to Rider M**. Rate II leaves in SC 5, 8, 9, and 12 will be modified to clarify that Rider M is applicable to supply charges, unless the customer is ineligible for Rider M, in which case the MSC and Adjustment Factors-MSC apply.

j. **SC 11 Clarifications**. Changes will be made to SC 11- Buyback Service to clarify that if service is taken by a Customer under both SC 11 and another SC through the same service connection, the following applies: (a) the Customer Charge will be waived and (b) the contract demand billed under SC 11 will be the contract demand in excess of that billed under SC 14-RA or the contract demand in excess of the as-used demand billed under another SC.

k. **Revenue Decoupling Mechanism**. The RDM tariff provisions will be revised for the following: (1) to set forth the annual revenue targets for Con Edison service classes and NYPA based on the revenue requirement established for each

Rate Year at the time of the compliance filing made to revise the rates for each Rate Year; (2) to clarify that any interim charges/credits associated with RDM reconciliations of actual versus targeted revenues for periods commencing on and after April 2010 will become effective on the first day of the month in which they become effective, as explained in Section B.6; and (3) to provide for an annual reconciliation of the low-income customer charge discount, waiver of reconnection fees and an arrears forgiveness program, as explained in Section K.

l. Rate Adjustment Clause. In the compliance filing made to revise the rates pursuant to the Electric Rate Plan, changes will be made to the RAC mechanism in the Company's tariffs associated with that portion of the Company's revenue requirement that is under review by the Commission as set forth in Case 07-E-0523 and Case 09-M-0114, as appropriate.

m. Low-Income Program. Tariff changes will be made to the SC 1 and 7 tariffs to implement the Low-Income Program described in Section K.

n. No Change to Reimbursement Limits. During the term of this Electric Rate Plan, no change will be made to the compensation amounts and limits for losses contained in General Rule III 14(A) resulting from service interruptions on the Company's local distribution system.

o. RGGI Allowances. The Company's tariff providing recovery of purchases of RGGI allowances shall also provide for crediting customers for proceeds from the sale of such allowances.

p. Housekeeping Changes. Other conforming and housekeeping tariff changes will also be made as required (*e.g.*, remove language from General Rule

VII(B)(15) (Monthly Adjustment Clause), which contains an incorrect cross reference to hedging instruments; Change "Village of Tarrytown" to "Village of Sleepy Hollow" in General Rule I (Territory to Which the Rate Schedule Applies)).

K. Low Income Program

The Company's Low-Income Program will consist of three components. First, during the term of the Electric Rate Plan, and continuing thereafter unless and until changed by the Commission, the Company will provide a discount on the customer charge to eligible and enrolled low-income residential customers taking service under Rate I of SC 1 (non-heating) and SC 7 (heating). Second, for the term of this Electric Rate Plan, the Company will also institute a program for waiver of reconnection fees. Third, a collaborative will be held to discuss an arrears forgiveness program, which program would be implemented if subsequently adopted by the Commission.

1. Customer Enrollment

To qualify for the Low-Income Program ("Qualifying Customers"), a Rate I SC-1 (non-heating) or Rate I SC 7 (heating) customer must (a) be enrolled in the Direct Vendor ("DV") or Utility Guarantee ("UG") Program; or (b) be receiving benefits under any of the following governmental assistance programs: Supplemental Security Income, Temporary Assistance to Needy Persons/Families, Safety Net Assistance, Food Stamps; or (c) have received a Home Energy Assistance Program ("HEAP") grant in the preceding twelve (12) months ("Qualifying Programs"). Customers participating in the Company's current electric low-income program at the time this Electric Rate Plan becomes effective will not be required to re-enroll in the Low-Income Program described herein.

Qualifying Customers may enroll or be enrolled in the Low-Income Program as follows:

First, the Company will continue its existing enrollment procedure for UG and DV customers by the New York City Human Resources Administration ("HRA") or the Westchester County Department of Social Services ("DSS") (the "Agencies"). The Agencies can utilize a newly-developed Company web application or submit a paper application to enroll a customer on UG or DV. Upon receipt of the electronic or paper application, the Company will update its customer records to indicate that the customer is enrolled in the Low-Income Program.

Second, the Company will continue its existing enrollment procedure for HEAP recipients whereby the Company enrolls a customer when it receives payment associated with a HEAP grant.

Third, the Company will continue its existing procedure to enroll individual customers upon (a) individual customer application with appropriate documentation and/or (b) receipt of notification from the Agencies of eligibility through any qualifying program. In these cases, the Company will manually update its customer records to indicate that the customer is enrolled in the Low-Income Program.

Finally, the Company will enhance the procedures that were established for the current Con Edison low-income program regarding a reconciliation of Company and Agency records. That is, the Company will initiate an annual reconciliation of Company and Agency records. In March 2010, the Company will request that the Agencies perform a reconciliation of (a) HRA and DSS records of recipients of benefits under Qualifying Programs for which they maintain records with (b) records provided by Con

Edison of all SC 1 and SC 7 residential customers. For purposes of this procedure, reconciliation means that each Agency will, in a manner agreed upon by the Company and the Agency, identify those customers on the list provided by the Company that are then participating in any of the Qualifying Programs. The Company will notify the parties if the reconciliation has not been completed by May 1, 2010. The Company will take prompt action to enroll or de-enroll customers on the basis of the data provided by the Agencies within thirty (30) days after receiving the data from the Agencies, including data received after the due date. The estimated 375,000 customers participating in the Low-Income Program reflects, in part, a reconciliation of the Company's and the Agencies' records performed during the course of this proceeding (in addition to the daily receipt of information from the Agencies, noted above), by comparing Agencies' records to a Company list of currently non-participating SC 1 and SC 7 residential customers.

The Company will thereafter annually initiate the reconciliation described in the paragraph above so that the reconciliation can be completed at least thirty (30) days prior to the beginning of each subsequent Rate Year for as long as this Low-Income Program continues to be in effect; provided, however, if the reconciliation with either or both Agencies is not completed at least thirty (30) days prior to the beginning of any subsequent Rate Year, or the Company concludes at any time that the annual reconciliation process is impracticable, or one or both of the Agencies impose conditions on the process that impose on Con Edison more than de minimis additional administrative costs, the Company will notify the parties of this circumstance. The Company, Staff, NYC and Westchester will work to develop, to the extent necessary, an alternative means to efficiently and effectively identify and enroll Qualifying Customers.

If an alternative method is developed, the Company will notify all the parties that an alternative method will be used and will explain the mechanics of the alternative method.

2. Low-Income Customer Charge Discount

Effective April 1, 2010, customers enrolling in the Low-Income Program and continuing participants will receive an $8.50 discount from the otherwise applicable customer charge.[18] Except as provided below, the $8.50 discount will remain in effect for the duration of the Low-Income Program. The target cost of the discount component of the Low-Income Program, including the cost of an arrears forgiveness program, if implemented, for the term of the Electric Rate Plan is $114.75 million.

No change will be made to the low-income customer charge discount for the following Rate Year if the Company estimates for the current Rate Year, based on data through December of the current Rate Year (reported according to the data reporting requirements stated below), that the annual cost of the customer charge discounts, including, if applicable, the cost of an arrears forgiveness program, is within five (5) percent of $38.25 million (*i.e.*, between $36,337,500 and $40,162,500).

The low-income customer charge discount will be adjusted for the following Rate Year if the Company estimates, based on third quarter data through December of the current Rate Year (reported according to the reporting requirements stated below), that the one-year cost of the customer charge discounts, including, if implemented, the cost of an arrears forgiveness program, differs by more than five (5) percent of $38.25 million (*i.e.*, less than $36,337,500 or more than $40,162,500). In that case, the Company will

[18] As explained in Appendix I, the otherwise applicable customer charge in RY1 will be determined by increasing the current May 2009 customer charge by the combined SC 1 and 7 Rate I class average non-competitive T&D increase, which charge will remain in effect for the term of the Electric Rate Plan.

make a compliance filing with the Commission thirty (30) days prior to the commencement of the following Rate Year to increase or decrease the low-income discount for the following Rate Year, as applicable, by up to $0.50.[19] The amount of the adjustment(s) will be designed so that the total projected cost of the customer charge discount component of the Low-Income Program, plus, if implemented, the arrears forgiveness component, remains as close to the annual target cost (*i.e.*, $38.25 million) as is practicable. However, the Signatory Parties recognize that the variation in the number of customers could result in the total cost of the Low-Income Program rate discount being more or less, notwithstanding an adjustment of up to $0.50 in each Rate Year.

If at least four (4) months prior to RY2 or RY3 the Company estimates that the sum of (a) the aggregate actual low-income discounts and, if implemented, (b) the cost of an arrears forgiveness program, will exceed or be less than the $114.75 million target by more than twenty (20) percent (*i.e.*, more than $137.7 million or less than $91.8 million) over the term of this Electric Rate Plan, the Company will notify Staff and the parties of such estimate and convene a meeting of the parties to discuss whether any action should be taken other than to implement the $0.50 adjustment. It is the intention of the Signatory Parties to conclude such discussion in time to enable one or more parties, either individually or collectively, to propose to the Commission that the Low-Income Program be modified effective on the commencement of the upcoming Rate Year.

[19] For example, the maximum/minimum discount in RY2 would be $9.00/$8.00, respectively, and (assuming an adjustment was made in RY2) the maximum/minimum discount in RY3 would be $9.50/$7.50, respectively.

3. Reconnection Fee Waiver

Effective April 1, 2010, the Company will waive its service reconnection fee no more than one time per customer during the term of this Electric Rate Plan for customers participating in the Low-Income Program. The target cost of the reconnection fee waiver component is $1.5 million over the term of the Electric Rate Plan. The Company may grant waivers to individual customers more than once, on a case-by-case basis and for good cause shown, provided that the Company does not forecast that it will exceed the $1.5 million program target.

If the Company forecasts, based on the quarterly reported data from at least the first six (6) months of RY1, that the $1.5 million program target will be exceeded over the term of the Electric Rate Plan, the Company will be permitted to make a compliance filing of tariff amendments, on not less than 30 days' notice, which, over the course of the term of the Electric Rate Plan, limit the waiver to no less than fifty (50) percent of the total reconnection fee, so that the estimated three-year cost of waived reconnection fees does not exceed $1.5 million. If the fee waiver is not reduced by the maximum amount by any single filing, the Company may make compliance filings for additional reductions. The Company's initial tariff leaves will state that the fee waiver program will end once the cost of the program equals $1.5 million. The Company will notify the parties if it projects that the $1.5 million program limit will be reached during the term of the Electric Rate Plan.

4. Cost Recovery

For RY1, the rates for all customer classes have been designed to recover the cost of providing (a) aggregate low-income customer discounts of $38.25 million annually to an estimated 375,000 participating low-income customers (375,000 customers *

$8.50/month * 12 months) and (b) waivers of reconnection fees of $500,000 provided to participants in the Low Income Program. For RY2 and RY3, the annual $38.25 million rate discount component of the Low-Income Program may also include costs incurred by the Company as part of any arrears forgiveness program adopted by the Commission.

All under- and over-recoveries associated with the customer charge discounts, the waiver of reconnection fees, and, if implemented, the arrears forgiveness program, will be reconciled through the RDM from all customers subject to the RDM. If the Low-Income Program continues beyond the term of the Electric Rate Plan, but the RDM as currently structured does not, continuation of the Low-Income Program will be contingent upon the implementation of an equivalent mechanism that provides for full reconciliation of the low income customer charges/discounts and other applicable costs.

5. <u>Reporting Requirements</u>

The Company will file a report on the Low-Income Program for each calendar quarter (the "reporting period"). Each report will be filed with the Secretary, with copies by email to interested parties, within thirty (30) days after the end of each reporting period. The following data will be reported as a snapshot of the program as of the last day of each quarterly reporting period, broken down by Westchester County and New York City participants: (a) the number of customers enrolled; (b) the number of low-income customers in arrears; (c) the total amount in arrears; and (d) the average amount in arrears. In addition, the Company will report (i) the aggregate amounts of low-income discounts to date for the Rate Year, (ii) the number of reconnections of low-income customers for which fees were waived to date for the Rate Year and since the inception of the program, (iii) the aggregate amount of reconnection fees waived to date for the Rate Year and since the inception of the program, and, if applicable, (iv) the aggregate amount of arrears forgiven to date for the Rate Year. Each quarterly report issued during the term of the Electric Rate Plan will also include a summary of this data from all previous quarterly reports.

6. Arrears Forgiveness Collaborative

The Company, Staff and interested parties will convene a collaborative to consider the establishment of an arrears forgiveness program. The first meeting of the collaborative will be held within 60 days of Commission adoption of the Proposal. As part of the collaborative, the participants will review then-effective arrears forgiveness programs conducted by other New York utilities. The collaborative will conclude within four (4) months of its commencement. Following the collaborative, either the Company or any other interested party may propose that the Company implement an arrears forgiveness program through a filing with the Commission.

The Signatory Parties agree that any proposal for an arrears forgiveness program is to provide that (a) the arrears forgiveness program be instituted on or after April 1, 2011; and (b) the estimated cost of the arrears forgiveness program for RY2 and RY3 is to be recovered within the overall target three-year cost of the Low-Income Program (*i.e.*, within the $114.75 million, which may, for example, result in a reduction of the discount to the low-income customer charge), and reconciled through the RDM along with the low-income customer charge/discounts and waiver of reconnection fees.

L. Collaboratives, Studies, Reports

1. Standby Rates Collaborative

Starting in February 2010, the parties will undertake a collaborative process to discuss and evaluate the allocation of costs between contract and as-used demand charges, and whether and how those charges should be modified to develop a cost-based electric standby rate that would provide neither a barrier nor an unwarranted incentive for the installation or operation of distributed generation and cogeneration facilities (*e.g.*, including facilities in both buildings and cruise ships) throughout Con Edison's service territory. Any changes proposed to electric standby rates should be in accord with the Commission's Opinion 01-04, *Opinion and Order Approving Guidelines for the Design of Standby Service Rates*, issued October 26, 2001, in Case 99-E-1470.

The process envisioned is that the collaborative would have a goal to conclude by July 30, 2010. During this time, the parties would try to reach consensus and present a unified proposal to the Commission for its consideration. If, by July 30, 2010, the parties are unable to reach consensus, all interested parties would report such status of the collaborative to the Commission and provide comments. In the event no agreement or only partial agreement is achieved, the parties will also have the right to request, as part of the status report or via a separate petition, that the Commission make a determination on any unresolved issues specifically related to this collaborative.

The schedule for implementing any changes will also be a topic for discussion by the parties as part of the collaborative and may be included in any party's submission to the Commission. Parties are not precluded from seeking implementation of any new standby rates prior to the start of RY2, provided that they can make an appropriate showing that standby rates should be changed during the middle of RY1.

The Company will be permitted at the time of any such rate changes to make rate adjustments to offset the revenue effect, if any, of any changes to electric standby rates being less than the amount assumed in setting rates.

2. <u>Distributed Generation ("DG") Collaborative</u>

There will be a DG collaborative, chaired by Con Edison, which will commence approximately sixty (60) days after the start of the RY1 regarding DG and renewable energy initiatives. The Collaborative will discuss, among other items, the physical assurance requirement for participation in the Company's DSM programs, the role of DG in the Company's long range electric plan, the status of the solar pilot program proposed by Con Edison in 2009, alternatives to the requirements pursuant to which the Company provides electric service to a campus facility that meets all or part of its electrical or thermal requirements through an on-site DG facility or qualified cogeneration facility under the Public Service Law, and the value of the use of DG to defer infrastructure investment. The DG Collaborative will (1) develop protocols to guide the Con Edison evaluation process for incorporating the use of DG as a load relief option within the T&D planning process and submit proposed protocols to the Staff for its review; such protocols are to consider all attributes of DG on a comparable basis with other measures; (2) explore potential mechanisms that can be tested in the market to attract and fund DG facilities in lieu of T&D investments where such facilities are economically and technically feasible and appropriate; and (3) revisit the 2005 rate case definition of clean DG.

The types of DG to be considered by the Collaborative include, but are not limited to, wind, solar, combined heat and power ("CHP"), micro-CHP, energy storage, and other alternative technologies. Diesel and gasoline-powered facilities shall not be considered.

The Collaborative will submit a report to the Secretary, as appropriate, within six (6) months of its commencement.

3. <u>Retail Access – Collaborative to Consider Rate Ready Utility Consolidated Billing Model</u>

A Collaborative Proceeding is established to consider modifications that may be necessary to the Rate Ready Utility Consolidated Billing Model to enable Energy Service Companies to offer and bill for products which reflect time-of-use, interval and real time pricing, as well as to offer multiple rate components, such as demand, on peak, and off peak usage.

The Collaborative will examine all issues relative to implementing such modifications, including, but not limited to, the amount of system upgrade and related costs, the appropriate manner by which related system upgrade costs will be determined and recovered and identification and development of an appropriate implementation schedule if it is determined that such modifications are reasonable and necessary. Neither Con Edison's nor other parties' agreement to participate in this collaborative shall be construed as agreement or acknowledgement by Con Edison or such parties that the Company's investors or its customers should bear any of the costs of any modifications made as a result of this collaborative.

The Collaborative will commence in December 2009. It is the intention of the parties that the Collaborative be completed within eight (8) months, and that if agreement is achieved, a joint proposal reflecting such agreement be submitted to the Commission.

In the event no agreement or only partial agreement is achieved, the parties will have the right to petition the Commission to determine all unresolved issues.

The parties acknowledge that the costs for undertaking any modifications to the Company's Rate Ready Utility Consolidated Billing Model were not considered in developing this Proposal and the Company will not be required or expected to defer any other work in order to effect such modifications. The Company will incur incremental costs (*e.g.*, for consultants) in order to effect modifications to that model; any capital expenditures required to implement any modifications should not be counted against any Capital Spending Target or Net Plant Target; and the incremental capital and O&M costs incurred by Con Edison to implement such modifications will be fully recoverable by the Company in the manner determined by the Commission.

The Collaborative will be open to all interested parties.

4. <u>Provision of Electric Usage Data</u>

The Company, NYECC, the City, Staff and other interested parties will work together to develop a process and/or system for the Company to provide tenant[20] customer data for energy efficiency purposes, including, but not limited to, benchmarking.

a. Building-Level Data

Upon request, Con Edison shall provide to owners or managers of multifamily or commercial buildings, aggregate building energy usage in kilowatthours ("kWh") and demand in kilowatts ("kW"), for up to twenty-four (24) months prior to the request, as and to the extent such information is available in the Company's database of current customers. All such building-wide data shall be provided by the Company solely in aggregate form and shall not reveal particularized or identifiable customer information.

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[20] For purposes of this Section L.4, "Tenant" shall mean and include tenants, condominium unit owners and other directly-metered occupants of individual buildings.

Owners and managers must provide written requests to the Company, and each such request must state the relationship of the requestor to the building and the reason the information is being requested. From the date the Company receives the request that includes the customer consent, Con Edison shall comply with such requests within fifteen (15) business days, or within a reasonable period thereafter if the Company receives multiple requests during such timeframe.

b. Tenant-Level Data

i) Upon receipt of written consent from a directly-metered tenant of a specific building, Con Edison, at no charge, will provide the tenant's account number to the owner/manager of the tenant's building.

ii) Upon request, Con Edison shall provide to an owner or manager of a multifamily or commercial building, usage and, if applicable, demand information for each directly-metered account in the building from which the Company has received written consent of the customer of record authorizing the owner or manager to have access to such information. The information shall consist of data for up to twenty-four (24) months prior to the request as and to the extent such information is available in the Company's current customer database.

iii) The owner or manager must provide a written request to the Company, and each such request must state the relationship of the requestor to the building and the reason the information is being requested. For example, the usage data could allow the building owner or manager to establish a baseline for energy efficiency purposes for the entire building and to monitor building-wide and/or focused energy efficiency efforts. The data could also be needed for the building owner's or manager's participation in EPA Portfolio Manager, an interactive energy management tool, which assists in verifying energy efficiency improvements.

iv) From the date on which the Company receives the request with the customer consent, Con Edison will comply with all such requests within fifteen (15) business days (or within a reasonable period thereafter if the Company receives multiple requests during such timeframe).

v) Con Edison may first seek to confirm or authenticate the written consents it receives, if it has good reason to believe that the consent may be fraudulent or otherwise invalid. In such instances, Con Edison would use reasonable efforts to verify the consent.

vi) The Company will provide the name and contact information of a Company representative that may be used by building owners and managers for inclusion in letters to their tenants advising that the Company supports energy efficiency efforts, including those that require the owner/manager to have access to data on all energy consumed in its building. Such letters may be used by building owners and managers to assist in obtaining the necessary consent from building tenants. The Company reserves all rights with respect to inappropriate representations or other inappropriate use of its name in respect of representations made under this subparagraph.

vii) At no time will Con Edison be required to disclose customer data without a customer's consent.

c. Cost Recovery

The above-described processes may require reallocation of existing employees, additional labor, modification of customer information systems, and/or development of connections (also known as interfaces) between databases and other information sources and desktop applications for collecting and collating the information.

First, to the extent there are incremental costs associated with this effort to develop system and interfaces, the parties will discuss and make recommendations to the Commission regarding the appropriate manner of recovery of such costs, including from whom such costs should be recovered. Any incremental costs associated with this effort should not be counted against any of the Capital Spending Targets or Net Plant Targets.

Second, where the Company's compliance with a building owner's or manager's request requires it to perform a manual review of historical usage or billing information, Con Edison will be allowed to impose a charge to the requesting party to recover the costs associated with such effort. The Company may supply information via the internet.

5. <u>NYPA Metering and Billing</u>

The Company provides billing information to NYPA on a daily and monthly basis so that NYPA can bill its customers. Con Edison, NYPA, NYC, MTA, and Westchester agree to work together to resolve issues related to billing data and meter readings provided by the Company to NYPA.[21] This effort will involve the performance of certain actions and activities by Con Edison and, when appropriate, in conjunction with NYPA, NYC, MTA, and Westchester. Certain of the meter reading issues that have been identified relate to access to the customers' meters, and the parties acknowledge that such issues must also be addressed. The performance of the actions and activities by the Company, NYPA, NYC, MTA, and Westchester should resolve the issues so that the

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[21] Con Edison also agrees to work with the other NYPA Customers to resolve their similar metering and billing issues.

NYPA Customers' bills are based, to the maximum extent practicable, on actual meter readings.

a. Data Issues

To address the issues related to the data provided by Con Edison to NYPA and the data provided by NYPA to its customers, the following items will be addressed: (i) Con Edison and NYPA will maintain a process for logging, evaluating and tracking the resolution of issues related to the electronic interface of monthly billing data to NYPA; (ii) Con Edison and NYPA will each designate and maintain a point person to aid in the communication and resolution of data issues; (iii) the parties will establish a schedule for regular progress meetings as needed; (iv) where appropriate, Con Edison will make modifications to the communication of data from Con Edison's billing system to resolve cited issues or improve the process for the exchange of data between the Company and NYPA; (v) where modifications to the communication of data from Con Edison's billing system are not practicable, Con Edison will provide NYPA with clarification of the Company's billing methodologies and data to assist NYPA in utilizing data provided by the Company including processes and rules currently in place; and (vi) where modifications are necessary for either Con Edison or NYPA, each party will respond timely to requests for confirmation of test results and overall acceptance and approval of the changes.

Con Edison and NYPA will endeavor to complete the items already identified through meetings between NYPA and Con Edison conducted before and during the course of this proceeding within four (4) months of the date of the Commission Order adopting this Proposal. For new issues that are identified in subsequent meetings between Con Edison and NYPA, Con Edison and NYPA agree to resolve them as expeditiously as possible.

b. Unread Meters

In addition to the data issues discussed above, a number of NYPA Customers' meters are not read regularly. The parties have established a goal of addressing these issues with the NYPA Customers' unread meters so that the NYPA Customers' meters are routinely read on a monthly basis. The parties agree that a multi-faceted approach is needed to achieve this goal and will be undertaken by the Company, with the assistance of NYPA, NYC, MTA, and Westchester, where appropriate.[22] This approach includes:

i) The Company has already installed over 500 meters capable of automated meter reading ("AMR") in locations of NYPA Customers.

ii) By December 31, 2009, Con Edison will complete installation of AMR meters or similar devices in all locations where the Company has not read the meter in at least six (6) months, as measured on a list of non-read customer meters provided by the Company to NYPA, NYC, MTA, and Westchester on October 16, 2009, provided the use of such devices is technically feasible at those locations and access is provided to change the meters. For purposes of this Proposal, "technically feasible" means that the location has the capability to accept an AMR solution, technology exists that will allow the communication of metering data to the Company's systems and the NYPA Customer provides access to the location for the Company to install the AMR meter.

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[22] Con Edison and NYPA also agree to work together to obtain the assistance of those NYPA Customers that are not Signatories to this Proposal, where necessary.

iii) Starting in November 2009, the Company will provide NYPA with a monthly report containing the meters that were not read in the prior month. NYPA will provide these reports to NYC, MTA, and Westchester.

iv) Starting no later than April 2010, Con Edison will provide NYPA with a quarterly report containing the current NYPA accounts for which the Company has not had a meter reading in over three consecutive months. NYPA will provide these reports to NYC, MTA, and Westchester. For these quarterly reports, Con Edison's list will provide supporting detail explaining the reason associated with not obtaining a meter reading (*e.g.*, hazardous condition, vacant building, pending AMR).

v) Con Edison, NYPA, NYC, MTA, and Westchester will meet quarterly after issuance of the latest three (3) month no read list to discuss the list and to develop protocols and solutions for accessing and reading the unread meters. If a meter is found to be unable to be accessed for nine (9) months or more, Con Edison will, subject to the prioritization within its allowance in rates for strategic AMR, install AMR meters at these locations, providing doing so is technically feasible.

vi) Starting in January 2010, NYPA will provide a monthly report to Con Edison, NYC, MTA, and Westchester containing a list of accounts that were not billed using actual Con Edison readings in the prior month.

vii) Con Edison, NYPA, NYC, MTA, and Westchester commit to develop and implement solutions in all other locations where usage is estimated. The parties have set a target date of June 30, 2011 to formulate and implement solutions for all of these problematic meters, subject to the funding limitations discussed above. This target date, as it relates to implementation, may be revisited and reset, as necessary and appropriate, once the solutions have been formulated and more information is known on the amount of time needed to effectuate those solutions.

c. Commission Intervention

It is anticipated that these issues can be resolved without the need for any direct Commission action or intervention. However, the parties reserve the right to seek the Commission's or Department Staff's involvement in the event any of these issues cannot be resolved as a result of the parties' efforts.

6. Traffic Violations & Notices of Violation ("NOV")

The Company will submit to Staff on a confidential basis, within 60 days after the close of each Rate Year, a report describing the Company's efforts to reduce costs for NOVs and traffic violations. The report will show how these costs are recorded on the Company's books of account.

7. Marginal Cost Studies

In response to the Liberty Audit recommendations, the Company is committed to producing an electric long-range planning study. The Company plans to consider at least two scenarios in that study.

Subject to the potential need to develop additional data or conduct a follow-up study upon Staff's request, as detailed in the paragraph below, the Company will use the analysis from the long-range planning study to develop an associated estimate of distribution marginal cost. The Company shall develop such estimate within 60 days following completion of the long range planning study and transmit that estimate to the Director of the Office of Regulatory Economics along with any recommended revisions to the distribution marginal cost value adopted by the Commission in its *Order Approving "Fast Track" Utility Administered Electric Energy Efficiency Programs With*

Modifications, p. 37 (issued January 16, 2009, in Case 08-E-1003) ("A value of $100 per kW-year is selected for use in this case as a placeholder until greater confidence is gained in studies that produce higher, or lower, numbers.").

Staff and the Company recognize that the electric long-range planning study is not specifically designed with the goal of producing a marginal cost estimate. Therefore, the Company would, upon Staff's request, undertake a follow-up study, to be conducted over an agreed-upon period of time during the term of this Electric Rate Plan, more closely examining marginal cost with a different approach, as appropriate. The Company will notify Staff in the event that consultants are needed to conduct the study as well as the estimated costs. The Company would be permitted to defer any associated incremental costs (*e.g.*, for consultants) up to $100,000 incurred within that time frame for later recovery from customers.

M. <u>Miscellaneous Provisions</u>

1. <u>Maintaining A Goal-Oriented And Responsive Corporate Culture</u>

The Company will continue efforts to identify changes to improve the overall culture of the enterprise, specifically to increase the Company's effectiveness and accountability to the Commission, customers, appropriate customer groups or representatives, community leaders, investors and other stakeholders. The Company will focus specifically on identifying opportunities to advance the Company's prospects for operating and project excellence, including efforts stemming from the Liberty Audit, focused cost control, and planning. The Company effort to implement culture change and achieve desired traits of business excellence will continue to focus on management, departmental and executive leadership and accountability. The Company will seek to continue to employ assessment techniques including individual and organizational performance targets designed to identify areas for improvement and deficiencies in individual and organizations performance and to take appropriate measures to address them.

2. **Draft New York State Energy Plan**

The parties believe that the Proposal will further objectives of the draft New York State Energy Plan, issued August 10, 2009, in that it recognizes the need for maintaining electric service reliability standards, promotes the State's economic development and environmental values and addresses energy affordability objectives through rate design, revenue requirement levelization, and revenue requirement mitigation measures including imposition of capital expenditure targets, and operating expenses austerity.

3. **Continuation of Provisions; Rate Changes; Reservation of Authority**

Unless otherwise expressly provided herein, the provisions of this Proposal will continue after RY3, unless and until electric base delivery service rates are changed by Commission order. For any provision subject to RY1, RY2 and RY3 targets, the RY3 target shall be applicable to any additional Rate Year(s).

Nothing herein precludes Con Edison from filing a new general electric rate case prior to April 1, 2013, for rates to be effective on or after April 1, 2013. Except pursuant to rate changes permitted by this subparagraph, the Company will not file rates to become effective prior to April 1, 2013.

Changes to the Company's base delivery service rates during the term of the Electric Rate Plan will not be permitted, except for (a) changes provided for in this Proposal; and (b) subject to Commission approval, changes as a result of the following circumstances:

a. A minor change in any individual base delivery service rate or rates whose revenue effect is *de minimis*, or essentially offset by associated changes within the same class or for other classes, provided however that the base delivery service rates applicable to the NYPA classes will not be increased in total. It is understood that, over time, such minor changes may be necessary and that they may continue to be sought during the term of the Electric Rate Plan, provided they will not result in a change (other than a *de minimis* change) in the revenues that Con Edison's base delivery service rates are designed to produce overall before such changes.

b. If a circumstance occurs which in the judgment of the Commission so threatens Con Edison's economic viability or ability to maintain safe, reliable and adequate service as to warrant an exception to this undertaking, Con Edison will be permitted to file for an increase in base delivery service rates at any time under such circumstances.

c. The Signatory Parties recognize that the Commission reserves the authority to act on the level of Con Edison's electric rates in the event of unforeseen circumstances that, in the Commission's opinion, have such a substantial impact on the range of earnings levels or equity costs envisioned by this Electric Rate Plan as to render Con Edison's electric rates unreasonable or insufficient for the provision of safe and adequate service or just and reasonable rates.

d. Nothing herein will preclude Con Edison from petitioning the Commission for approval of new services, the implementation of new service classifications and/or cancellation of existing service classifications, or rate design or revenue allocation changes within or among the non-NYPA service classes on an overall revenue neutral basis. Con Edison will not propose any changes to the SC 1 customer charge to be effective during the term of the Electric Rate Plan except as specified herein.

e. The Signatory Parties reserve the right to oppose any filings made by the Company under this section.

4. Legislative, Regulatory and Related Actions

a. If at any time the federal government, State of New York, the City of New York and/or other local governments make changes in their tax laws (other than local property taxes, which will be reconciled in accordance with Section E.1) that result in a change in the Company's electric costs in an annual amount of $12.5 million or more, and if the Commission does not address the treatment (*e.g.*, through a surcharge or credit) of any such tax law changes, including any new, additional, repealed or reduced federal, State, City of New York or local government taxes, fees or levies, Con Edison will defer on its books of account the full change in expense and reflect such deferral as credits or debits to customers in the next base rate change subject to any final Commission determination in a generic proceeding prescribing utility implementation of a specific tax enactment, including a Commission determination of any Company-specific compliance filing made in connection therewith.[23]

b. If at any time any other law, rule, regulation, order, or other requirement or interpretation (or any repeal or amendment of an existing rule, regulation, order or other requirement) of the federal, State, or local government or courts, including a requirement that Con Edison refund its tax exempt debt, results in a change in Con Edison's annual electric costs or expenses not anticipated in the expense forecasts and

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[23] All Signatory Parties reserve all of their administrative and judicial rights in connection with such generic proceeding(s).

assumptions on which the rates in this Proposal are based in an annual amount of $12.5 million or more,[24] Con Edison will defer on its books of account the full change in expense, with any such deferrals to be reflected in the next base rate case or in a manner to be determined by the Commission.

c. The Company will retain the right to petition the Commission for authorization to defer on its books of account extraordinary expenditures not otherwise addressed by this Proposal.

5. <u>Provisions Not Separable</u>

The Signatory Parties intend this Proposal to be a complete resolution of all the issues in Case 09-E-0428. It is understood that each provision of this Proposal is in consideration and support of all the other provisions, and expressly conditioned upon acceptance by the Commission. Except as set forth herein, none of the Signatory Parties is deemed to have approved, agreed to or consented to any principle, methodology or interpretation of law underlying or supposed to underlie any provision herein. If the Commission fails to adopt this Proposal according to its terms, then the Signatory Parties to the Proposal will be free to pursue their respective positions in this proceeding without prejudice.

6. <u>Provisions Not Precedent</u>

The terms and provisions of this Proposal apply solely to, and are binding only in, the context of the purposes and results of this Proposal. None of the terms or provisions of this Proposal and none of the positions taken herein by any party may be referred to,

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[24] For purposes of this Proposal, the $12.5 million threshold will be applied on a case-by-case basis and not to the aggregate impact of changes of two or more laws, rules, etc.; provided, however, that this threshold will be applied on a Rate Year basis to the incremental aggregate impact of all contemporaneous changes (*e.g.*, changes made as a package even if they occur or are implemented over a period of months) affecting a particular subject area and not to the individual provisions of the new law, rule, etc.

cited, or relied upon by any other party in any fashion as precedent or otherwise in any other proceeding before this Commission or any other regulatory agency or before any court of law for any purpose other than furtherance of the purposes, results, and disposition of matters governed by this Proposal.

7. Submission of Proposal

The Signatory Parties agree to submit this Proposal to the Commission and to individually support and request its adoption by the Commission as set forth herein. The Signatory Parties hereto believe that the Proposal will satisfy the requirements of Public Service Law §65(1) that Con Edison provide safe and adequate service at just and reasonable rates.

8. Effect of Commission Adoption of Terms of this Proposal

No provision of this Proposal or the Commission's adoption of the terms of this Proposal shall in any way abrogate or limit the Commission's statutory authority under the Public Service Law. The Parties recognize that any Commission adoption of the terms of this Proposal does not waive the Commission's ongoing rights and responsibilities to enforce its orders and effectuate the goals expressed therein, nor the rights and responsibilities of Staff to conduct investigations or take other actions in furtherance of its duties and responsibilities.

9. Further Assurances

The Signatory Parties recognize that certain provisions of this Proposal require that actions be taken in the future to fully effectuate this Proposal. Accordingly, the Signatory Parties agree to cooperate with each other in good faith in taking such actions.

10. Execution

This Proposal is being executed in counterpart originals, and shall be binding on each Signatory Party when the counterparts have been executed.

IN WITNESS WHEREOF, the Signatory Parties hereto have affixed their signatures below as evidence of their agreement to be bound by the provisions of this Proposal.

CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.

Dated: November 23, 2009 By Marc Richter

NEW YORK STATE DEPARTMENT OF
PUBLIC SERVICE

Dated: 11/24/09

By: David R Van Ort

NEW YORK POWER AUTHORITY*

Dated: 11/24/09

By: [signature]

* New York Power Authority reserves its right to seek modification of the allocation of TCC revenues as set forth in paragraph E.10 in the future in the event there are substantive changes to the factual basis upon which the Commission addressed the allocation of TCC revenues in the 2009 Electric Rate Order.

Case 09-E-0428

THE CITY OF NEW YORK*

Dated: November 24, 2009

By: [signature], Counsel

*The City of New York reserves its right to seek modification of the allocation of TCC revenues as set forth in paragraph E.10 in the future in the event there are substantive changes to the factual basis upon which the Commission addressed the allocation of TCC revenues in the 2009 Electric Rate Order.

METROPOLITAN TRANSPORTATION
AUTHORITY

Dated:______________________ By: ______________________________

Case 09-E-0428

CONSUMER POWER ADVOCATES

Dated: 11/24/09

By: [signature]

Case 09-E-0428

NEW YORK ENERGY CONSUMERS
COUNCIL, INC.

Dated: 11/20/2009

By: John Bartlik
John Bartlik, Co-President

Dated: 11/18/2009

By:
Daniel M. Levin, Co-President

THE PACE ENERGY AND CLIMATE CENTER

Dated:________________________ By: ______________________________

Case 09-E-0428

THE E-CUBED COMPANY, LLC
On Behalf of the Joint Supporters

Dated: November 23, 2009_______________By: Ruben S. Brown

Case 09-E-0428

SMALL CUSTOMER MARKETER
COALITION

Dated: 11/24/09

By: Usher Fogel, Counsel

RETAIL ENERGY SUPPLY
ASSOCIATION

Dated: 11/24/09

By: Usher Fogel, Counsel