

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 04-E-0572 - 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 ADOPTING THREE-YEAR RATE PLAN

Issued and Effective: March 24, 2005

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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 16, 2005

COMMISSIONERS PRESENT:

William M. Flynn, Chairman
Thomas J. Dunleavy
Leonard A. Weiss
Neal N. Galvin

CASE 04-E-0572 - 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 ADOPTING THREE-YEAR ELECTRIC RATE PLAN

(Issued and Effective March 24, 2005)

BY THE COMMISSION:

INTRODUCTION

This case concerns the terms and conditions of a new electric rate plan for Consolidated Edison Company of New York, Inc. (Con Edison or the Company). The vast majority but not all of the terms and conditions adopted today will become effective on April 1, 2005, apply through March 31, 2008, and remain effective thereafter until a replacement electric rate plan is adopted.

Among other things, the new rate plan:

1. Establishes new rates for delivery service.
2. Provides for customer sharing of Company earnings in certain circumstances

3. Requires a wide variety of measures to increase retail access.
4. Strengthens and expands existing reliability and customer service performance mechanisms.
5. Reduces the potential for volatility in the portion of customers' bills collected through the Market Supply Charge (MSC) and Monthly Adjustment Clause (MAC) and their adjustors.
6. Endorses cost effective demand management (energy efficiency, distributed generation, and load management) as a means for meeting in whole or in part projected load growth of approximately 535 MW in the three years commencing April 1, 2005.

The rate plan adopted today leaves open unbundling issues which we expect to resolve next month. Many other issues considered in this case will be the subject of a number of continuing proceedings, as discussed in more detail below.

PROCEDURAL HISTORY

On April 30, 2004, the Company filed a cover letter, proposed new tariff leaves, 28 pieces of direct testimony, and four volumes of exhibits in support of three annual delivery service revenue increases and other changes.¹ The annual delivery service revenue increases proposed to be recovered through rates at the time were \$550 million for the first rate year² (April 1, 2005 through March 31, 2006 or rate year one), \$175.3 million for the second rate year (April 1, 2006 through March 31, 2007 or rate year two), and \$289 million for the third rate year (April 1, 2007 through March 31, 2008 or rate year three).

The filing was suspended and this case was established to provide for an open and public examination of the propriety

¹ The entire filing comprises Exhibit (Exh.) 4, Parts 1-7.

² This comprises increases of \$435 million for full service and retail access customers, \$111 million for the New York Power Authority (NYPA), and \$4 million for Economic Development Delivery Service (EDDS) customers.

of the Company's proposals.³ Thereafter, the matter was further suspended through March 31, 2005.⁴

Numerous entities sought active party status thereafter; there were approximately 26 such parties by June 9, 2004 and there were 48 as of the start of hearings. Interested parties likewise engaged in extensive discovery concerning the Company's April 30, 2004 filing, primarily through August 2004. More than 1,000 discovery requests were tendered, many of them multi-part.

Active parties, other than the Company, filed and served their direct testimony on September 10, 2004. Thirty-seven pieces of testimony (supplemented by exhibits) were submitted at that time.

<u>OTHER ACTIVE PARTIES</u>	<u>PIECES OF DIRECT TESTIMONY SUBMITTED</u>
Department of Public Service Staff (DPS Staff)	15
NYPA	1
Consumer Protection Board (CPB)	2
The City of New York (the City), including one on behalf of the Metropolitan Transportation Authority (MTA) and the Port Authority of New York and New Jersey (Port Authority)	4
County of Westchester (Westchester)	1
Public Utility Law Project of New York, Inc.(PULP)	1
AFL-CIO, Local 1-2 (the Union)	2
The Natural Resources Defense Council (NRDC) and the Pace Law School Energy Project (Pace), (together NRDC and Pace)	1

³ Case 04-E-0572, Order Suspending Major Rate Filing (issued May 14, 2004).

⁴ Case 04-E-0572, Untitled Order (issued September 3, 2004) and Untitled Order (issued January 25, 2005). The latter order was based on the Company's October 21, 2004 conditional offer to extend the suspension date through March 31, 2005 without a make-whole provision.

<u>OTHER ACTIVE PARTIES (cont'd)</u>	<u>PIECES OF DIRECT TESTIMONY SUBMITTED</u>
New York Energy Consumers Council, Inc. (NYECC)	3
Consumer Power Advocates (CPA), including one submitted on behalf of CPA and Pace	3
Independent Power Producers of New York, Inc. (IPPNY)	1
U.S. Energy Partners II, LLC	1
Meter Service Provider Association of New York	1
Small Customer Market Coalition (the Coalition)	1 ⁵

On September 10, 2004, the Company also filed a notice of impending settlement negotiations. Talks were to commence in New York City on September 20, 2004. The notice filing date was consistent with the procedural schedule that had been adopted on August 20, 2004.⁶ The required review of the notice was completed and reported on September 17, 2004.⁷

Eight days of negotiations at the time did not result in an agreement among the parties. This first attempt at negotiations terminated on October 5, 2004, and the case reverted to a litigated track.

Twenty-three pieces of testimony by Company witnesses, responding to all other parties and updating Con Edison's case, and 13 pieces of testimony by witnesses for other active parties⁸

⁵ These filings are now in evidence. See, respectively, Exh. 16, Part 1; Exh. 38, Part 1; Exh. 39; Exh. 21, Part 1; Exh. 40, Part 1; Tr. 447-A through 448-B and Exhs. 36 and 37; Exh. 14; Tr. 281 through 300; Exh. 11, Parts 1 and 2 and Exh. 12; Exhs. 13, 41, 42, and 44; and Exh. 10, Part 1.

⁶ Case 04-E-0572, Procedural Ruling on Revised Schedule and Other Matters (issued August 20, 2004).

⁷ 16 NYCRR §3.9(a)(2).

⁸ Other active parties submitting rebuttal include DPS Staff, NYPA, the City, Westchester, the Union, NYECC, CPA, the Coalition, and the Mid-Atlantic Supply Association (jointly the Coalition and Association).

responding to each other (collectively the rebuttal) was filed and served on October 13, 2004.⁹

Evidentiary hearings were scheduled to commence on October 25, 2004; at the time, 10 or more full days of hearings were anticipated. However, those hearings were cancelled in anticipation of the filing of an October 21, 2004 Notice of Resumption of Settlement Negotiations.¹⁰ Negotiations resumed on October 25, 2004 and continued 11 days in the period through November 30, 2004. On October 29, 2004, some parties advised that an agreement in principle has been reached on many though not all issues.

A revised schedule adopted on November 3, 2004 called for the filing of a joint proposal on December 1, 2004, the filing of statements (and/or testimony) in support and statements (and/or testimony) in opposition to a joint proposal on December 15, 2004, evidentiary hearings on January 5 through 7, 2005, public statement hearings in early to mid-January 2005, and limited post-hearing pleadings on January 18, 2005.¹¹ This schedule was thereafter followed completely with the exception that the December 1, 2004 due date for a joint proposal was extended to December 2, 2004 for good cause shown and without objection.¹²

⁹ One piece of testimony filed by CPA on October 13, 2004 is not in evidence because CPA did not seek to introduce it (Tr. 185). One piece of testimony, filed and served by the Union on October 13, was not proper rebuttal and is not in evidence for that reason (Tr. 186-188). All of the other rebuttal filings are in evidence. (See Exh. 4, Part 8; Exh. 16, Part 2; Exh. 38, Part 2; Exh. 21, Part 2; Exh. 40, Part 2; Exh. 11, Part 3; and Exh. 10, Part 2, respectively.)

¹⁰ Case 04-E-0572, Notice Canceling Hearings (issued October 21, 2004).

¹¹ Case 04-E-0572, Procedural Ruling on Further Revised Schedule and Process (issued November 3, 2004). This schedule and process was adopted at the time only after numerous active parties participating in a November 1, 2004 conference call had an opportunity to comment on it. These parties are listed in n. 2 of the November 3, 2004 Ruling. No party objected to the schedule at the time.

¹² Case 04-E-0572, Informal Ruling (electronically distributed to all active parties on November 30, 2004).

On December 2, 2004, a Joint Proposal (JP) was filed and served, setting forth details of a proposed three-year rate plan. The 23 initial signatories recommended that we approve or adopt the proposed plan in whole or in part.¹³ As is discussed in greater detail below, some signatories are silent on portions of the JP and some support the JP in part and oppose it in part.

Thirteen statements solely in support of the JP in whole or in part were filed and served on or before December 15, 2004. Statements in this category, that are in evidence under oath, include those filed and served by the Company (Exh. 2), DPS Staff (Exh. 15), the City (Exh. 20), the New York State Energy Research and Development Authority (NYSERDA, Exh. 22), and the Joint Supporters (Exh. 34).

Other statements solely in support of the JP in whole or in part were timely filed and served by NYPA, the Port Authority, CPB, MTA, the Coalition and Association, IPPNY, Direct Energy Services, LLC (Direct Energy), and Gotham Power Zerega.

Statements partly in support and partly in opposition were timely filed and served by NYECC¹⁴ and CPA, while comments entirely in opposition to the JP in whole or in part were filed and served timely by PULP and Energywiz, Inc. (Energywiz).¹⁵

NRDC and Pace jointly were the only two parties to pre-file testimony concerning the JP on December 15, 2004; the Gupta/Plunkett panel's testimony, partly in support of the JP

¹³ The JP is Exh. 1, and Appendix I to this order. Signatories to the JP include active parties, entities that are represented by an active party, and others. While some executed the JP on or prior to December 2, others did so subsequently. All 30 signature pages as of January 6, 2005 are included in Exh. 1.

¹⁴ NYECC filed comments on December 15, 2004 and revised them on December 17, 2004. Only the revised version is considered in this order.

¹⁵ The latter pleading is part of the official record only as revised in accordance with the terms of the Ruling Concerning Sanctions (issued January 3, 2005), p. 8.

and partly in support of changes to the JP, is in the evidentiary record.¹⁶

Evidentiary hearings commenced on January 5, 2005 and concluded the following day.¹⁷ The topics receiving the greatest attention at these hearings include the reasonableness of the JP's provisions concerning Demand Management (Section J), delivery service revenue requirement (Sections B and D), and low-income rates (Section B-5).

Six public statement hearings - one in each county in the Company's service territory - were held on two afternoons and four evenings in the period January 5, 2005 through January 11, 2005. Commissioner Thomas J. Dunleavy was on the bench for the session in Manhattan. Very few members of the public took advantage of the opportunity to comment at such hearings or otherwise.

Through such hearings, letters, electronic messages, and calls to our toll-free opinion line, a total of 11 public comments were received, including letters from State Senators John L. Sampson (opposing Section J) and Liz Krueger (advocating against a delivery revenue increase, for further actions to reduce volatility in the MSC and MAC, and for larger discounts for low-income customers). Statements were also offered by State Assemblymember Ryan Karben (opposing a delivery service revenue increase, criticizing the absence of a reliability performance mechanism for stray voltage and manhole events, and supporting larger low-income discounts), and Queens Borough President Helen Marshall (opposing a delivery service revenue

¹⁶ Tr. 307A-323B. As in the case of the direct testimony of PULP witness Oppenheim, only one side of each double-sided page was assigned a transcript page number by the reporter. For purposes of this order, the sides assigned a number by the reporter are referred to by page number and the letter "A," and the other side is referred to by the same page number and the letter "B."

¹⁷ The hearings were held consistent with the November 3, 2004 Ruling on Further Revised Schedule and Process and pursuant to the Notice of Public Statement Hearings, Opportunities for Public Comment, and Evidentiary Hearing (issued December 6, 2004). The appearances are set forth in Appendix II.

increase unless the Company first improves its reliability and safety record). Other comments are offered by the Legal Aid Society and the Northern Manhattan Improvement Corporation, both of which emphasize the enormous challenges faced by those receiving public assistance or fairing only slightly better. They urge that more be done here to meet the needs of such customers. The final handful of public comments are offered by individual residential and small commercial customers who oppose any revenue increase, either because they feel they cannot afford it, or that an increase will make it even more difficult to do business profitably.¹⁸

The evidentiary record contains 575 pages of transcripts and 42 exhibits.¹⁹

Limited post-hearing briefs were filed and served on January 18, 2005 by Con Edison, DPS Staff, NYPA, CPB, the City, Joint Supporters, Westchester, NRDC and Pace, NYECC, and PULP.²⁰ Broadly speaking, the positions taken in these submissions are consistent with those presented in the December 15, 2004 filings and further developed at the evidentiary hearings. Westchester, which had not previously taken any position on the JP, offered

¹⁸ These preliminary summaries are general. Other comments and details are considered in our discussion of some of the issues presented.

¹⁹ On January 13, 2005, NRDC and Pace provided qualifications to an answer witness Gupta had given subject to check, Tr. 337-338. The January 13, 2005 filing is not part of the 575 transcript pages, but it is included in its entirety at the end of the transcript for the January 6, 2005 hearing. An annotation is included at Tr. 337-338, referring the reader to the January 13, 2005 filing.

²⁰ In a series of ten electronic messages, NYPA, NYECC, and the City dispute the propriety of part of NYPA's post-hearing submission. Given our decision concerning JP Section J, the issue is moot.

arguments in support of Business Incentive Rates that PULP appeared to oppose.²¹

THE JOINT PROPOSAL AND THE ISSUES BY SECTION

In the discussion that follows, the terms of the Joint Proposal are summarized generally and any issues raised are summarized and discussed.²² This is followed by a discussion of several issues that tend to cut across multiple sections of the JP. Our overall conclusions are set forth in the Conclusion.

A. Term

As noted above, the proposal is intended primarily for rate years one, two, and three. As discussed in some of the other JP sections, some provisions would be implemented prior to and might apply following the three rate years. The MTA

²¹ Near the end of the January 6, 2005 hearing (see Tr. 490-499) there was a discussion about Exhibit 9, the responses to the Administrative Law Judge's questions about the JP. Counsel for Westchester requested an opportunity to ask follow up questions as its expert had not had an opportunity to review the exhibit, Tr. 492. Over the objection of others, the Judge granted Westchester's request, subject to a tight time constraint, expressing interest in ensuring that any concern about the completeness or accuracy of Exhibit 9 be brought to his attention, Tr. 494-495. The County characterized this approach as fair, Tr. 495. In an electronic message dated January 12, 2005, Westchester followed up not with questions, but with a statement opposing a number of JP provisions having to do with participation in future proceedings and access to information by those who did not sign the JP. DPS Staff replied immediately that Westchester's comment was improper and untimely. The January 12, 2005 electronic message was inconsistent with the relief Westchester sought and was granted. Accordingly, we grant DPS Staff's request that the January 12, 2005 electronic message be ignored. We note however, that the issue raised by Westchester is considered below for reasons unrelated to Westchester's electronic message.

²² This summary is provided only for the reader's convenience. Binding legal significance, of course, attaches neither to the JP itself nor to this summary per se, but only to our order.

expresses support for the three-year term, expecting it will make it easier for it to plan.²³

B. Electric Rates and Revenue Levels

1. Rate Level

a. Background

This subsection proposes: (1) a delivery service revenue increase of \$104.6 million in rate year one; (2) deferral of a \$58.6 million delivery service revenue increase from rate year two to rate year three, along with \$1.5 million of interest that would accumulate at the unadjusted customer deposit rate; and (3) a delivery service revenue increase of \$220.4 million in rate year three, inclusive of the deferred second year revenue requirement and associated interest.²⁴ The incremental delivery service revenue requirement to be recovered in rates is significantly less than it otherwise would be because of the proposed use over three years of \$729.3 million of existing and anticipated net credits due customers.²⁵

The company summarizes the terms set forth in the subsection but does not explain their bases.²⁶ DPS Staff, meanwhile, explains the reasons for the differences between its original recommendation, that there be no revenue change for the first year, and the revenue requirement set forth for that year in JP Appendix A, p. 1.

²³ MTA's December 15 Comments, p. 6.

²⁴ The JP, Appendix M, indicates that the \$104.6 million and \$220.4 million delivery revenue increases equate to four percent and 7.4 percent, respectively, over a base of approximately 50 percent of total annual electric revenues expected without such increases. The base comprises the sum of delivery service and fixed Monthly Adjustment Clause (MAC) revenue before an increase. Thus, the total bill impacts are approximately one half of the stated percentages, Tr. 162.

²⁵ JP Appendix B summarizes the sources of the net credits to be used each year, including the \$226.7 million portion that is estimated and that would be reconciled in part on an on-going basis through the MAC and in part through deferral and future amortization.

²⁶ Exh. 2, pp. 6-7.

Among the changes to the delivery service revenue requirement in DPS Staff's original case are: (1) an increase in the equity return allowance to 10.3 percent, including a stay-out premium and use of a 48 percent equity capitalization ratio; (2) an adjustment to DPS Staff's forecast of revenues before any rate change; (3) increases in operation and maintenance expenses (including those associated with stray voltage testing and safety inspections); (4) a larger rate base associated with additional plant; (5) updates and corrections to federal income taxes; (6) reversal of its pension adjustment; (7) elimination of an adjustment to consultant costs; (8) correction of its employee count labor adjustment; (9) an inflation rate update; (10) an increase in the amount of deferred World Trade Center recoveries;²⁷ and (11) an increase in environmental remediation costs. These adjustments, in turn, are offset by higher estimates for some credits, tax calculation corrections, and lower costs associated with the Prescription Drug and Medicine Improvement Act of 2003.²⁸

The reasons for the recommended delivery service revenue increase are also broken out by component in the JP.²⁹

The New York Power Authority and the City also filed comments in support of the delivery service revenue increase. These comments focus in part on the evidence each submitted in opposition to the Company's April 30, 2004 filing and on the extent of the differences between what the Company filed for, and what is recommended now.³⁰

²⁷ Under the proposal, this would be the first electric case in which Con Edison would be allowed to collect deferred WTC costs at a rate of \$14 million per year.

²⁸ Exh. 15, pp. 10-12. These and other adjustments to DPS Staff's original recommendation, along with the dollar impacts of each, are listed in Exh. 15, Appendix C.

²⁹ Exh. 1, Appendix A, p. 2 of 3.

³⁰ NYPA's December 15 Comments, pp. 4-6, and the City's December 15 Comments, pp. 8-10. See, also, the Port Authority's December 15 Comments, p. 3, and the MTA's December 15 Comments, pp. 3-4.

The Public Utility Law Project contests this subsection in three respects. First, PULP suggests that the proposed delivery service revenue increases are higher than they would be had the case been fully litigated.³¹ This contention is based primarily on the fact that DPS Staff's direct case³² supported no change in delivery service revenues.

Expanding on the same theme in its post-hearing pleading, PULP questions the logic of some of the reasons that led DPS Staff to conclude any delivery service revenue increase is warranted. PULP questions whether there are good reasons for the differences between: (1) the 7.38 percent cost of capital in DPS Staff's direct case and the 8.08 percent figure in the JP; and (2) the 9.0 percent equity return allowance in DPS Staff's direct case and the 10.3 percent implicit in the JP, including a premium for the risk that the Company's non-commodity operation and maintenance expenses may increase faster than expected.³³

There was no opportunity to reply to PULP's latest arguments. However, Con Edison, DPS Staff, and the City respond in opposition to PULP's December 15 contention that delivery service revenue increases are too high. Con Edison, for example, says that PULP ignores that the last delivery service revenue increase was in 1994, which was followed by two decreases. It faults PULP for making no examination of the costs underlying the recommended increases and cites the testimony of DPS Staff witness Scherer that the recommended increases would permit the Company to carry out important programs and for it to reinforce its delivery system.³⁴

Department of Public Service Staff and the City disagree with PULP's implicit assertion that the likely outcome of a litigated rate case would be no change in delivery service rates. DPS Staff, for example, explains that the Company's

³¹ PULP's December 15 Comments, pp. 6-7 and 19-20.

³² Exh. 16, Part 1(e), p. 2 and CD-1, Schedule (Sched.) 1.

³³ PULP's January 18 Comments, pp. 5-6.

³⁴ Con Edison's January 18 Comments, p. 14, citing Tr. 194-195.

rebuttal showed some errors in DPS Staff's direct case and presented updates requiring an increase in delivery service revenue requirement. The City and DPS Staff likewise point out that PULP submitted no evidence on delivery revenue requirement and that any statements of fact in PULP's pleadings were not adopted under oath or subject to cross-examination. DPS Staff emphasizes also that the Company needs to replace and upgrade its delivery system. The City and DPS Staff, finally, each focus on the small size of the proposed delivery service revenue increases, relative to what the Company had sought. DPS Staff says the increased revenues recommended for each of the three rate years (ignoring the deferral of the second year revenue requirement to the third year) are 19, 33, and 35 percent, respectively, of what the Company requested in its April 30, 2004 filing.³⁵

PULP's second concern with this subsection is that the proposed third year delivery service revenue increase is too large in comparison with the proposed first year increase and will produce "rate instability."³⁶ PULP supports this contention, in part, citing a statement in a prior order that a two percent increase would be "disruptive and have unacceptable impacts."³⁷

³⁵ DPS Staff's January 18 Comments, pp. 9-10 and the City's January 18 Comments, pp. 3-8.

³⁶ PULP's December 15 Comments, pp. 6-7 and 19-20.

³⁷ Case 96-E-0897, Consolidated Edison - Electric Rates/Restructuring and Formation of a Holding Company, Order Concerning Retail Access Implementation - Phase III (issued February 20, 2000). The quoted statement was made in the context of a discussion of a Westchester argument in opposition to a Company proposal to set different delivery rates for New York City and Westchester. The Commission disagreed with Westchester at that time, noting in part that adoption of Westchester's proposal would undermine rate decreases called for in a prior order as millions of NY City customers would be subject to bill increases of two percent on a flash-cut basis. Westchester's concerns, however, became the subject of a subsequent inquiry. See Case 00-E-1208, Con Edison Electric Rate Restructuring in Westchester, Order Adopting Staff Proposal (issued November 25, 2003).

The Company responds that the real effect on ratepayers is the same whether revenues are increased in the second and third years or only in the third rate year and that a known increase to be effective at a definite point in the future cannot create rate shock.³⁸ The City and DPS Staff argue that ratepayers benefit under the proposal as they would have flat delivery service rates for the first two rate years and would have use of \$58.6 million during the second rate year, to support the general economy, that otherwise would be due the Company. They also explain how a larger increase in the third rate year will, relatively speaking, help to minimize (by \$60.1 million) the size of any needed increase in delivery service revenue starting after the proposed three-year rate plan. (This is because of the deferral of the \$58.6 million revenue requirement and \$1.5 million of interest to the third rate year.) DPS Staff also notes that PULP declined to support increases in the first, second, and third rate years as an alternative to increases in only the first and third years. The City emphasizes that the timing of the recommended increases is agreed to by many and objected to by only one and points out, again, that PULP's argument is unsupported by evidence.³⁹ CPB, finally, denies the proposal will create delivery service rate instability or rate shock, noting that a delivery service rate freeze during the first and second rate years would help ensure rate stability.⁴⁰

PULP's third objection to this JP section is based on the contention that DPS Staff's criticisms of Con Edison's original multi-year rate plan apply as well to the multi-year aspects of the JP.⁴¹ PULP argues that DPS Staff initially refused to support the Company's April 30, 2004 multi-year proposal, with a DPS Staff witness describing it as "a series of

³⁸ Con Edison's January 18 Comments, p. 15.

³⁹ DPS Staff's January 18 Comments, p. 12, and the City's January 18 Comments, p. 6.

⁴⁰ CPB's January 18 Comments, pp. 1-2.

⁴¹ PULP's December 15 Comments, p. 8.

staged increases, deferral mechanisms and true ups that insulate shareholders from many uncertainties while providing customers little more than the assurance of increasing rates."⁴² PULP contends the same criticism applies to the multi-year parts of the JP.

DPS Staff disagrees with PULP's argument, citing sworn testimony to the effect that the JP "includes parameters that were not proposed by the Company, such as dead bands around target levels [for items subject to reconciliation] . . . a share in excess earnings . . . and a limit to the Company's ability to defer incremental costs in the event the [Company is] found in an excess earnings position."⁴³ This argument refers to the earning sharing provisions in JP Section C, a provision that DPS Staff says would not apply in the absence of a JP.

PULP is not persuaded by these points, observing that an earnings sharing mechanism would be unnecessary in the context of a one-year rate plan. PULP also argues DPS Staff witnesses' responses to its questions at the hearings offer only "superficial" reasons in support of provisions that are completely in the interest of shareholders and not in the interest of ratepayers.⁴⁴

Finally, as discussed in the Procedural Background, eight of the eleven public comments received also oppose the proposed delivery service revenue increases. These include comments by a State Senator, State Assemblymember, the Queens Borough President, the Legal Aid Society, and individual residential and small commercial customers. In her comments, the Queens Borough President also suggests improvement in reliability and safety are necessary pre-conditions to any revenue increase while one Assemblymember opposes the recovery of costs the Company is projected to incur to comply with our recent order concerning safety testing and inspections.⁴⁵

⁴² Id., quoting from Exh. 16, Part 1(b), p. 6.

⁴³ DPS Staff's January 18 Comments, p. 11, citing Tr. 193-194.

⁴⁴ PULP's January 18 Comments, pp. 6-7.

⁴⁵ Case 04-M-0159, Transmission and Distribution Safety, Order Instituting Safety Standards (issued January 5, 2005).

b. Discussion

The burden of proving the reasonableness of each provision of the JP rests solely on the proponents. Whether or not PULP provides sworn evidentiary support for its arguments does not change that burden, particularly where the issue at stake involves a major electric revenue increase. Based on our review of the evidence and arguments, we conclude that burden has been met with regard to this subsection, PULP's three central arguments and public comments to the contrary notwithstanding.

With respect to the delivery service revenue requirements, DPS Staff introduced sworn evidence that identifies each of the ways in which it abandoned its initial litigation position, reflecting a reassessment of the strengths and weakness of its earlier positions, as well as updated information.⁴⁶ Out of the many reasons given for the changes in DPS Staff's position, PULP ignores almost all of them and basically calls into question the entire recommended delivery service revenue increase, based solely on the DPS Staff change in position on the overall cost of capital. That change, in turn, is driven primarily by the cost of equity and the equity capitalization ratio.

Implicit in PULP's argument on this point, however, is the notion that no weight whatsoever should be given to evidence introduced by other parties that supported a cost of capital higher than reflected in DPS Staff's initial litigation position or in the JP, including that presented by CPB,⁴⁷

⁴⁶ Exh. 15, and especially Appendix C.

⁴⁷ Mr. Niazi supported an equity return of allowance of 9.49 percent, Exh. 39, Part 1, p. 10.

Westchester,⁴⁸ and the Company.⁴⁹ Given the Company's planned construction and that no party objects to the elements of that plan, such a notion is patently unreasonable.

Moreover, the record includes other information, that identifies precisely the underpinnings of the sales forecasts reflected in the proposed revenue requirements,⁵⁰ the adjustments to DPS Staff's and the Company's earlier forecasts of operation and maintenance expenses,⁵¹ and the changes in litigation positions leading to the forecast of average rate base in the JP.⁵² On a macro basis, these and the latest calculations of income taxes, prepared by Company and DPS Staff experts, are all of the major components of the Company's delivery service revenue requirements.⁵³

The next question presented is whether the two recommended delivery service revenue increases from rates are reasonable with respect to their timing and relative size or should be adjusted to maximize rate stability and avoid rate shock for customers in the third rate year. We conclude the proposal is reasonable and that adjustments to the timing and

⁴⁸ Mr. Radigan supported an equity return of 9.2 percent, Exh. 40, Part 1, pp. 3-4.

⁴⁹ Company witnesses Rosenberg and Fetter, as well as the Company's Policy Panel, all supported an equity return allowance of 12.00 percent, including, as witness Rosenberg described it, a risk premium of 105 basis points based on premiums allowed in past cases, that interest rates had been very low and are likely to trend higher, and in recognition of the difference in yields between one- and three-year treasury securities. These same witnesses testified in support of a 48.81 percent equity capitalization ratio. See, Rosenberg (Exh. 4, Part 2, Tab 4, pp. 5-48 and 49-52, respectively, and Exh. 4, Part 8(r), pp. 14-28 and 3-13, respectively); Fetter (Exh. 4, Part 2, Tab 5, pp. 8-44 and 44-48, respectively and Exh. 4, Part 8(d), pp. 2-3 and 4-5 and 7, respectively); and the Policy Panel (Exh. 4, Part 2, Tab. 10, pp. 16-20).

⁵⁰ Exh. 9, Responses 16-19.

⁵¹ Id., Response 8.

⁵² Id., Response 9.

⁵³ See also, Tr. 195; there are legitimate drivers for the proposed increases, including the Company's significant infrastructure needs, and they do not come for free.

relative size of the recommended delivery service revenue increases are not warranted.

To begin, we give weight to the City's observation that out of all the many parties representing consumers and their interests, only one disagrees with the relative size and timing of the proposed delivery service revenue increases through rates. On a real cost basis, as the Company observes, customers and the Company should both be indifferent to whether there should be a \$58.6 million second rate year increase to minimize the size of the increase for the third rate year.⁵⁴ CPB and others are also correct that avoidance of a second rate year increase ensures delivery service rate stability for two of three rate years.

The most important factor here, however, is that the proposed approach will minimize, by \$60.1 million, the magnitude of any delivery service revenue increase from rates that might be needed at the end of the rate plan.⁵⁵ Information in the record suggests that a delivery service revenue requirement of up to approximately \$314.3 million (4.7 percent) might be needed at the end of rate year three solely to recognize the depletion of credits being used to ameliorate delivery service rate increases in the coming three years and to amortize deferred carrying charges on transmission and distribution plant if construction goes forward at a pace faster than envisioned in the JP.⁵⁶ To the extent decreasing the third year increase and adopting a \$58.6 million increase in the second rate year would increase the potential for an even larger increase beyond the third rate year, by another \$60.1 million (or another .9 percent for 5.6 percent in total), such an adjustment would be unreasonable and we will not adopt it.

⁵⁴ Tr. 154-155.

⁵⁵ Tr. 200-201.

⁵⁶ Exh. 9, Responses 11, 12, and 278. The referenced deferrals are discussed in greater detail below. The 4.7 percent does not reflect any new credits that might become available, any other deferred debits, or any cost-based delivery service revenue increase that may otherwise be warranted at that time.

Turning to PULP's third argument, finally, the record establishes significant differences between the multi-year aspects of the JP and the multi-year proposal set forth in the Company's April 30, 2004 filing. These changes include:

- 1) No revenue increase from rates in the second year.
- 2) Expense reconciliation targets lower than the Company had proposed.
- 3) The inclusion of dead bands around some expense targets that would be subject to reconciliation, including those for property taxes and interference expense.
- 4) Restrictions on some deferrals in instances where warranted by the Company's earnings level.
- 5) Provisions requiring earnings sharing in certain circumstances.

While PULP may believe these explanations are superficial, it does not present a reasonable basis for such a claim. This third PULP contention also appears to rest in part on the belief that single year rate determinations would be superior to a multi-year rate plan with earnings sharing and reconciliation provisions. The bases for such an assumption are not even described by PULP. Accordingly, no adjustment to this subsection is warranted based on PULP's third argument.

One of our ultimate responsibilities in this case is to set just and reasonable electric delivery service rates for Con Edison. The record in this case establishes that the rate increases recommended are necessary for the Company to meet its reasonable costs and to provide safe and adequate service. While the costs of doing so may be too high in the opinion of some and while we can empathize with many who have difficulty paying for the costs to serve them, this does not change these costs or the serious negative consequences we can expect if service quality is not reasonable. Moreover, no active party, including PULP, establishes that any of the cost estimates

underlying the JP delivery service revenue requirement are unreasonable.

The Company also has responsibilities it must meet in the coming three rate years to provide safe and adequate service. Among other things, the Company must comply with our orders on safety testing and inspections or face future revenue adjustments. The notions expressed by some in this context, that the \$21 million annual cost of increased testing and inspections⁵⁷ should only be recognized after the Company meets its responsibilities in this regard, or that the Company's actual costs of complying with our orders should not be recovered in rates at all, are confiscatory and unreasonable. Accordingly, we decline to reject the JP or adopt different delivery service revenue increase provisions based on these comments.

2. Sales Forecast

This subsection refers to JP Appendix C. Appendix C, in turn, reflects the Company's initial sales forecast for the three rate years,⁵⁸ adjustments to that forecast for purposes for calculating the recommended delivery service revenue increases, and the sales forecast reflected in the JP. Information in the record establishes that changes in the assumptions about customer growth rates for Service Classifications (SCs) 2 and 9 produced the changes reflected in the sales forecast underlying the JP.⁵⁹

3. Market Supply Charge and Monthly Adjustment Clause

a. Background

This JP subsection supports changes to tariffs or Company practices concerning the MSC and MAC. The MSC and MAC are the means by which the Company recovers variable capacity, energy, and related costs which together comprise the other 50

⁵⁷ Exh. 9, Response 69.

⁵⁸ See, for example, Exh. 4, Part 4, Tab. 21, Column (Col.) 3.

⁵⁹ Exh. 9, Responses 17-19.

percent of the Company's annual electric revenue requirement.⁶⁰ Appendix D of the JP includes all of the proposed tariff language changes. There are issues with respect to some of these changes and several of them are discussed here.

Among the proposed changes, there are three intended to reduce customer bill volatility by: (1) decreasing the forecast period for the MSC and MAC from six to three months each with the expectation this will increase forecast accuracy and reduce volatility in the related monthly adjustments; (2) passing back incremental transmission congestion contract (TCC) credits in excess of \$60 million per year to customers over the same amount of time they are generated;⁶¹ and (3) having Con Edison reflect other costs or credits over a reasonable period of time.

In its initial comments, Con Edison emphasizes that under the terms of the JP, it would continue to recover fully all prudently incurred supply and reliability related costs through the MSC and MAC. It also explains several of the many proposed tariff changes, including the proposed change in the MSC and MAC forecast period from six to three months.⁶²

PULP contends the existing and proposed MSC and MAC tariffs are inconsistent with the just and reasonable standard of Public Service Law (PSL) §65 as there is no requirement that the Company hedge its supply purchases to a greater, unspecified level.⁶³ Second, either as a matter of law or policy, PULP contends the proposed rate plan unreasonably fails to include rate cap provisions similar to those it claims are reflected in

⁶⁰ The sum of delivery service and fixed MAC revenue comprise the other 50 percent. At present, the MSC and MAC mechanisms involve forecasts of relevant costs for six month periods with a reconciliation of differences between forecast and actual costs through adjustments on a one-month lagged basis. A more detailed summary of these mechanisms is presented by the Company's rates panel, Exh. 4, Part 3, Tab 28, pp. 44-47.

⁶¹ The first \$60 million per year, or \$180 million in total, is part of the \$729.3 million of credits proposed to be used to minimize the two proposed delivery service rate increases.

⁶² Exh. 2, pp. 7-8.

⁶³ PULP's December 15 Comments, pp. 8 and 11.

the rate plans for all other electric utilities in New York with the exception of Orange and Rockland Utilities, Inc. (O&R).⁶⁴ Such a cap is necessary, PULP complains, as Con Edison purchases approximately half of all energy each year at less stable spot market prices. As a result, according to PULP, there have been at least six occasions since 2000 where the monthly adjustment to the filed six month forecasts have resulted in abrupt, unannounced increases for residential customers greater than 3¢/kWh. PULP implies that increases of such magnitude warrant the same hearing process required for major rate changes under PSL §66(12).

At the evidentiary hearings, PULP cross-examined DPS Staff about the proposed MSC and MAC changes intended to reduce volatility. At that time, DPS Staff witnesses Padula and Scherer both testified that use of a three month forecast would reduce volatility in the monthly adjustments.⁶⁵ Witness Padula acknowledged, however, that some volatility could still occur as this Commission does not have regulatory control over the prices of fuels that directly affect the cost of electricity.⁶⁶ Pointing to information provided by Con Edison's witness Holtman, the DPS Staff witnesses also noted that the Company hedges to reduce bill volatility, both through its retention of some generation and non-utility generation contracts, as well as through financial hedges and some long- and short-term fixed contracts.⁶⁷

Also at the hearing, Company witnesses were cross-examined by PULP on this topic. Company witness Holtman testified about various Company actions taken to minimize fluctuations in energy prices and that have allowed the Company

⁶⁴ Id., pp. 19-20. PULP does not provide any references in support of this assertion.

⁶⁵ Tr. 229 and 231, respectively.

⁶⁶ Tr. 229-230.

⁶⁷ Tr. 230. Mr. Holtman's prior discussion of hedging can be found at Exh. 4, Part 3, Tab 19, pp. 11-12, and Exh. 4, Part 8(g), p. 6.

to reduce market price volatility compared to the New York Independent System Operator (NYISO) spot market.⁶⁸

PULP's concern about customer bill volatility was not ameliorated at the hearings. In its post-hearing pleading, PULP cites testimony by Company witnesses that the price of fuel is volatile and likely to go higher during the three rate years,⁶⁹ that large changes in fuel prices, in either direction, might occur with little notice,⁷⁰ and that the Company's prices are more stable than the NYISO spot market price.⁷¹ PULP also points to statements by a DPS Staff witness, assertedly to the effect that the change in the forecast period for MSC and MAC from six to three months will not "change the volatility on the rate experience on the customer."⁷²

PULP therefore asserts that the proposed changes in the MSC and MAC forecast period do not deal sufficiently with the volatility problem and contends this is an important criticism given the combined bill impacts of MSC and MAC changes and those that would result from the proposed delivery service revenue increases in the first and third rate years.⁷³

Other parties did not have an opportunity to respond to these latest contentions. However, Con Edison's post-hearing pleading points to the testimony of witness Holtman, referenced above.⁷⁴ DPS Staff, meanwhile, argues that PULP ignores the Commission's policy of exposing customers to market prices.⁷⁵

⁶⁸ Tr. 160-161.

⁶⁹ Tr. 67-68.

⁷⁰ Tr. 137.

⁷¹ Tr. 138.

⁷² PULP's January 18 Comments, p. 15, n. 35, citing Tr. 231.

⁷³ Id., p. 15.

⁷⁴ Con Edison's January 18 Comments, pp. 15-16.

⁷⁵ DPS Staff's January 18 Comments, p. 10, n. 6. We assume this is a reference to our longer-term policy of allowing utilities to expose residential customers to seasonal pricing, Case 00-M-0504, Competitive Markets Proceeding, Statement of Policy on Further Steps Toward Competition in Retail Energy Markets (issued August 25, 2004), p. 31.

A final issue about this section concerns whether we should adopt a provision calling on the Company to pass back non-TCC credits or costs, including positive and negative NYISO rebills, over a reasonable period of time to reduce volatility in the MAC. To begin, the pertinent proposed tariff change⁷⁶ does not capture the "over a reasonable period" language. Moreover, the JP does not specify how the company would decide what a reasonable period of time would be.⁷⁷

b. Discussion

The three proposals in this JP section are reasonable given that they will tend to reduce volatility in comparison with how the MSC, MAC, and their adjustors operate now. This objective should also be met in a way that should not increase the total amount of costs to be collected through these mechanisms.

We reject outright PULP's contention that rate mechanisms that permit the collection of no more and no less than the Company's actual and reasonable costs of capacity, energy, and ancillary services, among other things, conflicts with the requirements of PSL §65. We note that PULP provides no analysis and cites no statute or precedent to support such a claim. Moreover, PSL §66(12)(k) expressly recognizes our authority to employ such mechanisms.⁷⁸

PULP's contention that more should be done to reduce bill volatility is difficult to evaluate as PULP neither describes what it believes would be a reasonable level of hedging, nor describes what level of extra costs the Company - and ultimately ratepayers - should be willing to incur to stabilize further the costs recovered through the MSC, MAC, and their adjustors.

⁷⁶ Exh. 1, Appendix D, Leaf 161, proposed paragraph 7.

⁷⁷ See Exh. 9, Response 37.

⁷⁸ In light of this section, we reject PULP's suggestion that PSL §66(12)(f) procedures for major rate cases should apply to monthly MSC and MAC adjustments.

Similarly, PULP does not support its claim that the existing rate plans for all New York electric companies we regulate, excluding O&R, have price cap provisions not proposed in this case. We are unaware of any such provisions in existing rate plans.

We also reject PULP's arguments to the extent it suggests DPS Staff testified use of three month MSC and MAC forecasts would not reduce bill volatility. The clear point of the testimony, quoted only in part by PULP, is that this change should reduce the volatility of the MSC and MAC adjustors. For all of these reasons, we will not adopt different rate plan terms based on PULP's arguments.

Turning to the other identified issue, the Company is directed to reflect the "reasonable period of time" language in the appropriate tariff leaf. Additionally, in order to reduce volatility of MAC charges, we find that miscellaneous charges/credits to be recovered from or passed back to customers via the MAC shall be limited to five percent of the total MSC/MAC costs for that month. Con Edison is authorized to defer residual charges or credits and to accrue interest thereon at the unadjusted customer deposit rate. Deferred charges/credits and related interest shall be recovered/passed back through the MAC in subsequent month(s) subject to the same five percent limitation.

4. State Income Taxes

This subsection explains how \$28.3 million per year of future New York State income taxes on the Company's electric business will be recovered prospectively through delivery service rates, consistent with our prior order in Case 00-M-1556.⁷⁹ This change increases electric delivery service revenues, decreases revenues from other electric rates, and has no net effect on total electric revenues the Company will collect each rate year.

⁷⁹ The relevant order is cited fully in Exh. 1, p. 7, n.7.

5. Low-Income Program

a. Background

Under the terms of its existing rate plan, Con Edison levies a fixed monthly residential customer charge of \$10.28 per month. However, approximately 198,000 residential customers are currently receiving a low-income customer discount of \$5.28 per month. Such customers are eligible for the low-income discount because they are beneficiaries of at least one of nine public assistance programs. As a result of the discount, participating low-income customers pay a monthly customer charge of only \$5.00 per month. The current low-income program also provides for arrearage forgiveness and waivers of reconnection charges in some circumstances.

In its April 30, 2004 filing, the Company proposed that the existing residential monthly customer charge be increased by the overall class percentage increase, from \$10.28 to \$12.67, and that the residential low-income discount be discontinued, effective April 1, 2005.⁸⁰

DPS Staff pre-filed testimony, supporting continuation of the existing low-income program with some modifications.⁸¹ Among other things, the DPS Staff Consumer Services panel explained why such a program is properly funded by other ratepayers and recommended that only the customer charge discount continue at an increased rate of \$5.67 per month. This means that if a residential customer charge of \$12.67 were approved, the low-income customer charge would be fixed at \$7.00. Finally, DPS Staff proposed changes in eligibility criteria so that funding would be limited to \$9.1 million per year. At the time DPS Staff filed this testimony, about 144,000 customers were participating in the current low-income program and it was projected that number would increase to 175,000 by the beginning of rate year one.⁸²

⁸⁰ Exh. 4, Part 3, Tab 28, pp. 38-39, and Part 5, Tab 64, Table No. 1.

⁸¹ Exh. 16, Part 1(d), pp. 19-27.

⁸² Id., p. 20.

PULP's witness Oppenheim, meanwhile, recommended retention of the existing \$5.00 per month low-income customer charge and creation of a life-line rate under which the first 300 kWh per month of delivery service would be provided to qualified customers at no direct cost to them.⁸³ PULP proposes that the eligibility criterion be that a customer must have income less than 150 percent of the federal poverty level. Many more customers would be eligible for the discounts proposed by PULP's witness, relative to DPS Staff's proposal and the current number of low-income customers receiving discounts.

The Company's Customer Operations panel submitted rebuttal in opposition to PULP's proposal, but did not comment on DPS Staff's. That panel stated that the avoided customer termination costs alone would not be sufficient to pay for the costs of the PULP proposal and, thus, that the costs would fall on other customers. At the time, the Company panel estimated the PULP proposal would cost \$100 million per year, compared to an estimated cost of \$12 million in 2004 if the existing low-income program were continued, and stated there is no basis for imposing the incremental costs on all Con Edison customers.⁸⁴

This JP subsection proposes that the existing low-income monthly customer charge of \$5.00 should increase to \$6.00 for the first two rate years and could be reset in the third rate year at any point within a range of \$5.50 and \$6.50 per month as necessary to ensure the total cumulative amount of low-income customer discounts offered during the proposed three-year rate plan, assuming participation by 198,000 customers per year, would be close to the target total cost of \$37.5 million.⁸⁵ The customer charge for all other residential customers would be \$11.04 initially, so the low-income discount would be \$5.04 per month. In the third rate year, the customer charge would

⁸³ Tr. 448-A and Exh. 37. Other delivery rates and all commodity rates would still have to be paid.

⁸⁴ Exh. 4, Part 8(w), pp. 35-37.

⁸⁵ If the total costs are less or greater than \$37.5 million over three years, the Company would defer the difference for future disposition.

increase to approximately \$11.75 and the discount to approximately \$5.75 per month.

Various parties filed comments in support of this subsection. Con Edison initially argues that the proposed low-income discount is reasonable as eligible customers would receive \$37.5 million in benefits over three years and as customers enrolled as of March 31, 2005 would not need to re-enroll.⁸⁶

The initial DPS Staff comments recount the gradual growth in eligible customers over the last four years to 198,000 today. The programs that would be used to determine eligibility are listed by DPS Staff⁸⁷ and it also provides a preliminary estimate that PULP's proposal would cost \$80 million per year. This subsection of the JP, according to DPS Staff, properly balances the need for low-income assistance with the costs that would be imposed on other customers.⁸⁸

The City makes many of the same points. It too contends this JP subsection strikes a fair balance between affording relief and imposing an unduly harsh impact on other customers.⁸⁹ CPB, finally, asserts that the proposed program reflects several improvements to the existing low-income program.⁹⁰ CPB does not specify what improvements it is referring to.

PULP, supported by several public comments, raises two issues about this subsection in its pre-hearing comments. PULP contends that a \$1.00 per month or 20 percent increase in the monthly residential low-income customer charge is unreasonable in the context of a large general delivery service

⁸⁶ Exh. 2, p. 11.

⁸⁷ Exh. 15, p. 29. Prospective eligibility would be determined by whether a customer participates in one of four programs: (1) Temporary Assistance to Needy Persons; (2) Safety Net Assistance; (3) Food Stamps; and (4) Supplemental Security Income, or has been a recipient of a Home Energy Assistance Program grant in the last 12 months.

⁸⁸ Id., p. 30.

⁸⁹ The City's December 15 Comments, pp. 19-20.

⁹⁰ CPB's December 15 Comments, pp. 3-4.

revenue increase and that this subsection is yet another example of a lack of balance in the JP between the interests of the Company and its customers.

Second, while the JP's proponents assume that the number of customers taking advantage of the discounted monthly customer charge would continue at the current level of approximately 198,000, PULP implies that this may not be so as the number of programs that would be used to determine eligibility for the monthly customer charge discount would shrink by four under the proposed rate plan, eliminating Medicaid, Child Health Plus, and non-service related Veterans' disability and survivor spouse benefits.⁹¹

As mentioned previously, four public comments were submitted in opposition to this JP subsection. Senator Krueger expresses concern about a 20 percent (\$1.00) increase in the monthly customer charge for low-income customers in light of the extreme difficulties faced by such customers. She suggests this subsection is unconscionable, if not a patent violation of the spirit of 16 NYCRR §3.9. Similarly, Assemblymember Karben describes as a "double whammy" the proposed increase in the low-income customer charge in the context of a general delivery service revenue increase.⁹²

The Northern Manhattan Improvement Corporation (a community-based organization serving an immigrant community whose members rely primarily on public assistance or earn just enough not to be eligible for public assistance) emphasizes how welfare grants have not increased for 15 years, and how the amounts allowed for energy in such grants are especially inadequate. According to this organization, low-income customers often have to choose between paying for electricity, medical care, and rent and an increase in the low-income monthly charge would only exacerbate this problem. Finally, it is noted that high energy bills cause homelessness or, worse yet, the use

⁹¹ PULP's December 15 Comments, pp. 8-11. In its initial comments, PULP made no mention of its life-line rate proposal.

⁹² Tr. 546-551.

of self-help means to obtain heat and light that are unsafe for those using such means and for their neighbors. This organization urges that the parties be required to develop an alternate proposal that better protects the interests of residential ratepayers and the Company.⁹³

The Civil Division of the Legal Aid Society in Brooklyn likewise emphasizes how low-income customers are already making untenable choices about how to spend their limited resources each month, that welfare payments have not increased from what was a subsistence level in 1986, and that a \$1.00 per month rise in the customer charge would cause great harm. It recounts a dramatic example of an individual with cancer who is poor and forced to choose between paying utility bills, on the one hand, and for essential medical costs, on the other.⁹⁴

Con Edison denies the proposed low-income program will disadvantage low-income customers, stating that: (1) all customers receiving rate benefits under the existing program will continue to do so under the proposal without needing to enroll; and (2) the total cost of the program - \$37.5 million - is approximately three times the funding for the current year.⁹⁵ It emphasizes the costs of the PULP alternative would be from \$110 to \$230 million per year,⁹⁶ putting PULP in the contradictory position of opposing cost-based delivery service revenue increases while supporting higher increases for many customers for a low-income program. The Company, moreover, emphasizes that the proposed low-income discount is comparable to one in effect today and that the proposed \$1.00 increase for low-income customer charge is only a 9.7 percent increase over a customer's total bill.⁹⁷

⁹³ Tr. 216-220.

⁹⁴ Tr. 538-543.

⁹⁵ Con Edison's January 18 Comments, p. 16.

⁹⁶ Depending on whether 250,000 or 742,987 customers participate.

⁹⁷ Con Edison's January 18 Comments, pp. 17-18.

DPS Staff's overall position continues to be that this JP subsection is reasonable and should be adopted without change. To begin, DPS Staff suggests the proposed increase of the low-income customer charge from the \$5.00 level set in 2001 to \$6.00 in 2005 is reasonable as the customer charge for all other customers in the same period would increase from \$8.57 to \$11.04. Likewise it suggests the proposal is reasonable to the extent the discount for low-income customers would increase from \$3.57 per month in 2001 to \$5.04 in the first two rate years.

Second, DPS Staff suggests PULP's alternative proposal is unreasonable because of (1) its total cost; (2) the impact on other Company customers; and (3) the relative rate shocks the proposal would cause to customers who become ineligible for one of the qualifying public assistance programs. On the cost front, DPS Staff notes the total cost of PULP's proposal would be \$230 million per year.⁹⁸ If this cost is spread over the Company's remaining 2.25 million electric customers, DPS Staff continues, the cost for each customer is approximately \$102.00 per year.⁹⁹ According to DPS Staff, this would constitute rate shock to a much greater extent than would the minimal increases in delivery service rates PULP objects to. DPS Staff notes as well that the loss of a \$26 per month discount on the loss of program eligibility would itself constitute rate shock.¹⁰⁰

The City emphasizes many of these same points and maintains this JP subsection is fair and balanced. It adds that: (1) the proposed \$1.00 per month increase is reasonable as all other residential customers would pay for a \$.76 increase per month, and (2) that flexibility is built in to the proposal to increase the number of low-income participants over 198,000

⁹⁸ 742,987 eligible customers (or 80 percent of the 928,734 Con Edison electric customers with incomes less than 150 percent of the federal poverty level) @ \$26 per month in savings (or \$312.00 per customer per year) equals \$230 million per year. DPS Staff cites Tr. 462-463 and 466.

⁹⁹ \$230 million divided by 2.25 million customers equals \$102.22.

¹⁰⁰ DPS Staff's January 18 Comments, pp. 12-14.

and to decrease the per customer discount accordingly in the third year.¹⁰¹

b. Discussion

The fundamental question presented concerns the extent to which we should require ratepayers who do not have very low incomes to pay for part of the actual, reasonable costs of providing electric delivery service to low-income customers.

The context for addressing this question has several facets. First, at least one party contends that low-income customers should be defined as those with incomes falling below 150 percent of the federal poverty level. This amounts to 928,734 customers or nearly one-third of the total number of the Company's electric customers. Second, it would clearly be preferable if each Con Edison customer had sufficient resources to pay for rent, food, medical costs, utility service, and other necessities. A third factor is that numerous agencies and programs at various government levels exist primarily to address the needs of those who have low incomes or other special needs.

A fourth factor is that there is an inherent conflict between the goals of keeping rates as low as reasonably possible and of increasing low-income discounts. A fifth is that the JP's low-income proposal enjoys the broad support of all but one party. A sixth consideration is that other actions have been taken that complement our action here. These include the allocation of \$2.5 million for energy efficiency over two years for the Company's low-income customers¹⁰² and the designation of approximately one half or \$13.00 to \$14.00 million of annual System Benefits Charge dollars for a low-income energy affordability program in Con Edison's service territory.¹⁰³

¹⁰¹ The City's January 18 Comments, pp. 8-10.

¹⁰² Case 00-E-0612, Forced Outage of Indian Point 2, Order Adopting Terms of Joint Proposal (issued February 12, 2004), pp. 9 and 13, and Attachment, pp. 3 and 4.

¹⁰³ Cases 94-E-0952 et al., Systems Benefits Charge and New York State Electric & Gas and Niagara Mohawk Power Corporation Low-Income Programs, Order Modifying and Approving Low-Income Energy Affordability Program (issued May 26, 2004).

Taking all of the arguments into account in this context, the \$37.5 million cost associated with the program proposed in the JP is much more reasonable in comparison with one offered by PULP that would cost other ratepayers \$110 - \$230 million per year, including other low- and moderate-income ratepayers who would not be eligible for the discounts that would be offered. In sum, the \$37.5 million strikes the correct balance.

The next question is whether it is unreasonable to modify the current eligibility criteria in a manner that will keep the number of eligible customers at approximately 198,000. The pragmatic answer is that the criteria should change if the costs are to be contained at approximately \$37.5 million over three years. DPS Staff also provides sworn evidence that the change in eligibility criteria should not affect eligibility of customers receiving the low-income discount today, provided they continue to receive benefits or a grant under the eligibility criteria that continue.¹⁰⁴

The final question is whether a \$1.00 increase in the low-income customer charge increase is reasonable. The thrust of PULP's arguments is that the increase is unreasonable because \$1.00 is 20 percent of \$5.00 and because other delivery service rates will increase also. However, there would continue to be a discount of \$5.04 per month per low-income customer in the first two rate years, and that would increase to approximately \$5.75 in the third rate year. A discount at that level is also consistent with a total program cost of \$37.5 million over three years.

We find that the comments of PULP and others do not warrant our adoption of a low-income program that differs from the one set forth in the JP.¹⁰⁵

¹⁰⁴ Tr. 246-247. DPS Staff's testimony is that a few current eligibility criteria are only theoretical, as enrollment and budget caps have been met with the programs that would carry forward.

¹⁰⁵ The basis for the suggestion that the JP's low-income component is a violation of the spirit of 16 NYCRR §3.9 is not apparent to us.

C. Computation and Disposition of Earnings

This JP section would establish two equity earnings sharing triggers. The revenue equivalent of equity earnings greater than 11.40 percent and less than or equal to 13.00 percent in any rate year would be shared evenly, with the ratepayers' share being used either to offset deferrals under JP Section D during the rate plan or deferred for the benefit of customers in the next rate plan. The revenue equivalent of equity earnings in excess of 13 percent would be shared 75/25 percent with ratepayers' 75 percent share being used as described in the prior sentence. Equity earnings would be calculated using the lesser of 50 percent or the Company's actual average common equity ratio and excluding incentives, performance based revenue adjustments, and the Company's share of property tax refunds.

D. Reconciliations

Section D of the JP proposes, among other things, that some or all of the differences between forecast and actual expenses, incurred by the Company for property taxes, interference,¹⁰⁶ pensions and other post-employment benefits, environmental remediation, and implementation of our decision in Case 04-M-0159 concerning stray voltage, should be deferred. The expense targets for each are specified in Appendix F of the JP and collectively comprise approximately 12 percent of total electric revenue requirement.¹⁰⁷

If adopted, Section D would also provide for the reconciliation of carrying charges on differences between targeted levels specified in JP Appendix G for transmission, distribution (jointly, T&D), and generation capital items and amounts actually invested in these items. The generation

¹⁰⁶ Interference costs are incurred when the Company must support or move parts of its system as a result of municipal construction projects. The term excludes the costs of Company labor but includes contractor labor.

¹⁰⁷ Exh. 9, Response 74.

reconciliation provision would apply only if the actual investment is less than the amounts stated in JP Appendix G.

The reconciliation of carrying charges on T&D investment is not routine, but such an approach was adopted in two recent cases.¹⁰⁸ The parties are unaware of any decision in recent memory in which generation capital items were targeted and a reconciliation of carrying charges was permitted.¹⁰⁹

The reconciliation of capital budget items in this case is proposed not because of any party's disagreement with the T&D capital projects the Company expects to undertake, or with its budgeted amounts per project, but because of DPS Staff's doubts that the Company can complete all of its T&D capital projects on the schedule originally proposed by Con Edison.¹¹⁰ Because of this practical concern, the annual T&D capital budget targets in the JP are about \$200 million per year lower than what the Company continues to believe it will invest in the coming three rate years.¹¹¹

Any expense and carrying charge reconciliation amounts due to customers or to the Company at the end of the proposed three-year rate plan would be paid back to or recovered from customers at the time in a manner we would determine. A benefit of this approach is that the level of delivery rates would not change during the proposed three-year rate plan, beyond any general revenue increases authorized here. However, two mechanisms are proposed that are intended to minimize the amount of costs to be deferred in certain circumstances. One mechanism, subject to limitations, would restrict by 50 percent the amount of costs to be deferred if the company's equity earnings exceed 11.4 percent but are less than or equal to 13.0 percent, or by 100 percent if equity earnings exceed 13.00 percent.¹¹² The second mechanism provides for an opportunity for

¹⁰⁸ Id., Response 54.

¹⁰⁹ Id., Response 62.

¹¹⁰ Exh. 16, Part 1(g), pp. 20-30.

¹¹¹ Exh. 9, Response 12.

¹¹² Exh. 1, §D-9(a) and Exh. 9, Response 73.

Con Edison to set off costs that might be deferred against any credits that might be due ratepayers that are unrelated to TCCs or otherwise not already accounted for in the proposed rate plan.¹¹³

The Company's primary initial comment in support of this section is that the reconciliations protect the Company and its customers against variations from forecasts of expense items that are not subject to its control.¹¹⁴

According to DPS Staff, meanwhile, the proposed reconciliation targets are reasonable because:

- 1) The property tax targets for the second and third rate years are based on a seven percent escalation rate.
- 2) The dead bands for property taxes and interference expense reconciliations give the Company an incentive to make reasonable efforts to try to influence these cost levels.
- 3) The environmental remediation target reflects a five-year amortization schedule.
- 4) The limitation on deferral provisions are similar to those adopted in the recent gas and steam rate proceedings for the Company.
- 5) The T&D capital investment target for the first rate year - \$774 million - is higher than DPS Staff's initial projection of \$737 million, but lower than the Company's \$936 million target.
- 6) The T&D capital investment targets for the second and third rate years - \$825 million and \$876 million - respectively, are based on DPS Staff's trendline.
- 7) The use of a T&D targets subject to reconciliation eliminates any reason the Company may have not to make necessary infrastructure investment.

¹¹³ Exh. 1, §D, first ¶ (unnumbered) and Exh. 9, Response 50

¹¹⁴ Exh. 2, p. 9.

- 8) Customers benefit from construction investments necessary to provide safe and adequate service.
- 9) The proposed one-way reconciliation of generation capital investment will ensure carrying costs not incurred will be returned to ratepayers instead of being retained for the benefit of shareholders.¹¹⁵

The Joint Supporters strongly favors the proposed reconciliation of T&D carrying costs and environmental remediation. In the first instance, the Joint Supporters contends it is proper that amounts the Company might pay for energy efficiency and distributed generation to defer T&D investment be subject to reconciliation - a matter related to JP Section J below - and important that annual reports called for in this JP section concerning T&D investment be filed and served so it can track progress on projects it expects will make it feasible for distributed generation to operate in synch with the Company's system. The Joint Supporters is also interested in prompt remediation of brownfield sites previously owned or used by the Company, and, thus, it favors the proposed environmental mediation expense targeting and reconciliation.¹¹⁶

Gotham Power Zerega, which is developing a 79.9 MW combined-cycle plant in the Bronx, favors the JP to the extent it opens up opportunities for local generation by accelerating improvements in the Company's T&D system.

The only party to raise an issue with respect to Section D, if any, is PULP to the extent it contends the proposed rate plan in whole and in various parts does not adequately balance the interests of ratepayers and shareholders and, as discussed previously, to the extent it contends the recommended targets and reconciliation mechanisms are beneficial only to the Company.¹¹⁷

¹¹⁵ Exh. 15, pp. 16-23.

¹¹⁶ Exh. 34, pp. 6-7.

¹¹⁷ PULP's December 15 Comments, p. 9.

It is routine to provide for the reconciliation of some expense items that are driven primarily by causes beyond a utility's control. As several parties argue, the use of targets and reconciliations ensures the Company collects no more and no less than its actual reasonable costs for such items. Support has been provided for each of the targets and PULP does not dispute any of these specific targets or their bases.¹¹⁸

The reconciliation of capital investments is not routine, having been implemented for T&D investment in only two cases in recent memory, according to some parties, and proposed to be implemented here for the first time in recent memory for generation investment. Again, the bases for the targets are stated and PULP does not dispute them.¹¹⁹

The costs in these latter categories are primarily within the Company's control. However, given the extremely large capital investment planned over the coming three years and the previously discussed doubts about the Company's ability to proceed with all construction on the pace the latter originally envisioned, these reconciliation provisions are reasonable in the circumstances presented.

PULP's fundamental point here seems to be that terms that establish targets, and provide for reconciliation of forecast and actual costs, are necessarily only beneficial to the Company and only harmful to ratepayers. The basis for this implicit assumption is not explained by PULP. Moreover the assumption is not reasonable. Use of a forecast and providing for the reconciliation of the carrying charges on needed T&D investment, for example, helps ensure that ratepayers do not pay

¹¹⁸ See, for example, Exh. 16, Part 1(e), pp. 8-11, Exh. 4, Part 8 (l), pp. 9-10 and Exh. 4, Part 8(h), pp. 35-40 re: property taxes; Exh. 9, Response 16, Exh. 16, Part 1(b), pp. 49 and 76, and Exh. 4, Parts 8(a), pp. 1-5 and 8(q), p. 24 re: interference; Exh. 16, Part 1(b), p. 6 and Exh. 4, Part 8(l), p. 6 re: Pensions and OPEBS; Exh. 9, Response 68 and Exh. 4, Part 8(m), pp. 1-4 re: Environmental Remediation; and Exh. 9, Response 69 and Exh. 4, Part 8(v), pp. 3-9 re: Stray Voltage Inspection Program.

¹¹⁹ Exh. 9, Response 61; Exh. 16, Parts 1(d), pp. 20-31, and 1(k), pp. 18-20; and Exh. 4, Part 8(v), pp. 22-25.

carrying charges on plant that is needed but that, for various practical reasons, may not be constructed in accordance with planning schedules. Likewise, the reconciliation of property taxes guarantees that if actual property taxes are lower than the forecast underlying the JP, the difference, subject to the dead band, would be used for the benefit of customers either during the rate plan or thereafter.

Accordingly, PULP's contentions are not a basis for adopting rate plan provisions different from those presented in this section of the JP.

E. Additional Rate Provisions

There are six additional rate provisions in JP Section E. The first, concerning depreciation rates and reserves, refers to JP Appendix H. That Appendix contains all of the depreciation-related factors used to determine the delivery service revenue requirement and calculate the reserve for depreciation. The factors set forth in Appendix H are based primarily on the testimony of DPS Staff witness Rieder.¹²⁰

The second provision states that the unadjusted customer deposit rate would be used to accrue interest on some deferred amounts.

The provision concerning the common expense and common plant allocation factors refers to JP Appendix I, which lists all of the factors. Those are the same factors used in the Company's most recent gas and steam rate proceedings.¹²¹

The fourth provision here specifies that if the Company's efforts result in property tax refunds, or credits against future property tax bills, and if the Company reasonably explains how its actions led to the property tax refund or credit in a report to be filed annually, the Company would be permitted to retain 14 percent of the net refund or credit and

¹²⁰ Exh. 16, Part 1(m), pp. 3-49. See, also, Exh. 9, Response 76.

¹²¹ Cases 03-G-1671 and 03-S-1672, Consolidated Edison - Gas and Steam Rates, Order Adopting the Terms of a Joint Proposal (issued September 27, 2004). Exh. 9, Response 79.

the 86 percent net balance would be deferred for future disposition for the benefit of ratepayers. The language here clarifies that future property tax credits and property tax refunds will be treated the same.¹²² This provision also makes clear that the Company is not relieved of the requirements of 16 NYCRR Part 89.

The provision concerning the planned sale of the Company's First Avenue properties proposes, in part, that any net gain on their sale would be deferred with interest at the Company's pre-tax rate of return.¹²³ State Senator Krueger, estimates that the Company stands to receive an estimated \$300 to \$550 million and raises the question whether this infusion of cash might also be used in whole or in part to ameliorate the delivery service revenue increases in this case.

Finally, the East River Repowering Project (ERRP) provision states that the costs of the project would be recovered through the MAC¹²⁴ and that the allocation of the costs between the Company's electric and steam dependents would be governed by the previously referenced gas and steam rate order.¹²⁵

These additional rate provisions are all supported by information in the record and they are uncontested by any party.

The cumulative delivery service revenue requirement to be recovered in rates in the coming three years, as previously noted, is \$729.3 million lower than it would otherwise be because of the proposed use of current and anticipated credits. Of that total, \$226.7 million comprises projected credits that are subject to reconciliation. Given the extent of the credits already proposed to be used here to ameliorate the delivery service rate increases, the uncertain amount of net credits that

¹²² See, generally, Exh. 9, Responses 80 through 84 for a contemporaneous explanation of parts of this provision.

¹²³ Exh. 9, Responses 84 and 85 provide a contemporaneous explanation of parts of this provision.

¹²⁴ See Exh. 1, Appendix D, Revised Fourth Leaf 161, Clause 2.

¹²⁵ Exh. 9, Response 86 provides a contemporaneous explanation of the reasons for the last two sentences of this provision.

will be available after the sale of the First Avenue Properties, and the potential bill impacts that might occur at the end of the rate plan when many existing credits will expire, we see no public benefit in further reducing the delivery service rate increases now because of other potential credits. The provision here properly ensures interest will accrue on any credits generated by the sale of these properties and, thus, reasonably protects the interests of ratepayers.

F. Retail Access Program

1. Background

The DPS Staff Retail Access panel recommended a number of steps to promote and facilitate the development of retail access, including those that have proven successful elsewhere. Among other things, this panel recommended:

- a. Incentive payments that would gradually increase in size for each block of 25,000 full service customers migrating to retail access service, up to a total incentive of \$7.5 million per year if 200,000 or more customers migrate in that year.
- b. A retail marketing program similar to the "Switch-and-Save" program in use in O&R's service territory.¹²⁶
- c. Retail Access outreach and education and promotional programs.
- d. Annual surveys of ESCOs and customer satisfaction.

¹²⁶ A major element of this program is that residential and small commercial customers can enroll with an Energy Service Company (ESCO) through the utility and receive a two-month ESCO commodity discount; Exh. 16, Part 1(1), p. 10.

- e. The introduction of Market Match and Market Expo programs.¹²⁷
- f. Continuation of retail choice credits at levels to be set in the unbundling phase of this proceeding.
- g. Designation of a Con Edison employee as the ombudsman to work with ESCOs.
- h. Acceleration of the Company's bill redesign efforts, among other reasons, to separate delivery and supply charges, remove from existing bills price comparison information this panel believes is inaccurate, increase understandability, and meet customer needs.

DPS Staff did not initially recommend a Purchase of Receivables (POR) program on the assumption that the Company was planning to implement one.¹²⁸ However, DPS Staff described such a program as the single most constructive step Con Edison could take to further retail choice.

The Coalition, meanwhile, submitted direct testimony in support of a POR program and a marketing program like O&R's "Switch-and-Save".¹²⁹

Con Edison's Customer Operations panel submitted rebuttal in opposition to some of these proposals. Among other things, the Company's rebuttal:

- a. Clarified that Con Edison did not agree to a POR program and, to the extent that it might be

¹²⁷ Market Match would comprise a series of meetings to facilitate the exchange of information among ESCOs and utility business customers with a peak demand of 71 kW or more in the prior 12 months. Such a program has been employed successfully by New York State Electric & Gas Corporation and Niagara Mohawk Power Corporation. Exh. 16, Part 1(1), p. 18. Market Expos are meetings or forums conducted by a utility to provide commercial and industrial customers an opportunity to learn more about the current status of retail access, and for them to meet with ESCOs and discuss their offerings. Exh. 16, Part 1(1), p. 19.

¹²⁸ Exh. 16, Part 1(1) pp. 8-9 and RAP-1, p. 18 of 18.

¹²⁹ Exh. 10, pp. 1-16.

willing to adopt one, the panel disagreed with many of the details set forth in the Coalition's testimony.

- b. Objected to any migration incentives, saying alternatively, that DPS Staff's proposal would have to be modified to be reasonable.
- c. Opposed adoption of a marketing program like "Switch-and-Save" and the use of Market Expos.
- d. Disagreed with the proposal that \$1.5 million per year be spent on retail access promotion.
- e. Expressed willingness to cooperate in a collaborative to discuss DPS Staff's billing redesign proposals.¹³⁰

Section F of the JP offers recommendations about how the differences in parties' litigation positions on retail access should be resolved for purposes of this rate plan. Among other things, this section of the JP recommends that Con Edison be required to:

- a. Purchase the receivables of ESCOs at a specified discount rate (that is subject to adjustment later) and without recourse, starting on or about April 1, 2005. The costs of this program would be collected in a variety of ways. The Company's incremental administrative costs would be recovered through the discount. The related credit and collection costs would be an element of the lost revenue determination in the unbundling phase of this case. Approximately \$1.62 million of costs the Company has incurred and additional costs it will incur to adjust its billing systems would be deferred with interest for future recovery.
- b. Establish a retail marketing program like Switch-and-Save. Customers agreeing to purchase commodity service from an ESCO would receive a two-month discount (initially seven percent) and

¹³⁰ See, generally, Exh. 4, Part 8(w), pp. 56-66 (purchase of receivables); pp. 68-70 (migration incentive); pp. 66-68 (Marketing and Market Expos); and pp. 74-75 (bill redesign).

would be assigned to an eligible ESCO randomly with some exceptions.

- c. Adopt Market Match and Market Expo programs.¹³¹
- d. Continue outreach and education and electric retail choice promotion at a total cost of approximately \$7.8 million over three years (including \$2.2 million for retail access promotion). These costs are built into the delivery service revenue requirements.
- e. Conduct annual ESCO satisfaction and residential and non-residential customer awareness and understanding surveys.
- f. Report two times per calendar year (January and July) on retail access program progress.
- g. Continue work in a future collaborative to improve the format of customers' bills.
- h. Hold off on some major automated meter reading initiatives, pending a decision in another case (Case 00-M-0504) or until the end of calendar 2005, whichever comes first.¹³²
- i. Participate in a collaborative study concerning the pros and cons of a retail market auction pilot.
- j. Refer customers requesting to discontinue service with an ESCO to that ESCO.
- k. Participate in a collaborative to consider a proposal for a Green Power Program in its service territory.¹³³

¹³¹ The threshold for participation in the Market Match program would initially be peak monthly demand of 100 kW vs. DPS Staff's initial 71 kW proposal. Four Market Expos would be held over three years; DPS Staff had recommended two in rate year one. See Exh. 9, Response 113.

¹³² This topic was the subject of discussion in the pre-filed testimony of DPS Staff's Metering panel (Exh. 16, Part 1(c)), the Meter Service Provider Association (Exh. 44), and the Company's rebuttal (Exh. 4, Part 8(w), pp. 7-20).

¹³³ Sterling Planet advanced a proposal along these lines at the time it first sought active party status.

1. Designate its gas ESCO ombudsman as the person who will serve that function for electric service.

It is also proposed that Con Edison receive a one-time incentive of \$10 per account that switches from full service to retail access delivery (not to exceed \$4 million over the three rate years) and a retention incentive of \$20 per account that continues with retail access service (not to exceed \$8 million over the three rate years). The incentives would be recovered through the MAC.

Eight active parties submitted pre-hearing comments in support of this JP section, including the Company, DPS Staff, CPB, the City, the Coalition and the Association, Joint Supporters, and Direct Energy. To begin, several of these parties contend that the retail access proposals of the JP are consistent with the initial vision for competition, set forth in Opinion No. 96-12,¹³⁴ the latest goals set forth in the August 25, 2004 Statement of Policy,¹³⁵ and with our decision in the Company's most recently concluded gas and steam rate proceeding.¹³⁶ The Company states that the recommended enhancements to its electric retail access programs further the long-standing goals of increasing customer choice through the creation of opportunities for all market participants. DPS Staff adds that an important element of this JP section is a marketing program similar to the Switch-and-Save program previously implemented successfully by O&R.

¹³⁴ Cases 94-E-0952 et al., Competitive Opportunities, Opinion No. 96-12 (issued May 20, 1996).

¹³⁵ Case 00-M-0504, supra, Statement of Policy on Further Steps Towards Competition in Retail Energy Markets (issued August 25, 2004). Examples of specific actions consistent with this policy, according to the City, include the Retail Auction Pilot and Green Power collaboratives.

¹³⁶ Cases 03-G-1671 and 03-S-1672, supra, Order Adopting Terms of a Joint Proposal (issued September 27, 2004), pp. 6-7. Some aspects of the JP's Retail Access section are consistent with and intended to complement those adopted in the earlier case.

Second, some of these parties, and particularly DPS Staff, explain how JP Section F is similar in many respects to and supported by the testimony submitted by it and other active parties. In instances where the JP's provisions depart from the parties' pre-filed testimony, as in the case of the design of the recommended incentive, DPS Staff explains how the JP's terms are consistent with the goals specified by its Retail Access panel.

Many of these parties recount the specific terms of this section of the JP and how they would tend to increase the number of customers purchasing commodity from an ESCO rather than from the Company.

DPS Staff points to an aspect of this section where our adoption of the proposal would involve a change from what Con Edison would otherwise be required to do. The change is that the Company alone would issue consolidated bills as part of the POR program and this would be a departure from Uniform Business Practice §9. The latter allows ESCOs to issue consolidated bills.¹³⁷ Thus a waiver is requested. DPS Staff argues a waiver should be granted because of the anticipated benefits of the POR program. It notes as well that ESCOs serving most of Con Edison's existing retail access customers agree to the waiver and that there would be an opportunity to revisit this issue in the third rate year upon the written request of two or more ESCOs.

Some of the pre-hearing comments of the JP's proponents focus on the specific benefits that should be enjoyed by various market participants. According to these arguments, ESCOs would benefit through increased customer contacts, the amelioration of the economic burden of uncollectibles, and minimization of customer acquisition costs. Ratepayers, these arguments continue, would receive more information that might help them to choose and reap the benefits of being able to try

¹³⁷ Section 9 is set forth in Case 98-M-1343, In the Matter of Retail Access Business Rules, Order on Petitions for Rehearing and Clarification (issued July 15, 2004) and Errata Notice (issued August 12, 2004).

alternate suppliers with opportunities for longer-term savings on the commodity portion of their bills. The Company, finally, would benefit from the opportunity to enjoy an incentive that would not be subject to earnings sharing.

Turning to some of the specific provisions of JP Section F, the Company points out that the level of back-out credits will be established soon in the unbundling phase of the case, while DPS Staff notes that Con Edison would be permitted to disconnect delivery service in the event a customer fails to remit full payment for a consolidated bill.¹³⁸

As to metering, DPS Staff and Joint Supporters both contend it is reasonable for the Company to delay four of its six original automated metering initiatives, pending a decision in another case or the end of 2005. Joint Supporters favors the metering terms for now, but complains it has been promoting competitive metering for six years and that action by us this calendar year is important to it. Direct Energy, finally, asserts that retail auctions have been used successfully elsewhere and it contends such auctions hold much promise for the development of further competition in New York.¹³⁹

Section F of the JP is opposed by PULP. In its December 15, 2004 comments, PULP complains the JP improperly fails to require that rates ESCOs charge must be just and reasonable under PSL §65.¹⁴⁰ Second, as the Company would be afforded an opportunity to recover through the MAC a grand total retail access incentive of up to \$12 million over the three rate years and would be permitted to defer for future recovery some of the costs of the POR program, PULP sees Section F as one that will cost ratepayers an amount that remains too uncertain.¹⁴¹

¹³⁸ DPS Staff notes that this is permitted by PSL §32(5)(d) and 16 NYCRR Part 13.

¹³⁹ See, generally, Exh. 2, pp. 12-15; Exh. 15, pp. 30-37; CPB's December 15 Comments, p. 5; the City's December 15 Comments, pp. 22-24; the Coalition and Association's December 15 Comments; Exh. 34, p. 7; and Direct Energy's December 15 Comments, pp. 1-2.

¹⁴⁰ PULP's December 15 Comments, p. 13.

¹⁴¹ Id., p. 7.

PULP also complains that the retail access provisions are unduly favorable to the Company and ESCOs, and provide little or no benefits to ratepayers. In this regard, PULP is critical of the marketing proposal under which customers taking advantage of a seven percent discount, to be offered by participating ESCOs for two billing periods, would be assigned to an ESCO by Con Edison rather than based on the customer's selection.¹⁴²

In its post-hearing comments, PULP makes many of the same arguments again but further develops its argument that any benefits of the retail access proposals will flow largely, if not exclusively, to the Company and ESCOs. According to PULP, ESCOs are spared the costs of billing and collection and will benefit from Company expenditures on marketing, outreach, and education. The Company, PULP continues, would be able to reduce its risks by limiting its role as a commodity provider and receive incentives for doing so. According to PULP, ratepayers get a chance to choose whether or not to be served by an ESCO (a right they already have) or to participate in a marketing program where the choice of an ESCO would be made for them.¹⁴³

2. Discussion

The delivery service rates we adopt today are just and reasonable as they are set at the level necessary for the Company to provide safe and adequate delivery service. Similarly, the mechanisms in place for the Company to recover commodity-related costs, as modified by this order, are designed so that the Company may recover its reasonable and actual costs to provide commodity on an on-going basis. Such recovery is also subject to our authority to review costs recovered through such mechanisms and to make adjustments where warranted.

Each full service customer that chooses to change to retail access service is essentially deciding that the package of commodity rates, customer services, and other benefits it can

¹⁴² See Exh. 1, §F(2), pp. 24 and 25 and PULP's December 15 Comments, p. 14.

¹⁴³ PULP's January 18 Comments, p. 10.

receive from an ESCO now are collectively preferable to those it would receive if it continued to be a full service customer of Con Edison. Moreover, each customer making that choice retains the right to change to another ESCO or to revert to full service. Given this context and the efforts recommended to help ensure customers have the information they need to choose intelligently, there is no reason why the rates ESCOs charge must or should be determined by us to be just and reasonable.

Looking at the same issue more broadly, PULP questions our long-standing policy that the best way to ensure just and reasonable rates for commodity and customer services is to establish conditions for fully competitive commodity and customer services markets. However, PULP does not offer any reasons why our policy in this regard is wrong. Given the expected long-term improvement in the manner by which commodity and customer service will be provided, we reject PULP's assertion that Section F of the JP does not provide benefits for customers commensurate with those Con Edison and ESCOs will receive.

PULP is correct that the amount of costs to be deferred to implement a POR program is not specified. However, the costs to be deferred are limited to those necessary for the Company to adjust its billing system to implement the POR program and comply with our prior orders. The administrative costs and billing and collections costs will be recovered, respectively, through the discount and in the determination of lost revenues in the unbundling phase.

The record is also replete with reasons why the costs of the billing system modifications should reasonably be deferred, including that there is no current estimate of such costs,¹⁴⁴ that these costs have been recovered from the general body of ratepayers in other cases,¹⁴⁵ and that the total amount of costs to implement a POR program would be significantly less than the costs the Company would otherwise incur and be allowed

¹⁴⁴ Exh. 9, Response 99.

¹⁴⁵ Id., Response 100.

to recover to implement HEFPA changes and to implement bill proration in the absence of a POR program.¹⁴⁶

PULP is also correct that under the proposed marketing program, customers deciding to accept the discount and purchase commodity would generally be assigned to an ESCO randomly. However, customers would know this in advance and reserve the right, after only 60 days, to change to another ESCO or back to Con Edison. Moreover, in instances where customers request a specific ESCO in response to ESCO marketing, they would be assigned to that specific ESCO.¹⁴⁷

In conclusion, PULP has not provided any good reason to adopt retail access terms other than those set forth in JP Section F.

For the reasons provided in the parties' pleadings, and based on other information in the record, we grant a waiver of Uniform Business Practice Section 9, as this is necessary for Con Edison to do all billing for customers in connection with the POR program.¹⁴⁸ Likewise, for the reasons discussed above, the request to defer pre-rate-plan (approximately \$1.62 million) and other costs to be incurred to implement the POR program, and to comply with the Uniform Business Practice and our decisions concerning implementation of HEFPA, is reasonable and is granted.¹⁴⁹

G. Reliability Performance Mechanism

The proposed Reliability Performance Mechanism includes six performance metrics intended to ensure the Company provides reliable service generally and with respect to several parameters of special interest to one or more parties in this case specifically. The two general parameters are part of an existing reliability performance mechanism. The other four metrics are new and include the repair of poles, the removal of

¹⁴⁶ Id., Response 93 (as revised).

¹⁴⁷ See Exh. 9, Response 111.

¹⁴⁸ See Exh. 9, Response 104. The waiver is for the term of this rate plan.

¹⁴⁹ Id., pp. 98-100.

shunts installed as temporary repairs, renewal of service to streetlights and traffic signals, and the replacement of circuit breakers with high fault current levels (over-duty breakers).

In most instances where the Company fails to meet any of the general or detailed reliability criteria, and where one or more exclusions do not apply, it would be subject to a downward adjustment to revenues that would be deferred for the benefit of the ratepayers beyond the third rate year. In comparison with the existing reliability performance mechanism, much more revenue would be at risk and the number of metrics would be increased. The proposed effective date for five of six of the reliability performance metrics is January 1, 2005, as the existing mechanism was designed to be in place through the end of calendar year 2004. The sixth would apply on a rate-year basis.

Pre-hearing comments in support of JP Section G are offered by the Company, DPS Staff, CBP, the City, and the Joint Supporters. The Company supports this section and observes that the total amount of revenue at risk each year for this mechanism would increase from \$22 million now to \$56 million or more.¹⁵⁰ DPS Staff contends this JP section is reasonable as it is consistent with long-standing policy, increases the incentive for the Company to attend more carefully to certain aspects of its system, and is based on proposals set forth in testimony filed by it, the City, and the Union.¹⁵¹ New York City likewise emphasizes how this section of the JP responds to concerns expressed in the pre-filed testimony of its witnesses and, more

¹⁵⁰ Exh. 2, pp. 15-16. The breakdown of the \$56 million is: (1) up to \$18 million related to outage frequency and duration; (2) up to \$30 million related to major outages; (3) up to \$8 million in total for three metrics related to public safety (repairs to damaged poles, removal of public accessible shunts, and repairs needed to serve streetlights and traffic signals). The Company would also be subject to a grand-total incremental revenue adjustment capped at not more than \$3 million in the second and third rate years combined, forgoing \$100,000 each to the extent the Company fails to replace at least 60 substation over-duty breakers in each of those years.

¹⁵¹ Exh. 15, pp. 24-26.

generally, provides a reasonable method for focusing the Company's attention on pressing, short-term reliability issues.¹⁵²

The Joint Supporters, finally, strongly favors the metric related to the Company's accelerated replacement of over-duty circuit breakers. The scheduled replacement of a minimum of 60 13 KV and 27 KV circuit breakers per year is a high priority, in its view, noting it is an improvement over the 19 such replacements made in 1999. The Joint Supporters also agrees with the procedures outlined for establishing a priority list for the replacement of such breakers.¹⁵³

PULP, with the support of some public comments, objects to the absence of any performance metric for manhole events, the number of which increased in the Company's service territory from 872 in 1997 to 2,824 in 2003.¹⁵⁴ Moreover, PULP objects to the absence of any performance metric for stray voltage incidents.

Assemblymember Karben likewise complains that performance metrics and revenue adjustments for poor performance should be adopted in this case for stray voltage and exploding manhole covers.¹⁵⁵

According to DPS Staff, there is nothing to do with PULP's objections, as PULP has not specified what the additional metrics should be.¹⁵⁶ Moreover, DPS Staff maintains that stray voltage and manhole incidents were both addressed in our

¹⁵² The City's December 15 Comments, pp. 14-15.

¹⁵³ Exh. 34, pp. 8-9 and Attachment JS-3.

¹⁵⁴ PULP's December 15 Comments, p. 18. The Union pre-filed testimony in support of such a metric but it was not accepted into the record as it was filed as rebuttal to DPS Staff's proposed Reliability Performance Mechanism rather than as direct testimony in response to the Company's initial proposal that there be no performance mechanisms going forward. Acceptance of such testimony as rebuttal would have deprived Con Edison an opportunity to respond even though the latter has the ultimate burden of proof, Tr. 186-188. The Union filed no comments on the JP.

¹⁵⁵ Tr. 548 and 550-551.

¹⁵⁶ DPS Staff's January 18 Comments, p. 4.

previously cited January 5, 2005 order in Case 04-M-0159 and need not be addressed here.

As DPS Staff observes, no specific proposals are before us concerning reliability performance metrics or revenue adjustments for stray voltage or manhole cover events. The Company's initial position was that there should be no performance metrics starting in rate year one and all parties, including PULP, had a more than adequate opportunity to offer evidence in opposition. Thus, even though we agree reasonable utility performance with respect to stray voltage and manhole events is important, we have no basis for adopting any specific performance measures for them.

Moreover, DPS Staff is correct when it states that we have already established performance metrics for stray voltage and revenue adjustments if those standards are not met.¹⁵⁷ It is neither necessary nor reasonable for us to adopt a second performance metric and revenue adjustment in this case given that prior decision.

Finally, in anticipation of a possible argument that the Union's testimony concerning manhole events should have been allowed, we observe that Judge Lynch explained some of the parameters of rebuttal to all parties in an electronic message dated September 17, 2004, that the Union was advised around the time it filed its testimony that it did not appear to be proper rebuttal (electronic message of October 15, 2004 to Mr. Koda), that the Company advised it would move to strike the Union's testimony just prior to the hearings originally scheduled on October 25, 2004 (electronic message of October 20, 2004), and that the Union's arguments in support of the testimony being accepted were all carefully considered at the January 2005 hearings. We conclude that the procedures followed with respect to the Union's untimely direct testimony were reasonable in all respects.

¹⁵⁷ Case 04-M-0159, *supra*, Order Instituting Safety Standards (issued January 5, 2005).

H. Compliance with Environmental, Health, and Safety Policy

Section H of the JP briefly summarizes the obligations of the Company and its employees with respect to environmental, health, and safety considerations. DPS Staff and the Company concur that this section pertains primarily to the Company's relationship with its employees.¹⁵⁸

The Company and DPS Staff also agree that Section H is not intended to alter our long-standing policy of not intervening in collective bargaining matters between utilities and their employees.¹⁵⁹ Indeed, they state that inclusion of Section H is "not intended to alter the Company's collective bargaining agreements . . . by providing Con Edison or unionized workers with recourse to the Commission" ¹⁶⁰

The terms of JP Section H are reasonable to the extent they summarize important principles that are supported by the Company and organized labor. Even though the provision is reasonable and we have no objection to it, we decline to adopt it as an element of our new rate plan for Con Edison.

As a matter of principle, we do not adopt rate plan terms which we would not be expected to enforce. Moreover, the terms set forth in Section H are matters for collective bargaining in which we would not be inclined to intervene.

I. Customer Service Issues

Section I pertains to a customer service performance mechanism, general outreach and education, and some streetlighting issues.

The Company's Infrastructure Investment panel submitted initial testimony in opposition to use of any performance mechanisms prospectively.¹⁶¹ The DPS Staff Consumer Services panel submitted direct testimony in support of continuation of a modified Customer Service Performance

¹⁵⁸ Exh. 9, Response 175.

¹⁵⁹ Id., Response 177.

¹⁶⁰ Id., Response 176.

¹⁶¹ Exh. 4, Part 3, Tab 12, pp. 141-144.

Mechanism,¹⁶² as did CPB witness DeVito.¹⁶³ The Company responded in opposition through the rebuttal of its Customer Operations panel.¹⁶⁴

Section I and Appendix L of the JP propose threshold performance levels for: (1) Commission complaints; (2) the number of days for the Company to complete investigations of customer inquiries; (3) call answer rates; (4) the average satisfaction levels of callers, visitors and others as measured in second- and fourth-quarter surveys each year; (5) the average number of days it takes for the Company to complete a service layout in response to a customer request; (6) the average number of days it takes the Company to complete final inspections of service installations; (7) the percentage of meters read on schedule; (8) the number of bills with errors as a percentage of total bills; and (9) the Company's achievement of outage notification requirements established in a prior case.¹⁶⁵

Subject to certain exclusions, the Company would be at risk for a revenue adjustment totaling up to \$36 million per year to the extent it fails to meet threshold levels specified in JP Appendix L and in the attachment to the prior order referred to immediately above.

The proposed Customer Service Performance Mechanism is supported in the pre-hearing comments of Con Edison, DPS Staff, and CPB. The Company notes that the proposal would double its maximum revenue adjustment exposure, from \$18 to \$36 million, and remove any opportunity for it to earn more where performance thresholds are surpassed. The proposed mechanism is also structured like the existing one, the Company continues, with some revisions to reflect changes in circumstances, and exclusions for events beyond its control. The Company also

¹⁶² Exh. 16, Part 1(d), pp. 7-18.

¹⁶³ Exh. 39, Part 2, pp. 3-14.

¹⁶⁴ Exh. 4, Part 8(w), pp. 38-49.

¹⁶⁵ Case 00-M-0095, Request for Approval of a Certificate of Merger, Order Approving Outage Notification Incentive Mechanism (issued April 23, 2002).

explains how some calculations would be performed when determining if revenue adjustments are warranted.¹⁶⁶

DPS Staff explains how some specific metrics have changed, including the decrease in the customer complaint threshold from 7 to 2.6 complaints per 100,000 customers, a change necessitated by how complaints are now counted by the Office of Consumer Services. Additionally, it points out, the allocation of dollars among metrics would change to focus on areas where it believes improvement is warranted. The proposed mechanism is also based largely on testimony submitted by DPS Staff and, thus, enjoys a solid record basis.¹⁶⁷ CPB generally supports the proposed mechanism.¹⁶⁸

There is also other information in the record concerning this mechanism. It shows, for example, that data set forth in the pre-filed exhibits of DPS Staff and CPB suggest that the Company can meet all of the proposed threshold for the first rate year without any incremental effort. That situation is not expected to change in the second and third rate years with the exception of the new call answer rates that would apply. The Company and DPS Staff acknowledge that if that new metric were in effect in 2002 and 2003, the Company would not have been subject to a revenue adjustment in the former but would have been subject to the full \$4 million revenue adjustment in the latter. According to DPS Staff, the Company will need time to prepare in rate year one to meet this new metric in rate years two and three.¹⁶⁹

There are two other key aspects of JP Section I. The first calls for the company to continue core outreach and education at existing funding levels, but with more attention focused on issues such as consumer rights and protections under

¹⁶⁶ Exh. 2, pp. 17-18.

¹⁶⁷ Exh. 15, pp. 26-28.

¹⁶⁸ CPB's December 15 Comments, p. 3.

¹⁶⁹ Exh. 9, Response 193.

HEFPA and the use of payment agents. This is considered in connection with the JP's Retail Access provisions.¹⁷⁰

Finally, this section of the JP proposes that a time metric be established for energizing new streetlights, that the Company develop a new streetlight billing system in consultation with the New York City Department of Transportation and NYPA, and that the annual burning hours for streetlights equipped with light sensitive control devices be reduced from 4,270 to 4,100 hours.¹⁷¹ No revenue adjustments, however, are recommended for this metric.

New York City strongly supports these terms, arguing they are consistent with the testimony of its witnesses that: (1) the register used to calculate charges is in need of overhaul; (2) an incentive is needed for the Company to energize new streetlights more quickly; and (3) the streetlighting billing system should be modernized. It urges that these terms all be adopted.¹⁷²

The Company likewise urges approval, noting that the target date for the new billing system is November 1, 2005.¹⁷³ DPS Staff adds that the NYC-specific measures appropriately address concerns raised by the City and should assist in improving the relationship between the Company and the City while, more importantly, improving public safety.¹⁷⁴

While no party raises any issue with respect to Section I of the JP, we do not adopt Section I(1)(b)(iv) as proposed. That provision would allow a modification of an express rate plan term adopted by us by written agreement between DPS Staff and the Company. This would amount to an impermissible delegation of non-ministerial authority as no

¹⁷⁰ See, also, Exh. 15, p. 28.

¹⁷¹ Con Edison bills NYPA for delivery service to streetlights, reflecting the number of lamps, the wattage per light, and the number of burning hours.

¹⁷² The City's December 15 Comments, p. 17.

¹⁷³ Exh. 2, p. 19.

¹⁷⁴ Exh. 15, pp. 27-28.

criteria are set forth that would have to be followed by DPS Staff and the Company in such circumstances.

Accordingly, any agreement between the Company and DPS Staff in the circumstances envisioned in this Section would have to be submitted to us for review and action. Alternatively, we direct that the maximum revenue adjustment for the activity that could no longer be measured be allocated among the remaining activities in proportion to the maximum annual revenue adjustment for each remaining activity as a percentage of the grand total maximum exposure net of the maximum associated with the activity that can no longer be measured.

J. Demand Management Goals

1. Summary of Terms

Section J proposes broad goals and a plan for achieving them as follows:

- a. Demand Management (DM), a term intended to encompass energy efficiency (EE), load management, and distributed generation (DG), would be identified as the means to be employed to meet 535 MW of peak load growth that the NYISO projects for the Company's service territory during the three rate years.¹⁷⁵
- b. An Action Plan would be developed through a collaborative process to help ensure the projected peak load growth would be met by programs funded through the System Benefits Charge (SBC) and through new DM programs to be managed by the Company and NYSERDA. The target completion date for the Action Plan would be within six months of this decision, and NYSERDA would file the Plan with us for our information at that time.
- c. Existing SBC programs (referred to as SBC II) are expected to yield 250 MW of DM in the Company's

¹⁷⁵ This comprises 83 MW in Zone I, a 5.5 percent increase over 1,497 MW, and 452 MW in Zone J, a 4 percent increase over 11,308 MW. Con Edison's electric service territory comprises 100 percent of Zones I and J (Exh. 9, Responses 197-199).

service territory (of which 80 MW is described as "permanent").¹⁷⁶ SBC programs anticipated in the period after June 30, 2006 (referred to as SBC III) are expected to yield 300 MW of DM in the Company's service territory (of which 120 MW is described as permanent). Thus, the JP rests in part on assumptions about what actions we might take in the future with respect to the renewal of SBC II.¹⁷⁷

d. Incremental programs to provide up to another 300 MW of DM would be developed as a result of this case. The JP does not specify how much of the 300 MW would have to be permanent.¹⁷⁸ The following three approaches would be employed:

- 1) Con Edison would have primary responsibility for achieving up to 150 MW of targeted EE and DG to reduce load on constrained delivery networks, with its first Request for Proposals (RFP) or other offering to be issued within nine months of this order.¹⁷⁹
- 2) NYSERDA would have primary responsibility for achieving up to 150 MW of EE, load management, and DG throughout the Company's electric service territory. NYSERDA would be under an obligation to enter into contracts for 550 MW of SBC II

¹⁷⁶ The quoted term is not defined in the JP but is understood to refer to energy efficiency and DG measures that, after an initial investment, reduce on-peak demand, energy consumption, or both over many years.

¹⁷⁷ The existing SBC will remain in effect through June 30, 2006 pursuant to Case 94-E-0952, Competitive Opportunities, Order Continuing and Expanding the Systems Benefit Charge for Public Benefit Programs (issued January 26, 2001). DPS Staff anticipates we will make a decision in the second half of 2005 about whether the SBC program will continue beyond June 2006.

¹⁷⁸ The operating assumption seems to be that at least 150 MW and less than 300 MW would be permanent.

¹⁷⁹ The JP (pp. 70-71) specifies that Con Edison will evaluate and implement cost-effective measures as alternatives to major T&D projects. The term "cost-effective" is not defined in the JP.

and SBC III funded DM before it could recover the costs of the incremental 150 MW from Con Edison. This may be one reason why the JP does not specify a date by which NYSERDA would issue its first system-wide RFP or other offering.¹⁸⁰

- 3) Various actions would be taken by the Company to facilitate DG development in its service territory. For example, the Company would: (a) extend the existing Standard Interconnection Requirements to DG facilities of up to five megawatts in size (the standard otherwise applies to DG facilities up to two megawatts); (b) provide information about areas without fault current limitations and the schedule for upgrading breakers; (c) post important DG information on its website; and (d) file and serve DG status reports two times per year.

The collaborative process referred to above would start within 30 days of this order. That process is expected to produce an Action Plan within five months thereafter. The collaborative would be started by DPS Staff, chaired by NYSERDA, and limited initially to 15 entities, only seven of which are named in the JP. Other participants would be chosen in the future, using a consensus approach. The two key goals of the Action Plan would be to stimulate DM activity in the Company's service territory and identify additional opportunities for DM to be sponsored by NYSERDA or the NYISO. The JP (pp. 64-65) lists 16 specific topics that would be focused on in the DM collaborative.

¹⁸⁰ The JP states that if Con Edison cannot achieve its 150 MW target, the balance would be shifted to the system-wide program and NYSERDA's budget for the system-wide effort would increase as a result. During the hearing, a Con Edison witness stated the JP also requires it to exceed 150 MW if NYSERDA cannot meet its 150 MW goal. (See Exh. 9, Response 213.) The JP does not specify that the system-wide DM must be cost effective.

Con Edison's portion of the costs of the 150 MW, to be targeted at specific delivery networks near their capacity limits, would have a base "cap" of \$112 million.¹⁸¹ The \$112 million is based on costs NYSERDA incurred for similar programs from 1998 through 2003 (\$.008/kWh), as adjusted upward by 25 percent (\$.002) for inflation and higher implementation costs in New York City.¹⁸² This base cap of \$.01/kWh would be increased for (1) the present value of carrying charges on transmission and distribution (T&D) reinforcements that are delayed as a result; and (2) the equivalent of the then applicable NYSERDA administrative and evaluation fee. Con Edison would also be allowed to recover lost delivery service revenue and an incentive and would be expressly authorized to seek our permission to increase the cap even further at a later date.

NYSERDA's portion of the costs of the 150 MW system-wide program would also have a base cap of "approximately" \$112 million, calculated in the same manner summarized in the prior paragraph. The base cap would also be subject to the exact same upward adjustments, except that there would be no adjustment for the carrying charges on T&D projects that are delayed. There is also no JP provision expressly affording NYSERDA the right to petition for an increase in the applicable cost cap.¹⁸³

¹⁸¹ The portion of costs not covered by Con Edison would be the responsibility of program participants.

¹⁸² The \$.008/kWh figure, in turn, was calculated by dividing \$120.3 million of historic NYSERDA program costs by the 14,809.2 GWh of lifetime savings resulting from those costs. Exh. 9, Response 218.

¹⁸³ The record contains no estimate of the present value of the carrying charges on T&D projects that are delayed. Estimates of the other factors are \$10.1 million each for the two administrative fees, \$40 million per year of lost delivery service revenue for the targeted and system-wide efforts combined, and a maximum incentive of \$15.188 million for the three rate years combined. (See Exh. 9, Responses 224 and 244.) Con Edison's ultimate incentive would reflect the success of programs proposed here as well as the success of SBC, NYISO, and other programs.

The grand total estimated upper limit for Con Edison's and NYSERDA's shares of the targeted and system-wide programs is approximately \$259.5 million, exclusive of the net present value of carrying charges on T&D investment that is delayed, and subject to any future cap increase that might be allowed.¹⁸⁴

The JP proposes that to the extent that the portion of total DM costs incurred by Con Edison and NYSERDA, respectively, fall below the capped amounts, such costs would be recovered through the MAC over a reasonable period of time as incurred. Customers who do not pay MAC rates would not contribute to the costs of the proposed DM initiatives.

2. The December 15 Submissions
in Support of Section J

The Company, DPS Staff, NYSERDA, CPB, the City, NRDC and Pace, and the Joint Supporters each filed comments or pre-filed testimony in support of Section J on or about December 15, 2004.¹⁸⁵

As an initial procedural matter, DPS Staff and the City both argue that Section J is consistent with the pre-filed direct testimony submitted prior to negotiations by their witnesses Saxonis and Chernick, respectively.¹⁸⁶

The Joint Supporters claims that the NYISO projection of need is reasonable and consistent with the sales forecast

¹⁸⁴ That total comprises \$224 million for the base cap for Con Edison's and NYSERDA's respective programs, \$20.2 million for administrative fees for the two programs, and a \$15.188 million maximum incentive over the three rate years combined. It has been suggested lost revenue of \$120 million should be included in this figure. However, a make whole for delivery service revenues, allowed but not received because of the 300 MW of DM, is not a cost of the DM initiatives.

¹⁸⁵ NRDC and Pace generally support Section J but also propose several significant modifications; only their supporting contentions are summarized here.

¹⁸⁶ Exh. 15, pp. 39-40, and the City's December 15 Comments, p. 17.

underlying the delivery service revenue requirement calculation in this case.¹⁸⁷

The testimony pre-filed by NRDC and Pace suggests that there is sufficient cost-effective DM potential in just the New York City portion of Con Edison's service territory (i.e., excluding Westchester) to offset peak load growth of 535 MW over the three rate years, excluding the potential to expand the use of DG. In support of this contention, these parties rely primarily on a report prepared for NYSERDA in August 2003 that suggests 502 MW of cost-effective DM is achievable in Zone J (i.e., New York City but excluding Westchester) in the three rate years at a cost below long run levelized energy costs projected in that study of 3.3¢/kWh.¹⁸⁸ They calculate that the benefit-to-cost ratio for the residential and commercial classes in the period 2005 through 2014 would be 12.24 and 1.53, respectively, or 1.86 combined.¹⁸⁹ To the extent T&D investment might also be avoided, the benefit-to-cost ratio they foresee would even be higher.

Anticipating the criticism that Section J amounts to selection of demand management as the only resource to be used, the NRDC and Pace panel states that other alternatives are not foreclosed. That panel contends that new, cleaner alternatives to existing in-City generation are still needed to improve air quality, for example, and that other alternatives can still be used to meet such needs.

Almost all of the parties supporting Section J expect it will result in significant public interest benefits in addition to a favorable benefit-to-cost ratio. Among the other benefits envisioned are: (1) reduced air pollution, including forms that contribute to ozone production in a severe non-

¹⁸⁷ Exh. 34, pp. 3-4.

¹⁸⁸ Tr. 311-A through 313-A. The study is referenced but is not in evidence. The report's title is Energy Efficiency and Renewable Energy Resource Development Potential in New York State. During the hearings, Mr. Plunkett stated that 3.3¢/kWh represents avoided generation costs on a levelized basis, Tr. 383-384.

¹⁸⁹ Exh. 28.

attainment area, asthma, and global warming; (2) reduced demand for and costs of electric energy and capacity and gas in periods of peak demand; (3) increased electric system reliability; (4) decreased impacts associated with electric transmission, distribution, and generation construction; (5) increased supply diversity; and (6) increased local economic growth.

In this same vein, the NRDC and Pace panel contends that the August 25, 2004 Policy Statement in Case 00-M-0504 expressly provides that long term investment may be used judiciously to support public policy goals of system reliability, environmental quality, fuel diversity, and market power mitigation. The panel suggests that many of these benefits would result were Section J adopted.¹⁹⁰ Likewise, NYSERDA argues that the goals of Section J are consistent with the public policy goals adopted by the Energy Planning Board in June 2002.¹⁹¹

DPS Staff argues that recovery of program costs through the MAC is reasonable for a variety of reasons. The reasons include that the actual costs to be incurred and their timing remain uncertain, that costs to be recovered would be subject to review by it and subject to refund should we determine they are inappropriate, and that the timing of cost incurrence and recovery would be closely matched.

DPS Staff also contends the proposed incentive is reasonable as it expects the company can contribute to the success of SBC and the proposed rate plan DM initiatives through information sharing and cooperation.

The Joint Supporters expresses strong support for changes envisioned to encourage DG. The proposal that standards intended to ensure timely interconnection for DG units of up to two megawatts would now apply as well to DG units of up to five megawatts, for example, is seen as a significant improvement.

¹⁹⁰ Tr. 310-B - 311-A.

¹⁹¹ Exh. 22, p. 2, citing New York State Energy Plan and Final Environmental Impact Statement (June, 2002), Executive Summary, pp. 2-3.

Anticipating the argument that customer classes that previously invested heavily in DM should not have to contribute to the costs of new DM initiatives proposed in Section J, the NRDC and Pace panel asserts that such an exemption is not warranted. While the panel does not deny some customer classes may have invested heavily already in DM, it maintains there will be new opportunities for such investment and, in any event, that all customer classes will enjoy the extensive public interest benefits outlined above.

Finally, it should be noted that the NRDC and Pace panel recommends that we adopt rate plans with provisions like those in Section J for all electric utilities in New York.

3. The December 15 Submissions in
Opposition to Section J

In addition to PULP, which opposes the JP broadly, three other active parties filed comments, urging that we reject Section J and require that DM issues be considered further in a

separate proceeding.¹⁹² These parties include NYECC,¹⁹³ CPA,¹⁹⁴ and Energywiz, Inc.¹⁹⁵ NYECC and CPA state they support all sections of the JP other than Section J. Energywiz takes a position only with respect to Section J. While CPA opposes Section J generally, it supports adoption of Subsection J(4) concerning DG. These parties' arguments are summarized first, followed by responses and further arguments in support. Meanwhile, as noted previously, NRDC and Pace contend that Section J is reasonable as far as it goes but they recommend it be modified in ways they believe would improve it. These arguments and the responses to them are summarized later, followed by our discussion.

a. Arguments Opposing Adoption of JP Section J

At the outset, Energywiz and NYECC both make clear that they support the use of cost-effective DM. NYECC also says it supports SBC II and a reasonable extension in SBC III. Nevertheless, these parties believe Section J should not be adopted at this time.

¹⁹² State Senator John L. Sampson also submitted a letter dated January 13, 2005, asking that Section J be removed and considered when SBC funding is up for renewal. Alternatively, he suggests that funding in Section J be reduced to a level necessary to research the costs and availability of energy efficiency initiatives. His primary concern appears to be customer bill impacts.

¹⁹³ NYECC was formed during the pendency of this case, when the Owners' Committee on Electric Rates and the New York Energy Buyers Forum, Inc. merged. It represents colleges, hospitals, governmental agencies, cultural and financial institutions, industrials, housing cooperatives, and real estate organizations. Members' properties include the Empire State Building and Rockefeller Center.

¹⁹⁴ CPA is an association of large not-for-profit institutions, including Columbia University, New York Presbyterian Hospital, Mount Sinai Medical Center, Memorial Sloan-Kettering, Beth Israel Medical Center, NYU Medical Center, and New York University.

¹⁹⁵ Energywiz, Inc. violated our confidentiality rule, 16 NYCRR §3.9(d), following the conclusion of negotiations in this case. The violations involved criticisms of JP Section J.

NYECC and Energywiz both argue that it would be unfair as a matter of law or procedure to adopt Section J. NYECC emphasizes that many of the most important issues in Section J were not the subject of direct, responsive, or rebuttal testimony prior to the negotiations, and were not subject to the extensive discovery process that was employed over a period of many months with respect to other issues addressed in the JP.

Energywiz maintains that the amount of money proposed to be spent on DM is very large and that key underpinnings of Section J came up only at the very end of negotiations, when there was inadequate time for parties to obtain needed information and to test what was on the table. NYECC and Energywiz assert they were treated unfairly at the end of the negotiation process. Energywiz goes so far as to suggest that the State Administrative Procedures Act (SAPA) may have been violated in the negotiations.

NYECC asserts that the process following submission of the JP on December 2 was not fair either. It notes that statements and testimony in support of the JP were not filed until December 15, 2004 and that an adequate opportunity to undertake discovery and to file responsive testimony was not provided. NYECC concludes on this point, asserting JP Section J should not be approved as such action alone could result in an average revenue increase of 3.1 percent for all classes and of 5.1 percent for the customer classes within which many of its members fall.

NYECC, Energywiz, and CPA all object to the extent they believe Section J does not provide an opportunity for fair consideration of alternatives to DM that might produce cost savings and other benefits at a lower total cost. Alternatives identified by the three include the Cross-Hudson Power Line Project for a firm 560 MW,¹⁹⁶ the proposed 1,100 MW TransGas

¹⁹⁶ Energywiz contends the costs of the power line project are lower than for Section J's DM, and that considerable environmental benefits would also be achieved by that line. Subsequent to these comments, the referenced project was cancelled.

project in Brooklyn, a 500 MW increase in generation from Astoria in the next several years, and a possible 500 MW in response to a request by NYPA. Energywiz likewise complains that the JP does not explain why 300 MW of DM is needed to address projected load growth on top of 550 MW of SBC DM, DM from the Company's current targeted program, and new generation from the ERRP.

Arguments are also offered to suggest that the total costs and benefits of Section J must be better quantified before a decision can be made to authorize future recovery in rates. PULP complains the full extent of the costs is not known. NYECC, meanwhile, argues that only the costs are fairly certain while the benefits to be achieved are not.

Energywiz offers several reasons why it believes the desired 300 MW might not be achieved given the proposed cap amounts. It points out that the Company offset only 1,000 MW of demand growth in the six-year period ending in 1996. It says that effort was accomplished under circumstances where extensive DM had not already been done, new lighting and motor technologies were just becoming available, the incentives for Con Edison were higher in nominal terms than proposed today, and a substantial number of Con Edison's account representatives were employed in the effort. Given changes in circumstances since then, Energywiz cautions, the 300 MW goal may not be achievable in three rate years at the costs specified.

Energywiz also points to the recent targeted DM effort that yielded bids in the \$.70 per saved watt range; it does not explain the implications of this observation. Another Energywiz argument is that the JP does not establish that NYSERDA has the capacity to double its DM workload in New York City, assuming the incremental 300 MW would be achieved evenly over time. Energywiz also observes that NYSERDA's work effort would more than double if, as the former suspects, much of the proposed effort will fall in the second and third rate years.

In the same vein, Energywiz contends the base cap of \$112 million each for the targeted and system-wide initiatives is too low in at least two respects. The base improperly

includes, it contends, NYSERDA's program costs for several years prior to SBC II. According to Energywiz, SBC programs were ineffective in New York City in those years. The 25 percent adjustment to historic costs for inflation and to reflect higher costs in New York City is also completely inadequate, in its opinion, claiming that the need to use union electricians in New York City alone would alone require an upward adjustment of 25 percent to NYSERDA's historic, statewide costs.

NYECC and Energywiz both assert Section J could increase volatility in the MAC. Energywiz, for example, suggests that the impacts of Section J, if it were adopted, would occur primarily in the second and third rate year, when per/kWh increases greater than \$.01 could occur. A more reasonable alternative, it suggests, might be to recover a level amount over three years and to use anything left over as a future rate moderator.

In contrast to a claim by NRDC and Pace that all customers paying MAC rates should contribute to the costs of the proposed DM initiatives, Energywiz contends Section J would be completely unfair to SC 4, 8, and 9 time-of-use customers who have already invested significantly in DM, including through NYSERDA and Con Edison sponsored programs.¹⁹⁷ It suggests such customers have very little practical opportunity for further savings and that their ongoing contributions to the SBC effort are more than reasonable already. It would be improper to charge such customers approximately 20 percent of the total costs of the proposed 300 MW initiative in these circumstances, it says.¹⁹⁸

Energywiz points to the example of Columbia University, one of the Company's ten largest customers, where \$10 million of efficiency upgrades were made when Mr. Audin was energy manager there. That university already pays \$200,000 per year for SBC and another \$200,000 per year for the new

¹⁹⁷ These are the Commercial and Industrial-Redistribution, Multiple Dwellings-Redistribution, and General-Large service classifications, respectively.

¹⁹⁸ The derivation of the 20 percent figure is not provided.

initiatives would be completely unreasonable, according to Energywiz, given the diminished opportunity for that university to achieve further energy savings. Energywiz suggests it would be more reasonable to provide for an exemption in such circumstances, just as interruptible Con Edison gas customers were in Case 03-G-1671.

Finally, NYECC contends Section J should not be adopted on the grounds that it would undermine other JP terms (JP Section L) concerning what had been the contentious delivery service revenue allocation issue. It explains that SC 4 and 9 time-of-day customers fared relatively well in the new allocation as they have been contributing more than their cost of service. NYECC contends that JP Sections J and L are inconsistent and says it would not have entered into the revenue allocation agreement if it had known of the impacts of Section J.

b. January 18, 2005 Responses to Arguments Opposing Adoption

Turning, first, to process complaints leveled by some, three or more parties emphasize that DM issues were raised prior to negotiations in direct testimony pre-filed by Messrs. Saxonis, Chernick, and Gupta in September 2004 as well as in rebuttal pre-filed by Messrs. Saxonis, Rieder, and Chernick, in October 2004. Given these facts, these parties argue that no party should have been surprised that negotiations would take place on DM issues.

NRDC and Pace point out that all settlement negotiations took place on notice to all active parties and that those complaining participated fully. The City, meanwhile, contends that criticisms of the negotiation process are misleading, unsubstantiated, and simply not what happened. According to the City, every active party had a fair opportunity to attempt to eliminate or modify what is proposed in the JP.

As to the process followed after the Joint Proposal was filed, the City observes that the schedule was adopted in consultation with the interested parties and that there was no

objection at the time. The City and DPS Staff emphasize that all parties were afforded opportunities to: (1) submit comments and testimony on December 15; (2) conduct discovery on the JP; (3) cross-examine witnesses; and (4) submit post-hearing comments. Both maintain these opportunities were reasonable and they observe that NYECC took advantage of most of them.¹⁹⁹

Con Edison sees no need for a new or separate proceeding on DM issues. The Joint Proposal, if adopted, would provide for development of an action plan through a collaborative process that the Company expects NYECC and CPA will participate in. Con Edison argues these parties would be able to raise any concerns in that context and, if a consensus is not reached, would be free to request our intervention.

The City also suggests we should not be unduly concerned about allegations that the process was inadequate given the magnitude of the overall or individual class revenue increases described by NYECC. The City, NRDC, and Pace assert that NYECC's estimates focus only on the costs and do not reflect quantitative or qualitative benefits. This is just one example, in the City's opinion, of how NYECC improperly focuses only on the costs and fails to account for expected benefits.

Con Edison disagrees with the assertion that adoption of Section J precludes reasonable consideration of alternative resources. The Company states that it is reasonable to pursue all options during the term of the proposed rate plan given the identified need for resources on peak. It also points out that Section K of the JP, if adopted, would expressly provide for consideration of all alternatives for the long-term planning horizon.

¹⁹⁹ DPS Staff states that the process employed meets due process requirements. The City notes that while NRDC and Pace took advantage of the opportunity to file testimony on December 15, NYECC did not do so. Finally, the City observes that when NYECC's counsel was sick during the hearings, he inexplicably failed to have an alternate complete NYECC's cross-examination of the testimony and statements offered under oath by some of the JP's proponents.

NRDC and Pace disagree with expressions of concern that the proposed 300 MW of DM would not be cost effective, relying primarily on information provided on December 15, 2004 and summarized above. However, DPS Staff and the City offer supplemental information in this regard, either building on information already in evidence or based on other information.

DPS Staff, for example, argues as follows:

1. Section J will provide DM at a cost of \$813/kW.
2. The ERRP cost \$700 million or \$1,900/kW.
3. Keyspan Ravenswood's facility and the Poletti unit are all reported to cost about the same as the ERPP or a few hundred dollars less per kW.
4. DM costs are even more beneficial because fuel costs are also avoided.
5. To the extent DM costs lead to delays in new T&D investment, the DM initiatives are even more favorable.²⁰⁰
6. DPS Staff says this analysis shows not only that Section J is reasonable, but that the results will be more advantageous than the construction of new infrastructure.

The City presents two additional analyses. The first is as follows:

1. Con Edison's capital budget for load-related work is \$1.368 billion over the next three years.
2. The NYISO expects new load in this period of 535 MW.
3. If 535 MW requires \$1.368 billion of expenditures, and if 300 kW would reduce T&D costs proportionately, Section J would decrease Con

²⁰⁰ DPS Staff's January 18 Comments, p. 6.

Edison spending by 56 percent of \$1.368 billion or \$770 million.²⁰¹

The second City presentation in this regard has to do with the anticipated effects of Section J on capacity costs in and outside of New York City. The latter analysis leads it to conclude that Section J of the JP would reduce total capacity costs by \$166 million per year in New York, with all but \$25 million of that enjoyed in the City. According to the City, this is a significant quantitative benefit that would be enjoyed by all Con Edison ratepayers.²⁰²

CPB, meanwhile, argues that we need not be too concerned now about the relationship of costs and benefits. According to CPB, the DM programs under Section J will be implemented after an evaluation process that would ensure such programs are cost effective. CPB does not explain which JP term requires such an analysis.

Responding to suggestions that Section J would result in volatility of the MAC and customers' bills, the City maintains cost recovery through the MAC is reasonable and consistent with prior practice for DM costs.

Three or more parties contend that no customers subject to the MAC should be exempt from paying for the proposed DM initiatives. Con Edison acknowledges that some customers have invested in DM, including some DM it expects was implemented with support from the general body of ratepayers. However, this is not a good reason to exempt some customer classes, Con Edison continues, as many customers in all classes will not benefit to the same extent as others and would, nevertheless, contribute to Section J costs. The Company emphasizes as well that Section J is expected to have numerous economic, environmental, health, and other public interest benefits that will be enjoyed by all customers. New York City echoes this same theme, as do NRDC and Pace.

²⁰¹ The City's January 18 Comments, pp. 15-16.

²⁰² Id., pp. 16-17.

During the hearings, counsel for NYECC asked questions that tended to suggest it would be unfair to recover Section J costs from NYECC members who have invested heavily in DM. The implication was that to the extent NYPA does not contribute to MAC costs, it would be "exempt" from the costs of Section J and NYECC members should be treated likewise. In anticipation of an argument by NYECC along these lines, NYPA argues it is reasonable that NYPA not contribute to Section J costs because NYPA conducts its own extensive DM efforts.

The City characterizes as absurd the notion that Section J is inconsistent with, or in any way undermines, Section L's provisions on revenue allocation. The City argues that: (1) NYECC was in the negotiations leading to Section L; (2) NYECC continues to support the proposed revenue allocation; (3) the proposal to recover DM costs through the MAC was not opposed by any party; (4) NYECC executed all of the JP other than Section J; and (5) NYECC presents no argument, statement, or testimony challenging the proposed revenue allocation. That allocation, the City says, is fully supported by the record.

Finally, several miscellaneous other arguments are offered to suggest Section J should reasonably be adopted in spite of opposition expressed by PULP, NYECC, Energywiz, and CPA. These include: (1) the Company's contention that Section J is supported by a rational basis; (2) the City's argument that Section J's reasonableness is further established by the fact that some parties oppose its adoption, and others (NRDC and Pace) urge that it must be modified; (3) the City's criticism of CPA to the extent the latter opposes Section J except for Subsection 4 concerning DG (the City suggests such "cherry picking" could upset the precarious balancing of parties' interests in the JP); and (4) the City's contention that the goals of Section J are consistent with those of the New York City Energy Task Force, a group which included NYECC's predecessors.

c. Additional Arguments in Opposition

NYECC is the only party that submitted post-hearing comments in opposition to JP Section J. The themes expressed are similar to those previously summarized. These arguments are as follows:

1. Process - while it is true that some witnesses discussed DM issues in testimony pre-filed before the negotiations, none recommended we take action now to order 300 MW of DM, adopt cost caps in the hundreds of millions of dollars, and provide for recovery of DM costs and incentives through the MAC. Instead, it insists, the recommendations were aimed at having the Company make future filings that we would act on subsequently.
2. Burden of Proof - the proponents of Section J failed to carry their burden of proving its reasonableness. According to NYECC, insufficient information has been provided, for example, to show that: (a) the projected peak demand growth is properly reflected in the sales forecast underlying the delivery service revenue requirements; (b) 300 MW of DM is needed to meet projected demand growth on top of 550 MW of SBC II and SBC III DM; and (c) benefits will exceed costs on a quantified basis, including benefits associated with deferring investment in T&D plant.
3. The Amount at Stake - the total cost cap of the DM initiative, allegedly some \$379 million, exceeds the size of the delivery service revenue increase and the JP unreasonably fails to make this clear.
4. Collaborative Participation - the DM collaborative initially proposed by DPS Staff witness Saxonis did not limit participation to 15; most of the participants named in the JP will be those who will not be requested to pay the costs, and some proposed participants (EE & DG vendors) cannot be expected to be concerned about minimizing programs costs reasonably.
5. Practicality - the achievement of 300 MW of DM is in doubt because the Company's recent RFP for 125

MW of targeted DM only produced cost-effective bids for 47 MW.

6. Cost Effectiveness - Company witnesses testified that only cost effective DM would go forward. However, a discovery response suggests to NYECC that the Company's definition of cost effective in practice will amount only to whether or not Con Edison's or NYSERDA's shares of the cost are, on average, less than or equal to the capped amount. Adoption of this term would amount to an abrogation of our responsibilities, according to NYECC.²⁰³
7. The SBC Precondition - the precondition applies only to the proposed system-wide initiative rather than to all 300 MW and, in any event, the precondition only involves the execution of contracts and not the delivery of the contracted amounts.
8. Discrimination - there is no rational basis for allowing recovery of DM costs from NYECC members' service classes but not from NYPA and Economic Development classes who do not pay MAC rates. Accordingly, NYECC urges that adoption of Section J would violate PSL §65(1)-(3).

²⁰³ The referenced request and response is part of Exh. 9 and states the following:

Question 227: Given the proposed adder to the \$112 million cap for administration and evaluation, is it reasonable to infer that there will be an evaluation of the cost effectiveness of any targeted EE/DG that would be implemented under the JP? If so, who would perform the evaluation and would the results of the evaluation be reported to the Commission?

Response: Targeted EE/DG costs (including incremental administrative fees to be incurred by Con Edison for such things as contractors that are needed to perform pre- and post-installation inspections) that were below the cap (as adjusted to reflect the present value of deferrals) would be considered cost effective because any shortfall in the targeted EE/DG program would shift to the system-wide program and be funded up to the cap. As with the RFP discussed in the response to 214, the Company will consult with Staff prior to awarding any contracts for targeted EE/DG.

9. Exemptions - the Commission has provided for exemptions in situations similar to those presented²⁰⁴ and it should provide exemptions here for service classes that will have little or no real opportunity to participate and receive direct benefits.

d. Proposals to Keep Section J but to Modify It and Responses

NRDC and Pace recommend that we: (1) limit the system-wide initiative to permanent DM measures only; (2) require that a revised incentive mechanism be developed that would still limit the total incentive to \$15.188 million;²⁰⁵ and (3) require that a revenue decoupling mechanism be developed promptly in the proposed DM collaborative, and put into effect going forward.

The arguments concerning these three issues are presented next.

(i) Permanent Measures Only

NRDC and Pace contend that demand response programs produce savings for the long term only through continued investment and that they produce relatively fewer environmental benefits because they are effective only for a very small number of hours per year. NRDC and Pace suggest, accordingly, that the system-wide initiative should be limited to energy efficiency and DG initiatives, as is proposed for the targeted initiative.²⁰⁶

²⁰⁴ Opinion 95-20, pp. 5-6, Opinion 93-3, p. 2, and Case 94-E-0648, Order of June 26, 1995.

²⁰⁵ The NRDC and Pace panel also suggest that NYSEDA should be expressly authorized to petition to increase the cap for the system-wide initiative.

²⁰⁶ NRDC and Pace's January 18 Comments, p. 5. NRDC and Pace's panel had also suggested during the hearings that further demand response programs are not needed given the amounts implicit in SBC II and SBC III. Con Edison faults NRDC and Pace for not specifying the total amount of demand response programs included in SBC II and III.

Con Edison responds that NRDC and Pace have not offered a sufficient basis for a change. It notes, moreover, that the central goal of Section J is to reduce peak demand and that demand response programs will be useful in achieving that goal.²⁰⁷

DPS Staff responds that NRDC and Pace's recommendation should be rejected as one of the latter's witnesses has supported the use of demand response initiatives in other states, demand reductions will necessarily result in energy price reductions and other benefits desired by NRDC and Pace, and the per kWh cap set forth in Section J will likely result in more permanent energy efficiency measures in any event.²⁰⁸

The City, finally, emphasizes that it and others might not have agreed to Section J if the load management provisions had not been included. It criticizes NRDC and Pace for "cherry picking."²⁰⁹

(ii) The Incentive Mechanism

If adopted, the proposed DM incentive mechanism would afford Con Edison an opportunity to earn \$22,500 per MW of DM achieved up to a three-year maximum of \$15.188 million.²¹⁰ Any MW reduction achieved as a result of the recommended 300 MW initiatives, SBC III, and other specified programs would be counted, up to 675 MW.

NRDC and Pace propose that the proposed maximum incentive dollar amount be adopted. However, they also request that DPS Staff and NYSERDA, in consultation with other collaborative participants, be directed to develop a different incentive mechanism and report back to us within 90 days of this order's issuance.

²⁰⁷ Con Edison's January 18 Comments, pp. 12-13.

²⁰⁸ DPS Staff's January 18 Comments, pp. 7-8.

²⁰⁹ NY City's January 18 Comments, p. 21.

²¹⁰ Like all positive incentives proposed in the JP, the DM incentive would be ignored for equity earnings sharing purposes.

The two DM incentive mechanism changes favored by NRDC and Pace would: (1) provide relatively greater rewards for MW reductions accompanied by long-term energy reductions (MWh) and environmental benefits; and (2) add a "penalty" or downward revenue adjustment for Con Edison that would equal 75 percent of the \$15.188 million if 300 MW of targeted and system-wide DM is not achieved in the three rate years.²¹¹

DPS Staff responds that there is nothing to consider because NRDC and Pace had, but declined to take advantage of, a full and fair opportunity to put forward a more detailed incentive proposal. These parties, the DPS Staff argument goes, should not be given a second opportunity to do so in the collaborative. DPS Staff also advises that a "penalty" per se would not be legal under PSL §25. Even if considered as a legally acceptable revenue adjustment, DPS Staff argues, such a mechanism should not be adopted as: (1) it is not in general use elsewhere; (2) NRDC and Pace's own witness, Mr. Plunkett, would not agree to operate subject to such a mechanism; and (3) one possible result might be that the Company would lose revenues unfairly in the event third party contractors fail to meet their legal commitments.²¹²

The City asserts a sufficient basis for the proposed changes has not been demonstrated and that the proposed incentive mechanism already reasonably balances the need to minimize total costs with the need to spur Con Edison.²¹³

The Company also opposes both aspects of NRDC and Pace's incentive proposals. With respect to the proposal that MWh reductions be an element of the incentive calculus, the Company notes that the principal goal of Section J is to reduce peak demand. It suggests this is a worthy goal, asserting it is well settled that system peak reductions are the most beneficial in terms of both pollution and price reductions.²¹⁴ The Company

²¹¹ NRDC and Pace's January 18 Comments, pp. 11-12.

²¹² DPS Staff's January 18 Comments, pp. 8-9.

²¹³ NY City's January 18 Comments, p. 21.

²¹⁴ No authority is provided for this claim.

also maintains it makes no sense to penalize it if 300 MW of DM is not achieved, claiming that the JP expressly provides that NYSERDA is responsible for picking up any MW reductions Con Edison cannot achieve in the targeted program.²¹⁵

(iii) Revenue Decoupling Mechanism

Section J of the JP proposes that in the event Con Edison loses delivery service revenues as a result of the 300 MW of proposed DM, it would be allowed to recover the lost revenues through the MAC over a reasonable period. The Company estimates such revenues would amount to \$40 million per year. However, the method that would actually be used to calculate lost revenue is not specified in the JP and would be determined by Con Edison alone during the pendency of the proposed DM collaborative. NRDC and Pace object to these aspects of the JP and the objection is opposed by Con Edison, DPS Staff, and the City.

The initial NRDC and PACE arguments are as follows:

- The Company has a powerful economic incentive to increase sales in order to increase revenues and, as fixed costs are fully recovered, to increase profits dramatically.
- The effect of DM, however, is to decrease sales.
- There are many reasons why customers may employ DM beyond the proposed 300 MW, including stricter efficiency standards for appliances and buildings, and as a result of tax incentives for more efficient machinery.
- All of these sources of DM, to the extent they are incremental, are not reflected in the sales forecast underlying the delivery service revenue requirement.²¹⁶

None of these contentions are disputed.

²¹⁵ Con Edison's January 18 Comments, pp. 12-13.

²¹⁶ NRDC and Pace's January 18 Comments, pp. 1 and 6-9.

NRDC and Pace turn next to the question of whether the proposed recovery of lost revenue for 300 MW of DM and the proposed approximately \$15.2 million incentive over three rate years adequately overrides the Company's economic incentive to increase sales. The simple answer to this question is no, they contend, in part because a sales growth increase of only .14 percent above that reflected in the delivery service revenue requirement calculations would yield more profit than the proposed \$15.188 million incentive.²¹⁷ Another reason why the answer to the above-stated question is no, according to NRDC and PACE, is that it would not be reasonable to adopt a provision that would allow Con Edison alone to determine the formula for calculating lost delivery service revenue.

Given the importance of JP Section J's objectives, the inconsistency between Con Edison's profit motive and those objectives, and the assertedly inadequate remedies set forth in JP Section J, NRDC and PACE recommend that we reject the JP's DM incentive and revenue loss provisions and require DPS Staff and NYSERDA to: (1) take the lead in the DM collaborative to develop a Revenue Decoupling Mechanism (RDM); and (2) report back with the results within 90 days of this order. Among other things, this proposal is intended to ensure that Con Edison would be made whole for all delivery service revenues lost from DM, whether or not the DM is the result of the DM initiatives in this case.²¹⁸

The NRDC and Pace RDM proposal is opposed by Con Edison, DPS Staff, and the City. At the outset, they criticize NRDC's failure to develop a specific RDM proposal. Such a proposal should have been forthcoming, these parties suggest, because:

²¹⁷ The assumption that all sales growth converts evenly into profit is not reasonable. It was clear at the hearing that NRDC and Pace would make this argument. However, others do not address it.

²¹⁸ NRDC and Pace's January 18 Comments, pp. 10-14.

- The Company operated with an RDM in effect from April 1992 through November 1997, and that RDM was discontinued thereafter for cause.
- A proposal to institute an RDM and to establish a collaborative for such purpose was rejected at the time the existing Con Edison electric rate plan was established, given the SBC program and the unintended negative consequences associated with RDMs used in the past in New York.
- The need for an RDM is even more diminished since then given the 300 MW of DM proposed in JP Section J.
- DPS Staff is on record in a July 9, 2004 report in another on-going proceeding, Case 03-E-0640, as opposing the use of RDMs generically.
- There was more than enough time in the case to develop and submit a detailed proposal.
- Development of an RDM in the DM collaborative would unnecessarily hamper other important work.

Second, these three parties contend the proposed incentive and lost revenue provisions are reasonable and need not be changed. The Company, for example, denies there is any reason to suspect it will not meet its commitments if the JP is adopted and suggests past positions it may have taken with respect to the SBC or appliance efficiency standards are not a good reason to think otherwise.²¹⁹ Its claim in this regard should be accepted, according to the Company, in part because utility actions or inactions, in a report relied on by NRDC and Pace to support parts of JP Section J, are not among those items described as an impediment to DM. The City adds, moreover, that even if a utility takes a position in opposition to more DM or

²¹⁹ Con Edison also argues that NRDC and Pace are incorrect to suggest the Company has somehow stymied greater use of energy efficiency.

higher efficiency standards, it does not mean such a position will necessarily be sustained.

DPS Staff describes NRDC's and Pace's concerns as speculative and unwarranted to the extent: (1) much DM is ongoing without an RDM; and (2) the Company's failure to meet the requirements of our order on DM could result in penalties of up to \$100,000 per day. The gist of these and related arguments is that the JP's proposals for a significant increase in DM, for an incentive, and for the Company's recovery of lost delivery service revenues are reasonable overall, and that the balance reflected among the JP's terms should not be disturbed because of NRDC's and Pace's RDM proposal.

Con Edison and DPS Staff argue that even if one agrees that an RDM makes some theoretical sense, it cannot be assumed that such a mechanism will be effective. They both emphasize the lack of evidence about how effective an RDM mechanism might be. It was suggested during the hearings that an effective RDM is in effect for Pacific Gas and Electric. However, DPS Staff suggests this is not nearly enough information to establish that the RDM in question is effective in fact.

The fourth general argument offered in opposition to an RDM is that it would be very hard, if not impossible, to develop an RDM that would address all the problems experienced in New York in the past (large deferrals, rate instability, and rate uncertainty) without creating any new ones. The suggestion here is that it would be exceedingly complex and administratively burdensome to develop an RDM that isolates the effects of weather, economic growth, and other non-DM factors and provides only for the recovery of revenues lost because of DM. The City questions whether an RDM would have the undesirable effect of shifting, from the Company to its ratepayers, the risks of weather changes and economic downturns.

Other miscellaneous consequences of an RDM, according to DPS Staff, are that increased sales could not be counted on to fund needed infrastructure investment and that changes in price signals from an RDM could hinder rather than further cost-

effective DM. The City, finally, expresses concern that an RDM could thwart economic development.²²⁰

In their post-hearing pleading, NRDC and Pace counter some of the foregoing criticisms. They claim the need for an RDM is clearly established by the Company's past pattern of behavior. The Company's opposition to an extension of the SBC, its failure to advocate for energy efficiency appliance standards, the recent contracts for only 47 MW of DM resulting from a June 2003 RFP for 125 MW, and a RFP for DG that yielded no new projects, according to NRDC and Pace, are all manifestations of the Company's overriding profit motive. They also point out that Con Edison has been subject to a requirement that it evaluate and implement cost-effective DM as an alternative to major T&D projects since at least 1997 and emphasize that the Company's witnesses in this case were unable to identify a single instance in which a major T&D project of \$10 million or more was deferred because of DM.

As to an RDM's potential to increase bill volatility, NRDC and Pace point out that the mechanism would, because of the divestiture of generation, apply only to the 50 percent of total revenues collected for delivery service, cutting in half any volatility that might have resulted from RDMs in the past. They suggest as well that volatility could be addressed in the RDM design and that any remaining volatility would pale in comparison with that associated with the more than \$3.35 billion of capacity, energy, and other costs recovered through the MSC and MAC in 2003.

Likewise, NRDC and Pace disagree with the suggestion that it would be too complex to develop a reasonable RDM. They assert that the same level of complexity would be involved in the development of a lost revenue mechanism for the 300 MW of DM proposed in the JP.

²²⁰ The arguments in opposition to an RDM are generally set forth in Exh. 2, pp. 25-27; Con Edison's January 18 Comments, pp. 7-12; Exh. 15, p. 40; DPS Staff's January 18 Comments, pp. 2-5; and the City's January 18 Comments, pp. 20-23.

Finally, NRDC and Pace assert that it is possible to develop a reasonable RDM, noting a DPS Staff witness agreed an RDM could be designed that leaves the risk of weather fluctuations with the Company, and claim an RDM can be designed to accommodate increases in sales associated with economic growth. These parties acknowledge that it may not be possible to develop a perfect RDM. However, they suggest little in regulation is perfect and that the effort is warranted given the important goal of properly aligning the Company's economic interests with the public's interest in reliability, cost minimization, and environmental protection.²²¹

4. Discussion

In the subsections that follow, we explain our decision and reasoning, and consider issues concerning the process in this case, the proposed cost recovery method and exemptions, other proposals to change the incentive mechanism, the RDM proposal, and other matters.

a. Terms Adopted and Reasoning

We are adopting nearly all of the terms of Joint Proposal Section J. The general goal of fostering the use of DM resources to offset projected peak load growth is very important given the numerous public benefits DM alone can provide in comparison with typical alternatives. Those benefits include reduced energy consumption, reduced air pollution, avoidance of the environmental impacts associated with construction of electric generation, transmission, and distribution facilities, increased supply diversity, and increased economic growth. The specific terms fostering development of DG (JP Subsection J-4) are also reasonable and are unopposed by any party.

While nearly all the terms of JP Section J are adopted, several additional terms are being adopted, either in addition to or in lieu of those proposed.

²²¹ See, generally, NRDC and Pace's January 18 Comments, pp. 13-20.

The differences between the terms we adopt and those proposed in the JP are as follows:

(i) The roles described for the DM collaborative process²²² are adopted subject to the proviso that DPS Staff will file with the Secretary, and serve on interested collaborative participants, brief periodic reports on progress achieved and any impediments it perceives. This reporting requirement will continue through the three rate years. To the extent any such reports indicate that Con Edison is not complying reasonably with the terms of this order, the Action Plan, or any instructions or guidance we give following our review of the Action Plan (see below), the Company will be allowed a reasonable opportunity to file and serve responsive comments. This additional term has no effect on other reporting requirements in JP Section J, which are adopted.

(ii) The proposal²²³ that NYSERDA will file the Action Plan with us is adopted except insofar as the JP suggests that filing would only be "for information purposes." Consistent with our overall authority and responsibilities under the Public Service Law, we reserve the right to review the Action Plan, and if warranted, to issue an order or provide other guidance thereafter. This additional term is necessary because the terms of the Action Plan will not have the same force and effect as our orders. Our review of the Action Plan will be expedited to ensure it does not lead to undue delays in the issuance of RFPs or other offers.

(iii) The JP²²⁴ proposes that the Company be required to evaluate and implement cost-effective measures as alternatives to major T&D projects. However, the term "cost-effective" is not defined. Moreover, neither JP Section J(3)²²⁵ concerning the targeted load reduction initiative, nor JP

²²² Development of the Action Plan, Exh. 1, p. 63, bottom; and coordination with the Company for the targeted initiative, Exh. 1, p. 65, bottom.

²²³ Id., p. 64, line 4.

²²⁴ Id., p. 70.

²²⁵ Id., pp. 65-67.

Section J(5)²²⁶ concerning the system-wide initiative, requires that the DM programs to be selected be "cost effective" or defines that term. Finally, in this regard, the JP proposes²²⁷ that NYSERDA should be required to adopt an evaluation process for the system-wide initiative, but the particulars of that evaluation process are not specified.

Each of these terms is adopted subject to the express proviso that Con Edison and NYSERDA will each be allowed to pursue their respective shares of the 300 MW goal only with programs that are cost effective on a total resource cost basis.²²⁸ In furtherance of this requirement, Con Edison and NYSERDA will each be required to file separate plans, identifying the programs each expects will be proposed and explaining how each intends to evaluate such programs on a total resource cost basis. These separate plans should be developed by Con Edison and NYSERDA in consultation with the other members of the collaborative. Each of the filings must be made prior to issuance of the relevant RFP or other offers. The filed plans will each be evaluated expeditiously.

We agree that DM can provide important economic, environmental, reliability, and other benefits. However, DM programs adopted pursuant to this order must be cost effective on a total resource cost basis and Con Edison's and NYSERDA's respective shares of total DM program costs must fall below the capped amounts to ameliorate rate impacts.²²⁹

NRDC and Pace submitted information which tended to suggest 300 MW of DM could be achieved on a cost-effective basis in New York City. These same parties, DPS Staff, and the City, also submitted information that tended to suggest that so

²²⁶ Id., pp. 69-70.

²²⁷ Id., p. 69, middle.

²²⁸ See generally, Case 29409, Plans for Meeting Future Electricity Needs, Opinion No. 88-20 (issued July 26, 1988), pp. 30-40, for a discussion of the broad context within which costs and benefits would have to be evaluated.

²²⁹ As Con Edison's argument suggests, it likewise retains its on-going responsibility to consider alternatives in the short- and long-run.

long as the Con Edison and NYSEERDA shares of DM program costs stayed below the proposed capped amount, the investments in the associated DM programs would be reasonable. However, neither of these lines of argument establishes that the programs that will actually be employed would be cost effective on a total-resource cost basis.

(iv) The last sentence of JP Section J(7)²³⁰ proposes that the Company provide DPS Staff and members of the Collaborative the procedures that will be used to calculate lost revenues. This term is rejected. We will determine the procedures that will be used to calculate lost revenue in the context of a notice and comment process to be initiated upon the filing of a Company tariff. As the DM payments are justifiable as a means of obtaining capacity and energy and, in the case of the targeted DM program, T&D deferrals as well, we anticipate recovery in the kW and kWh charges in the MAC.

(v) The Joint Proposal assumes the SBC program will be continued and that the new program would yield 300 MW of DM in Con Edison's territory in the three rate years (e.g., JP, p. 62, middle and p. 69 middle). The decision of whether or not the SBC program will extend beyond June 2006 will be made in another case, based on the record there. The DM terms we adopt today imply nothing with respect to what actions will be taken in that other case.

b. The Process in This Case

We conclude that the procedures employed in this case were reasonable given the DM terms adopted. Indeed, some of the new terms adopted are a direct result of that process.

For example, this order specifies that the Company will be allowed to recover from ratepayers in the future both its and NYSEERDA's shares of total costs only for those DM programs that are determined to be cost effective on a total-resource basis and only to the extent their share of total DM costs falls within the relevant cap. Moreover, contrary to the

²³⁰ Exh. 1, p. 71, middle.

suggestion of several parties, we are not setting MAC rates or revenues at this time.

The NYECC comparison of the maximum possible impacts on MSC and MAC revenue, on the one hand, and the delivery service revenue increases, on the other, is inapposite. The objectives of the DM initiatives ordered here are to help ensure that peak demand needs are met, and that MSC and MAC revenue levels in total in the long run will be lower than their sum otherwise would be if cost-effective DM were not employed.

As to the numerous specific procedural complaints raised with respect to JP Section J, we conclude as follows:

(i) While many parties pre-filed testimony proposing that we take action to increase future use of DM in the Company's service territory, no witness proposed that we take such action in this order until NRDC and Pace filed testimony on December 15, 2004.

(ii) However, there is no requirement, or good reason, why testimony must be pre-filed on a topic before it can be subject to negotiations. Indeed entire cases can be negotiated without a tariff filing ever having been made.²³¹

(iii) No party sought relief from Judge Lynch at the time the negotiation process is said to have become unfair. If anything was to be done to address perceived or actual unfairness, such concerns should have been timely addressed to the Judge.²³²

(iv) As to the reasonableness of the post-hearing process and schedule, it was adopted by the Judge only after consulting with the parties, including NYECC, and there was no objection at the time. Moreover, not a single active party in this case ever asked Judge Lynch to modify the post-hearing schedule. The complaints along these lines are untimely.

²³¹ 16 NYCRR §3.9(c).

²³² The contention that SAPA was violated is rejected. In a rulemaking proceeding such as this, SAPA requires notice, an opportunity to comment, and hearings. These minimal requirements were more than met in this case.

c. Recovery Method and Exemptions

The arguments about recovery of Con Edison's and NYSERDA's shares of DM costs in the MAC, an asserted inconsistency between the allocation of delivery service and MAC recoveries, and the appropriateness of exemptions are all connected. Nothing in these arguments leads us to conclude that DM terms should be adopted different from those summarized in subsection a, above.

We conclude that recovery through the MAC is reasonable. As several of the proponents observe, the extent of the costs and the timing of their recovery remain uncertain, other DM costs have been recovered in the MAC in the past, and cost incurrence and recovery would be matched in time. Moreover, no party argues or gives reasons why such costs would more appropriately be recovered in another Con Edison rate.

Turning to the alleged inconsistency between the allocation of delivery service revenue requirement as proposed in JP Section L and the recovery of DM costs through the MAC, we are aware of no reason why the two have to be consistent. No party, including NYECC, has argued or given reasons why DM costs are appropriately recovered through a rate other than the MAC. Accordingly, it is appropriate that DM costs be recovered in the same manner as other costs subject to the MAC.

Of the two basic arguments offered in support of exemptions, one is based on the suggestion that all large time-of-day customers have invested substantially in DM already, will not be able to share in any of the direct economic benefits of the DM initiatives, and thus, should be exempted. The information provided in support of such a broad exemption is anecdotal at best. Indeed the best information provided in this regard is the example of Columbia University. However, this information alone hardly establishes what the large time-of-use classes have done as a whole. No explanation has been provided either about the extent to which any prior efforts were supported in whole or in part by Con Edison or NYSERDA DM programs.

The second argument in support of an exemption is to the effect that if NYPA is to be "exempted" from paying for DM costs through the MAC, it would be discriminatory and illegal to deny large time-of-use customers a similar "exemption." This is not an instance where two similarly situated parties are being treated differently. Con Edison's customers represented by NYECC pay MAC rates, and as a general matter, NYPA delivery customers do not. As noted above, there has not been an argument by any party that DM costs would more appropriately be recovered in some rate other than the MAC. The claim of illegal and undue discrimination by NYECC, accordingly, is rejected.

d. Permanent Measures Only and Other DM Incentive Proposals

We are not adopting proposals to require that only permanent DM measures be allowed and that the incentive be modified to reward MW and MWh reductions. A downward revenue adjustment, if 300 MW of DM is not achieved, will not be adopted either.

If permanent DM measures are the most cost effective on a total-resource cost basis, it would be reasonable that these be the focus of the DM initiative. It is not yet known, however, if this will be the case. Accordingly, it would be unreasonable to require that such measures be employed exclusively or to establish an incentive mechanism that assumes they will be.

In light of the numerous regulatory provisions in place to help ensure cost-effective DM will be procured in the coming three rate years, a downward revenue adjustment is unnecessary. As discussed elsewhere, moreover, it is not appropriate to tie a downward revenue adjustment strictly to whether or not targeted DM levels are achieved given that

whether such measures will be cost-effective on a total-resource basis is not yet known.²³³

e. Revenue Decoupling Mechanism

Department of Public Service Staff and NYSERDA will not be ordered to lead the development of an RDM at the beginning of the proposed DM collaborative. We agree with NRDC and Pace that there is a conflict between the DM goal of reducing sales and the Company's economic incentive to increase sales. We also agree that the Company's sales in the three rate years, all other things being equal, might be lower than projected by a specific amount solely because of DM beyond the levels assumed for purposes of calculating the delivery service revenue requirements or that might result from DM initiatives that would be captured in the lost revenue mechanism for this case. We disagree, however, that the sole reasonable regulatory approach for eliminating this conflict is to adopt an RDM.

The regulatory mechanisms that will be employed in this case include: (1) the proposed maximum \$15.188 million incentive; (2) full recovery of lost delivery service revenue to be determined in a manner we shall prescribe; (3) the Company's full recovery of the reasonable costs of the program; (4) our on-going monitoring of the DM collaborative process; (5) our ability to seek a penalty if the Company fails to comply with our order; (6) Con Edison's ability to seek delivery service relief during the rate plan if its economic viability or ability to maintain safe, reliable and adequate service is jeopardized;²³⁴ and (7) that the Company's delivery revenues can be considered again in three years, at which time sales

²³³ NRDC and Pace also do not object generally to the proposed caps on the Company's and NYSERDA's shares of the targeted and system-wide initiatives. As those caps are based primarily on NYSERDA's historic costs for programs that are not limited to permanent measures, NRDC's and Pace's arguments are inconsistent when they support the caps and oppose the incentive proposed in the JP.

²³⁴ Exh.1, pp. 87-88.

forecasts can be updated. This broad array of measures is reasonable under the circumstances.

In reaching this conclusion, we find that NRDC's and Pace's arguments about the Company's past activities are poorly supported. The suggestions that the Company acted unreasonably for failing to implement DM as an alternative to major T&D projects, for example, is not accompanied by any evidence to the effect that there were, in fact, such alternatives and that the Company unreasonably ignored them. No specific information is provided by NRDC and Pace either to establish that the levels of DM in response to recent Con Edison solicitations are evidence of a concerted Company effort to rely on higher cost alternatives that would not reduce sales.

It is also clear that it would be quite daunting to develop an RDM that meets its objectives without having unintended and undesirable side effects. DPS Staff has considerable expertise in this regard and its overall opinion to this effect is entitled to significant weight.

While the regulatory mechanisms adopted are reasonable in the context of this record, and while we will not require that an RDM be developed and implemented in this case, we remain interested in ensuring that all reasonable efforts are made so that the incentive for utilities to increase sales does not interfere with the development of cost-effective DM in their service territories. We expect to provide further guidance on this issue in a separate proceeding in the coming months.

f. Miscellaneous

There are several miscellaneous DM-related arguments not discussed above. The first of these concerns NYECC's apparent objection to the proposal to limit DM collaborative participants to 15 and to provide for participation by many who would not contribute toward the costs of the DM initiatives. We expect the collaborative will be conducted fairly and that if all the different interests cannot be represented by the 15 initial members, that the number of participants will be increased. Given the DM term we are adopting, requiring that

all selected DM measures must be cost effective on a total-resource basis and that Con Edison's and NYSERDA's share of these costs fall within the cap, we see no need to require that a certain number of the participants must represent retail customers.

Another miscellaneous issue concerns NYECC's post-hearing contention that neither the targeted nor the system-wide initiative should go forward until SBC-funded DM initiatives are contracted for and fully implemented. A related question is why 300 MW of DM is needed to meet 535 MW of peak load growth given other expected supply and demand-side resources, including those funded by the SBC. Both of these arguments rest on the notions that the projected 535 MW increase in demand is accurate and static and that 675 MW of DM is not needed to meet such growth. There is no requirement that supply and demand match perfectly and reliability is enhanced to the extent the former exceeds the latter. It is also much too early to tell if the entire 675 MW of DM can come to fruition in the three rate years.

Another miscellaneous issue concerns NRDC's and Pace's suggestion that NYSERDA should be expressly authorized to increase the system-wide cap to reflect avoided T&D carrying charges and to petition to increase the system-wide cost cap. NYSERDA's system-wide initiative is not intended primarily to avoid T&D investment, and thus, it is unnecessary and inappropriate to provide for an adjustment to the system-wide cost cap for associated avoided carrying charges. The JP also reasonably fails to provide expressly for NYSERDA to petition for an increase in the system-wide cap, as the costs of the system-wide initiative will be incurred only after all SBC funds are encumbered. This is a reasonable capped amount given the interest in ameliorating overall rate impacts.

The final miscellaneous issue concerns NYECC's claim that the NYISO's projected peak demand growth and the sales forecast reflected in the delivery service revenue requirement may not be consistent. The Joint Supporters, meanwhile, contends the NYISO projection of need is consistent with the sales forecasts in this case. Given the requirement that all DM

programs adopted pursuant to this order be cost effective on a total-resource basis, and that Con Edison's and NYSERDA's share of such costs fall within the cap, we see no need to evaluate these competing contentions.

K. System Reliability Assurance

Witnesses for several active parties submitted testimony urging that Con Edison be required to do more to ensure there will be sufficient supply and demand-side resources to meet future needs.²³⁵

Based on such testimony, Section K of the JP calls on the Company to prepare a study, primarily in the second half of 2005, of the supply- and demand-side resource options that could be used to meet system demand over the next ten years. This JP section specifies issues to be examined, proposes a process for refining the scope of the study, and discusses cost recovery (the costs of any consultants used to prepare the study would be deferred for future recovery).

Section K also describes other on-going and related planning efforts and includes provisions to minimize or avoid duplication of effort. Finally, as future needs on its system are identified that might be met through competitive generation, transmission, or demand management, Con Edison will undertake to recommend proposed "back stop" solutions that could be implemented in the absence of market actions to meet the identified needs. A process to be followed in such instances is described in the JP.

This section of the JP is expressly supported in the December 15 comments of Con Edison, DPS Staff, the City, IPPNY, and Joint Supporters. The Company's comments primarily recount the terms of this section.²³⁶ DPS Staff emphasizes that this section is responsive to testimony submitted by the City, NYECC, IPPNY, and NRDC. DPS Staff also states that New York electric

²³⁵ See, for example, Exh. 21, Part 1(c), pp. 6-21 (witness Chernick) and Exh. 11, Part 1, pp. 13-14 (witness Pechman).

²³⁶ Exh. 2, pp. 21-22.

utilities have an on-going obligation to plan for future needs and to ensure their electric systems can accommodate local growth and localized energy demands. The study should help Con Edison meet this obligation, according to DPS Staff.²³⁷

New York City projects that 6,800 MW of new supply is needed by 2013 and states that only 1,975 MW of that is under construction or planned. It also observes that the market has failed to yield the new generation and transmission resources needed to maintain safe and reliable service and that it does not believe the Company's service territory can afford any diminution in service quality. Accordingly, the City supports this JP section as it will produce a study of resources that could be used to meet needs through 2015 and establish a rational process for reviewing proposals Con Edison could implement on a back-stop basis.²³⁸

IPPNY supports JP Section K and emphasizes that a solicitation process open to multiple bidders is superior to other approaches to satisfying reliability needs.²³⁹ Joint Supporters, finally, emphasizes that this JP section calls for a full vetting of local generation, energy efficiency, and load management resources that might be needed to meet needs identified in the coming ten years.²⁴⁰

L. Revenue Allocation

An issue that was one of the most controversial earlier in the case concerns the allocation of the Company's delivery service revenue requirement among: (1) its full service and retail access customers (and within their service classifications); (2) NYPA; and (3) Economic Development Delivery Service customers. The Company submitted testimony and evidence in support of its proposed allocation.²⁴¹ The Company's

²³⁷ Exh. 15, pp. 44-45.

²³⁸ The City's December 15 Comments, pp. 13-14.

²³⁹ IPPNY's December 15 Comments, p. 1.

²⁴⁰ Exh. 34, p. 15.

²⁴¹ Exh. 4, Part 3, Tab 28, pp. 5-36; Part 5, Tabs 61-63, and Parts 6 and 7.

proposal, among other things, suggested NYPA's allocation should increase significantly relative to others'.

The Company's studies and proposals were opposed by many other parties, including NYPA,²⁴² the City, MTA, and Port Authority, jointly,²⁴³ Westchester,²⁴⁴ and CPA.²⁴⁵ DPS Staff also offered revenue allocation recommendations.²⁴⁶

Extensive rebuttal on the topic was also pre-filed by the Company,²⁴⁷ DPS Staff,²⁴⁸ NYPA,²⁴⁹ the City, MTA, and Port Authority, jointly,²⁵⁰ and Westchester.²⁵¹

Section L of the JP sets forth a proposed two-page resolution of all of the issues raised in the testimony and exhibits of interested parties, recommending a specific revenue allocation in this case and a future collaborative to discuss and analyze how to best prepare studies supporting revenue allocation proposals, for use beyond the proposed three-year rate plan. This JP section describes the steps leading to the recommended revenue allocation. The results of that process for

²⁴² Exh. 38, Part 1, pp. 7-26.

²⁴³ Exh. 21, Part 1(d), pp. 54-69.

²⁴⁴ Exh. 40, Part 1, pp. 7-16.

²⁴⁵ Exh. 13, Part 2, pp. 10-11.

²⁴⁶ Exh. 16, Part 1(j), pp. 3-15.

²⁴⁷ Exh. 4, Part 8(n), pp. 8-28.

²⁴⁸ Exh. 16, Part 2(c), pp. 2 and following.

²⁴⁹ Exh. 38, Part 2, pp. 4-14.

²⁵⁰ Exh. 21, Part 2(c), pp. 2-19.

²⁵¹ Exh. 40, Part 2, pp. 2-6 and 8.

the first and third rate year delivery increases are set forth in JP Appendix M, pp. 2 and 3.²⁵²

Seven active parties expressly recommend adoption of the terms of this JP section. Among other things, these parties: (1) explain that the overall effect of the proposed revenue allocation is that NYPA's annual delivery service revenue requirement would increase by \$18 million or 1.825 times the overall delivery service revenue increase for rate year one and by \$29 million or 1.4 times the overall increase for rate year three, or by 19 percent or 1.66 times the overall revenue increase on a cumulative basis. This compares with Con Edison's original proposal, according to DPS Staff, to increase NYPA's revenue requirement by two times the overall revenue increase.

NYPA, the Port Authority, the City, and MTA all emphasize that their witnesses favored a smaller allocation for NYPA, but they each suggest the recommended outcome is reasonable overall for purposes of this case while not precedential or providing any indication that the Company's revenue allocation methods are reasonable.

The proposed use of credits in the allocation of revenue requirement is also reasonable, according to NYPA and DPS Staff. The former explains that it would receive 14.22 percent of forecast TCC auction proceeds (the \$60 million per year of proceeds that are subject to reconciliation) and 14.22 percent of one-half of historic TCC auction proceeds. The latter asserts that the proposed use of credits ameliorates the overall revenue increases to NYPA, producing the results described above, and is reasonable overall.

²⁵² A detailed explanation of these pages is presented in Exh. 9, Response 263. Of all of Con Edison's full service and retail access customer classes, the one revenue increase that is much larger than any other is the 29.6 percent proposed for rate year one for SC 6, Public and Private Streetlighting. The record shows this increase is warranted to align costs and revenues for this class. We previously mandated the transfer of bus-stop shelters to SC 6, increasing the class size from 300 to 3,000 and decreasing bus-stop shelters' bills, at the time, by approximately 40 percent. The overall bill impact of the current change is reported to be approximately 12 percent. See, Exh. 9, Response 266.

Finally, NYPA observes that the recommended outcome falls within the range of reasonable outcomes if the case were decided based on a litigated record. The City suggests the proposal would resolve a nettlesome issue in a fair and balanced way. MTA argues the proposal here is more equitable than what Con Edison had initially proposed.²⁵³

M. Rate Design

Section M of the JP has eight rate design provisions. The first proposes that rates set in this case be designated for delivery service generally. The company plans to file a transmission rate case with the Federal Energy Regulatory Commission (FERC). Whatever transmission revenue requirement FERC establishes would be considered subsumed within the delivery rates we set. Thus, no adjustment of our delivery rates would be warranted after FERC acts.

The second and third provisions explain how changes in revenue requirement for delivery service to NYPA and EDDS customers will be accomplished. One specific change that had been controversial is the proposed increase in New York streetlight facilities charge from \$5.22 per month now, to \$5.54 for rate year one, and \$5.86 in rate year three.

The fourth provision sets forth the specific steps that would be followed to set rates at levels necessary to recover the allocated revenue requirement from each of the Company's full service and retail access customer classes. Noteworthy changes here are the proposed elimination of the water heating rate block for residential classes (because the rates in that block are currently higher than for the first 360 kWh) and the proposed increase of residential customer and energy charges by the overall class percentage increase. As

²⁵³ Arguments in support of JP Section L are set forth in (1) Exh. 2, pp. 22; (2) Exh. 15, pp. 37-39; (3) NYPA's December 15 Comments, p. 4; (4) CPB's December 15 Comments, p. 4; (5) the Port Authority's December 15 Comments, pp. 3-4; (6) the City's December 15 Comments, pp. 10-12; and (7) the MTA's December 15 Comments, pp. 5-7.

previously discussed, the residential customer charge would increase in rate year one to \$11.04 per month.

The Company has been encouraging its Direct Current (DC) customers to convert. As more customers convert, the costs to operate the DC system are spread among fewer and fewer customers. The fifth provision of JP Section M proposes increases in the monthly customer charge for small DC service customers from \$10.00 to \$20.00 and for large customers from \$385 to \$1,256. The existing distribution charge would be increased from \$.11/kWh to \$.39/kWh. These rates could be changed annually pursuant to a filing with us, and revenues each year would be subject to reconciliation.

The sixth rate design provision acknowledges recent change in New York law under which military bases and non-public schools can now be served by NYPA and proposes in part that any resulting net revenue shortfall from this or similar changes in the future be collected on a current basis through the MAC.²⁵⁴

The seventh rate design provision lists miscellaneous tariff changes that would and would not be implemented. The ones that would not be adopted are those that were opposed in the testimony of one or more other active parties.

The final rate design provisions concern continuation of the existing Business Incentive Rate (BIR) Program. Among other things, it is proposed that the BIR allocation of 440 MW increase gradually to 452 MW with the new increment reserved for not-for-profit institutions using laboratory space for biomedical research. For purposes of the proposed rate plan, it would be assumed that BIR allocations would not result in any revenue shortfalls for the Company.

Comments in support of the JP's rate design section are offered by several parties. The Company points out that the proposed rate designs would generally maintain existing rate structures by increasing rates by applicable class percentages. The most noteworthy proposed tariff changes, according to the

²⁵⁴ See Exh. 1, Appendix D, Draft Leaf No. 162, proposed Clause 22.

Company, include: (1) imposition of contract demand surcharge (of two times the normal demand charge) that would apply when a customer connects to on-site generation equipment in violation of the Company's tariff; (2) a requirement that customers in existing one- to three-family houses relocate their meters outdoors whenever they upgrade their service conduits; and (3) establishment of various charges for extra services based on the costs to provide them.²⁵⁵

The DPS Staff explains that at least four of the Company's initially proposed tariff changes are not included in the JP based on opposition presented by it and other parties. It adds that the proposed BIR extension is contrary to the Company's original position that this program expire and is based on a balancing of BIR proposals offered by it, the City, Westchester, and CPA. DPS Staff expects the BIR program will assist municipalities in attracting and maintaining businesses.²⁵⁶

NYPA notes its agreement with the proposal that the parties continue to consider in a collaborative process the DPS Staff rate design proposal that service to NYPA include a \$5/kW summer/winter differential.²⁵⁷ CPB supports the proposal that the residential customer charge increase to \$11.04 and "remain at that level for the three rate years."²⁵⁸

The City observes that the proposed gradual increase for the monthly streetlight facilities charge is based on testimony by its witness that the Company's proposed increase to \$8.41 per facility was excessive and that a cost-justified increase of only \$5.86 per month was supported by the Company's study. The City also supports the BIR provision, pointing out that 820 commercial and industrial customers in New York City

²⁵⁵ Exh. 2, pp. 22-24.

²⁵⁶ Exh. 15, pp. 47-49.

²⁵⁷ NYPA's December 15 Comments, p. 9.

²⁵⁸ CPB's December 15 Comments, p. 4. The quoted part of CPB's comment is incorrect. JP Section M (4)(c) states that the customer charge would increase by the overall class increase in rate years one and three. See also, JP Section N(2)(d).

hold various BIR allocations and account for approximately 20,000 jobs in New York City. It contends continuation of the BIR program is vital and expresses satisfaction that the continued program will not require a \$50 per month customer charge, contrary to the Company's original proposal.²⁵⁹

The Joint Supporters, finally, supports this section of the JP, noting it does not include the Company's original proposal to levy standby service charges to technologies such as hybrid chillers. Other specific rate design provisions it supports are those calling for a cost-based increase in the carrying charge for interconnections (JP Section M(7)(b)(i)) and the proposed contract demand surcharge subject to the limitations set forth in it (JP Section M(7)(b)(iii)).²⁶⁰

At the evidentiary hearings, PULP asked a series of questions concerning the BIR proposal. Based on the questions asked, the BIR proposal was identified as one that could be discussed on the limited post-hearing briefs. As a result, several additional arguments are offered in support of the proposal.²⁶¹ However, PULP is silent in the BIR issue in its post-hearing pleading, and, thus, there is no objection to the BIR proposal.

N. Miscellaneous Provisions

There are nine miscellaneous provisions in JP Section N. The first reflects Con Edison's agreement to help NYPA implement a new billing system.

The second specifies that the terms of the JP, if adopted, would extend beyond the three rate years except as expressly noted. DPS Staff says that reconciliation of major expense categories would not continue, to help make sure the Company's deferrals and prospective revenue requirements will be looked at again in three years.²⁶² The second provision of JP

²⁵⁹ The City's December 15 Comments, pp. 20-21.

²⁶⁰ Exh. 34, p. 16.

²⁶¹ Con Edison's January 18 Comments, pp. 18-20 and Westchester's January 18 Comments, pp. 1-4.

²⁶² Exh. 15, p. 49.

Section N also proposes that delivery service revenues will not increase in the three rate years except where: (1) they are revenue neutral; (2) the Company's ability to provide safe and adequate service is in jeopardy; or (3) we determine the Company's rates are unjust or unreasonable for the provision of safe and adequate service.

Under the third provision, the Company would be permitted to defer the effects of certain government actions on its electric costs or expenses greater than \$7.5 million²⁶³ and retain the right to petition for the deferral of extraordinary expenditures not addressed by the JP.

The proponents ask that the terms of the JP be adopted in their entirety and they state that they retain the right to pursue their respective positions if the JP is not adopted according to its terms.²⁶⁴ DPS Staff comments that this provision is typical.²⁶⁵

Other standard miscellaneous provisions are to the effect that: (1) the terms of the proposal and the arguments offered in support of it are not precedential; (2) the JP's terms should be adopted because they are reasonable; (3) adoption of the terms would in no way abrogate or limit our authority; and (4) the proponents agree to cooperate with one another in effectuating their proposal.

OTHER ISSUES

The issues identified and discussed to this point have been organized by JP section. There are a few more issues that go beyond individual sections of the JP, and they are discussed here.

²⁶³ Exh. 9, Response 274 provides examples of how it would be determined if the \$7.5 million threshold had been met.

²⁶⁴ Given the pending March 31, 2005 suspension date, this can be described as the right to seek judicial review by proponents and opponents alike.

²⁶⁵ Exh. 15, p. 49.

A. Rights of Non-Signatories

A subset of Exhibit 9 responses reflect a philosophy, implicit in the JP, that: (1) those who signed the JP and are interested are automatically entitled to be served with some reports and other information to be generated in the future while those who did not sign have the same right as any member of the public to access such information in our files; and (2) those who signed the JP and are interested are sometimes entitled to be consulted on various matters in the future while those who did not sign are not.

Examples of JP terms in this category are set forth in Table 1.

TABLE 1

ITEM No.	JP REFERENCE	EXH. 9 - RESPONSE No.	TOPIC
1	p. 8, bottom	45	Prior to making any filing for an upward or advanced adjustment to the low-income discount in the third year, the Company would only have to consult with DPS Staff, New York City, and Westchester County, but not PULP.
2	p. 11, ¶3	59	Annual reports on the status of transmission and distribution investment would be publicly available but would be served only on signatories.
3	p. 12, ¶4	66	Annual reports on the status of generation plant investment would be publicly available but would be served only on signatories.
4	p.18, §F(1)	88	Monthly status reports to be provided until April 1, 2005, concerning the Purchase of Receivables, will only be served on DPS Staff and other signatory parties. However, the company advises it will keep all ESCOs informed.
5	p. 33, ¶9	125	Copies of retail access reports to be filed two times per year would be publicly available but would be served only on interested signatory parties.
6	p. 34, middle		High-level summaries of ESCO and customer surveys would be provided to interested signatory parties.
7	p. 50, top	169	With respect to the priority order for circuit breakers that are at or over fault current limitations, the Company would consult and meet only with interested signatory parties.
8	p. 74, §§3 and 4	255	The scope of the System Reliability Assurance Study would be developed in consultation with DPS Staff, the City, Westchester, and other signatory parties. The same parties would be updated if the study is not completed by December 31, 2005.

It is understandable that some parties might want to propose such terms in negotiations as a way of helping to generate signatures in support of a joint proposal. However, the philosophy reflected in these and any other similar sections of the JP is unreasonable from a number of perspectives and we decline to adopt such provisions.

Whether or not a party is a signatory to a joint proposal is not a reasonable basis for determining whether or not it should be served with copies of certain reports or the extent to which it should be consulted on issues of interest to it. Such a distinction is contrary to our long-standing policy of affording all interested parties equal opportunities to participate fully and effectively in our proceedings.²⁶⁶ Such a distinction also undermines cooperation we would expect from all parties in various future collaboratives that will ensue. Accordingly, in all instances where it is proposed that information will be filed and served on interested signatory parties, such information must also be served on any other interested party who expressly requests such information following our decision in this case. Moreover, in instances where it is proposed that consultations be limited in part to signatory parties, all interested active parties interested in participating in such consultative process shall have exactly the same right to participate upon request.

Our action here should not be taken as license for any active party to disrupt or attempt to delay unreasonably any of the numerous collaborative processes.

B. Minor Corrections and Clarifications

For a limited number of JP terms, information has been provided that corrects minor errors in the JP or that clarifies its terms. They are summarized in Table 2 and our conclusions concerning the JP's overall reasonableness rely in part on this information.

²⁶⁶ 16 NYCRR §4.3(c)(1).

TABLE 2

ITEM	JP REFERENCE	EXH. 9 - RESPONSE No.	TOPIC
1	p. 9, §C	47 and Tr. 236-37	50/50 earnings sharing would apply in the event of an earned equity return of exactly 13.0 percent.
2	p. 12, §4	65	Production plant account numbers are 310 through 346.
3	p. 15, §9	72	The section of the JP concerning earnings sharing is section C (not D).
4	Appendix H	75	The net salvage and annual depreciation rates shown are all percentages.
5	p. 17, §3	78	The words "revenue requirement" on line 5 refer to electric revenue requirement.
6	p. 17, §4	80-82	The annual showings would describe the Company's efforts resulting in property tax refunds or credits, would typically be filed in the first quarter of each year for the prior calendar year, and would be filed with the Office of Accounting and Finance.
7	p. 28, ¶a	117	Any funds not expended in one rate year will, to the extent possible, be spent in subsequent years. DPS Staff contends funds for competition outreach and education should not be commingled with those for promotion. The Company believes commingling is reasonable.
8	p. 40, §5	143	The terms secondary network and secondary contingency network are defined.
9	p. 40, §5	146	The reference to 70,000 customers at the end of the second paragraph is to 70,000 or more customers.
10	p. 43, §iv (also, p. 46, §iv) (also p. 48, §iv)(also, p. 50, §iii)	155 (also 164)	Demonstration of any extraordinary circumstances would be made by the Company in the context of the annual reports under JP §G(3) and the Commission would determine if extraordinary circumstances existed or not.

TABLE 2 (cont'd)

11	p. 50, §iv	172	As the over duty breaker performance metric will be measured on a rate year rather than a calendar year basis, required reporting for it would be done later than described for each rate year.
12	p. 56, §2 p. 57, §4	188	In each instance, the text defines the term in the heading.
13	p. 53, §I(1)(a) and Appendix L	179	Consistent with the text of the JP, the word "penalty," used twice in Appendix L, should be understood to refer to revenue adjustments.
14	p. 62, §1, continued	200	The reference to new generation is only to central generating stations.
15	p. 67, §4	230	The term "operating area" as used here differs from the term as it is used elsewhere in the JP and in our Electric Service Standards. The term "fault current limitations" as used here refers to limitations in additional fault current contributions by Distributed Generation.
16	p. 67, §4	231	The updates to be performed semi-annually will be made every six months.
17	p. 70, middle	240	The quarterly reports on demand reductions will be reported on both MW and MWh bases.
18	p. 70, §6	242	The Company and DPS Staff understand the general instruction - that the Company will evaluate and implement cost-effective measures as alternatives to major T&D projects - is limited to the targeted initiative set forth in JP §J.
19	p. 86, §e	272	The term "increase their allocation of BIR" is understood to refer to an increase in the total BIR amount over 452 MW and the assignment of the increment to the petitioning BIR administrator.
20	pp. 88-89, §3(a) and (b)	273	The \$7.5 million or more discussed in paragraph 3(a) on p. 88 is subject to the same caveat in n. 29 (on p. 89) as is the \$7.5 million in ¶3(b) on p. 89.

C. Schedules and Priorities

The JP and a subset of the Exhibit 9 responses make clear that many issues raised in this proceeding would not be resolved now and would continue to be worked on in varying degrees and for various periods after April 1, 2005. The total amount of work planned for these various collaboratives appears to be considerable.

A table summarizing the collaboratives was prepared by some of the parties and it is reformatted and set forth below as Table 3. In all instances, an initial milestone is set forth and end dates are provided in some instances.²⁶⁷

TABLE 3

Collaborative	Due Date	Results Required
New Streetlights Service Initiation, pg 61	April 1, 2005	Report to Director of Office of Consumer Services with respect to an agreed upon procedure
Demand Management - Action Plan, pg 63	30 days from order	Collaborative formed to discuss EE/DG/LM initiatives within Con Edison service territory; NYSERDA to file Action Plan within 180 days from date Order is issued.
Competition Outreach and Education, pg 28	30 days from order	Meeting to coordinate the Company's promotion of its Retail Marketing Program
Targeted Energy Efficiency/Distributed Generation, pg. 66	45 days from order	Meeting of Collaborative (established by Demand Management - Action Plan) to begin discussions on the targeted EE/DG initiative and to review the lessons learned from the Company's targeted DSM RFP issued in 2003. New program to be initiated within 9 months from date of Order.
NYC Streetlight Billing System, pg 60	60 days from order	Definition phase of functional requirement for a new NYC streetlight billing system. Recognizing a possibility of resetting the date, the parties agree to set November 1, 2005 as target date for implementation of system.

²⁶⁷ Exh. 9, Responses 106 and 131.

TABLE 3 (cont'd)

Collaborative	Due Date	Results Required
Revenue Allocation Process, pg 77	60 days from order	Analyze alternative ECOS methodologies and inputs consistent with generally accepted cost of service principles, winter/summer rate differential for the Rate I NYPA class and the streetlighting outage allowance; report to the Commission by December 31, 2005.
Green Power, pg 36	90 days from order	Consider a proposal for a Green Power program in Con Edison's service territory.
Consolidated Billing, pg 24	Anytime in RY3	In RY3, upon the request of two qualified ESCOs, a collaborative to discuss the reasonableness of and the time required for implementation of an ESCO consolidated billing program for residential customers without a POR component will be convened.
Bill Format, pg 34	on-going	As part of initiative established in Gas/Steam Rate Order, discuss current bundled bill format and possible redesign and/or formatting changes.
Retail Auction Pilot, pg 35	60 days from order	Study appropriateness, feasibility, and possible implementation of a mass market retail auction pilot program.
Distributed Generation, pg 67	30 days from order	Company to identify operating areas without fault current limitations and provide a schedule of planned upgrades of breakers in operating areas with fault current limitations.

We adopt the proposal that all of these important initiatives be undertaken. To the extent sufficient resources can be brought to bear on all of these initiatives on the schedules proposed, we encourage the parties to do so. In the event of resource inadequacies or scheduling conflicts, however, initial emphasis should be placed on initiatives intended primarily to increase reliability (such as, for example, the development of the Action Plan, the targeted DM program, and the system reliability assurance study), and to further our retail access policies (such as, for example, the bill formatting, retail auction pilot, and consolidated billing initiatives).

CONCLUSION

We conclude that it is reasonable to adopt a three-year electric rate plan for Con Edison, comprising almost all of the terms of the Joint Proposal and several other terms.

At the outset, a three-year rate plan is preferable to annual delivery service rate changes. The Joint Proposal includes at least six significant improvements over the Company's original multi-year rate plan proposal, including one providing for earnings sharing. With a multi-year plan, the level of delivery service rates will also be more predictable for customers and interested parties will have more time in the coming months to focus their collective resources on the many important collaboratives and other efforts to be initiated following this order's issuance. Indeed, not a single good reason has been offered to suggest it would be more reasonable to adopt a one-year rate plan at this time.

The provisions concerning the additional revenues needed to cover the reasonable costs of delivery service are all well supported by the record. Many of these provisions are broadly supported, unopposed, or opposed by only one active party. A very significant factor underlying these two increases is the Company's undisputed need to invest in distribution, substation, transmission, and other infrastructure to increase safety, modernize, expand to meet growth, ensure high reliability, increase efficiency, avoid future and ameliorate existing environmental problems, and increase security. Such investment is essential to ensuring the Company can provide the high level of service quality that is necessary in a highly-populated urban environment. Another significant revenue requirement factor is the return on equity and, as discussed above, there is voluminous information in the record supporting an equity return as high as 10.3 percent and a 48.00 percent equity capitalization ratio.

There is some information in the record that one could weave together to suggest a lower delivery service revenue increase is warranted. However, the parties originally

supplying this information in their litigation positions have abandoned it after due consideration. Moreover, there is much other information in the record which would have to be ignored completely to adopt such a course of action. For these two reasons as well, we conclude the delivery service revenue requirements are reasonable.

It has been suggested that if the two recommended delivery service rate increases are justified in fact, that it might be preferable to adopt two smaller increases in the second and third rate years instead of the proposed third-year increase. The basic contention is that this would ameliorate customer bill impacts in the third year. As discussed in detail above, however, PULP was unwilling to support this proposal when asked, such a change would provide no real cost savings to ratepayers in the short run, and it could well result in a more abrupt increase at the end of the third rate year.

The earnings sharing provisions are generally reasonable also, affording the Company an incentive to increase efficiency while affording ratepayers an opportunity to enjoy a significant share of the benefits.

The proposed amortization of existing and projected net credits due customers is also reasonable, balancing the competing interests of ameliorating delivery service revenue increases now and of minimizing prudently the probability of the need for a dramatic delivery service rate increase in three years.

The proposed expense amortization targets and related provisions are also supported by the record. Among other things, these provisions will help ensure the Company receives no more and no less than its actual costs in a few expense categories that have historically changed for reasons beyond Con Edison's control. The proposed reconciliation of carrying charges in capital investments is not typical. Given the facts and circumstances here, pertaining to whether the Company can complete all of its planned capital projects, and the relatively large amount of revenue requirement at stake, these provisions reasonably reduce the risk of forecasting errors for ratepayers

and shareholders alike. The previously discussed argument that the reconciliation provisions provide inadequate ratepayer benefits is rejected.

The additional rate provisions are unopposed, are supported by information in the record, and are also reasonable. A significant portion of the difference between the Company's initial delivery service requests and the allowed increases are attributable to differences in the forecasts of depreciation expense. We expect to consider depreciation rates again in the Company's next major electric rate case, taking into account the impacts of the Company's large construction program on service lives and negative salvage values between now and then. The treatment of the proceeds of the sale of the First Avenue Properties, as already discussed, is reasonable under all of the circumstances, reserving at least one significant known source of net credits to minimize delivery rate impacts later on, when numerous other credits expire at the end of the third rate year.

Perhaps the most controversial aspect of the five JP sections related to the delivery service revenue requirement is the one concerning low-income rates. This is an important issue and, for the reasons previously discussed, we conclude that the proposals for an initial low-income discount of \$5.04 per month and a discount of approximately \$5.75 per month in the third rate year are superior to the significantly more expensive alternative presented by PULP. The initial monthly discounts are reasonable to the extent they balance fairly the interests of customers who can and cannot pay for all of the costs incurred to serve them. The total incremental benefits to low-income rate payers of \$37.5 million are also reasonable in the context of other ongoing low-income allocations of \$14.00 to \$15.00 million per year. Additionally, the proposed change in the low-income discount eligibility criteria is adopted, given information in the record that the change will have no practical effect on those currently receiving such discounts.

The final provision of note in the first five sections of the JP concerns the proposed changes to the MSC and MAC to help reduce bill volatility. We continue to believe that

smaller-use customers should be afforded some protection from volatility in spot market prices and that volatility is one of the factors, along with cost and reliability, which should be considered in Con Edison's commodity purchasing decisions.²⁶⁸ There has been no showing in this case that the Company's purchasing practices are inconsistent with our current expectations. The suggestion that all other rate plans in New York but one require greater hedging, as previously noted, has not been supported. Accordingly, we reject the contention that Con Edison's supply portfolio must be hedged to some undefined, greater degree. One term intended to reduce bill volatility, however, is adopted subject to two caveats.

Taken as a whole, the Retail Access provisions are consistent with near term strategies endorsed in our recent Statement of Policy.²⁶⁹ Indeed, the proposed programs for the purchase of ESCO receivables and for retail access marketing are among those that have been the most successful in encouraging customer migration to ESCOs and moving toward the point in time when the provision of commodity service will be fully competitive.

The other aspects of the Retail Access proposals, including those focusing on billing improvements, are likewise important and should further the development of retail competition. We envision that all the transitional efforts will produce long-term benefits for all customers and PULP's suggestions to the contrary are rejected.

It has been suggested the Retail Access terms are not reasonable because we would not set commodity rates for ESCOs and because customers taking advantage of the Company's new marketing program would not select their own ESCO in every case. These arguments are rejected as discussed above and the latter outcome is reasonable as well given that each customer has the option of choosing to participate in the marketing program or

²⁶⁸ Case 00-M-0504, supra, Statement of Policy on Further Steps Toward Competition in Retail Energy Markets, pp. 33-35.

²⁶⁹ Id., pp. 29-31.

not, and each participating customer retains the opportunity to make a different decision within 60 days.

In the context of the competing demands for the Company's attention, the proposed Retail Access incentive mechanism and the exclusion of any incentive from the earnings sharing calculation are likewise reasonable. The requested Uniform Business Practice waiver and deferral request are granted.

The proposed Reliability Performance and Customer Service Performance Mechanism provisions are reasonable and are adopted generally as they reflect a continuation of our practice of employing incentive regulation for monopoly services. The proposed metrics reasonably reflect detailed proposals that were timely presented by several parties. One term of the Customer Service Performance Mechanism is adopted subject to a caveat to avoid any improper delegation of authority to DPS Staff and the Company.

As discussed previously, our adoption of a revenue adjustment mechanism in connection with recently adopted inspection and testing requirements makes it unnecessary for us to adopt a similar mechanism here to address stray voltage. The absence of a specific performance metric for each aspect of the Company's delivery service is not an indication that those not covered by incentive mechanisms are unimportant or that the Company is somehow released from the full panoply of its legal responsibilities with respect to them. Any inference to the contrary would be unreasonable.

The two major performance mechanisms will put significantly more Company revenue at risk in the future in comparison with past years. The Company's support for the metrics and the metric-by-metric maximum revenue adjustment level is a major factor underlying our conclusion that these increases in potential exposure are reasonable under all the circumstances.

The System Reliability Assurance proposal enjoys broad support, is responsive to a number of parties' proposals, and is unopposed. The study and process envisioned should place Con

Edison in a good position to have its long-term commodity needs met at a reasonable price in the event the market will not meet that need. The proposal also properly seeks to avoid duplication of effort in light of other long-term planning to be done by NYISO.

The Joint Proposal's revenue allocation, rate design, and miscellaneous provisions are also adopted. The provisions in the first of these two sections are reasonable in the context of the testimony and exhibits pre-filed in the case, are broadly supported by several interested active parties, and are unopposed.

Noteworthy rate design provisions include the proposed, cost-justified monthly residential customer charges of \$11.04 in the first rate year and approximately \$11.75 in the third rate year, and the gradual expansion of the BIR program by 12 MW. The miscellaneous provisions, meanwhile, are also unopposed and generally typical of those adopted in the context of other multi-year rate plans.

There are some other provisions of the JP that we do not adopt or that we adopt only subject to additional terms. The first example concerns the Company's agreement with organized labor, concerning compliance with environmental, health, and safety policies. There is no objection to the specific terms proposed in JP Section H. However, we do not adopt them as part of the new rate plan because we do not issue orders we would not be expected to enforce and as the matters agreed upon in this section are a subject of collective bargaining, a sphere in which we do not delve.

The most important examples in this category concern the Demand Management provisions. The vast majority of the proposed Section J provisions are reasonable and are adopted.

The additional expenditures for demand management initiatives hold the potential to ensure load growth is met at a reasonable dollar cost while avoiding the environmental impacts associated with siting new central generation and transmission facilities in the Company's service territory, and reasonably minimizing the costs of capacity and energy in New York City and

Westchester. Energy costs, in particular, have reflected increases in fuel costs and demand management will help mitigate such impacts. The proponents of JP Section J are commended for proposing ambitious targets and for identifying a variety of means that will be employed to help ensure those goals are met where it is cost effective to do so.

However, we are adopting several additional provisions and adopting several provisions other than those proposed, for example, to: (1) ensure that DM program total resource cost effectiveness is a lynchpin of the up to 300 MW of DM initiatives; (2) reserve our authority to render guidance or instructions we believe appropriate, if any, once an Action Plan is developed; and (3) establish a process by which we will exercise our exclusive authority to determine the manner by which lost delivery service revenues will be calculated. Our decision in this case also implies nothing with what action we will take in the future concerning a continuation of the SBC program beyond June 2006.

We are adopting a wide variety of regulatory mechanisms to help ensure the Company meets its stated commitments to the implementation of cost-effective DM. Given the mechanisms adopted, we will not require that an RDM be adopted for the term of this rate plan. However, we expect to provide guidance soon in another proceeding so that efforts will be made to address utility incentives relative to efficiency measures employed in all utility service territories in the future.

Another category of departures from the terms of the JP include a number of instances where terms, other than those set forth in the Joint Proposal, are adopted to ensure reasonable treatment in the future of those active parties that did not execute the Joint Proposal, and to reflect minor corrections and clarifications of the Joint Proposal.

Our overall conclusion, therefore, is that a new three-year rate plan, comprising nearly all of the provisions of the Joint Proposal and the relatively few other terms we are adopting in addition to or in lieu of terms all set forth in the

Joint Proposal, is reasonable in all respects, will result in just and reasonable rates, and will afford the Company a reasonable opportunity to provide safe and adequate service. The new rate plan is adopted.

The Commission orders:

1. The terms and conditions of the Joint Proposal, set forth in Appendix I of this order, are adopted and hereby incorporated into and made a part of the order to the extent they are consistent with the discussions and conclusions above.

2. Consolidated Edison Company of New York, Inc. shall submit by not later than 4:45 P.M. on March 30, 2005 a written statement of unconditional acceptance of the terms of this order, signed and acknowledged by a duly authorized officer. If such acceptance of this order is not so filed, all or part of our decision may be revoked. Consolidated Edison Company of New York, Inc. shall file this statement with the Commission Secretary and serve copies contemporaneously, by first class mail or better, on all active parties in this case.

3. Assuming acceptance in accordance with the prior paragraph, Consolidated Edison Company of New York, Inc. shall, by not later than March 31, 2005, cancel the tariff leaves and supplements listed in Appendix III to this order.

4. Consolidated Edison Company of New York, Inc. is authorized to file on not less than one day's notice, to take effect on a temporary basis on or after April 1, 2005, such electric tariff changes as are necessary to effectuate the terms of this order. Consolidated Edison Company of New York, Inc. is also authorized to file such further tariff changes as are necessary to effectuate the rate year three delivery service revenue increase. Such further tariff changes shall be filed on not less than thirty days' notice to be effective on a temporary basis on or after April 1, 2007.

5. Consolidated Edison Company of New York, Inc. shall contemporaneously serve copies of its filings on all active parties in this proceeding by first class mail or better service. Any comments on each compliance filing must be

received within fourteen days of the filing and service. The amendments specified in each compliance filing will not become effective on a permanent basis unless and until it is 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 one delivery service and other contemporaneous tariff changes, provided, however, that Consolidated Edison Company of New York Inc. shall file with the Commission Secretary, no later than six weeks following the effective date of such filing, 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 three delivery service rate increase.

7. This proceeding is continued.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

Case 04-E-0572

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

December 2, 2004

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**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

Case No. 04-E-0572

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 the 2d day of December, 2004, 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”), New York State Energy Research and Development Authority (“NYSERDA”), the City of New York (“NYC”), Metropolitan Transportation Authority, Consumer Power Advocates, New York Energy Consumers Council, Inc., Joint Supporters, Gotham Power Zerega LLC, 1st Rochdale Cooperative Group, Ltd, Independent Power Producers of New York, Inc., Con Edison Solutions, Constellation NewEnergy, Inc., Direct Energy Services, LLC, Mid-Atlantic Power Supply Association, National Energy Marketers Association, North American Energy, Inc., Small Customer Marketer Coalition, Strategic Energy, LLC, ConsumerPowerline, Meter Service Provider Association of New York, Inc., Sterling Planet, Inc., and other parties whose signature pages are or will be attached to this Proposal (collectively referred to herein as the “Signatory Parties”).

Procedural Setting

The Company is operating under a multi-year rate plan that expires on March 31, 2005.¹ On April 30, 2004, Con Edison filed new tariff leaves and supporting testimony for new rates

¹ Case 00-M-0095, et. al., Joint Petition of Consolidated Edison, Inc. and Northeast Utilities – Approval of Merger, Opinion No. 00-14 (issued November 30, 2000).

and charges for retail sales and for delivery services for its electric business for the period April 1, 2005 through March 31, 2006. In that filing, the Company also proposed terms for a multi-year rate plan.

Parties to this proceeding engaged in discovery activities starting shortly after the proceeding was commenced. After a number of iterations to the schedule for this proceeding, parties filed testimony in response to the Company's original filing on September 10, 2004. Parties also filed rebuttal testimony on October 13, 2004. A hearing on the filing and the parties' testimony was scheduled to commence on October 25, 2004.

On September 13, 2004, Con Edison notified all parties, by electronic and first class mail, of the commencement of settlement negotiations on September 20, 2004.² Settlement negotiations began on September 20, 2004 and continued on September 21, 22, 27, 28, 29, October 4 and 5, at which time they were terminated. On October 21, 2004, Con Edison notified all parties, by electronic and first class mail, of the resumption of settlement negotiations on October 25, 2004.³ The negotiations resumed on that date and continued on October 25, 26, 27, 28, November 1, 8, 17, 18, 19, 23, and 30, 2004.

All settlement negotiations were conducted in accordance with the New York State Public Service Commission's ("Commission") Settlement Rules, 16 NYCRR § 3.9, and all parties received appropriate advance notice of all negotiating sessions, including all breakout sessions that, pursuant to the agreement of the parties, were conducted on particular issues during this same time period.

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

² A copy of this notice was filed with the Secretary to the Commission.

³ A copy of this notice was also filed with the Secretary.

Overall Framework

The Signatory Parties have developed a comprehensive set of terms and conditions for a multi-year rate plan for Con Edison's electric business. 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**
- D. Reconciliations**
- E. Additional Rate Provisions**
- F. Retail Access Program**
- G. Reliability Performance Mechanism**
- H. Compliance with Environmental, Health and Safety Policy**
- I. Customer Service Issues**
- J. Demand Management**
- K. System Reliability Assurance**
- L. Revenue Allocation**
- M. Rate Design**
- N. Miscellaneous Provisions**

A. Term

The Signatory Parties recommend that the Commission approve or adopt the three-year electric rate plan for Con Edison set forth herein, commencing April 1, 2005 and continuing through March 31, 2008 ("Electric Rate Plan"). For the purposes of this Proposal, "Rate Year" ("RY") means a 12-month period starting April 1 and ending on the following March 31; "RY1"

means the 12-month period from April 1, 2005 to March 31, 2006; “RY2” means the 12-month period from April 1, 2006 to March 31, 2007; and “RY3” means the 12-month period from April 1, 2007 to March 31, 2008.

B. Electric Rates and Revenue Levels

1. Rate Level

This Proposal recommends an increase to the Company’s delivery service rates, including the fixed component of the Monthly Adjustment Clause (“MAC”), designed to produce an additional \$104.6 million in revenues on an annual basis in RY1, no additional revenues in RY2, and an additional increase of \$220.4 million in revenues on an annual basis in RY3, as shown in Appendix A.⁴ These increases are net of the amortizations of various customer credits and debits on the Company’s books of account that have been previously deferred by the Company and specified customer credits that are expected to be received during the Electric Rate Plan. The list of customer credits and debits to be applied during the Electric Rate Plan is attached as Appendix B. The imputed expected credits include: (i) \$60 million per year of expected Transmission Congestion Contract (“TCC”) auction proceeds; and (ii) \$48.5 million that comprises Con Edison's estimate of the net proceeds from the sale of the Company's West 24th Street Chelsea property (“Chelsea”).⁵

⁴ The Company will establish a regulatory asset in RY2 and accrue revenues of \$58.6 million, plus interest. The accrued revenues will be reversed in RY3.

⁵ Con Edison has not yet filed a petition under Public Service Law §70 for approval of the sale of this property with the Commission, and this Proposal does not constitute such a filing. The Signatory Parties, except Con Edison, are not privy to the details of this transaction and express no view on or agreement with either the reasonableness of the sale price or other terms of sale or whether the proposed transaction should be approved by the Commission.

If TCC auction proceeds are greater or less than \$60 million in RYs 1, 2, or 3, the Company will pass through the variation in the MAC. If the net gain from the sale of Chelsea is more or less than \$48.5 million, the Company will defer the difference. To settle certain issues raised in this proceeding, including issues related to the Company's pension and Other Post-Employment Benefits ("OPEB") costs and prospective application of the provisions of the Commission's Pension Policy Statement,⁶ the Company has agreed to provide a credit to customers of \$100 million, as shown on Appendix B. To record the Company's liability for this credit, the Company will, prior to the beginning of RY1, record a one-time charge to pre-tax earnings of \$100 million and establish a regulatory liability and record related deferred income tax effects. The effect of this charge will be excluded from any earnings sharing calculation in the year recorded.

2. Sales Forecast

The parties have agreed to a sales forecast for each Rate Year. The sales volumes for each year are set forth in Appendix C.

3. Market Supply Charge and Monthly Adjustment Clause

The Company will continue to recover all prudently-incurred supply and reliability-related costs, including, but not limited to, power purchase costs and the embedded costs of retained generation, through the Monthly Supply Charge ("MSC")/MAC mechanism. The MAC tariff will be modified as shown on the draft tariff leaves included in Appendix D. The transition from the tariff provisions in effect to the new tariff provisions that reflect the terms and

⁶ 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").

conditions of this Proposal will be done in a revenue and earnings neutral manner. Among other things, the MAC will be modified to specify recovery of certain program costs, lost revenues, and incentives as provided below in Section J.

Given that MSC/MAC estimates for the period November 1, 2004 through April 30, 2005 have already been filed by the Company, the MAC revenue changes associated with the month of April 2005 that will result from the various provisions of this Proposal will be reflected in the April 2005 MAC true-up. Beginning May 2005, the proposed changes in the costs to be recovered through the MAC will be reflected in the MAC estimates.

In an effort to reduce the volatility of customers' bills, the Company will, beginning in May 2005, forecast MSC and MAC rates on a three-month basis. In addition, any TCC auction proceeds to be credited to customers will be applied over the period covered by the auction; for example, credits from a TCC auction covering a one-year period will be flowed back to customers over the same one-year period. Other credits or costs, such as New York Independent System Operator ("NYISO") rebills, will be passed back or recovered over a reasonable period of time in order to reduce volatility in the MAC.

The Company will file estimated MSC/MAC rates apart from the rate schedules three business days before May 1, August 1, November 1 and February 1 of each Rate Year. The Company will file one MSC/MAC statement applicable both to customers served under PSC No. 9 – Electricity (the "Full Service Schedule") and PSC No. 2 – Retail Access (the "Retail Access Schedule"), as appropriate. The MSC is applicable to customers served under the Full Service Schedule, except for Service Classification ("SC") 11, and to customers served under Special Provision C of SC 14-RA of the Retail Access Schedule. The Company does not serve copies of MSC/MAC statements on parties but will make them available on its web site

contemporaneously with the dates they are filed. The MAC is applicable to customers served under the Full Service Schedule, except for SC 11, and to customers served under the Retail Access Rate Schedule, except for SC 15-RA. Customers served under the Power Authority of the State of New York (“PASNY”)⁷ and Economic Development Delivery Service (“EDDS”) rate schedules are exempt from the MAC up to the megawatt (“MW”) cap established under each schedule, as specified in Appendix E.

4. State Income Taxes

Commencing April 1, 2005, State Income Taxes (“SIT”) attributable to Con Edison's electric business will be recovered through base rates; in accordance with the Commission's directive in Case 00-M-1556,⁸ this method of recovery will replace the current mechanism of recovering such tax expenses as a component of the percentage Increase in Rates and Charges surcharge. Although the increased revenue requirement discussed above excludes the \$28.3 million of SIT surcharge to be rolled into base rates, the transition from the use of the surcharge to inclusion in base rates will be revenue and earnings neutral. The Company will continue to use the Increase in Rates and Charges surcharge to reconcile and recover from or credit to customers SIT for periods prior to April 1, 2005.

5. Low Income Program

The Company will conduct a low income customer rate discount program targeted at low income residential customers taking service under Rate I of SC 1 (non-heating) and 7 (heating). Customers in the Company's low income program established pursuant to Opinion No. 00-14, as of

⁷ Throughout this Proposal, the abbreviation “NYPA” refers to the Power Authority as an entity and a party to this proceeding; the abbreviation “PASNY” is used only in reference to the Con Edison rate schedule applicable to delivery service to NYPA for its customers.

⁸ Case 00-M-1556, Proposed Accounting and Ratemaking for the Tax Law Changes Included in the 2000-2001 New York State Budget, Order Implementing Tax Law Changes on a Permanent Basis (issued June 28, 2001).

March 31, 2005, will not be required to re-enroll in the low income program described herein. The customer charge for such customers will be set at \$6.00 per month for each Rate Year (a rate discount of approximately \$5.00) but may be changed in RY3 as set forth below. The targeted cost for this program is \$37.5 million over the Electric Rate Plan.⁹ This funding level should be sufficient to encompass approximately 198,000 low income customers annually, which is about the same number of low income customers participating in the low income program established in Opinion No. 00-14.

To qualify for this rate discount program, a customer must be enrolled in the Direct Vendor or Utility Guarantee Program, and/or 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 have received a Home Energy Assistance Program grant in the preceding 12 months.

Qualifying customers will be automatically enrolled through a matching of the Company's records with the records of the New York City Human Resources Administration and Westchester County Department of Social Services. If such matching becomes impracticable, the Company, in consultation with Staff and those agencies, will develop alternative strategies to identify and enroll qualifying customers.

If the Company, in consultation with Staff, NYC, and the County of Westchester (“COW”), estimates that the aggregate actual rate reductions to be provided to low income customers over the Electric Rate Plan will exceed or be less than \$37.5 million, it may revise the customer charge/rate discount applicable in RY3 so that the forecast cost of the program will remain at \$37.5 million. If a revision is determined to be necessary or appropriate, revised charges

⁹ Of the required funding, \$9.1 million annually is reflected in the revenue requirement; the remainder will be implemented through revenue allocation from all customers.

must be filed on not less than 75 days' notice before the beginning of RY3. Further, if a revision is made, the customer charge will not be less than \$5.50 nor more than \$6.50. At the end of the Electric Rate Plan, any difference between the \$37.5 million and the aggregate actual level of low income rate discounts provided over the Electric Rate Plan will be deferred for future disposition.

The Company will annually report to the Commission, within 60 days of the end of each Rate Year, the number of customers enrolled in the program, the total amount expended for the Rate Year, and total amount expended for the program to date.

C. Computation And Disposition of Earnings

Following each of RYs 1, 2 and 3, Con Edison will compute its electric rates of return on common equity capital for the preceding Rate Year. The Company will submit to the Director of the Office of Accounting and Finance the computation of earnings no later than 60 days after the end of each Rate Year.

If the level of earned common equity return in any Rate Year exceeds 11.40 percent (“Earnings Sharing Threshold”), calculated as set forth below, the amount in excess of 11.40 percent will be deemed “shared earnings” for the purposes of this Proposal, and one-half of the revenue equivalent of any shared earnings between 11.40 percent and 13.00 percent will be deferred for the benefit of customers and the remaining one-half of the revenue equivalent of any shared earnings will be retained by the Company; 75 percent of the revenue equivalent of any shared earnings in excess of 13.00 percent will be deferred for the benefit of customers and the remaining 25 percent of the revenue equivalent of any shared earnings will be retained by the Company.

For purposes of determining whether the Company has earnings above the Earnings Sharing Threshold:

1. The calculation of return on common equity capital will be 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 Electric Rate Plan, and (iii) any other Commission-approved ratemaking incentives applicable during the Electric Rate Plan; and

2. Such earnings will be calculated based on a capital structure that reflects the lesser of (i) an equity ratio equal to 50.0 percent or (ii) Con Edison's actual average common equity ratio.

D. Reconciliations

The Company will reconcile the following costs to the levels reflected in rates, as set forth in Appendices F and G. The reconciliations in each of RY1, RY2, and RY3 will be deferred and recovered from customers or credited to customers after expiration of this Electric Rate Plan, in a manner to be determined by the Commission. However, at the end of each Rate Year and subject to audit and prudence review, the Company may apply any available credits, except credits associated with TCC's, to offset the deferred balance.

1. Property Taxes

If the level of expense for property taxes (excluding the effect of property tax refunds or credits) varies in any Rate Year by more than 2.5 percent (plus or minus) from the levels reflected in rates, as set forth in Appendix F, any variations in excess of 2.5 percent will be deferred and recovered from or credited to customers in the manner described above.

2. Interference (Other Than Company Labor)

If the level of actual non-Company labor interference expenses (*e.g.*, contractors' costs) varies in any Rate Year by more than 2.5 percent (plus or minus) from the levels reflected in

rates, as set forth in Appendix F, any variations in excess of 2.5 percent will be deferred and recovered from or credited to customers in the manner described above.

3. Transmission and Distribution Capital Expenditures

If, at the end of any Rate Year, average net plant in the transmission and distribution (“T&D”) category is either greater than or less than the amount set forth in Appendix G (“T&D Capital Target”), the revenue requirement impact of such variation, as calculated below, will be deferred and recovered from or credited to customers in the manner described above. T&D plant is defined as electric utility plant recorded in Federal Energy Regulatory Commission (“FERC”) Accounts 350 – 373, net of associated depreciation reserves. The revenue requirement impact will be calculated by applying an annual carrying charge factor of 13.95 percent (representing a combination of pre-tax rate of return of 11.40 percent and depreciation of 2.55 percent) to the actual Rate Year variance from the T&D Capital Target. In addition, any payments made by the Company under the targeted energy efficiency (“EE”) /distributed generation (“DG”) program for the deferral of T&D capital expenditures will be deferred and recovered from customers in the manner described above.

The Company will, for informational purposes, file with the Secretary to the Commission and submit to the Signatory Parties in this proceeding, subject to confidentiality concerns, by May 1, 2005 and thereafter by January 31 each year, a comprehensive status report on its annual T&D expenditures. The report should, at a minimum:

- a. identify all completed projects, the date they were completed, and the cost of the project;
- b. for ongoing projects, provide their status, estimated dates of completion, and costs expended to date;

c. for projects where the Company's expenditures have varied by more than 15 percent from estimates previously provided to the parties, provide a detailed explanation and justification for such variation; and

d. for each new project (*i.e.*, those not previously identified by the Company in this proceeding), provide a detailed project description, justification of the need for the project, cash flow requirements from inception through completion, an explanation of how the cost figures were derived, and supporting work papers and other back-up materials.

The Company has the flexibility over the Electric Rate Plan to modify the list, priority, nature, and scope of the capital projects identified in its April 30, 2004 filing or in any of the status reports filed pursuant to this section.

4. Production Plant Expenditures

If, at the end of any Rate Year, average net plant in the production category is less than the amount set forth in Appendix G ("Production Capital Target"), the revenue requirement impact of such variation, as calculated below, will be deferred and credited to customers in the manner described above. Production plant is defined as electric utility plant recorded in FERC Accounts 301 – 346, net of associated depreciation reserves. The revenue requirement impact will be calculated by applying an annual carrying charge factor of 14.75 percent (representing a combination of pre-tax rate of return of 11.40 percent and depreciation of 3.35 percent) to the actual Rate Year variance from the Production Capital Target.

The Company will, for informational purposes, file with the Secretary to the Commission and submit to the Signatory Parties in this proceeding, subject to confidentiality concerns, by May 1, 2005 and thereafter by January 31 each year, a comprehensive status report on its annual production expenditures. The report should, at a minimum:

- a. identify all completed projects, the date they were completed, and the cost of the project;
- b. for ongoing projects, provide their status, estimated dates of completion, and costs expended to date;
- c. for projects where the Company's expenditures have varied by more than 15 percent from estimates previously provided to the parties, provide a detailed explanation and justification for such variation; and
- d. for each new project (*i.e.*, those not previously identified by the Company in this proceeding), provide a detailed project description, justification of the need for the project, cash flow requirements from inception through completion, an explanation of how the cost figures were derived, and supporting work papers and other back-up materials.

The Company has the flexibility over the Electric Rate Plan to modify the list, priority, nature, and scope of the capital projects identified in its April 30, 2004 filing or in any of the status reports filed pursuant to this section.

5. Pensions/OPEBs

The Company will implement the Pension Policy Statement for electric operations, effective April 1, 2005. The provisions of the Pension Policy Statement include, but are not limited to, the provision to reconcile actual pension/OPEB expenses to the level allowed in rates, as set forth in Appendix F.

The Company agrees that, as a condition for being permitted to implement the provisions of the Pension Policy Statement, it will not, during the Electric Rate Plan or thereafter, without Staff's prior concurrence, seek approval or authorization from the Commission to deviate from the Pension Policy Statement for electric operations.

The electric pension/OPEB expense or credit recorded prior to April 1, 2005 (*i.e.*, prepaid pension balance) will not be eliminated from the Company's earnings base or capitalization for ratemaking purposes.

6. Environmental Remediation

If the level of actual expenditures for site investigation and remediation allocated to Con Edison's electric business,¹⁰ including expenditures associated with former manufactured gas plant ("MGP") sites, Superfund and 1994 DEC Consent Order Appendix B charges, varies in any Rate Year from the level reflected in rates, as set forth in Appendix F, such variation will be deferred and recovered from or credited to customers in the manner described above. The deferred balances will be reduced by accruals, insurance recoveries, associated reserves, and deferred taxes.

7. Stray Voltage

The revenue requirement reflects estimated amounts for a stray voltage program as set forth in Appendix F. If there are any changes to the stray voltage program as a result of a final non-appealable order in Case 04-M-0159,¹¹ any variation between the costs included in this Proposal, except for capital costs addressed in Section D.3, above, and the actual costs of the

¹⁰ 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 Company's obligations to act prudently in such matters.

¹¹ Case 04-M-0159, Proceeding on Motion of the Commission to Examine the Safety of Consolidated Edison Company of New York, Inc.'s Transmission and Distribution Systems, Order Instituting Proceeding, Requiring Additional Testing and Any Necessary Repair and Report on Status of Electric Program (issued February 11, 2004).

program, will be deferred and recovered from or credited to customers in the manner described above.

8. Additional Reconciliation/Deferral Provisions

The reconciliation provisions for property taxes, interference (other than Company labor), T&D Capital Expenditures, Production Capital Expenditures, pensions/OPEBs, environmental remediation, stray voltage expense, Financial Accounting Standards (“FAS”) 109 taxes, Metropolitan Transportation Authority (“MTA”) taxes, and all other reconciliations and deferrals described in this Proposal will continue in effect through the Electric Rate Plan. Applicable reconciliations and deferrals of FAS 109 taxes, MTA taxes, pensions/OPEBs, the MAC, and the MSC will continue in effect thereafter unless and until modified by the Commission. All customer credits received by the Company during the Electric Rate Plan will be deferred for customers' benefit.

The treatment of World Trade Center (“WTC”) capital costs deferred by Con Edison and allocated to its electric business will be in accordance with the Commission’s determination in Case 01-M-1958 and, as of April 1, 2005, subject to interest at Con Edison’s allowed pre-tax AFUDC rate of return. The Company will continue to seek recovery for all WTC costs from governmental agencies and insurance carriers. All recoveries will be applied to reduce the deferred balance.

9. Limitations on Deferrals

When calculating the level of earned common equity return that may be subject to sharing under Section D of this Proposal, the Company will make the following adjustments if its earnings exceed an 11.40 percent return on equity:

a. For earnings above 11.40 percent but less than or equal to 13.00 percent, the Company will reduce expenses (debits) deferred for later recovery pursuant to this Section D,

up to 50 percent of the deferral, provided that such reduction in deferrals will not cause the resulting earnings to decrease below an 11.40 percent return on equity.

b. For earnings above 13.00 percent, the Company will reduce expenses (debits) deferred for later recovery pursuant to this Section D, up to 100 percent of the deferral, provided that such reduction in deferrals will not cause the resulting earnings to decrease below a 13.00 percent return on equity.

c. The deferral limitation outlined above will apply to all debit deferrals except for the MSC, MAC, deferred taxes and surcharges, WTC-related expenditures, carrying costs on T&D capital expenditures, losses on property sales, demand management costs and incentives, and migration incentives.

E. Additional Rate Provisions

1. Depreciation Rates and Reserves

The average service lives, net salvage factors and life tables used in calculating the depreciation reserve and in establishing the revenue requirement are set forth in Appendix H.

2. Interest on Deferred Costs

The Company will record on its books and records of accounts various credits and debits that will ultimately be reflected in the rates to be charged to customers. Unless otherwise specified in this Proposal or by Commission order, the Company will accrue interest on all such book amounts, net of federal and State income taxes, at an interest rate equal to the unadjusted rate for customer deposits 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. The one-time global settlement charge represents a non-cash charge to earnings and will not be subject to interest.

3. Allocation of Common Expenses/Plant

During 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 I. 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 change in revenue requirement will be deferred on an annual basis for future recovery from or credit to customers.

4. Property Tax Refunds and Credits

Property tax refunds allocated to Con Edison's electric business that are not reflected in the Electric Rate Plan and which result from the Company's efforts, including credits against tax payments (intended to return or offset past overcharges or payments determined by the taxing authority 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 14 percent of the 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 netted against the refund or credit before any sharing or deferral of the proceeds is calculated. The deferral, recovery, and retention of property tax refunds and incentives will be subject to an annual showing by the Company of its ongoing efforts to reduce its property tax burden; additionally, the Company is not relieved of the requirements of 16 NYCRR Part 89 with respect to any refunds it receives.

5. Sale of First Avenue Properties

The interest on any net gains attributable to the electric business on the sale of the First Avenue Properties will be deferred and accrue interest at the Company's pre-tax rate of return level. Any remaining embedded costs related to these Properties upon their sale will be removed from the MAC, as appropriate.

6. East River Repowering Project

The carrying costs charged by the Steam Department for the electric department's portion of the costs of the East River Repowering Project (“ERRP”) will be flowed through the MAC. The allocation of ERRP costs between the electric and steam departments will be governed by the Gas/Steam Rate Order.¹² Actual maintenance expenses may not be incurred ratably as they are reflected in rates. In order to normalize earnings impacts, the Company may defer revenues to match maintenance expenses as incurred during the Electric Rate Plan.

F. Retail Access Program

1. Purchase of Accounts Receivable

On or about April 1, 2005 and during the Electric Rate Plan, the Company will offer a Purchase of Receivables Program (“POR Program”) to Energy Service Companies (“ESCOs”) who are authorized to provide electric supply service in its territory.¹³ Starting January 2005, the Company will provide monthly status reports on its progress to implement the POR Program to Staff and the Signatory Parties. This program will be implemented and administered, to the extent practicable, as a single program (with the possibility of different discount rates) in conjunction with the POR program established in the Gas/Steam Rate Order for ESCOs authorized to provide gas supply service in the Company’s territory.

¹² Cases 03-G-1671 and 03-S-1672, Consolidated Edison Company of New York, Inc. – Gas and Steam Rates, Order Adopting the Terms of a Joint Proposal (issued September 27, 2004) (“Gas/Steam Rate Order”).

¹³ The Company estimates that it will be able to implement the POR program upon the commencement of the Electric Rate Plan. Any ESCO that is a Signatory Party to this Proposal hereby agrees that it will not, prior to April 1, 2005, request the Company to suspend electric service to any of the ESCO's customers; disconnection of delivery service and termination of commodity service upon implementation of the POR Program will be in accordance with Section F.1.c, below.

Under the POR Program, the Company will purchase electric and gas supply service accounts receivable, at a discount and without recourse, on the accounts of the Company's delivery service customers who receive a consolidated bill from the Company that includes electric and/or gas supply service provided by the ESCOs. The Company's purchase of receivables will begin with current charges billed on a utility consolidated bill issued on and after the commencement of the POR program. Payment will be made to each participating ESCO on the 20th day of the calendar month for customer accounts billed during the preceding calendar month. For receivables associated with charges billed on consolidated bills issued by the Company prior to the commencement of the POR program, the Company will undertake collection on the ESCO's behalf and will prorate any payments received as a result of the Company's collection activities, provided that the ESCO indemnifies and holds harmless Con Edison for any damages, claims, costs or expenses that are not the result of the sole negligence of Con Edison, if any such collection activity deemed to be subject to federal, state or local laws on collection is adjudged to be in violation thereof.

The POR Program is premised on implementation in accordance with the following provisions.

a. Discount Rate

The discount rate applicable to receivables purchased from the commencement of the POR Program through the end of calendar year 2005 will be 0.97 percent for electric and gas receivables purchased by the Company.¹⁴ The discount rate reflects the sum of:

¹⁴ Because the initial discount rate of 0.97 reflects different assumptions and therefore falls below the low end of the range (1.25) for the initial discount rate under the POR program for gas receivables as established in the Gas/Steam Rate Order, the Signatory Parties to this Proposal that are also signatory parties to the Gas Joint Proposal agree to support modifications to the Gas Rate Plan to the extent necessary to implement the discount rate set forth in this Proposal for purchased gas receivables, including the recovery of system change

- i) 0.72 percent, which is the Company's uncollectible rate for all residential and commercial electric and gas customers, other than the Company's corporate account customers,¹⁵ for the 10 months ending October 2004;
- ii) 0.10 percent, which is 15 percent of the 0.72 percent uncollectible rate and is designed to compensate the Company for its financial risk that the actual uncollectible rate for the purchased receivables may be higher than 0.72 percent; and
- iii) 0.15 percent, which reflects the incremental costs associated with two new full-time employees necessary to administer the POR Program, at an estimated annual aggregate compensation rate (including fringe benefits) of \$190,000.

The Company's costs of credit and collection and theft associated with customers taking ESCO service under the POR Program will not be recovered through the discount rate discussed above, but rather will be addressed in the Unbundling Proceeding, either through an unbundled rate/back-out credit for customers under the POR Program that excludes costs for credit and collection and theft or another vehicle for collecting credit and collection and theft costs from such customers. The Signatory Parties recognize that the component included in the POR discount rate for uncollectibles inter-relates with the lost revenue recovery mechanism to be established in the Unbundling track of this proceeding; that is, the determination of the lost

costs to implement billing for the POR Program and related matters associated with retail choice in compliance with requirements under the Uniform Business Practices and in connection with the Commission's implementation of the amendments to the Home Energy Fair Practices Act, from gas customers in the manner addressed for electric customers in section F.1.b. Absent Commission approval of such modifications, the discount rate for purchased gas receivables will be established in accordance with the Gas Rate Plan.

¹⁵ A Con Edison corporate account customer is any single account over 180 kW in monthly billing demand, one of multiple accounts for premises or facilities owned or managed by one customer with locations in different operating areas within Con Edison's service territory, any governmental account, any New York City real estate account, any NYPA account, any New York City street and traffic lighting location, any special unmetered service account, and any account that requires specialized billing.

revenues recoverable by the Company will recognize the Company's recovery of costs attributable to uncollectible bills in the POR discount rate (*e.g.*, for calendar year 2005, the equivalent value of the 0.72 percent component of the discount rate set forth in a (i) above). The Signatory Parties further recognize that the ALJ has established a procedural schedule for establishing unbundled rates/back-out credits, whereby the parties will either (i) file a joint proposal with the Commission by January 25, 2005 or (ii) the Company will file an update to its October 12, 2004 filing in the Unbundling Track of Case 00-M-0504, by December 22, 2004. The Signatory Parties agree that the unbundled rates/back-out credits should be made effective May 1, 2005.

For calendar year 2006, the discount rate applicable to receivables purchased during calendar year 2005 will be adjusted to reflect (i) changes in the Company's actual uncollectibles experience for all residential and commercial electric and gas accounts other than the Company's corporate accounts customers, including uncollectibles attributable to ESCO customers participating in the POR Program, during 2005, (ii) an associated adjustment to the risk factor, and (iii) any additional incremental, verifiable costs beyond those included in the initial discount rate associated with administering the POR Program. The discount rate applicable to receivables purchased during calendar year 2007 and calendar year 2008 (until the end of the Electric Rate Plan) will be adjusted in the same manner as the 2006 discount rate reflecting the Company's most recent calendar year experience.

With respect to the discount rates for 2006, 2007, and 2008, an ESCO may invoke mediation under the Commission's Office of Hearings and Alternative Dispute Resolution with respect to any increase in the discount rate (but not with respect to the underlying discount rate)

if the ESCO believes that the Company has not established the increase reasonably in accordance with the foregoing criteria applicable to adjustments to the discount rate.

For ESCOs that participate in the POR Program, the Company will be exempted from pro-rating partial payments from those ESCOs' customers except when those payments are applied to ESCO receivables not purchased or that have been charged back to the ESCO.

b. Implementation Costs

The Company has incurred, and will continue to incur during the Electric Rate Plan, system change costs to implement billing for the POR Program and related matters associated with retail choice in compliance with requirements under the Uniform Business Practices and in connection with the Commission's implementation of amendments to the Home Energy Fair Practices Act. None of these costs are reflected in the revenue requirement, nor are they recoverable by the Company through the POR discount, which recovers only the Company's incremental administrative costs associated with the POR Program. The Company is permitted to defer these costs and an accrued carrying charge on these costs, net of any income tax benefits, at the Company's 11.40% pre-tax rate of return for future recovery from customers.

c. Disconnection of Service

Con Edison, in accordance with applicable provisions of law, may disconnect its delivery service and an ESCO's commodity service to residential customers who fail to make full payment of all amounts due on the consolidated billing, including the amount of the purchased ESCO receivables. Residential customers disconnected from utility service under the POR Program will be reconnected to service upon the payment of the arrears that were the subject of the disconnection, which may include both delivery and supply charges, or a lesser amount as specified in Public Service Law §32(5)(d).

Con Edison is also authorized, in accordance with 16 NYCRR Part 13, to disconnect its delivery service and ESCO commodity service to non-residential customers where: (i) the customer fails to make full payment of all amounts due on the consolidated billing; and (ii) the Company purchased the ESCO receivable. As a condition of each ESCO's participation in the POR Program, the ESCO will furnish the Company an affidavit from an officer of the ESCO representing to the Company that the ESCO has notified its non-residential customers and will notify its future non-residential customers that Con Edison is permitted to disconnect a customer for non-payment of the ESCO charges. The ESCO will also indemnify the Company for any cost, expense, or penalty if the customer's service is discontinued for non-payment and the customer establishes that it did not receive such notification.

d. Charge Back

Where Con Edison reconnects service to a residential customer in accordance with Public Service Law §32(5)(d), the Company is permitted to charge back to the ESCO as of the date of reconnection the difference between the billed amount and the amount the residential customer would have been charged as a full service customer. Charge back may be accomplished by netting out the amounts owed the Company by the ESCO from the payments otherwise due the ESCO from the Company. After reconnection, if and when the customer makes a payment that is applicable to the charge back amount, the Company will remit the payment to the ESCO in accordance with its routine remittance practices.¹⁶

e. Billing Options

Con Edison is not required to offer additional utility consolidated billing options to any ESCO providing either electric or both electric and gas commodity service apart from the

¹⁶ The charge back amount is treated as arrears that are not subject to disconnection for the purpose of pro-ration.

consolidated billing option available for the POR Program. ESCOs electing not to participate in the Company's POR Program are required to provide their own bills to residential customers under the procedures applicable to the dual billing model; ESCOs may offer an ESCO consolidated bill to their non-residential customers in accordance with Con Edison's existing ESCO consolidated bill program and using Con Edison's current data exchange system. By its approval of this Joint Proposal, the Commission grants to Con Edison a waiver of the provisions of the Uniform Business Practices related to consolidated billing options, to the extent inconsistent with the foregoing, during the Electric Rate Plan. The POR Program is contingent upon the Company's receipt of such waiver of the Uniform Business Practices related to consolidated billing options.

If, during RY3, a minimum of two ESCOs eligible to participate in the Company's retail access program request in writing the ability to issue ESCO consolidated bills to residential customers in lieu of participating in the POR Program, and each requesting ESCO can demonstrate, to Con Edison's satisfaction, its ability to issue ESCO consolidated bills, the Company, Staff and interested ESCOs will convene a collaborative process within 60 days of the request to discuss the reasonableness of and the time required for implementing an ESCO consolidated billing program for residential customers without a POR component.

2. Retail Marketing Program

Pursuant to the Gas/Steam Rate Order, Con Edison is establishing a Retail Marketing Program. Concurrent with the implementation of a POR Program for both the gas and electric businesses, Con Edison will expand the Marketing Program to include both gas and electric customers. Under this Marketing Program, ESCOs participating in the Company's POR Program can offer electric customers who enroll with the ESCO under utility consolidated billing a seven

percent discount from the Energy Shopping Price¹⁷ for a two-billing cycle introductory period,¹⁸ provided that each electric account will receive only one discount over the Electric Rate Plan.

The Marketing Program will include the following additional elements:

- a. A procedure for customer enrollments by Con Edison reasonably designed to provide each ESCO a generally equivalent number of accounts by service type (electric only or electric and gas combination service), rate classification, and location. Customers enrolled by Con Edison through this Program are not permitted to select a specific ESCO.¹⁹
- b. Con Edison will obtain customer authorization, process enrollments, and provide customer information to the assigned ESCO.
- c. Con Edison will calculate the price to be charged customers enrolled under this Program on the two bills issued during the two-billing cycle introductory period.
- d. Participating ESCOs must provide enrolled customers with the terms and conditions, including price, for serving those customers beyond the two-billing cycle introductory period.
- e. Participating ESCOs will not penalize a customer who returns to utility service timely following the two-billing cycle introductory period.

¹⁷ The Energy Shopping Price will be calculated by subtracting the customer's retail access delivery service bill from a full service bill calculated using the same billing determinants and dividing the result by the customer's usage during the billing period.

¹⁸ The Company may, after consultation with Staff and with consensus among ESCOs authorized to provide service in the Company's service territory, adjust the seven percent discount prospectively for the purpose of maximizing both ESCO and customer participation in the Marketing Program.

¹⁹ Con Edison will accept an ESCO's request to enroll a customer in this Program.

f. Each participating ESCO will indemnify the Company against any damages, penalties, or other costs associated with or arising from a claim that the ESCO misrepresented the terms of the ESCO service that was initiated through this Program.

3. Market Match and Market Expo Programs

The Gas/Steam Rate Order established Market Match and Market Expo Programs as means of facilitating the development of the competitive gas market and promoting contact between Con Edison's large non-residential customers and ESCOs. Con Edison will expand these Programs to include both gas and electric customers.

a. Market Match Program

The Market Match Program provides ESCOs and large customers the opportunity to exchange information electronically and allow the ESCOs to offer the customers competitive supply service proposals based on their specific load profiles. The Program will include the following elements:

i) A capability on Con Edison's web site for customers interested in obtaining competitive price offers from ESCOs to provide on-line authorization to the ESCOs enabling the ESCOs to obtain their usage data.

ii) Con Edison will notify all customers with maximum monthly demand of at least 100 kW of this Program by direct letter. Con Edison may reduce the 100 kW threshold criteria in order to expand customer participation in this Program.

iii) ESCOs may use customers' account numbers to access customer usage information.

iv) ESCOs will execute a confidentiality agreement promising not to release or use customer information for purposes other than the Market Match Program.

b. Market Expo Program

The purpose of the Market Expo Program is to bring ESCOs, large non-residential customers, and Con Edison together to provide a forum for an exchange of information regarding retail choice and to provide a platform for customers to receive offers from ESCOs. The Program will include the following elements:

i) Con Edison will conduct a minimum of four Market Expos during the Electric Rate Plan. The Market Expos conducted for electric customers may be coordinated with Market Expos held for gas customers.

ii) Invitations and applications for participation in the Market Expos will be provided to all customers with maximum monthly demand of at least 500 kW. Con Edison may reduce the 500 kW threshold criteria in order to expand customer participation in this Program.

iii) At each Expo, a presentation will be made on the status of the electric markets in the Northeast and an explanation of Con Edison's retail access rules.

iv) After the presentation and any question and answer period, there will be an opportunity for customers to meet with specific ESCOs.

v) At each Expo, there will be an opportunity for customers to discuss specific retail access-related concerns, if any, with Con Edison.

4. Competition Outreach and Education and Promotional Funding

Con Edison will continue to conduct outreach and education to increase customer awareness and understanding of residential and non-residential competitive choice and the Company's "Power Your Way" Program. The Company will keep Staff and ESCOs informed of its competition-related outreach and education activities by providing them in advance with

samples of materials and the schedule for their distribution and by reporting on plans and activities as described in Section F.9. Con Edison will also conduct Retail Choice Promotion activities (“RCP Program”) to support its Retail Marketing, Market Expo, and Market Match Programs.

a. Funding

Con Edison is authorized to spend up to \$3.395 million during RY1, \$2.595 million during RY2, and \$1.795 million during RY3 on competition outreach and education, and on promotion of electric retail choice in its service territory. The RCP Program component of these funds will be \$1.5 million in RY1 and \$700,000 in RY2; any funds not expended in any Rate Year will, to the extent possible, be spent in subsequent Rate Year(s). These funds will be used for retail choice research and to implement retail choice education, communication and marketing efforts.

b. Timing

Within 30 days of the date of the Commission Order approving or adopting this Proposal, Con Edison will convene a meeting of Staff and ESCOs authorized to serve electric customers in its service territory to coordinate the Company’s promotion of its Retail Marketing Program.

c. RCP Program

The RCP Program will focus on the promotion of retail access and will include promotional advertising, ESCO meetings, the Market Expo and Market Match Programs, and the Retail Marketing Program. The Retail Marketing Program and the Market Expos will be developed by Con Edison with input from Staff and ESCOs. All retail access promotion material and messages, including "Power Your Way" materials and messages, will clearly identify Con Edison's affiliation with the "Power Your Way" program.

Acceptable forms of promotional advertising include, but are not limited to, the use of customer bill inserts and other direct mailings, print, radio, television, and Internet advertisements, and call center contacts.

5. Migration Incentive

In order to encourage Con Edison to promote retail access in its service territory, subject to the terms and conditions stated below, the Company will receive at the end of each Incentive Period (defined below) an electric migration incentive for accounts that switch to or are retained on retail access delivery service. The incentive will be calculated in accordance with the following methodology:

a. Definitions

i) “Switching” means the enrollment of an existing Con Edison full-service account in retail access delivery service or the enrollment of a new account in retail access delivery service.

ii) “Retention” means the continuation of retail access delivery service. For the purpose of the Retention Incentive, retention in RY1 will be the net increase in the number of customers taking retail access delivery service at the end of RY1 as compared to the number of customers taking retail access delivery service on the first day of RY1 or the commencement of the POR and Retail Marketing Programs, whichever occurs last (“Start Date”). Retention in RY2 will be the net increase in the number of customers taking retail access delivery service at the end of RY2 as compared to the number of customers taking retail access delivery service on either the first day of RY2 or the number of customers taking retail access delivery service on the Start Date, whichever is greater. Retention in RY3 will be the net increase in the number of customers taking retail access delivery service at the end of RY3 as compared to the number of customers taking retail access delivery service on the first day of

RY3 or the number of customers taking retail access delivery service on the Start Date or the number of customers taking retail access delivery service on the first day of RY2, whichever is greater. See Appendix J for examples of the incentive calculation.

iii) “Incentive Periods” are the time periods over which migration data will be measured for purposes of determining the level, if any, of the migration incentive to which the Company may be entitled. Measurement of migration data will commence on the Start Date. For purposes of the Retention Incentive, each Rate Year will be a separate Incentive Period (*i.e.*, RY1 is the First Incentive Period, RY2 is the Second Incentive Period, and RY3 is the Third Incentive Period).

b. Threshold

A minimum of 25,000 eligible electric accounts must commence taking service during the Electric Rate Plan from ESCOs before a migration incentive can be awarded. This threshold can be achieved anytime during the Electric Rate Plan.

c. Exclusions

Customers who resume taking bundled service from Con Edison during any of the incentive periods and any subsequent one-year periods due to an ESCO's cessation of retail marketing operations in or departure from Con Edison's service territory will be considered to have remained with the ESCO for purpose of calculating the retention incentive and are subject to the limitations in Section F.5.e.iii.

d. Eligibility

The migration incentive applies to all electric accounts.

e. Incentive Amount

i) The Company can receive a Switching Incentive for accounts enrolled in retail access delivery service. The Incentive Period will be the Electric Rate Plan. The incentive amount is \$10 per switched account, not to exceed \$4 million.

ii) The Company can also receive a Retention Incentive for accounts retained. The incentive amount is \$20 per retained account, not to exceed \$8 million over the Rate Plan.

iii) The Company can receive only one Switching Incentive and one Retention Incentive per electric account.

f. Timing of Incentive Recovery

i) If the threshold of 25,000 accounts is achieved during the First Incentive Period, Switching and Retention Incentives will be recovered at the end of that period.

ii) If the threshold of 25,000 accounts is not achieved during the First Incentive Period but is achieved during a subsequent Incentive Period, Switching and Retention Incentives for accounts switched and/or retained at any time will be recovered at the end of the period in which the threshold was achieved.

g. Recovery of Incentives

The Company will make a filing on the calculation of the incentive for the applicable incentive period with the Director of the Office of Accounting and Finance prior to recovering an incentive. All incentives will be recovered through the MAC over a 12-month period.

6. ESCO/Marketer Ombudsman

Pursuant to the Gas/Steam Order, Con Edison has designated a management employee who is responsible for addressing ESCO concerns and issues and who serves as a liaison

between ESCOs and the Company. ESCOs have been provided with the Ombudsman's name and telephone number and the Ombudsman is available directly to ESCOs.

7. ESCO Satisfaction Survey

Con Edison will conduct an annual ESCO survey and should strive to achieve 100 percent ESCO participation by ESCOs operating in its service territory. The survey is intended to gauge ESCOs' satisfaction with and understanding of the Company's service available to them and to identify potential enhancements.

A survey is presently being performed, and Con Edison will consult with Staff to determine if any changes need to be made to it. As necessary during the Electric Rate Plan, Con Edison will continue to consult with Staff about changes to the survey. Con Edison will report the results of each survey and its plans for addressing ESCO concerns identified by the survey, if any, in the July 31 Retail Access Report described in Section F.9.

8. Competition Awareness and Understanding Survey

Con Edison will survey its residential and small non-residential customers annually for the purpose of tracking changes in customer awareness and understanding of competition in the electric market. The survey should also be used to evaluate the effectiveness of the Company's programs and to identify potential enhancements. The survey will be developed by Con Edison with input from Staff. This survey should be similar in content and timing to the Company's awareness and understanding survey of residential and small non-residential gas customers. The Company will report the results of the survey in the July 31 Retail Access Report described in Section F.9.

9. Retail Access Report

On January 31 and July 31 of each Rate Year, Con Edison will submit to the Director of the Office of Retail Market Development, with copies to all interested Signatory Parties, a report (the “Retail Access Report”) that includes the following:

a. Competition Outreach and Education

i) a list and description of activities and expenditures for the prior six months;

ii) a list and description of planned activities and expenditures for the subsequent six months or longer, as appropriate;

iii) Customer Awareness and Understanding Survey results, as appropriate;

iv) ESCO Satisfaction Survey results, as appropriate; and

v) the Company's plans for addressing improvement opportunities identified by the surveys.

b. RCP Program

i) a list and description of activities and expenditures for the prior six months; and

ii) a list and description of planned activities and expenditures for the subsequent six months or longer, as appropriate.

c. Migration Data

i) the total number of customers migrated during the prior six months, including customers who have migrated from ESCO to ESCO or who have resumed taking bundled service from the Company after previously migrating to ESCOs; and

ii) migration data associated with the Retail Marketing Program for the prior six months.

For the reports due January 31 each Rate Year, the prior six months means the period July 1 through December 31 and the subsequent six months means the period January 1 through June 30; for the reports due July 31 each Rate Year, the prior six months means the period January 1 through June 30 and the subsequent six months means the period July 1 through December 31. The last report will be for the three months ended March 31, 2008.

The Company will provide to Staff, pursuant to the Commission's trade secret regulations, commercially sensitive migration data and a confidential report of the raw data obtained during the survey processes, including the names of the participating ESCOs but without attribution of the raw data to individual ESCOs, and excluding the names of participating customers. The Company will provide to interested Signatory Parties high-level summaries of the feedback received from ESCOs and customers during the survey processes, the Company's plans to address concerns, if any, identified by the ESCOs during the survey process, and non-commercially-sensitive migration data.

10. Bill Format

As part of the initiative established by the Gas/Steam Rate Order, Con Edison will meet with Staff, ESCOs and parties representing the interests of customers to discuss the Company's current bundled bill format and possible redesign and/or formatting changes, consistent with Commission directives in Cases 00-M-0504 (Unbundling Track), Case 03-E-0188 (Renewable Portfolio Standard), and any other relevant Commission policy. The goal of this discussion will be to improve bill understandability, to revise the price to compare, and to present billing information and charges in clear, plain language.

The Company will seek and consider customer input on the working draft of the redesigned bill.

11. Metering Initiatives

Con Edison may implement its proposed strategic Automated Meter Reading (“AMR”) and remote meter reading replacement programs. Con Edison may implement saturated AMR in Westchester County, obsolete demand meter replacement, replacement of kWh meters for large commercial time-of-day customer installations, and inclusion of AMR modules for new meters if the Commission determines, in a generic review of competitive metering, that initiatives of these types are not anticompetitive or if the Commission issues no decision concerning competitive metering issues by December 31, 2005, whichever occurs first. The operating cost savings for these programs will be deferred for credit to customers; capital costs will be reconciled with the T&D capital expenditures as provided in Section D.3.

Certified meter service providers that are deemed eligible to participate in the Company's bidding process for meter installations will be invited to bid on such work in the event the Company decides to bid out that work.

If the Commission determines, in a generic review of competitive metering, that the Company's provision of interval data is not anticompetitive, or if the Commission issues no decision concerning competitive metering issues by December 31, 2005, whichever occurs first, the Company will file with the Commission a method of making available to customers with interval metering and operable telemetry capability data from such metering and an associated charge for the provision of such data.

12. Retail Auction Pilot Program

Within 60 days of the date of the Commission Order approving or adopting this Proposal, the Company, Staff and interested parties will convene a collaborative process to study the

appropriateness, feasibility, and possible implementation of a retail market auction pilot program for a segment of the mass market. No Signatory Party to this Proposal waives its right to object to the implementation of a pilot auction program.

13. Customer Interaction

Con Edison will instruct its customer service representatives to inform any customer contacting the Company to discontinue ESCO supply service that such customer should contact the ESCO before requesting to return to full service.

14. Green Power

Within 90 days of the date of the Commission Order approving or adopting this Proposal, the Company, Staff and interested parties agree to establish a collaborative to consider a proposal for a Green Power program in the Company's service territory.

G. Reliability Performance Mechanism

1. Operation of Mechanism

This electric service reliability performance mechanism ("reliability mechanism") will be in effect for Con Edison for the period January 1, 2005 through the end of the Electric Rate Plan and thereafter until electric base delivery rates are reset by the Commission. The measurement periods for the reliability mechanism performance metrics are stated in the description of each metric below.

This reliability mechanism establishes six performance metrics:

- a. Threshold Standards, consisting of system-wide performance targets;
- b. a Major Outage metric;
- c. a Program Standard for repairs to damaged poles;
- d. a Program Standard for the removal of temporary shunts;

e. a Program Standard for the repair of "no current" street lights, and traffic signals; and

f. a Program Standard for the replacement of over duty circuit breakers.

All revenue adjustments related to this reliability mechanism will come from shareholder funds and will be deferred for the benefit of ratepayers.

2. Exclusions

The following exclusions will be applicable to operating performance under this reliability mechanism:

a. Any outages resulting from a major storm, as defined in 16 NYCRR Part 97 (for at least 10% of the customers interrupted within an operating area or customers out-of-service for at least 24 hours), except as otherwise noted; this includes secondary network interruptions that occur in an operating area during winter snow/ice events that meet the 16 NYCRR Part 97 definition (10%/24 hour rule).

b. Heat-related outages are not a major storm. However, the Company may petition the Commission for an exemption for an outage if the Company can prove that such outage, whether heat-related or not, was beyond the Company's control, taking into account all facts and circumstances.

c. Any incident resulting from a strike or a catastrophic event beyond the control of the Company, including but not limited to plane crash, water main break, or natural disasters (*e.g.*, hurricanes, floods, earthquakes).

d. Any incident where a problem beyond the Company's control involving generation or the bulk transmission system is the key factor in the outage, including, but not limited to, NYISO mandated load shedding. This criterion is not intended to exclude incidents that occur as a result of unsatisfactory performance by the Company.

3. Reporting

The Company will prepare annual report(s) on its performance under this reliability mechanism. The annual report(s) will be filed by March 31st of each Rate Year with the Director of the Office of Electricity and Environment. Copies of the annual report(s) will be simultaneously provided to the New York City Department of Transportation (“NYCDOT”) Deputy Commissioner of Traffic Operations, the NYCDOT Director of Street Lighting, the Westchester County First Deputy Commissioner of Public Works, and the President of the Utility Workers Union of America, Local 1-2. The reports will state the: (a) Company’s annual system-wide performance under the Threshold Standards and identify whether a revenue adjustment is applicable and, if so, the amount of the revenue adjustment, (b) Company’s performance under the Major Outage metric and identify whether a revenue adjustment is applicable and, if so, the amount of the revenue adjustment, (c) Company’s performance under the Program Standards applicable during the period and identify whether a revenue adjustment is applicable and, if so, the amount of the revenue adjustment, and (d) basis and provide adequate support for all exclusions.

Within 45 days of any event that meets the Major Outage criteria, the Company will file an interim report on the event, containing, among other things, information pertinent to determining whether a revenue adjustment for the event is applicable. Any requests for exemption under Section G.2 must be made in the interim report.

4. Threshold Standards

In Cases 90-E-1119, 95-E-0165, 96-E-0979, and 02-E-1240, the Commission adopted standards establishing minimum performance levels for both frequency and duration of service interruptions for the network and radial systems in the six operating areas of Con Edison's service territory. Under these standards, the frequency of service interruptions is measured by

the System Average Interruption Frequency Index (“SAIFI”), and the duration of service interruptions is measured by the Customer Average Interruption Duration Index (“CAIDI”). The minimum performance levels established in those cases are set forth as certain minimum SAIFI and CAIDI values. The System-Wide Performance Targets used for purposes of the Threshold Standards metric are as set forth below. The measurement periods for the Threshold Standards are successive 12-month periods ending December 31, 2005, 2006, and 2007. During each annual measurement period, Con Edison's year-end SAIFI, or frequency, index for its entire network system and its entire radial system will be measured against the respective SAIFI System-Wide Performance Targets. During each annual measurement period, Con Edison's year-end weighted average CAIDI, or duration, index for its entire network system and its entire radial system will be measured against the respective CAIDI System-Wide Performance Targets.

The Company’s annual performance in maintaining reliability must meet or be better than the SAIFI and CAIDI System-Wide Performance Targets. A total of \$18 million is at risk for performance not meeting those targets.

a. System-Wide Performance Target – CAIDI

A total of \$8 million per year is at risk for customer interruption duration performance, as follows:

	Threshold Target (hours)	Revenue Adjustment (millions)
Network duration	3.74	\$ 4.0
Radial duration	1.85	\$ 4.0

b. System-Wide Performance Target – SAIFI

A total of \$10 million per year is at risk for customer interruption frequency performance, as follows:

	Threshold Target	Revenue Adjustment (millions)
Network frequency	0.015	\$ 5.0
Radial frequency	0.530	\$ 5.0

5. Major Outages

Effective April 1, 2005, the Company will be subject to a revenue adjustment of \$10 million for each network shutdown event or a radial system interruption event (a “Major Outage”).

Con Edison will be subject to a revenue adjustment for a Major Outage up to three times in each Rate Year. Beyond three Major Outage events, the effect of the Major Outage will be included in the SAIFI and CAIDI measurements. For purposes of this metric, a network shutdown event is defined as a loss of all supply feeders to any of the 57 secondary networks in Manhattan, Brooklyn, Queens, and the Bronx for three hours or more in duration. The 57 secondary networks are identified in Appendix K. If the Company creates any new second contingency networks during the Electric Rate Plan, those networks will be covered by this metric. A radial system interruption event is defined as the sustained interruption of service to 70,000 customers in a load area (as defined in the Company's Distribution Manual) for three hours or more.

Any single occurrence that results in multiple network shutdowns or radial system interruption events will result in only one revenue adjustment being assessed. An example is the loss of an area substation that shuts down two or more networks or a combination of network and radial system load.

This single occurrence exception will not apply if each Major Outage that takes place during any single occurrence results from separate and distinct causes. For example, if there are two network shutdowns during a single heat wave, and each network shutdown results from

failures on that particular network that were not beyond the Company's control, the single occurrence exception would not apply and two network shutdowns will be considered to have occurred.

To avoid multiple revenue adjustments for the same operating performance problem or occurrence, interruptions and customer hours of interruption associated with Major Outage revenue adjustments will be excluded from the appropriate year-end SAIFI and CAIDI calculations, except as noted above.

6. Program Standards

a. Pole Repair

i) Definitions

1. "Damaged Poles" are poles damaged by storm conditions, vehicle contact, or other circumstances, and that support existing equipment with temporary external bracing while not posing an immediate threat to the safety of the public or the distribution system.

2. "Double Damaged Poles" are poles damaged by storm conditions, vehicle contact, or other circumstances, and that are not capable of supporting existing equipment. In each of these cases, a new pole is installed next to the damaged pole and is braced to the damaged pole to safely support the damaged pole until the Company transfers equipment to the new pole.

3. "Repair," for purposes of this program standard, means transferring Company facilities to a new pole, and removing or "topping" the "damaged" pole.

ii) Performance Requirements

The Company will strive to repair all “Damaged Poles” and “Double Damaged Poles” in a timely manner.

Con Edison will make repairs, by December 31, 2005, to at least 90% of the “Damaged Poles” and “Double Damaged Poles” that exist on December 31, 2004. In the event the Company has not repaired at least 90% of those “Damaged Poles” and “Double Damaged Poles” by December 31, 2005, it will incur a revenue adjustment of \$1.5 million. The Company will repair all such existing “Damaged Poles” and “Double Damaged Poles” by June 30, 2006, except in extraordinary circumstances.

For all “Damaged Poles” and “Double Damaged Poles” that come into existence on or after January 1, 2005, Con Edison will make repairs within 30 days from the date the Company became aware of the “Damaged Pole” or “Double Damaged Pole” for at least 90% of these new “Damaged Poles” and “Double Damaged Poles”. In the event the Company does not achieve the 90% within 30 days threshold for “Damaged Poles” and “Double Damaged Poles” that come into existence in 2005, it will incur a revenue adjustment of \$1.5 million. In the event the Company does not achieve the 90% within 30 days threshold for “Damaged Poles” and “Double Damaged Poles” that come into existence during any of calendar years 2006 and 2007, it will incur a revenue adjustment of \$3 million for such year.

Con Edison will make repairs to all “Damaged Poles” and “Double Damaged Poles” that come into existence on or after January 1, 2005 within six months of the dates the poles are damaged.

iii) Storm Exclusion

In an effort to permit the Company to utilize labor resources most effectively and facilitate the restoration of customers, the Company may utilize up to 60 days to make repairs on 90% of poles that become “Damaged Poles” and “Double Damaged Poles” during qualifying major storm events as defined in 16 NYCRR Part 97. Where the Company does not immediately make repairs on its poles, the Company shall ensure that each “Damaged Pole” and “Double Damaged Pole” is safe for public and vehicle access.

iv) Extraordinary Circumstances Exception

Where the Company can demonstrate that extraordinary circumstances prevent a repair within the 30-day, 60-day, or six month time frames, as appropriate, that non-repair will not be considered in measuring the Company's compliance with these requirements. The determination of whether extraordinary circumstances exist will be made on a case-by-case basis and will be based on the particular facts and circumstances presented.

v) Reporting

The Company’s annual report(s) described in Section G.3 will: (i) report on "Damaged Poles" and "Double Damaged Poles" that come into existence from January 1 through December 31 of the prior year; (ii) provide the status of "Damaged Poles" and "Double Damaged Poles" that existed before January 1 of the prior year; (iii) identify the “Damaged Poles” and “Double Damaged Poles” that were not repaired; and (iv) describe the extraordinary circumstances, if any, that prevented the repairs from being made. For (i) and (ii), the report(s) will include, at a minimum, a listing of the damaged pole locations, the date the Company became aware of the problem at that location, and the date of the repair.

b. Shunt Removal

It is not the purpose of this metric to require Con Edison to eliminate the use of temporary shunts; to the contrary, the Signatory Parties recognize that temporary shunts may be needed to restore electric service pending permanent repairs. In cases where temporary shunts are used, the Company will strive to remove them and make permanent repairs in a timely manner.

To assist the Company in identifying the location of existing shunts, the NYCDOT has been conducting a survey of its facilities throughout New York City and identifying the locations of its and Con Edison's shunts. NYCDOT agrees to provide the results of the first phase of its survey to Con Edison by December 15, 2004. While this survey should be viewed as helpful, it does not supplant the Company's obligations related to this matter. That is, it is Con Edison's responsibility to identify all existing Company-installed shunts.

i) Definitions

1. "Temporary Shunts" are cables installed by the Company to temporarily maintain service continuity to a customer pending the permanent repair of a Company facility.

2. "Publicly Accessible Shunts" include street/sidewalk shunts and overhead to underground service shunts, including shunts to street lights, installed by the Company. Shunts installed within individual customer facilities, typically behind the customer's meter (called a "meter pan bridge") or inside the customer's end line box (called a "service bridge"), that are not accessible to the general public are not covered by this metric.

3. "Permanent Repair" means that the condition necessitating the shunt has been fully remediated and service has been restored by the Company to the customer's facility before the shunt is removed.

ii) Performance Requirements

The Company will not remove any shunt that will have the effect of leaving a streetlight or traffic signal without power, except for exigent safety reasons,²⁰ until the condition giving rise to the need for the shunt has been completely repaired. Further, it is Con Edison's responsibility to repair the conditions on its system that required the use of the temporary shunts.

Con Edison will make permanent repairs by December 31, 2005 to all shunts that exist on December 31, 2004 or incur a revenue adjustment of \$1.5 million. For all shunts that come into existence on or after January 1, 2005, Con Edison will make permanent repairs for at least 90% of these new cases within 90 days during the winter months, which are defined for purposes of this metric as January, February, March, April, November, and December, and at least 90% of these cases within 60 days during the remaining six months, May through October. Failure to reach the 90% threshold will result in the follow revenue adjustments:

For Calendar Year 2005

Winter Months	\$750,000
May – October	\$750,000

For Calendar Years 2006 and 2007

Winter Months	\$1,500,000
May – October	\$1,500,000

Con Edison will make permanent repairs in all cases in which temporary shunts are installed on or after January 1, 2005 within six months of the dates the shunts are installed.

The 60-day, 90-day and six month periods for making permanent repairs may be tolled in the event that, and for the period corresponding to, a third party (such as the municipal customer)

²⁰ In such situations, and as appropriate, the Company either will replace its temporary shunt or effect the permanent repair.

must perform service at the site prior to, and as a precondition to, Con Edison's completion of work. The Company will be responsible for providing notice to the third party that its work is a precondition to the Company's work and for demonstrating the applicability of the tolling period.

iii) Extraordinary Circumstances Exception

Where the Company can demonstrate that extraordinary circumstances prevented a shunt repair within the 60-day, 90-day, or six month time frames, as appropriate, that non-repair will not be considered in measuring the Company's compliance with the above requirements. The determination of whether extraordinary circumstances exist will be made on a case-by-case basis and will be based on the particular facts and circumstances presented (*e.g.*, documentation demonstrating delays of more than 30 days in receiving street-opening permits from NYCDOT).

iv) Reporting

The Company's annual report(s) described in Section G.3 will: (i) report on shunts installed from January 1 through December 31 of the prior year; (ii) provide the status of shunts installed before January 1 of the prior year; (iii) identify the shunt locations that were not permanently repaired within the 60-day, 90-day, and six month periods described above; and (iv) describe the extraordinary circumstances, if any, that prevented the permanent repair of the shunts. For (i) and (ii), the report(s) will include, at a minimum, a listing of the shunt locations, the date the Company became aware of the problem at each such location, the date the shunt was installed, the date of the permanent repair, and the date the shunt was removed.

c. No Current Street Lights and Traffic Signals

i) Definitions

1. A "no current" is a location where Con Edison's electric service supplying power to municipal street lights or traffic signals is not working due to a

failure of Con Edison's service to the customer facility point, and the date that a "no current" comes into existence is the date of the "stop tag" notifying Con Edison of the "no current" condition.

2. "Permanent repair" means that service has been permanently restored by the Company to the customer's facility point.

ii) Performance Requirements

The Company will strive to make permanent repairs to all no currents (including both street lights and traffic signals) in a timely manner.

For all no currents that are in existence as of December 31, 2004, Con Edison will make permanent repairs no later than May 1, 2005, except in situations in which the Company can demonstrate that it could not complete its repair due to work required to be undertaken by third parties. For all no currents that come into existence on or after January 1, 2005, Con Edison will make permanent repairs for at least 90% of these new cases within 90 days during the winter months, which are defined for purposes of this metric as January, February, March, April, November, and December, and at least 80% of these new cases within 45 days during the remaining six months, May through October. The Company's total exposure each year under this metric will be \$2 million, as follows:

For Calendar Years 2005 - 2007

Winter Months	\$1,000,000
May – October	\$1,000,000

The Company will make permanent repairs to all no currents that come into existence on or after January 1, 2005 within six months of the dates they come into existence.

The 45-day, 90-day, and six month periods for making permanent repairs may be tolled in the event that, and for the period corresponding to, a third party (such as the municipal customer) must perform service at the site prior to, and as a precondition to, Con Edison's completion of work. The Company will be responsible for providing notice to the third party that its work is a precondition to the Company's work and for demonstrating the applicability of the tolling period.

iii) Extraordinary Circumstances Exception

Where the Company can demonstrate that extraordinary circumstances prevented a "no current" from being permanently repaired within the 45-day, 90-day, or six month time frames, as appropriate, that non-repair will not be considered in measuring the Company's compliance with the above requirements. The determination of whether extraordinary circumstances exist will be made on a case-by-case basis and will be based on the particular facts and circumstances presented (*e.g.*, documentation demonstrating delays of more than 30 days in receiving street-opening permits from NYCDOT).

iv) Reporting

The Company's annual report(s) described in Section G.3 will: (i) report on "no currents" that came into existence from January 1 through December 31 of the prior year; (ii) provide the status of "no currents" that existed before January 1 of the prior year; (iii) identify the "no current" locations that were not repaired within the 45-day, 90-day, and six month periods; and (iv) describe the extraordinary circumstances, if any, that prevented the permanent repair of the "no currents." For (i) and (ii), the report(s) will include, at a minimum, a listing of the "no current" locations, the date the Company became aware of the problem at each location, and the date of the permanent repair at each location.

d. Over-Duty Circuit Breakers

Many of the Company's substations' circuit breakers are at or over their fault current capacity. This situation has precluded the parallel operation of specific types of DG in certain areas of the system, and more specifically, has restricted the installation of primary grid-parallel synchronous on-site generators in areas served by these substations since these types of generators produce additional fault current, thus further straining the substations' circuit breakers. Elimination of over-duty circuit breakers and taking other reasonable steps necessary to enable the installation of synchronous generators is a priority because of the significant interest in the use of DG to address a variety of concerns.

i) Performance Requirements

The Company will accelerate its replacement schedule for 13 kV and 27 kV over-duty circuit breakers. Except upon the occurrence of extraordinary system conditions, the Company will replace a target of at least 60 over-duty circuit breakers during each Rate Year (the "Target Level"). This Target Level may be adjusted pursuant to the recommendations of the Fault Current Review Study established below for RY2 and RY3.

There will be no revenue adjustment applicable in RY1. Failure by the Company to achieve the sum of the Target Levels for over-duty circuit breaker replacements for RY2 and RY3 will result in a revenue adjustment of \$100,000 per breaker multiplied by the difference between the sum of the Target Levels for RY2 and RY3 and the number actually replaced. The maximum potential exposure under this metric is \$3 million during the Electric Rate Plan.

ii) Selection and Prioritization of Replacements

The Company will, to the extent practicable, seek to include over-duty circuit breaker replacements in situations where maximum fault currents are between 100 and 103% of the

breaker rating. The Company will seek input from interested Signatory Parties to this Proposal to assist in its prioritization of where to replace over-duty circuit breakers. The Company will meet with interested Signatory Parties for this purpose no later than 60 days of the date of the Commission Order approving or adopting this Proposal. Further, there will be at least one meeting of all interested DG parties annually to review implementation of the effort and to further address prioritization. This annual meeting should be done in conjunction with efforts to improve communication with the DG community discussed in Section J.4.

The prioritization process will consider such factors as circuit breaker duty ratings, predicted load growth, status of proposed/pending DG, combined heat and power, other similar projects, areas with critical human needs loads, and other reasonable criteria that the parties may identify.

iii) Extraordinary Circumstances Exception

Where the Company can demonstrate that extraordinary circumstances prevented it from achieving the sum of the Target Levels for RY2 and RY3, those circumstances will be factored in measuring the Company's compliance with the above requirements. The determination of whether extraordinary circumstances exist will be made on a case-by-case basis and will be based on the particular facts and circumstances presented.

iv) Reporting

The Company's annual reports described in Section G.3 will: (i) report on the number of over-duty breakers in existence from January 1 through December 31 of the prior year; (ii) provide the status the Company's efforts on replacing the over-duty breakers; (iii) identify all over-duty breakers that were replaced over the course of the prior year; and (iv) describe the

extraordinary circumstances, if any, that prevented the Company from achieving the target level for replacements.

v) Fault Current Review Study

Within 60 days of the date of the Commission Order approving or adopting this Proposal, the Company, in consultation with Staff and interested parties, will issue a request for proposals (“RFP”) for an independent study to be conducted to review its fault current over duty constraints in relation to synchronous generators. In a manner consistent with the Company's existing reliability criteria, the Fault Current Review Study should:

1. review the effects of fault current contribution from synchronous generators on the Company's substations;
2. develop measures for mitigating the problem in a cost-effective manner;
3. examine the extent to which the Company's efforts in replacing over-duty breakers can be further accelerated;
4. develop best practices based on the success that other electric distribution utilities or states have had in installing synchronous on-site generation;
5. examine and recommend alternative measures that provide a measure of relief in lieu of circuit breaker replacement; some of these measures may be considered temporary and others could defer circuit breaker replacement; examples include evaluation of the fault current contribution of dual mode inverters that 'line commutate' to run grid parallel and 'self-commutate' (analogous to synchronous) to run stand-alone, and evaluation of the feasibility of using Fault Current Limiters under development by EPRI; and

6. identify other creative approaches that are not currently being pursued.

In preparing the Fault Current Review Study, the consultant should, as appropriate, solicit comments from the parties who were involved in the preparation of the RFP. This Study, the cost of which the Company will be permitted to defer for later recovery, should be completed and filed within nine months of the date of the Commission Order approving or adopting this Proposal.

vi) Technology Research and Development and Demonstration Projects

The Company will continue collaborative efforts and, where effective, support acceleration of research activities on technologies that reduce the impact of fault current from synchronous generators. In cooperation with NYSERDA, the United States Department of Energy, and others, as appropriate, the Company should develop several research and/or demonstration projects using new fault-mitigation technologies during the Electric Rate Plan. The Company may request recovery of any incremental research and development costs incurred in developing the research and/or demonstration projects.

H. Compliance with Environmental, Health, and Safety Policy

Consistent with Con Edison's Standards of Business Conduct, the Company's Environmental, Health, and Safety ("EH&S") Policy makes environment, health, and safety considerations an integral part of the Company's business and operating practices. For the purposes of the Company's operations, the Company's management and represented employees both understand that the term "safety" includes and fully encompasses the written operating practices and procedures of the Company. The EH&S Policy commits Con Edison to continuously strive to improve EH&S performance and holds all employees accountable for knowing EH&S

requirements applicable to their assigned responsibilities and for using the information in planning and completing their work. Compliance is never optional, including the timely and accurate reporting of violations or other reportable events.

If employees have an EH&S concern, they should first report the concern to their immediate supervisor in accordance with the Company's Standards of Business Conduct. Every supervisor is responsible for handling these concerns courteously and honestly and pursuant to the Company's written policies and operating procedures and practices. Employees may also contact their EH&S Manager or local EH&S representative, respective department managers and officers, Con Edison's General Auditor, or Con Edison's Corporate Ombudsman.

I. Customer Service Issues

1. Customer Service Performance Mechanism

The Customer Service Performance Mechanism ("CSPM") described herein will be in effect for the Electric Rate Plan and thereafter until electric base delivery service rates are reset 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 L. Failure by the Company to achieve the specified targets will result in a revenue adjustment of up to \$36.0 million.

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 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 G.2.

i) In the event abnormal operating conditions in one of the Company's six operating areas affects 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 condition will be omitted from the calculation and the Company's results in the measured areas will be measured only by the data from the other operating area(s) for the period of the abnormal operating condition.

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 upon by Staff and the Company in writing. In the event the parties 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 Director of the Office of Consumer Services 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 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

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

1. 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. 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 about high bills 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.

2. Days to Complete Routine Investigation

The number of calendar days to complete investigation of a customer inquiry, received by telephone, mail, facsimile or in person that cannot be resolved on the day it is received. Performance in any month will be measured by the number of investigations completed within 30 calendar days, when the date of completion falls within that month, divided by the total number of investigations completed during the reporting month.

3. Call Answer Rate

(a) For RY1, "Call Answer Rate" is the percentage of calls answered by the Company Call Centers 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 divided by the sum of the system-wide number of calls offered. Calls offered are calls received by the operating areas' Automatic Call Distributors. Calls abandoned are calls where the customer hangs up before the voice response unit ("VRU") responds or when the customer chooses to speak to a representative but hangs up before contact is made. The number of calls answered is equal to the number of calls received minus the number of calls abandoned.

(b) For RY2 and RY3, “Call Answer Rate” is the percentage of calls answered by a Company representative within 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 30 seconds divided by the sum of the system-wide number of calls answered by representatives.

4. Satisfaction of Callers, Visitors, and Emergency Center Contacts

The average of the satisfaction index ratings on the semi-annual surveys (conducted during the second and fourth quarters) of callers, visitors, and emergency center contacts (electric portion only) conducted by Communication Research Associates or other professional survey organization during each Rate Year.

5. Days to Complete – Initial Phase

With respect to work orders, the average number of business days from receipt of the customer’s request for an electric non-vault service job by the Energy Services Department to issuance of a service layout to the customer for all initial phase jobs completed in the reporting month. The date of receipt of the customer’s request will be the earlier of (i) the date on the Contractor Work Request Form; or (ii) the receipt date entered in the Commercial Operations Reporting System. The date of issuance of the service layout (Form 2-80) to the customer will be the earlier of (i) the date shown in the service date confirmation letter issued to the customer; or (ii) the completion date recorded in the Commercial Operations Reporting System.

6. Days to Complete – Final Phase

With respect to work orders on all non-vault electric final phase jobs completed in the reporting month, the average number of business days measured from receipt of a city certificate

or completion of final inspection, whichever is later, to the date of final inspection displayed on the “field call sheets,” which must be retained until Staff has verified the reported performance level.

7. Percentage of Meters Read on Schedule

A percentage that is determined by dividing the sum of actual meter readings obtained in the Rate Year by the total number of meters scheduled to be read for all operating areas in that Rate Year. Actual meter readings are readings obtained from meter readers in the field, or through receipt of completed customer “drop cards” or through phoned-in readings from customers, either directly to a customer service representative or by message left on a VRU, or input via the Internet.

8. Billing Accuracy

The number of bills not adjusted as a result of a Company error in the Rate Year divided by the total number of bills rendered during the Rate Year.

9. Outage Notification

The specific activities for communicating with customers, the public, and other external interests during defined electric service outage events as described by the Commission in Case 00-M-0095.²¹

ii) For each activity, annual performance that fails to meet the applicable threshold performance standard will result in a revenue adjustment in the amount noted in Appendix L. All revenue adjustments related to this CSPM will come from shareholder funds and will be deferred for the benefit of ratepayers.

²¹ Case 00-M-0095, supra, Order Approving Outage Notification Incentive Mechanism, (issued April 23, 2002).

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.

3. Streetlights

a. NYC Street Light Billing System

Con Edison, NYCDOT, and NYPA agree to work together to jointly define the functional requirements for a new New York City street light billing system that will: (i) include a verifiable, electronic billing register; (ii) produce accurate bills based on the data contained in the register; and (iii) provide appropriate audit trails so that Con Edison, NYCDOT, and NYPA can verify the accuracy of the bills produced by the system, including the accuracy of the number of facilities billed.

The functional requirements definition will include the source of the billing data to be used in the new system, the content of the data, the process and rules for exchanging information electronically among Con Edison, NYCDOT, and NYPA, the process and rules for adding and removing service locations and introducing new or different lighting types or sizes, the responsibilities for data ownership, the viewing and search capabilities needed by each party, the rules for retaining and archiving historical data, the system controls, an audit process for periodic comparisons of the contents of the billing register to actual street conditions and reconciliation to

bills to the extent necessary and appropriate, and the security rules for the new system and its data.

Upon completion of the functional requirements definition, Con Edison will create a development and implementation plan for the new system, including target dates for the major development milestones, including technical design, programming, data conversion, unit testing, systems testing, user acceptance by Con Edison, NYCDOT, and NYPA, and implementation. Once Con Edison develops the system, implementation will commence upon acceptance of the system by NYCDOT and NYPA.

Con Edison, NYCDOT, and NYPA will each assign a point person having the appropriate decision making authority to represent it in this process. In addition, Con Edison will assign a project manager from its Information Resources organization. Con Edison, NYCDOT, and NYPA will endeavor to complete the functional requirements definition phase within 60 days of that date of the Commission Order approving or adopting this Proposal. Those parties have set November 1, 2005 as a target date for implementing the new system, recognizing that this target date may be revisited, and may be reset, as necessary and appropriate, once the functional requirements definition phase is complete and the implementation plan is developed.

b. Street Light Burning Hours

The New York City streetlight annual burning hours in Leaf 18 of the PASNY No. 4 rate schedule for light sensitive control devices for normal years will be reduced from 4,270 hours to 4,100 hours.

c. New Street Lights Service Initiation

(i) Con Edison will energize at least 85% of new streetlights within a 90-day period and all new streetlights within six months, which periods will commence upon Con Edison's receipt of notice from NYCDOT containing all necessary information regarding

the new streetlight(s); provided, however, such 90-day and six month periods will be tolled for periods where the Company is unable to access the site(s) due to conditions beyond the Company's reasonable control (*e.g.*, NYCDOT must perform work at the site as a precondition to the Company's completion of work; the municipality declares a snow emergency).

(ii) Con Edison and NYCDOT will continue to develop a verifiable, electronic process whereby (i) NYCDOT will provide notice to Con Edison when a new streetlight is ready to be energized by Con Edison (content of such notice also to be developed); (ii) NYCDOT can verify receipt of such notice by Con Edison; and (iii) Con Edison and NYCDOT can assess the status of the work on each streetlight as compared to the 90-day and six month periods for energization of service. Con Edison and NYCDOT will work to finalize this process and submit a report with respect to the agreed upon procedure to the Director of the Office of Consumer Services by April 1, 2005.

d. Streetlight Task Force

There is a Streetlight Task Force comprised of representatives from the Company and NYCDOT. The Task Force will remain in place throughout the Electric Rate Plan, unless the Company and NYCDOT mutually agree otherwise.

J. Demand Management

The Signatory Parties agree that the following measures should be undertaken to address and promote energy efficiency and demand management and improve environmental quality in Con Edison's service territory.

1. Demand Management Goals

The NYISO expects that peak load in Zones I and J of Con Edison's service territory will grow by 535 MW from the summer of 2005 through the summer of 2008, including any impact

of participation in the NYISO Emergency Demand Response Program (“EDRP”). See NYISO's 2004 Load & Capacity Book, Table 1-2 on page 5. To meet the expected peak load growth of 535 MW without the need for additional generation and potential additional infrastructure expansion, and to promote EE and DG, the Signatory Parties agree to develop an Action Plan on how to better implement demand management goals and increase the effectiveness of the NYSERDA programs funded through the System Benefits Charge (“SBC”) III.

a. System Benefits Charge Programs

The efforts of NYSERDA in administering SBC II programs, which are nearly fully subscribed, are expected to yield up to 250 MW of EE/DG/load management (“LM”) in Con Edison's service territory during the Electric Rate Plan. Of this amount, 80 MW can be attributed to programs providing permanent EE/DG measures. Should the SBC Program be renewed or extended at the current funding level, it is expected that the SBC III programs will achieve an additional 300 MW, including 120 MW of permanent EE/DG measures during the Electric Rate Plan.

b. Targeted Energy Efficiency/Distributed Generation

Additionally, the Company will issue an RFP or other offerings seeking up to 150 MW of targeted EE/DG initiatives to reduce load demands in selected constrained networks, recognizing that EE/DG may provide system relief. To the extent that Con Edison determines that it cannot achieve the full amount of this level during the Electric Rate Plan, it will transfer the remaining portion of the 150 MW to the system-wide EE/DG/LM program operated by NYSERDA.

c. Distributed Generation

The Company will take certain measures, as detailed below, to facilitate DG development in its service territory.

d. System-Wide Energy Efficiency/Distributed Generation/
Load Management Program

Given the uniqueness of the Company's service territory and the projected growth in peak demand described above, the Company will fund during the Electric Rate Plan a system-wide EE/DG/LM program operated by NYSERDA of up to 300 MW, including any shortfall in targeted EE/DG, that is incremental to existing and future programs funded by the SBC.

e. Incentive

If superior achievement is reached by the Company for increasing participation in various EE/DG/LM programs, the Company is permitted to earn an incentive, as detailed below.

2. Action Plan

Within 30 days of the date of the Commission Order approving or adopting this Proposal, Staff will initiate a collaborative process (“Collaborative”), to be chaired by NYSERDA, and inviting Con Edison, New York City Economic Development Corporation (“NYCEDC”), NYISO, New York State Consumer Protection Board, COW, customer groups, EE providers, DG providers, environmental groups, low income advocates, and other interested parties to discuss EE and demand response initiatives within Con Edison's service territory. The Collaborative will, at its outset, include no more than 15 members. If more than 15 members seek to join the Collaborative, parties with common interests will meet amongst themselves and appoint an appropriate representative(s). After an attempt to consolidate representation, the members of the Collaborative, upon consensus, may expand membership as appropriate to ensure that all interested and necessary parties have representation in the Collaborative.

The Collaborative will have the responsibility for the development of an Action Plan for Con Edison and others to significantly stimulate participation in existing EE/DG/LM programs, particularly the SBC III and system-wide programs, and identifying additional NYSERDA and

NYISO-sponsored demand management opportunities within Con Edison's service territory. The Collaborative will not seek to duplicate or conflict with the workings and recommendations of any SBC Advisory Group, with regard to any SBC program. NYSERDA will file the Action Plan with the Commission, for information purposes, within 180 days of the date of the Commission Order approving or adopting this Proposal.

The Action Plan will focus on:

- a. identifying and analyzing methods to increase participation in EE/DG/LM programs;
- b. reviewing Con Edison's process for promoting existing EE/DG/LM to determine if and how further enhancements can be made;
- c. offering recommendations to NYSERDA and NYISO for new initiatives designed to further stimulate participation in their EE/DG/LM programs;
- d. reviewing general DG and EE/DG/LM programs for possible coordination of those efforts with a targeted EE/DG program;
- e. developing a strategy for cooperation among relevant parties (*e.g.*, Con Edison, NYSERDA, NYISO) on a regular basis to maximize the effectiveness and avoid duplication of existing and future EE/DG/LM programs;
- f. assessing the Company's EE-related outreach and education efforts to determine if further enhancements can be made;
- g. reviewing and, if necessary, enhancing the skills of the Company's account executives with regards to EE/DG/LM issues;
- h. tracking the number of customer calls related to EE/DG/LM at a designated toll free number for demand management;

- i. developing potential marketing and sales plans to support program goals;
- j. reviewing existing measurement and verification protocols for use in tracking programs;
- k. coordinating with NYPA's EE/DG/LM initiatives;
- l. identifying the means and impediments to shifting load away from electric chillers to non-electric chillers and other technologies;
- m. developing a definition of clean DG for the purposes of the programs discussed in this Proposal, based on existing applicable regulations;
- n. examining the opportunity for ESCOs to adjust their installed capacity (“ICAP”) buying requirements for any service classifications based on Company-approved, objective metrics and for offering customers the right to measure use at system peak for purposes of setting ICAP responsibility through an approved Meter Data Service Provider, taking into account the potential revenue impacts on customers and the Company;
- o. considering legislative and regulatory opportunities, such as improvements in energy building codes and establishing state and federal EE standards for residential and commercial products, that would achieve EE load reductions in Con Edison's service territory; and
- p. maximizing the effectiveness of SBC II programs and seeking ways to expand them for use in the system-wide programs.

3. Targeted Energy Efficiency/Distributed Generation

The Company will develop and implement the targeted EE/DG load reduction initiative, involving investment in at least 150 MW of targeted EE/DG load reductions intended to defer and possibly avoid T&D infrastructure investments, in cooperation with NYSERDA and in coordination with the members of the Collaborative.

Within 45 days of the date of the Commission Order approving or adopting this Proposal, the Company will schedule a meeting of the Collaborative to begin discussions on the targeted EE/DG initiative and to review the lessons learned from the Company's recent targeted demand management RFP. Any individual entity that works directly on the development of the targeted EE/DG load reduction initiative will be precluded from bidding on the offerings stemming from the initiative. In addition, all entities participating in the development of the targeted EE/DG initiative will be required to sign a confidentiality agreement that prohibits their disclosure of information to any potential program participant(s) in the ensuing targeted EE/DG RFP and/or other offerings.

In advance of the issuance of the targeted EE/DG RFP and/or other offerings, the Company will design a process for identifying customers in targeted load areas who are candidates for targeted EE/DG programs, taking into consideration the confidentiality of the Company's customers and other information. The targeted EE/DG RFP and/or other offerings will include a map of the targeted load areas, subject to security concerns and appropriate disclaimers and cautions. A targeted EE/DG RFP and/or other offering(s) will be issued by the Company beginning within nine months of the date of the Commission Order approving or adopting this Proposal.

The targeted EE/DG load reduction initiative will be subject to a price cap on an average initiative-wide per kWh basis that is equivalent to the level NYSERDA spent statewide for eight of nine business/institutional programs (the curtailable load program is excluded) from 1998 – 2003, including incentive and implementation costs to achieve savings thus far, adjusted for inflation and higher NYC costs (25%), and except that the price cap will be increased to allow payments to reflect the present value of the deferral of the T&D reinforcements under

consideration in the subject area.²² The cap for this effort is \$112 million plus the equivalent of the then-applicable NYSERDA administrative and evaluation fee percentages under the SBC programs, which is equivalent to what NYSERDA will receive for the system-wide programs, excluding the present value of the deferral of T&D reinforcements. Following receipt of bids, Con Edison may, as appropriate, seek permission from the Commission to revise the cap.

The Company will inform NYSERDA and all members of the Collaborative by December 31 of each Rate Year of its progress in achieving the 150 MW level for the targeted EE/DG initiative.

4. Distributed Generation

To further promote the interconnection of DG, the Company will post on its web site appropriate DG information, including its *Handbook for General Requirements for Electrical Service to Dispersed Generation Customers*, references to the Commission's Standardized Interconnection Requirements (“SIR”), application instructions for DG interconnection, and the name of and contact information for the Company's designee responsible for managing all aspects of the DG interconnection application process.

The Company will also work with the DG community to increase the level of education with respect to DG. Additionally, the Company will provide to interested customers information identifying any operating areas (*e.g.*, a map) without fault current limitations and a schedule of planned upgrades of breakers in operating areas with fault current limitations. This information will first be made available within 30 days of the date of the Commission Order approving or adopting this Proposal and will be updated at least semi-annually thereafter. The information

²² Customers that do not pay the MAC are free to participate in the targeted EE/DG load reduction initiative; however, payment for their participation will be limited to the present value of the deferral of T&D reinforcements.

will include appropriate cautions and disclaimers, including that it is subject to change without notice based on changing circumstances.

In order to ensure timely treatment of DG interconnection applications for customers above the 2 MW SIR limits, but below 5 MW, the Company agrees to apply SIR timing requirements for DG units below 2 MW to those DG units up to 5 MW.

The Company will provide on a semi-annual basis to Staff and participants in the Collaborative a report on the status of DG interconnections. The report will, at a minimum, include:

- a. the status of all interconnection proposals in progress during the period, and, for proposals that were denied or rejected, the reason(s) for the denial or rejection;
- b. type of prime mover (*e.g.*, micro-turbine, fuel cell);
- c. type of generator (induction or synchronous);
- d. general description of type of installation and mode of operation (*i.e.*, size, fuel, peaking, base load, grid-parallel vs. grid-isolated, grid backup);
- e. type of system modification required by the Company with an order of magnitude cost estimate;
- f. operating area corresponding to the map described above;
- g. for completed projects, total time and cost for the Company (subject to appropriate customer consent); and
- h. percent of applications that were not handled within the time limits established by the applicable SIR, including application of those limits to DG customers above 2 MW, but below 5 MW, with explanations for time-overruns.

The Company will host meetings of interested parties, as necessary, to review the findings of the reports and to consider recommendations for actions during future periods.

5. System-Wide Demand Management Programs

As provided above, Con Edison will provide funding to NYSERDA at a level sufficient for NYSERDA to procure at least 150 MW, and up to 300 MW, of system-wide EE/DG/LM load reductions that are incremental to NYSERDA's SBC-funded (SBC II and III) programs.

The EE/DG/LM system-wide program will be administered by NYSERDA, in coordination with the Company, Staff, NYCEDC, and COW, and with the input of other interested parties. The system-wide program may be implemented by NYSERDA as new programs or as expansions of existing NYSERDA SBC-funded programs. The Company agrees to provide NYSERDA with available customer data, including such data as may be identified by the Action Plan, subject to confidentiality concerns, to facilitate NYSERDA's programs.

NYSERDA agrees to implement an evaluation process for the system-wide EE/DG/LM program and will report to the Commission on the program annually. NYSERDA agrees to use SBC funding to first achieve, through contracts, at least 250 MW of EE/DG/LM under SBC II and 300 MW under SBC III within Con Edison's service territory. Additional program efforts will be funded by Con Edison during the Electric Rate Plan, through a contractual arrangement acceptable to Con Edison and NYSERDA, up until the system-wide target is reached. With the stated exception of the targeted EE/DG load reduction initiative, customers that do not pay the MAC are not eligible for the system-wide EE/DG/LM program.

Con Edison's funding will be capped on an average initiative-wide per kWh basis at the level NYSERDA spent statewide for eight of nine business/institutional programs (the curtailable load program is excluded) from 1998-2003, including incentive payments, implementation costs and an administrative fee to NYSERDA, including any fee for program

evaluation, adjusted for inflation and higher NYC costs (25%). On this basis, a 150 MW system-wide program would require Con Edison to fund NYSERDA with no more than approximately \$112 million in program costs plus the then-applicable administrative and evaluation fee percentages under the SBC programs over the Electric Rate Plan. Should the 150 MW system-wide program be expanded due to any shortfall in the targeted EE/DG initiative, the amount of funding by Con Edison to NYSERDA will be increased by a proportionate amount.

Because NYSERDA SBC-funded programs are a partial basis for meeting projected load growth, and because the system-wide EE/DG/LM program may be implemented through expansion of SBC-funded programs, the Company agrees that in any of its written or oral communications, Con Edison will support extension of the NYSERDA-administered SBC program at least at existing SBC funding levels. NYSERDA will report to the Commission, Con Edison, and the members of the Collaborative on a quarterly basis the amounts of demand reductions achieved in Con Edison's service territory under its various programs.

6. Generally Applicable Commitments

The Company agrees to appoint EE/DG/LM coordinator(s) to provide EE/DG/LM program-related information to large commercial and industrial customers. In addition, the Company will provide a toll-free phone number for residential and small commercial and industrial customers for their informational needs on EE/DG/LM.

The Company will continue to develop detailed annual forecasts of T&D capital budget requirements and will identify for each major T&D project (*i.e.*, projects of \$10 million or more), the location, rationale, scope, estimated capital costs, appropriate load, and other data. This information will be included in the Company's annual reports described in Section D.3. The Company will evaluate and implement cost-effective measures as alternatives to major T&D

projects that defer major T&D system projects through the use of technologies or services that could reduce peak T&D loads.

7. Cost Recovery

Con Edison may recover the direct cost of both the targeted and system-wide programs and associated lost revenues in the MAC over a reasonable period when incurred. These costs will be net of the value of the deferred T&D capital expenditures under the targeted EE/DG initiative (which is addressed in Section D.3) but will not be reduced by avoided or avoidable costs. The Company and NYSERDA will, in consultation with Staff, develop a schedule for Con Edison's payments to NYSERDA reasonably based on NYSERDA's payment obligation for system-wide programs; such payments will be recovered through the MAC over a reasonable period. Lost delivery revenues will be recovered as realized up until rates are reset and the sales forecast is adjusted to reflect these measures. Within 120 days from the date of the Commission Order approving or adopting this Proposal, the Company will provide Staff and the members of the Collaborative the procedures that will be used to calculate lost revenues.

8. Incentive Mechanism

In order to encourage the Company to take all actions within its control to promote participation of its customers in NYSERDA SBC III-funded programs for EE/DG/LM, the targeted EE/DG initiative, the system-wide EE/DG/LM program, and the NYISO's EDRP (as discounted by the NYISO) and Special Case Resource (“SCR”) programs, including reductions or additional participation achieved by ESCOs, curtailment service providers, and the Company’s tariffed demand response programs, the Company is eligible to receive an incentive for attainment of incremental MW participation in each of the programs listed above. In each Rate Year, subject to the thresholds set forth below, the Company will be eligible to receive an

incentive of \$22,500 for every MW achieved that year through these actions, up to a maximum of \$15,187,500, representing an increment of 675 MW during the Electric Rate Plan.

Con Edison's ability to earn an incentive is subject to the achievement of certain threshold levels. In RY1, the threshold level is 100 MW, in RY2 it is 200 MW, and in RY3 it is 300 MW; these annual thresholds are not cumulative. Once the threshold for each Rate Year is achieved, the Company will recover proportionately for incremental MW achieved (*e.g.*, if the Company achieves 120 MW in RY1, it would be eligible to receive an incentive of \$2,700,000 [120 MW x \$22,500/MW]; if the Company achieves an additional 85 MW in RY2, it would be eligible to receive an additional incentive of \$1,912,500 in RY2 [85 MW x \$22,500/MW]). The Company will not be entitled to receive an incentive for EDRP or SCR programs in excess of 100 MW over the Electric Rate Plan to the extent that enrollment in those programs results from relaxation of the New York State Department of Environmental Conservation's ("NYSDEC") restrictions on emergency on-site generation. The Company will recover any incentive over a reasonable period through the MAC.

The Company will file an annual report with the Commission, within a reasonable time period after the end of each Rate Year, on any incentives earned hereunder. The report will, at a minimum, explain the basis of any incentives the Company is seeking.

K. System Reliability Assurance

1. Scope of Study

In coordination with the ongoing Comprehensive Reliability Planning Process for Reliability Needs of the NYISO and such modifications thereto as may be directed by the FERC, and in order to assure the long-term reliability of the Company's bulk power system, particularly in New York City, the Company will develop a Study ("Study") that examines the supply and

demand side resource options that will be needed to adequately meet system demand in the next 10 years (the “Study Period”). While that time frame is beyond the duration of the Electric Rate Plan, the design, approval, and construction process for new or repowered facilities necessitates analysis and planning well in advance of system needs. The Study will acknowledge New York’s competitive electric market and any findings will be consistent with a competitive environment.

The Study will examine: (i) the NYISO’s current 80% minimum in-City locational reliability requirement, and the effects of any revisions thereto as may be made prior to completion of the Study or that Con Edison may reasonably anticipate in the future due to load growth or other changing circumstances during the Study Period; and (ii) the feasibility of both new and repowered generation plants, demand-side resources, and additional bulk transmission lines as a means of meeting the expected load growth, accommodating retirements and enhancing competition in the Company service territory in the Study Period. The Study will review and make preliminary recommendations concerning potential means of facilitating the competitive development of generation, transmission, and demand-side resources needed for system reliability, including, but not limited to, the use of auctions and long-term power purchase agreements.

The Study should give appropriate consideration to cost-benefit calculations and the reliability impact of each potential option, as well as such factors as the adequacy of fuel supplies, the desire for diversity of both fuel supplies and generation resources, Homeland Security needs and system security concerns, City land use limitations, and environmental and health issues. The Study should also be consistent with the Commission’s Statement of Policy of August 25, 2004 in Case 00-M-0504.

2. Jurisdictional Setting

The parties hereto recognize that the NYISO has filed with the FERC an Agreement between the NYISO and the New York Transmission Owners on the Comprehensive Reliability Planning Process, and that the Company will have rights and obligations as set forth in that Agreement if it is approved by the FERC and executed by the Company. The parties also recognize that the Company has obligations and responsibilities as an electric corporation subject to the Commission's jurisdiction.

3. Preparation and Input

The Company may contract with one or more independent consultants to perform the Study, or portions thereof, and defer the reasonably incurred costs of such consultant(s) for later recovery.

The scope of the Study will be developed in cooperation with Staff, NYCEDC, COW, and Signatory Parties (including their principals and members) to this Proposal. In addition, Study input should be sought from the NYISO, the New York State Reliability Council, and potentially interested governmental and regulatory entities, such as the federal Departments of Homeland Security and Energy, FERC, NYSDEC, and NYSERDA.

To avoid duplication of effort, the Study will exclude consideration of the subjects addressed in the steam production study discussed in the Gas/Steam Rate Order.

4. Timing

The Study process will be commenced within 60 days of the date of the Commission Order approving or adopting this Proposal, and the Company will use best efforts to issue the Study by December 31, 2005. If the Study is not issued by December 31, 2005, the Company will update Staff, NYCEDC, COW, and the Signatory Parties as to its expected completion date.

The Study, when completed, will be made available to Staff, NYCEDC, COW, and other interested parties. To the extent the Study contains confidential cost projections or cost data or security sensitive information, those sections of the Study will be segregated and treated as confidential information, in accordance with the Commission's trade secret regulations, and will not be disseminated to parties other than Staff.

5. Interplay of Con Edison's Obligations

If the NYISO, as a result of the Comprehensive Reliability Planning Process, identifies a reliability need within the Company's bulk power system within the Study Period, the Company will identify for the NYISO and the Commission proposed backstop solutions, which should be based on the Study findings if such findings are available at the time the Company must identify its potential backstop solutions. One or more of the proposed backstop solutions will be implemented in the absence of a market response to the NYISO's identified need, in accordance with the NYISO process.

If the NYISO Comprehensive Reliability Planning Process is rejected by the FERC, is abandoned or terminated, or fails to produce annual "Reliability Needs Assessments" for the Company's service territory during the Electric Rate Plan, and instead the Company identifies a reliability need within the Company's bulk power system within the Study Period, and the Commission confirms that such need must be met, the Company will submit to the Commission, and other regulatory bodies, as appropriate, proposed backstop solutions for addressing the identified need, which should be based on the Study findings if such are available at the time the Company must identify its potential backstop solutions. One or more such solutions will be implemented in the absence of a market response to this identified need.

In either case, the procedure to be employed related to the implementation of the appropriate backstop solution(s) will involve a filing by the Company with the Commission that

describes the backstop solution(s) chosen by the Company, including the rationale for its choice(s), the Company's proposal for implementing its solution(s), and any plan to solicit and consider offers or bids associated with the proposed solution(s). Interested parties will then be provided an opportunity to comment on the Company's filing.

L. Revenue Allocation

The annual revenue requirement for each Rate Year will be allocated among the classes as follows and as shown in greater detail in Appendix M.

1. Step 1: Rate Realignment

The NYPA class will receive a \$5.25 million increase in RY1 and RY3, designed to address the Electric Cost of Service ("ECOS") study deficiency, as calculated by Con Edison. The impact of this increase on all of the customer classes will be as shown on Appendix M.

2. Step 2: Allocation of Base Rate Increase

The "Pre-Rate Moderator Increase" for RYs 1 and 3 will consist of both T&D and MAC revenue changes and is that sum, which when combined with the rate moderators for RY1, will produce the total agreed upon base rate increase in delivery service revenue for RYs 1 and 3. Any Pre-Rate-Moderator Increase for RY1 and RY3 will be apportioned as a uniform percentage increase to all classes in proportion to (a) each class' current T&D base revenue prior to that Rate Year's increase, plus (b) any rate increases or decreases from Step 1 scheduled for that Rate Year.

3. Step 3: Allocation of Rate Moderators

Each Rate Year, the NYPA class will be allocated \$8,533,000 of the imputed forecasted TCC auction proceeds (*i.e.*, 14.22% of \$60 million) for that year consistent with ECOS Transmission Allocator D03. This allocation will serve as a reduction or offset to the Pre-Rate

Moderator Increase. The NYPA class will not share in any subsequent reconciliation of forecasted-to-actual TCC auction proceeds during the Electric Rate Plan. In addition, each Rate Year the NYPA class will be allocated \$6,849,000 of the historic TCC auction proceeds (14.22% of \$48.154 million, which is 50% of those proceeds).

Except as per contract between Con Edison and NYPA, the NYPA class will not receive an allocation of TCC congestion rents during the Electric Rate Plan. Further, the NYPA class will not share in any gains and/or losses arising from the sale and/or disposition of any Con Edison production-related assets.

4. Step 4: Total Class Increase

The total revenue increase in RY1 and RY3 for each class will be the sum of any rate increase or decrease from Step 1 plus any allocation of base rate increase from Step 2 minus any allocation of rate moderators from Step 3.

5. Step 5: Development of Transmission and Distribution Rate Increases for Con Edison Classes

The T&D rate increase applicable to each Con Edison class will be determined by subtracting the change in the MAC revenue requirement included in the Pre-Rate Moderator increase from the total revenue increase for each class determined in Step 4.

6. Other

a. This interclass revenue allocation does not set any precedent for any future revenue allocation or TCC revenue allocations.

b. Within 60 days of the date of the Commission Order approving or adopting this Proposal, the parties agree to initiate a collaborative process to discuss and analyze alternative ECOS methodologies and inputs consistent with generally accepted cost of service principles, the appropriateness of a Winter/Summer rate differential for the Rate I NYPA class,

and the streetlighting outage allowance. The parties intend to submit a report on this matter to the Commission no later than December 31, 2005. This collaborative process will not result in rate changes during the Electric Rate Plan.

c. Neither this Proposal nor the execution thereof by any party shall be construed as validating or endorsing any particular ECOS methodology or study.

M. Rate Design

1. General Delivery Service

Consistent with the Commission's jurisdiction over retail delivery service, this Proposal establishes comprehensive rates that include all T&D-related costs associated with retail delivery service. The comprehensive delivery service rates will be grounded on a total revenue requirement that reflects all 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,²³ except as may be necessary to implement rate unbundling.

The delivery service rates for certain service classifications will have time-dependent or other-based components. For example, time-of-day delivery service rates will have multiple components to reflect the different on-peak and off-peak periods currently applicable to T&D rates. In addition, with respect to economic development programs whose distribution charges are subject to percentage-based discounts or minimum monthly charges, the percentages will be restated to reflect their application to the comprehensive rates.

²³ The delivery service rates will be set forth in the Full Service Schedule and incorporated by reference in the Retail Access Schedule.

The Company plans to file a transmission rate case with the FERC after the date of the Commission Order approving or adopting this Proposal. When the FERC case is completed, the Company will inform the Commission of the FERC-approved transmission revenue requirement. That revenue requirement will be deemed to be subsumed in the total delivery service revenue requirement established in this proceeding, without altering that total delivery service revenue requirement or the associated comprehensive delivery service rates set forth in the Company's Commission-jurisdictional tariffs.

2. PASNY No. 4 Rates

a. The facilities charge applicable in Rate I to New York City streetlights will be adjusted in RY1 from \$5.22 to \$5.54 and in RY3 from \$5.54 to \$5.86, based on the embedded cost of facilities specifically associated with service to street lights. All other Rate I and Rate II charges under the PASNY No. 4 rate schedule will then be increased to recover the balance of the NYPA revenue requirement.

b. Rate III and Rate IV rates will be developed consistent with the Standby Rates Order.²⁴ As specified in the standby rate guidelines, Rate III and Rate IV rates will each be developed to be revenue neutral at the proposed revenue level (*i.e.*, to produce the same transmission and distribution revenues as the equivalent non-standby rates).²⁵ Rate IV 138 kV standby rates reflect revenues associated with 138 kV facilities only.

²⁴ Case 99-E-1470, Proceeding on Motion of the Commission as to the Reasonableness of the Rates, Terms and Conditions for the Provision of Electric Standby Service, Opinion No. 01-4 (issued October 26, 2001) (“Standby Rates Order”).

²⁵ The Commission has defined “revenue neutral” as “the full service class (not any individual customer) would contribute the same revenues if the full class were priced under either the standard service class rates or the standby rates (given the historic usage patterns of the customers in that class).” Standby Rates Order, p. 7.

3. EDDS No. 2 Rates

The current conventional and time-of-day rates under the EDDS rate schedule (Rates I and II, respectively) will be increased by the percentage increase applicable to EDDS. Rate I of SC 15-RA of the Retail Access Schedule will be set equal to EDDS Rate I; Rate II of SC 15-RA will be set equal to EDDS Rate II.

4. Con Edison P.S.C. No. 9 – Electricity and P.S.C. No. 2 – Retail Access Rates

a. The Rate I water heating block rate (*i.e.*, the 360-780 kWh block rate per month) in SC 1 will be eliminated, because the rates in that block are currently higher than the rates for the first 360 kWh per month.

b. The water heating block rate in SC 7 Rate I will be eliminated to be consistent with the elimination of the water heating block rate in SC 1. Existing SC 7 Rate III (for space heating only) is the same as SC 7 Rate I, except that it has no water heating block rate; because the water heating block was eliminated, Rate III will be eliminated. The space heating discount applicable under SC 7 Rate I will be applicable to usage greater than 360 kWh during the winter months.

c. The customer charge and the energy charges in SC 1 Rate I will be increased in RY1 and RY3 by the overall class base rate percentage increase and will not otherwise be increased during the Electric Rate Plan.

d. In SC 7 Rate I, the customer charge, the summer rates, and the winter rates for usage up to 360 kWh will be set identical to SC 1 Rate I. The remaining revenue requirement for SC 7 Rate I will be allocated to the over 360 kWh winter block rate.

e. Consistent with past practice, Rate II in SC 1, 2 and 7 will be designed to recover each class' overall base revenue requirement. The rates will be designed to be revenue neutral at the proposed revenue level.

f. The SC 2 Rate I customer charge and energy charges will be adjusted by the overall class base rate percentage change.

g. The demand charges and energy charges in Rate I of SC 4, 5, 8, 9 and 12 will be adjusted by the overall base rate percentage change applicable to each class.

h. The SC 6 (Public and Private Street Lighting) minimum charge will be eliminated and a customer charge will be set to collect the embedded cost of \$12.46 per account. The customer charge and energy charge will be increased by the overall base rate percentage increase applicable to this class.

i. The SC 9 Rate I maximum rate will be increased by double the overall base rate percentage increase applicable to SC 9 Rate I, consistent with past practice and the goal of eventually eliminating this provision.

j. The minimum charge and energy charges applicable to SC 12 Rate I customers billed for energy only will be increased by the overall base rate percentage increase applicable to SC 12 Rate I customers.

k. Past practice will be followed in designing Rate II of SC 4, 5, 8, 9, 12, Rate III of SC 4, 8, 9, and 12, and the SC 13 rate. The energy rates in these rate classes will be set equally: they will be determined by increasing current energy rates by the ratio of the proposed energy revenue requirement for these classes to the current level of revenue collected from the energy charges in these classes. The demand rates in each of these classes will then be adjusted to recover the residual revenue requirement. Rate III in SC 4, 8, 9, and 12 will be

designed to recover the class revenue requirement of all customers not billed under Rate II.

l. SC 14-RA rates will be developed consistent with the Standby Rates Order. As specified in the standby rate guidelines, rates will be developed for each class within SC 14-RA to be revenue neutral at the proposed revenue level.

m. SC 11 Buy-Back Service will be modified, so as to make the SC 14-RA customer charges and distribution contract demand charges applicable to SC 11 customers. In addition, the SC 11 and SC 14-RA reactive power demand charge will be increased.

5. Direct Current Service Charges

Direct Current (“DC”) service charges, applicable to customers served by DC service, will be updated to collect the current cost of financing and operating the DC system. The DC customer charge, currently \$10.00, will be increased to \$20.00 for Con Edison customers served under SC 1, 2 and 7 and from \$385 to \$1,256 for PASNY No. 4 and EDDS No. 2 customers and Con Edison customers served under SC 4, 8, and 9. The DC distribution charge, currently \$0.11 per kWh, will be increased to \$0.39 per kWh.

The Company proposes to revise the DC service charges no more than once annually, upon 30 days’ advance notice, based on projected DC system costs, DC kWh sales, and the number of customers taking DC service for the upcoming 12-month period. Any over- or under-collections each Rate Year will be reconciled and included in the subsequent Rate Year’s amount to be collected.

The Rider T – DC Conversion Program will be modified as follows: the Company will continue the program through March 31, 2008, accept applications until September 30, 2007, and

fund the program at the lesser of surcharge collections or \$18 million from January 1, 2006 through March 31, 2008.²⁶

6. Delivery Service for Additional NYPA Customers

Recently-enacted laws permit NYPA to supply capacity and energy to military bases and elementary and secondary non-public schools in Con Edison's service territory. Certain of these customers may be eligible for NYPA delivery service, whereas others may not. Only customers who are eligible for existing NYPA delivery service will be served under PASNY No. 4 and will be exempt from the MAC to the same extent as other customers served under PASNY No. 4. Customers who are not eligible for existing NYPA delivery service will be served under the otherwise applicable service classification under the Retail Access Schedule. Should the Company experience a net revenue shortfall as a result of customer transfers from Con Edison to NYPA pursuant to the recently-enacted or similar laws enacted during the Electric Rate Plan, such a net revenue shortfall between retail access rates and NYPA delivery rates will be collected on a current basis through the MAC.

7. Miscellaneous Changes

a. Applicability of Standby Service Charges

The Company will not impose, during the Electric Rate Plan, standby service charges on customers solely because they have existing installed, or they will install, hybrid chillers and/or thermal storage systems.

b. Tariff Changes

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.

²⁶ The Rider T program budget through December 31, 2005 was established pursuant to a Commission Order issued May 28, 2003, in Case 03-E-0272.

- i) The annual carrying charge for interconnection applicable under SC 14-RA and SC 11 and under the PASNY No. 4 schedule will be increased to 11.4% reflect updated total operating expenses as indicated by the ECOS study.
- ii) When customers upgrade their service conduits, they will be required to relocate meters outdoors for existing one to three family homes, when it is feasible for the meter to be relocated outdoors.
- iii) General Rule III-13(D) will be changed to indicate that if a customer connects its on-site generation equipment in violation of the Company's tariff, the Company will prospectively assess a contract demand surcharge equal to twice the amount of the otherwise applicable contract demand each month under SC 14-RA, beginning the later of April 1, 2005 or the month in which the condition is detected, until the customer complies with the Company's tariff requirement.
- iv) A reinspection charge of \$109 will be assessed if a customer's first inspection demonstrates that the work was either incomplete or incorrectly performed and the Company is required to revisit the premises.
- v) The stores handling rate will be increased to 14.5% to reflect current costs.
- vi) The overhead rate will be decreased to 4.0% when the labor cost for engineering or drafting service is separately stated.
- vii) Text will be added to clarify that services in the General Information Section are subject to the Increase in Rates and Charges.
- viii) Text will be added to allow special services to be requested by a customer's agent as well as by a customer.

ix) Charges will be established for certain services upon the basis of costs to the Company, including: (1) when a customer requests a service outage outside of normal working hours; (2) when a customer requests the Company to design non-standard specifications for structures to house Company facilities on the customer's premises; or (3) when the Company exposes a customer's property line box to find the cable fault location and the cable fault is not within the Company's facilities, except there will be no charge for such work in connection with service to 1-3 family houses.

x) The exemption from pole relocation charges for relocation for ingress or egress purposes will be eliminated.

xi) Charges for Megger tests of \$230 per test will be added, and charges for dielectric fluid tests will be changed to between \$295 and \$525 per sample and high potential proof tests will be changed to \$910 per visit for the first four hours and \$230 for each additional hour.

xii) Charges for interval metering data for customers served under Riders M, P, U, V, and W will be waived if the information is provided over the Internet.

xiii) A number of other, minor, housekeeping changes will be made.

8. Business Incentive Rate Program

The following changes will be made to Rider J – Business Incentive Rate (“BIR”):

a. Applications to commence service under Rider J will be accepted through March 31, 2008.

b. The maximum amount of power available for allocation through the BIR program will be increased during the Electric Rate Plan by 12 MW to bring the total allocation to 452 MW. The increase will be phased-in as follows: 5 MW effective as of April 1, 2005, 2 MW effective as of April 1, 2006, and 5 MW effective as of April 1, 2007. The 12 MW will be

allocated to the “New and Vacant program” and will be reserved for not-for-profit institutions utilizing laboratory space for biomedical research under the existing criteria for such allocations, except that the tariff definition of the term “Biomedical Research” will be amended to state the following:

Biomedical research includes research within the following disciplines: bioscience (adapting traditional research to commercial goals); biomedical engineering (integrating physical, chemical, mathematical, computational science, and engineering principles to study biology, medicine, behavior and health); genomics (treatments based upon genetic manipulation); translational medicine (application of research findings to commercially viable product development and to treatments that are directly applicable to human diseases); and biopharmacology (direct application of research to development of drug treatments).

c. As BIR allocations to customers in a particular program (*i.e.*, New York City Comprehensive, Westchester Comprehensive, New and Vacant) expire, such allocations will be available for re-use in that program at the then-current BIR rate.

d. BIR allocations during the Electric Rate Plan will be assumed not to result in revenue shortfalls during the Electric Rate Plan.

e. Economic development administrators (“EDA”) of BIR programs are not precluded from petitioning the Commission, with copies served on all parties to Case 04-E-0572, to increase their allocation of BIR during the Electric Rate Plan based upon a showing that: (1) all BIR allocations available to the EDA have been depleted; (2) the EDA requires a BIR allocation; and (3) the increased allocation will not have a material adverse impact on ratepayers.

N. Miscellaneous Provisions

1. NYPA Billing System

Con Edison agrees to work with NYPA, to the extent reasonable, to facilitate implementation of NYPA's new billing system.²⁷

2. Rate Changes

Except as otherwise provided herein, the provisions of this Proposal will continue after RY3, unless and until electric base delivery service rates are changed by Commission order. Nothing herein precludes Con Edison from filing a new general electric rate case prior to April 1, 2008, for rates to be effective on or after April 1, 2008. The Company will not file rates to be become effective prior to April 1, 2008.

Changes to the Company's base delivery service rates during 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 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 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

²⁷ This provision does not bind any Signatory Party to agree with or accept NYPA's new billing system.

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 base delivery service rates in the event that, in the Commission's opinion, Con Edison's base delivery service rates are unjust or unreasonable for the provision of safe, reliable and adequate service.

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 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.

3. Legislative, Regulatory and Related Actions

a. If 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 D.1) that result in a change in the Company's electric costs in an annual amount of \$7.5 million or more and if the Commission does not permit the disposition, 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 the full change in expense, subject to Section D.9, 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.²⁸

b. If 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 assumptions on which the rates in this Proposal are based in an annual amount of \$7.5 million or more,²⁹ Con Edison will defer on its books of account the full change in expense, subject to Section D.9, 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 extraordinary expenditures not otherwise addressed by this Proposal.

4. Provisions Not Separable

The Signatory Parties intend this Proposal to be a complete resolution of all the issues in Case No. 04-E-0572. 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

²⁸ All Signatory Parties reserve all of their administrative and judicial rights in connection with such generic proceeding(s).

²⁹ For purposes of this Proposal, the \$7.5 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.

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.

5. Provisions Not Precedent

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, 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.

6. 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.

7. Effect of Commission Approval

No provision of this Proposal or the Commission's approval 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 approval 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.

8. 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.

9. Execution

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

APPENDIX A**REVENUE REQUIREMENT**

Table 1
 Operating Income, Rate Base & Rate of Return
 For the 12-Months Ending March 31, 2006
 \$ Thousands

	Rate Year Forecast	Rate Increase	Rate Year 1 With Rate Increase
Sales Revenues	\$ 6,379,341	\$104,601	\$ 6,483,942
Less Fuel & Purchased Power	(3,271,609)		(3,271,609)
Other Fuel Charges	(12,484)		(12,484)
Gross Receipts Tax (GRT)	(169,344)	(3,284)	(172,628)
Other Revenues	333,300		333,300
Net Revenues	<u>3,259,204</u>	<u>101,317</u>	<u>3,360,521</u>
Operations & Maintenance Expenses	1,155,182	523	1,155,705
Depreciation	382,781		382,781
Losses from Disposition of Utility Plant	38,640		38,640
Gains from Disposition of Utility Plant	(23,585)		(23,585)
Taxes Other Than Income Taxes & GRT	803,813		803,813
Total Deductions	<u>2,356,831</u>	<u>523</u>	<u>2,357,354</u>
Operating Income Before Income Taxes	902,373	100,794	1,003,167
Federal Income Tax	167,037	32,632	199,669
New York State Income Taxes	46,425	7,560	53,985
Utility Operating Income	<u>\$ 688,911</u>	<u>\$ 60,602</u>	<u>\$ 749,513</u>
Rate Base	<u>\$ 9,280,727</u>		<u>\$ 9,280,727</u>
Overall Rate of Return	<u>7.42%</u>		<u>8.08%</u>

Table 2
Electric 2nd & 3rd Stage Increase
\$ Millions

Rate Year Ending	March 31,		
	2006	2007	2008
First Year Increase	\$ 104.6		
Annual Increases / (Decreases)			
- Sales Growth		\$ (37.2)	\$ (45.1)
- Gain from Sales of Utility Plant		(11.7)	(43.7)
- O&M Increases & Adjustments		24.0	21.6
- Pensions/OPEBs		3.0	28.0
- Depreciation		14.4	25.0
- Property Taxes		50.8	54.3
- Taxes other than income and property taxes		1.7	1.7
- Plant Rate Base Additions		48.2	94.5
- Reserve for Stage 2 & 3 Increases		(34.6)	(34.6)
Total Revenue Requirements	<u>\$ 104.6</u>	<u>\$ 58.6</u>	<u>\$ 101.7</u>

Table 3
Three Year Revenue Requirement Phase -In
\$ Millions

Rate Increase	Rate Year Ending March 31,			Increase Over
	2006	2007	2008	Three Years
Annual Increase Based On Proposal	\$ 104.6	\$ 58.6	\$ 101.7	\$ 532.7
Phase - In				
Two Rate Changes (RY1 & RY3)	\$ 104.6	\$ -	\$ 218.9	\$ 532.7
Interest on Deferred Rate Increase (a)	-	-	1.5	1.5
Total Increase with Interest	\$ 104.6	\$ -	\$ 220.4	\$ 534.2

(a) Interest @ 4.35% (Net of Tax)

APPENDIX B

CUSTOMERS CREDITS AND DEBITS

(in millions of dollars)

Amortization of Deferred Accounting Credits (Net of Amortization of Deferred Debits)	RY1	RY2	RY3	Total
Other Operating Revenues (Amortizations):				
Historical TCC Auction Proceeds - Principal & Interest	\$ 96.3	\$ 96.3	\$ 96.3	\$ 288.9
TCC Transition Period Credits	20.0	20.0	20.0	60.0
NYISO Metering True-ups - Principal & Interest	49.4	49.4	49.4	148.1
Customer's Share of Earnings Over Threshold - 2000 Agreement	16.4	16.4	16.4	49.1
2000 Agreement Rate Reductions (RY4)	10.6	10.6	10.6	31.8
Amortization Transition Period OPEB Medicare Tax Benefits	6.0	6.0	6.0	18.0
Electric Reliability Penalty	3.4	3.4	3.4	10.1
Sale of Roseton – Interest	3.1	3.1	3.1	9.3
Interest - Regulatory Assets	2.8	2.8	2.8	8.3
Telecommunication Revenues - Principal & Interest	2.1	2.1	2.1	6.4
Site Separation Revenues - Astoria bundle	1.7	1.7	1.7	5.1
Lost Revenues Associated with Customer incentives	(0.3)	(0.3)	(0.3)	(1.0)
Sale of Mid-Hudson Properties – Interest	(2.8)	(2.8)	(2.8)	(8.4)
Sale of Indian Point – Interest	(7.7)	(7.7)	(7.7)	(23.0)
Fuel	(11.0)	(11.0)	(11.0)	(33.0)
Interference Expense	(14.7)	(14.7)	(14.7)	(44.2)
Property Taxes	(32.5)	(32.5)	(32.5)	(97.4)
Loss on Sale of Utility Plant	(38.6)	(38.6)	(38.6)	(115.9)
Gain on Sale of Utility Plant	23.6	23.6	23.6	70.8
Amortization of Global Settlement	-	33.3	66.7	100.0
Electric Performance Reliability Credits	-	0.5	1.0	1.5
Gain from sale of 45th Street Properties (DOT)	-	6.0	11.9	17.9
Expected Accounting Credits				
Annual TCC Auction Proceeds	60.0	60.0	60.0	180.0
Proceeds from Sale of Chelsea Property	-	5.3	41.4	46.7
Total Accounting Credits	\$1 87.7	\$ 232.8	\$ 308.8	\$ 729.3

APPENDIX C**SALES FORECAST****Forecast of Sales Volumes**

	<u>SC 1</u>	<u>SC 1 1WH</u>	<u>SC 1 TOT</u>	<u>SC 2</u>	<u>SC 4</u>	<u>SC 5</u>	<u>SC 6</u>	<u>SC 7</u>	<u>SC 8</u>	<u>SC 9</u>	<u>F.G.</u>	<u>SC 9 TOT</u>	<u>SC 12</u>	<u>SC 13</u>	<u>SC 3</u>	<u>CONED</u>	
Con Edison Forecast	<u>Quarterly</u>																
	2005.2	2,791	12	2,803	495	1,534	30	3	35	431	4,498	0	4,498	93	36	1	9,959
	2005.3	4,315	12	4,327	566	1,791	30	3	31	622	5,513	0	5,513	86	39	0	13,008
	2005.4	3,032	12	3,044	510	1,534	30	3	42	454	4,683	0	4,683	104	38	1	10,443
	2006.1	3,179	12	3,191	558	1,518	30	3	76	457	4,687	0	4,687	174	42	0	10,736
	2006.2	2,786	12	2,798	491	1,515	30	3	34	427	4,544	0	4,544	91	36	1	9,970
	2006.3	4,436	12	4,448	574	1,802	30	3	31	630	5,687	0	5,687	84	40	0	13,329
	2006.4	3,095	12	3,107	516	1,544	30	3	41	460	4,828	0	4,828	105	39	1	10,674
	2007.1	3,243	12	3,255	564	1,526	30	3	76	462	4,761	0	4,761	173	43	0	10,893
	2007.2	2,891	12	2,903	505	1,548	30	3	35	440	4,692	0	4,692	91	37	1	10,285
	2007.3	4,552	12	4,564	581	1,812	30	3	31	638	5,779	0	5,779	84	40	0	13,562
	2007.4	3,154	12	3,166	522	1,552	30	3	41	466	4,904	0	4,904	103	39	1	10,827
	2008.1	3,296	12	3,308	569	1,530	30	3	74	467	4,819	0	4,819	171	43	0	11,014
		<u>Rate Years</u>															
		2006	13,317	48	13,365	2,129	6,377	120	12	184	1,964	19,381	0	19,381	457	155	2
	2007	13,560	48	13,608	2,145	6,387	120	12	182	1,979	19,820	0	19,820	453	158	2	44,866
	2008	13,893	48	13,941	2,177	6,442	120	12	181	2,011	20,194	0	20,194	449	159	2	45,688
JP Adjustment	<u>Quarterly</u>																
	2005.2	31.8	0.1	31.9	5.8	6.7	0.0	0.0	0.3	1.5	107.8	0.0	107.8	0.0	0.0	0.0	154.1
	2005.3	41.9	0.1	42.1	6.2	47.8	0.0	0.0	0.2	2.1	37.3	0.0	37.3	0.0	0.0	0.0	135.7
	2005.4	31.0	0.1	31.1	5.8	5.5	0.0	0.0	0.3	1.6	36.5	0.0	36.5	0.0	0.0	0.0	80.8
	2006.1	33.1	0.1	33.3	8.8	4.5	0.0	0.0	0.5	1.6	44.0	0.0	44.0	0.0	0.0	0.0	92.7
	2006.2	48.7	0.2	48.9	11.2	10.6	0.0	0.0	0.3	2.1	133.1	0.0	133.1	0.0	0.0	0.0	206.2
	2006.3	50.7	0.1	50.8	11.2	48.7	0.0	0.0	0.3	3.0	55.4	0.0	55.4	0.0	0.0	0.0	169.5
	2006.4	34.1	0.1	34.2	9.7	4.8	0.0	0.0	0.4	2.2	47.1	0.0	47.1	0.0	0.0	0.0	98.5
2007.1	44.3	0.2	44.5	14.1	5.9	0.0	0.0	0.8	2.2	61.4	0.0	61.4	0.0	0.0	0.0	128.9	

JP Total GWH Forecast	2007.2	58.9	0.2	59.2	16.0	12.0	0.0	0.0	0.5	2.8	151.9	0.0	151.9	0.0	0.0	0.0	242.4	
	2007.3	66.8	0.2	66.9	16.8	50.4	0.0	0.0	0.4	4.0	76.4	0.0	76.4	0.0	0.0	0.0	215.0	
	2007.4	44.9	0.2	45.1	14.7	6.2	0.0	0.0	0.5	2.9	64.9	0.0	64.9	0.0	0.0	0.0	134.5	
	2008.1	55.8	0.2	56.0	19.5	7.4	0.0	0.0	1.0	2.9	79.7	0.0	79.7	0.0	0.0	0.0	166.5	
	<u>Rate Years</u>																	
	2006	137.9	0.5	138.4	26.7	64.6	0.0	0.0	1.3	6.8	225.7	0.0	225.7	0.0	0.0	0.0	463.3	
	2007	177.8	0.6	178.4	46.2	70.0	0.0	0.0	1.8	9.6	296.9	0.0	296.9	0.0	0.0	0.0	603.0	
	2008	226.4	0.8	227.2	67.1	76.1	0.0	0.0	2.4	12.7	372.9	0.0	372.9	0.0	0.0	0.0	758.3	
	<u>Quarterly</u>																	
	2005.2	2,822.8	12.1	2,834.9	500.8	1,540.7	30.0	3.0	35.3	432.5	4,605.8	0.0	4,605.8	93.0	36.0	1.0	10,113.1	
	2005.3	4,356.9	12.1	4,369.1	572.2	1,838.8	30.0	3.0	31.2	624.1	5,550.3	0.0	5,550.3	86.0	39.0	0.0	13,143.7	
	2005.4	3,063.0	12.1	3,075.1	515.8	1,539.5	30.0	3.0	42.3	455.6	4,719.5	0.0	4,719.5	104.0	38.0	1.0	10,523.8	
	2006.1	3,212.1	12.1	3,224.3	566.8	1,522.5	30.0	3.0	76.5	458.6	4,731.0	0.0	4,731.0	174.0	42.0	0.0	10,828.7	
	2006.2	2,834.7	12.2	2,846.9	502.2	1,525.6	30.0	3.0	34.3	429.1	4,677.1	0.0	4,677.1	91.0	36.0	1.0	10,176.2	
	2006.3	4,486.7	12.1	4,498.8	585.2	1,850.7	30.0	3.0	31.3	633.0	5,742.4	0.0	5,742.4	84.0	40.0	0.0	13,498.5	
	2006.4	3,129.1	12.1	3,141.2	525.7	1,548.8	30.0	3.0	41.4	462.2	4,875.1	0.0	4,875.1	105.0	39.0	1.0	10,772.5	
	2007.1	3,287.3	12.2	3,299.5	578.1	1,531.9	30.0	3.0	76.8	464.2	4,822.4	0.0	4,822.4	173.0	43.0	0.0	11,021.9	
	2007.2	2,949.9	12.2	2,962.2	521.0	1,560.0	30.0	3.0	35.5	442.8	4,843.9	0.0	4,843.9	91.0	37.0	1.0	10,527.4	
	2007.3	4,618.8	12.2	4,630.9	597.8	1,862.4	30.0	3.0	31.4	642.0	5,855.4	0.0	5,855.4	84.0	40.0	0.0	13,777.0	
	2007.4	3,198.9	12.2	3,211.1	536.7	1,558.2	30.0	3.0	41.5	468.9	4,968.9	0.0	4,968.9	103.0	39.0	1.0	10,961.5	
2008.1	3,351.8	12.2	3,364.0	588.5	1,537.4	30.0	3.0	75.0	469.9	4,898.7	0.0	4,898.7	171.0	43.0	0.0	11,180.5		
<u>Rate Years</u>																		
2006	13,454.9	48.5	13,503.4	2,155.7	6,441.6	120.0	12.0	185.3	1,970.8	19,606.7	0.0	19,606.7	457.0	155.0	2.0	44,609.3		
2007	13,737.8	48.6	13,786.4	2,191.2	6,457.0	120.0	12.0	183.8	1,988.6	20,116.9	0.0	20,116.9	453.0	158.0	2.0	45,469.0		
2008	14,119.4	48.8	14,168.2	2,244.1	6,518.1	120.0	12.0	183.4	2,023.7	20,566.9	0.0	20,566.9	449.0	159.0	2.0	46,446.3		

Notes: sales forecasts include both Full Service & Retail Choice
all sales volumes are expressed in gigawatthours

Forecast of the Number of Customers

<u>Con Ed SC-2 (thousands of customers)</u>						
	<u>YEAR</u>	<u>Q1</u>	<u>Q2</u>	<u>Q3</u>	<u>Q4</u>	<u>Annual</u>
Actual	2003	318.483	321.105	321.779	323.025	321.098
Forecast	2004	325.744	328.426	329.116	330.390	328.419
Forecast	2005	333.171	335.914	336.619	337.923	335.907
Forecast	2006	340.768	343.573	344.294	345.628	343.566
Forecast	2007	348.537	351.407	352.144	353.508	351.399
Forecast	2008	356.484	359.419	360.173	361.568	359.411

	<u>Rate Years</u>	<u>Rate Years</u>
Forecast	2006	337.806
Forecast	2007	345.508
Forecast	2008	353.386

<u>Con Ed SC-9 (thousands of customers)</u>						
	<u>YEAR</u>	<u>Q1</u>	<u>Q2</u>	<u>Q3</u>	<u>Q4</u>	<u>Annual</u>
Actual	2003	115.947	116.138	116.781	117.496	116.591
Forecast	2004	118.533	118.728	119.385	120.116	119.191
Forecast	2005	121.176	121.376	122.048	122.795	121.849
Forecast	2006	123.878	124.082	124.769	125.533	124.566
Forecast	2007	126.641	126.849	127.552	128.332	127.344
Forecast	2008	129.465	129.678	130.396	131.194	130.184

	<u>Rate Years</u>	<u>Rate Years</u>
Forecast	2006	122.524
Forecast	2007	125.256
Forecast	2008	128.049

Note: This Joint Proposal reflects adjustments to the number of customer forecasts for SC 2 and SC 9. Con Edison's forecasts for the number of customers for other service classes were accepted without adjustment.

APPENDIX D

REVISIONS TO MAC/MSC TARIFFS

DRAFT

Consolidated Edison Company
of New York, Inc.

P.S.C. No. 9 - Electricity
Fifth Revised Leaf No. 159
Superseding Fourth Revised Leaf No. 159

GENERAL INFORMATION – Continued

VII. Market Supply Charge, Monthly Adjustment Clause, and Adjustments

A. Market Supply Charge

The rates for electric service include a Market Supply Charge ("MSC") applicable to all Customers served under this Rate Schedule, ~~except for Service Classification No. 11, and including all Customers served under Special Provision C of SC 14-RA of the Retail Access Schedule as approved by the Commission in its orders dated February 28, 2000 and April 24, 2000 in Case 96-E-0897.~~ The MSC varies by Service Classification and is calculated separately for Customers served in the New York City and combined Westchester NYISO zones as defined in General Information Section I. MSCs are estimated on a monthly basis ~~Beginning May 1, 2005, MSCs will be estimated for a six-month NYISO capability a three-month~~ period and will be updated prior to the start of the next ~~three~~ six-month NYISO capability period. ~~Capability periods commence in May and November. Not less than 3 business days prior to February 1, May 1, August 1, and November 1, a Statement of Market Supply Charge and Monthly Adjustment Clause (Statement) will be filed with the Public Service Commission apart from this Rate Schedule. Such Statement will show for each month covered by the Statement the applicable MSC amounts by Service Classification. Depending on the Service Classification, MSC amounts will be shown either in cents per kilowatthour or in both dollars per kilowatt and cents per kilowatthour. A copy of the Statement in effect will be available to the public on the Company's website. Except for Customers served under Special Provision C of Service Classification No. 14-RA, the MSC is not applicable to Customers served under the Retail Access Rate Schedule.~~

1. MSC Components

The components of the MSC include:

- 1) market cost of energy and capacity based on NYISO market prices;
- 2) Ancillary Service Charges including certain NYISO Schedule 1 charges including Scheduling, System Control & Dispatch ("S, SC & D") Service Charge, Local Reliability S, SC & D Service Charge and Market Administration and Control Area Service Charge;
- 3) NYPA Transmission Adjustment Charge ("~~NTAC~~"); and;
- 4) certain other transmission-related charges and credits for Customers served under this Rate Schedule.

2. Adjustment Factors – MSC

~~Estimated~~ MSC amounts recovered in rates ~~on a calendar month basis~~ shall be reconciled to actual market supply costs on a ~~calendar monthly~~ basis. The actual market supply costs are defined as the costs the Company would have incurred if the requirements to serve Customers under this Rate Schedule were to have been purchased solely from the NYISO market calculated on a load-weighted average market price based on available NYISO billing data at the end of each month.

The MSC will be reconciled separately for New York City and the combined Westchester NYISO zones. As approved by the Commission in its orders dated February 28, 2000 and April 24, 2000 in Case 96-E-0897, the rates under all Service Classifications shall be subject each month to an adjustment based on the MSC reconciliation amounts, which adjustment is referred to as the "Adjustment Factor - MSC."

(General Information - Continued ~~on~~ Leaf No. 159-A)

Date of Issue: ~~April 30, 2004~~

Date Effective: ~~May 30, 2004~~ April 1, 2005

GENERAL INFORMATION – Continued

VII. Market Supply Charge, Monthly Adjustment Clause, and Adjustments - Continued

Separate Adjustment Factors - MSC will be determined for New York City and the combined Westchester NYISO zones by dividing the reconciliation amounts determined for each zone by estimated zonal sales in kwhr to Customers served under this Rate Schedule during the period over which the adjustments are to be applied. The Adjustment Factors - MSC will be applied on a cents per kilowatthour basis, taken to the nearest 0.0001 cent, and will be the same for all Service Classifications.

The amounts recovered or credited through the Adjustment Factors - MSC will be reconciled to actual amounts to be recovered. Any differences will be passed through the Adjustment Factors - MSC in a subsequent month.

3. Special Provisions

(a) Tax Reimbursement Recovery Provision

Pursuant to Ordering Clauses (1) and (4) of the Public Service Commission's "Order Permitting Recovery of New and Revised Taxes," issued July 23, 1991, the Adjustment Factors - MSC per kwhr, as determined above, shall be subject to a separate surcharge, applicable to only non-residential use of electricity, to recover the tax reimbursement as provided for under Service Classification 11 "Buy-Back Service" and as authorized by Section 66-h of the Public Service Law and Section 149-b of Chapter 166 of the Laws of 1991. This separate surcharge shall not be applicable to Customers taking service under Service Classification Nos. 1, 7, 8, 12, or 13 of this Rate Schedule or to residential usage under any other Service Classification of this Rate Schedule. The proportion of a Customer's usage that is residential usage shall be considered to be zero unless the Customer has supplied the Company with the properly completed "Certification of Residential Use" (New York State Tax Form TP-385). Customers taking service under a Service Classification subject to the surcharge and wishing to establish that a proportion of their usage is residential must provide the Company with the aforementioned form, properly completed, and will be exempt from the surcharge for such residential usage in future billing periods.

(b) Demand Response Program Cost Recovery Provision

The Adjustment Factor – MSC will in each month include an amount equal to the difference, if any, between (i) the amounts billed in such month to Customers served under Rider M for actual energy usage priced at the applicable hourly energy prices in accordance with the provisions of Rider M, and (ii) the actual market supply costs for such month, as defined in Paragraph A.2. of General Information Section VII, for such Customer's actual energy usage. The Adjustment Factor – MSC will in each month include a credit for any Rider W penalty amounts received by the Company in excess of those paid by the Company to the NYISO under the NYISO's Day Ahead Demand Response Program.

(General Information - Continued On Leaf No. 160)

Date of Issue: July 11, 2002

Date Effective: September 23, 2002

Issued by Joan S. Freilich, Executive Vice President and
Chief Financial Officer
4 Irving Place, New York, N.Y. 10003

GENERAL INFORMATION – Continued

VII. Market Supply Charge, Monthly Adjustment Clause, and Adjustments - Continued

4. Statement of Adjustment Factors - MSC

Commencing with the eighth billing cycle of each month, the Adjustment Factors - MSC per kwhr, as determined above, shall be effective during the succeeding billing month after the month for which the Adjustment Factors - MSC shall have been determined, and shall continue in effect until changed. The Adjustment Factors - MSC will be applicable to bills that are rendered on or after the effective date of the Statement.

Not less than 3 business days prior to any change in the rate adjustment per kwhr resulting from this provision for MSC adjustment, a Statement of Adjustment Factors – MSC (Statement) showing the Adjustment Factors - MSC, the date at which and the period for which the Adjustment Factors - MSC were determined, and the amount of adjustment per kwhr, will be duly filed with the Public Service Commission, apart from this Rate Schedule. Such Statement will be available to the public ~~at Company offices at which applications for service may be made~~ on the Company's website.

B. Monthly Adjustment Clause

~~As approved by the Commission in its orders dated February 28, 2000 and April 24, 2000 in Case 96-E-0897, the Rates for electric service include a Monthly Adjustment Clause ("MAC") applicable to all Customers served under this Rate Schedule, except for Service Classification No. 11, and under the Retail Access Rate Schedule, except for Service Classification No. 15-RA to the extent the MAC does not apply under the EDDS Rate Schedule. The MAC varies by Service Classification and is stated separately for Customers served in the New York City and the combined Westchester NYISO zones as defined in General Information Section I. As directed by the Commission in its order dated November 25, 2003, in Case 00-E-1208, the Company will phase-in MAC equalization for the New York City and the combined Westchester NYISO zones as defined in General Information Section I beginning May 2004 so that the MACs will be fully equalized by November 2006. MACs are estimated on a monthly basis Beginning May 1, 2005, MACs will be estimated for a sixthree-month NYISO capability period and will be updated prior to the start of the next six-month NYISO Capability three-month period. Capability periods commence in May and November. ~~Not less than 3 business days prior to February 1, May 1, August 1, and November 1, a Statement of Market Supply Charge and Monthly Adjustment Clause (Statement) will be filed with the Public Service Commission apart from this Rate Schedule. Such Statement will show for each month covered by the Statement the applicable MAC amounts by Service Classification. Depending on the Service Classification, MAC amounts will be shown either in cents per kilowatthour or in both dollars per kilowatt and cents per kilowatthour. A copy of the Statement in effect will be available to the public on the Company's website.~~~~

1. MAC Components

The components of the MAC include:

- (1) above-market costs of ~~non-divested purchased power generation assets. Purchased power includes ing power purchased under non-utility generator ("NUG") contracts, gas turbines, the electric department's share of Con Edison's steam/electric units, and Hydro-Quebec diversity contracts other power purchase contracts. Above-market costs of power purchase contracts. The above-market costs of non-divested generation assets~~ reflect the difference between the ~~actual embedded costs of the non-divested generation assets based on Con Edison's embedded cost-of-service study adjusted in accordance~~

(General Information - Continued on Leaf No. 161)

Date of Issue: ~~April 30, 2004~~

Date Effective: ~~May 30, 2004~~ April 1, 2005

GENERAL INFORMATION – Continued

VII. Market Supply Charge, Monthly Adjustment Clause, and Adjustments - Continued

- ~~— with the Agreement and Settlement dated September 19, 1997 in Case 96-E-0897 monthly costs of these purchases, including fixed and variable costs, and the imputed revenue associated with pricing non-divested generation these assets purchases at the market price(s) included in the MSC;~~
- (2) ~~above-market costs of retained generation assets. Retained generation assets include gas turbines and the electric department's share of Con Edison's steam/electric units assigned to the electric system, including the East River Repowering Project as governed by the Public Service Commission's order in Case 03-S-1672. Above-market costs of retained generation assets reflect the difference between the actual costs of the retained generation assets, including fixed, variable, and fuel costs, and the imputed revenues associated with pricing these assets at the market price(s) included in the MSC;~~
- (3) ~~(2) the difference between~~ monthly amortized revenues from sales of the Company's system Transmission Congestion Contracts ("TCCs") ~~and the amount reflected in setting applicable rates¹;~~
- (4) ~~(3) charges for and/or revenues from the Company's system TCCs that are not sold;~~
- (5) ~~(4) monthly amortized costs of TCCs purchased through the NYISO auctions, direct sales or from the secondary market for Customers served under this Rate Schedule;~~
- (6) ~~(5) revenues from TCCs held for Customers served under this Rate Schedule;~~
- (7) ~~(6) certain NYISO-related charges and credits, including rebills, and certain NYISO Schedule 1 charges, applicable to Customers served under this Rate Schedule and under the Retail Access Rate Schedule;~~
- (8) ~~(7) Customers' share of the cost of the savings passed on to Madison Square Garden in accordance with Section 3, Chapter 459, 1982 N.Y. Laws;~~
- (9) ~~(8) any incremental costs incurred by the Company resulting from divestiture of its electric generation facilities as described in Con Edison's Generation Divestiture Plan in Case 96-E-0897 and approved by the Public Service Commission's order dated July 21, 1998;~~
- (9) ~~deferred ISO start-up costs from periods prior to May 1, 2000;~~
- (10) ~~(10) adjustments applicable to periods prior to May 1, 2000;~~
- (11) ~~New York Power Pool assessment credit;~~
- (11) ~~(12) certain NYISO Transmission Owners Charges such as Congestion Balancing Settlement, Rochester Station 80 Capacitor Bank and Ramapo Phase Angle Regulator;~~
- ~~(13) payments for energy to Sithe Energies, Inc. that would be due absent the discount to the buy-back tariff rates specified by contract beginning in the sixth year of the contract term (i.e., payments at the full buy-back tariff rate);~~
- ~~(14) thirty percent of reductions in energy costs for a period of eighteen months, resulting from the renegotiation, termination, "buyout" or "buydown" of NUG contracts during the five-year period commencing April 1, 1997;~~
- (12) ~~(15) the difference between actual values and assumptions used to design generation capacity and energy adjustments for retail access rates prior to April 1, 2000;~~
- (13) ~~(16) net amounts from sales to other utilities, LSEs and others;~~
- ~~(17) certain other transmission-related charges and credits for Customers served under this Rate Schedule and the Retail Access Rate Schedule including wholesale Transmission Service Charges, and;~~

(General Information - Continued On Leaf No. 162)

¹ A TCC sales level of \$60 million is reflected in the revenue level set for each of the three rate years of the Electric Rate Plan in Case 04-E-0572.

Date of Issue: ~~April 30, 2004~~Date Effective: ~~May 30, 2004~~ April 1, 2005

GENERAL INFORMATION – Continued

VII. Market Supply Charge, Monthly Adjustment Clause, and Adjustments - Continued

~~(18)~~(14) the difference between actual market based costs as determined in the calculation of the Adjustment Factors – MSC, and total actual costs incurred for energy, capacity and Ancillary Services to serve Customers under this Rate Schedule, including costs of financial hedging instruments associated with transactions intended to reduce price volatility to customers (e.g., transaction costs, such as option premiums, costs of providing credit support and margin requirements, and professional fees, and gains and losses associated with such transactions made in the commodities exchanges and with other counterparties);

(15) foregone delivery service revenues associated with the provision of service under Rider M, Rider P, Rider W, and the Company's Direct Load Control Program;

~~(20)~~(16) foregone electric revenues resulting from decreased electric requirements associated with steam air conditioning installations by Customers under Special Provision E of Service Classification Nos. 2 and 3 of Con Edison's Schedule for Steam Service, P.S.C. No.3 - Steam;

~~(21) any amounts paid to Customers under the Company's Direct Load Control Program less penalties received from Customers for such month under the Company's Direct Load Control Program;~~

~~(22)~~(17) foregone steam revenues associated with steam rate discounts for steam air conditioning installations by Customers under Special Provision E of Service Classification Nos. 2 and 3 of Con Edison's Schedule for Steam Service, P.S.C. No.3 - Steam;

(18) all costs on an as-incurred basis, including but not limited to payments to Customers where applicable and capital costs for enabling technologies, associated with the implementation of the programs conducted under Rider M, Rider P, Rider U, the Company's Direct Load Control Program, the Targeted Demand Side Management Program to the extent authorized by the Public Service Commission in Case 03-E-1332, the steam rate discount under Special Provision E of Service Classification Nos. 2 and 3 of Con Edison's Schedule for Steam Service, P.S.C. No.3 - Steam, the Company's Public Awareness and Education initiative for demand response programs, the Company's interval meter installation incentive program, and the Company's program to support energy service company load reduction efforts, and the Company's marketing program for demand response programs;

~~(23)~~(19) recovery of certain costs related to the restoration, ~~and~~ operation, and decommissioning of Hudson Avenue Unit 10/100 as authorized in the Public Service Commission's Memorandum Order in Case 01-E-0147, issued April 27, 2001; ~~and~~

~~all administrative costs associated with Rider P~~

(20) the Company's lost revenues and costs for both targeted and system-wide demand management programs, net of the value of deferred distribution capital expenditures for the targeted program, above the levels associated with the System Benefits Charge, and any demand management program-related incentives, as approved by the Public Service Commission in Case 04-E-0572;

(21) Switching and Retention Incentive Payments, as approved by the Public Service Commission in Case 04-E-0572;

Date of Issue: ~~April 30, 2004~~

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**Consolidated Edison Company
of New York, Inc.**

**P.S.C. No. 9 - Electricity
Fifteenth Revised Leaf No. 162
Superseding Fourteenth Revised Leaf No. 162**

- (22) any net revenue shortfalls between retail access rates and NYPA delivery rates resulting from a law(s) enacted in 2004, or similar laws enacted during the Electric Rate Plan established in Case 04-E-0572, that would permit NYPA to serve additional Customers in the Company's service area;
- (23) any difference between the level of NEIL distributions reflected in rates¹ and the actual NEIL distributions received on an annual basis;
- (24) the actual wholesale Transmission Service Charge revenues, other than from firm transmission contracts, received on an annual basis net of any NYISO-related adjustments;
- (25) any variance between the wheeling revenues for firm Transmission contracts reflected in rates² and the actual wheeling revenues for firm Transmission contracts received on an annual basis; and
- (26) other appropriate costs as may be approved by the Public Service Commission.

(General Information - Continued on Leaf No. 163)

¹ The annual level of NEIL distributions reflected in rates for Case 04-E-0572 is \$ 4 million.

² The annual wheeling revenue for firm Transmission contracts reflected in rates for Case 04-E-0572 is \$ 12.433 million.

Date of Issue: ~~April 30, 2004~~

Date Effective: ~~May 30, 2004~~ April 1, 2005

GENERAL INFORMATION – Continued

VII. Market Supply Charge, Monthly Adjustment Clause, and Adjustments - Continued

2. Adjustment Factor - MAC

~~Estimated~~ Monthly Adjustment Clause amounts recovered in rates on a calendar month basis shall be reconciled to actual amounts of MAC components on a calendar monthly basis. ~~As approved by the Commission in its orders dated February 28, 2000 and April 24, 2000 in Case 96-E-0897, the~~ Rates under all Service Classifications shall be subject each month to an adjustment reflecting the sum of the MAC reconciliation amount and the sharing incentive amounts described below, which adjustment is referred to as the "Adjustment Factor – MAC."

~~Costs associated with Rider U will be collected through the Adjustment Factor – MAC.~~

The Adjustment Factor - MAC will be determined by (1) ~~separately~~ dividing the reconciliation amount, ~~the 90/10 sharing incentive amount and the 70/30 sharing incentive amount~~ by the sum of the estimated sales in kwhr to Customers served under this Rate Schedule plus the estimated sales in kwhr to Customers served under the Retail Access Rate Schedule during the period over which the adjustment is to be applied, taken to the nearest 0.0001 cent, and (2) summing the resulting quotients. The Adjustment Factor - MAC will be applied on a cents per kilowatthour basis, taken to the nearest 0.0001 cent, and will be the same for all Service Classifications. The Sharing Incentives are described below.

The amounts recovered or credited through the Adjustment Factor - MAC will be reconciled to actual amounts to be recovered. Any differences will be passed through the Adjustment Factor - MAC in a subsequent month.

~~3. Sharing Incentives~~

~~The Company is subject to the following sharing incentives which will be included in the Adjustment Factor – MAC. Total adjustments, inclusive of the effects of the operation of the Company's Indian Point No. 2 generating unit and its replacement generation prior to its sale, may not exceed \$35 million on a cumulative basis in any twelve-month period ending March 31, 2002 and may not exceed \$25 million on a cumulative basis in any twelve-month period commencing April 1, 2002. If the prescribed adjustment inclusive of the effects of Indian Point No. 2 and its replacement generation is limited by the maximum annual amount, the adjustment will continue to be calculated on an annual basis, and the adjustment will resume to the extent the cumulative adjustment falls below the maximum annual amount. Each incentive will be determined separately and distributed based on the Customer/Company sharing ratios stated below:~~

~~(a) 90/10 Incentive~~

~~Ninety percent of the sum of the difference between (i) the NYISO market prices and the Company's costs for the net procurement of energy, capacity and ancillary services outside the NYISO procurement market, including financial hedging costs, and (ii) the costs and revenues for TCCs purchased for Customers served under this Rate Schedule will be credited or charged to Customers through the Adjustment Factor – MAC.~~

(General Information - Continued on Leaf No. 163-A)

Date of Issue: ~~April 30, 2004~~

Date Effective: ~~May 30, 2004~~ April 1, 2005

Issued by Joan S. Freilich, Executive Vice President and
Chief Financial Officer
4 Irving Place, New York, N.Y. 10003

APPENDIX E

EXEMPTION FROM MAC CHARGES

The MAC charges set forth in Con Edison's PSC No. 9 – Electricity (Full Service Tariff) will not apply to service under the EDDS Tariff to the extent that the aggregate allocations to the EDDS customers do not exceed 235 MW. In addition, the MAC charges will not apply to service under the PASNY No. 4 Tariff to the extent that the weather-adjusted contribution of the PASNY No. 4 customers to the peak load in Con Edison's service territory does not exceed the following load level for the applicable year:

<u>Year</u>	<u>MW</u>
2005	2,013
2006	2,047
2007	2,080
2008	2,112
2009	2,144
2010	2,178

1. If the above load levels are exceeded, the MAC charges will apply to such excess.
2. Customers served under PASNY No. 4 as of October 1, 1996 will not be subject to the MAC charges irrespective of the Con Edison tariff under which they receive service. If such PASNY No. 4 customers transfer to another tariff and do not pay the MAC charges under the other tariff, then the applicable load level will be reduced by the amount of such transferred load. Conversely, the applicable load level will not be reduced where a former PASNY No. 4 customer or successor customer pays the MAC charges under the tariff to which the customer transfers.
3. When a customer served under PASNY No. 4 as of October 1, 1996 adds additional accounts to that Tariff (other than accounts transferred to the PASNY No. 4 Tariff from the PSC No. 9 Tariff, EDDS Tariff, or Retail Access Tariff), the additional account will be considered part of the customer's load served as of October 1, 1996.
4. The MAC charges will not be applicable to EDDS service for customers taking service under another tariff to the extent such charges do not apply under the EDDS Tariff.
5. Nothing in this Appendix affects any rights of any party respecting eligibility for NYPA service.

APPENDIX F

EXPENSE RECONCILIATION TARGETS

(in millions of dollars)

Electric Operations	March 31,				
	2005	RY2 Update	2006	RY3 Update	2007
Property Taxes (+/- 2.5%)	\$ 698.7	\$ 48.9	\$ 747.6	\$ 52.3	\$ 799.9
Interference (Other Than Company Labor) (+/- 2.5%)	67.7	-	67.7	-	67.7
Pension / OPEB (Policy Statement)	(29.1)	2.9	(26.2)	27.0	0.8
Environmental remediation costs	8.9	-	8.9	-	8.9
Stray Voltage / 5 Year Inspection Program	21.0	-	21.0	-	21.0

APPENDIX G

CAPITAL RECONCILIATION TARGETS

(in millions of dollars)

<u>Rate Year</u>	<u>Average Plant Balance</u>	<u>Average Depreciation Balance</u>	<u>Annual Target</u>
<u>T&D Capital Target</u>			
RY1	\$11,840.1	\$3,285.2	\$8,554.9
RY2	12,320.5	3,414.1	8,906.4
RY3	13,252.8	3,555.1	9,697.7
<u>Production Capital Target</u>			
RY1	\$277.7	\$14.6	\$263.1
RY2	312.5	7.6	304.9
RY3	338.9	3.9	335.0

APPENDIX H**DEPRECIATION RATES**

P.S.C. ACCT. NO.	<u>ELECTRIC PLANT IN SERVICE</u>	CO. ACCT. NO.	AVERAGE SERVICE LIFE	NET SALVAGE	ANNUAL DEPR. RATE	LIFE TABLE
<u>STEAM PRODUCTION</u>						
310	LAND AND LAND RIGHTS	9510	-	-	-	-
310	LAND AND LAND RIGHTS - LEASEHOLDS	9512	-	-	-	(A)
311	STRUCTURES AND IMPROVEMENTS	9514	65	(35)	2.08	h1.00
312	BOILER PLANT EQUIPMENT	9516	35	(35)	3.86	h1.50
314	TURBOGENERATOR UNITS	9522	35	(20)	3.43	h2.00
315	ACCESSORY ELECTRIC EQUIPMENT	9524	35	(20)	3.43	h1.50
316	MISC. POWER PLANT EQUIPMENT	9526	50	(10)	2.20	h1.00
<u>OTHER PRODUCTION</u>						
340	LAND AND LAND RIGHTS	9430	-	-	-	-
341	STRUCTURES AND IMPROVEMENTS	9431	25	(5)	4.20	h3.00
342	FUEL HOLDERS, PROD. & ACCESSORIES	9432	25	(5)	4.20	h3.00
344	GENERATORS	9434	25	(5)	4.20	h3.00
345	ACCESSORY ELECTRIC EQUIPMENT	9435	25	(5)	4.20	h3.00
<u>TRANSMISSION PLANT</u>						
350	LAND AND LAND RIGHTS	9530	-	-	-	-
352	STRUCTURES AND IMPROVEMENTS	9532	70	(25)	1.79	h2.50
353	STATION EQUIPMENT	9534	50	(20)	2.40	h2.00
354	TOWERS AND FIXTURES	9536	45	(40)	3.11	h3.25
356	OVERHEAD CONDUCTORS AND DEVICES	9540	35	(35)	3.86	h2.25
357	UNDERGROUND CONDUIT	9544	55	(5)	1.91	h3.25
357	UNDERGROUND CONDUIT - MAN. & BRONX	9545	55	(5)	1.91	h3.25
358	UNDERGROUND CONDUCTORS & DEVICES	9546	50	(15)	2.30	h3.25
<u>DISTRIBUTION PLANT</u>						
360	LAND AND LAND RIGHTS	9550	-	-	-	-
360	LAND AND LAND RIGHTS - LEASEHOLD	9551	50	0	2.00	(A)
361	STRUCTURES AND IMPROVEMENTS	9552	50	(25)	2.50	h1.75
362	STATION EQUIPMENT	9554	45	(20)	2.67	h2.25
364	POLES, TOWERS AND FIXTURES	9556	45	(85)	4.11	h1.25
365	OVERHEAD CONDUCTORS AND DEVICES	9558	55	(45)	2.64	h1.25
366	UNDERGROUND CONDUIT	9560	80	(20)	1.50	h1.25
366	UNDERGROUND CONDUIT - MAN. & BRONX	9561	80	(20)	1.50	h1.25
367	UNDERGROUND CONDUCTORS & DEVICES	9562	45	(35)	3.00	h0.50
368	LINE TRANSFORMERS	9565				

	OVERHEAD TRANSFORMERS		35	0	2.86	h1.25
	UNDERGROUND TRANSFORMERS		45	0	2.22	h2.00
369	SERVICES – OVERHEAD	9566	50	(145)	4.90	h0.75
369	SERVICES – UNDERGROUND	9567	70	(120)	3.14	h0.75
370	METERS	9569	35	0	2.86	h1.50
370	METER INSTALLATIONS	9571	35	0	2.86	(B)
371	INST. ON CUSTOMERS' PREMISES	9573	60	0	1.67	h1.25
373	O.H. STREET LIGHTING & SIGNAL SYS.	9575	35	(80)	5.14	h0.75
373	U.G. STREET LIGHTING & SIGNAL SYS.	9576	65	(55)	2.38	h0.75
	<u>COMMON UTILITY PLANT IN SERVICE</u>					
	<u>GENERAL PLANT</u>					
389	LAND AND LAND RIGHTS	9810	-	-	-	-
390	STRUCTURES AND IMPROVEMENTS	9812	50	(30)	2.60	h1.25
391	ELECTRONIC DATA PROCESSING EQ.	9815	8	5	11.88	h3.00
391	OTHER OFFICE FURNITURE AND EQ.	9816	18	0	5.56	h0.25
392	TRANSPORTATION EQUIPMENT	9820	8	10	11.25	h2.00
393	STORES EQUIPMENT	9824	20	5	4.75	h1.00
394	TOOLS, SHOP AND GARAGE EQUIP.	9830	18	5	5.28	h0.25
395	LABORATORY EQUIPMENT	9828	20	0	5.00	h0.75
396	POWER OPERATED EQUIPMENT	9829	12	10	7.50	h1.75
397	COMMUNICATION EQUIPMENT	9832	15	0	6.67	h1.75
398	MISCELLANEOUS EQUIPMENT	9834	20	0	5.00	h1.00

APPENDIX I

COMMON ALLOCATION FACTORS

	<u>Electric</u>	<u>Gas</u>	<u>Steam</u>
<i><u>Administrative & General Expenses</u></i>			
A&G - Labor Related	78.70%	16.20%	5.10%
A&G - Other than Labor	81.14%	13.21%	5.65%
Pensions/OPEBs and Health Ins. Capitalized	72.67%	23.63%	3.70%
A&G Transferred - Other	76.55%	17.80%	5.65%
<i><u>Customer Accounting Expenses</u></i>			
Uncollectible Accounts	86.00%	14.00%	0.00%
Other Customer Accounts	82.00%	18.00%	0.00%
Energy Services	89.00%	11.00%	0.00%
Other Customer Assistance and Informational & Promotional Advertising	82.00%	18.00%	0.00%
<i><u>Taxes Other than FIT</u></i>			
Sales & Use	77.75%	15.50%	6.75%
Vehicle/Gasoline	81.00%	16.50%	2.50%
Payroll Taxes	78.75%	16.25%	5.00%
Payroll Taxes Transferred to Construction	72.50%	23.75%	3.75%
Other	81.25%	13.25%	5.50%
<i><u>Plant</u></i>			
Common Plant	83.00%	17.00%	0.00%
Common M&S	77.00%	17.00%	6.00%

APPENDIX J**MIGRATION INCENTIVE EXAMPLES**

Example 1 – Under 25,000 accounts enrolled in Retail Choice during the Electric Rate Plan

Period	# RC Accounts – Start/End Period	# Accounts Switched Under Plan	# Accounts Retained During Incentive Period	Switching Incentive Recovery	Timing of Recovery	Retention Incentive Recovery	Timing of Recovery
Start of Electric Rate Plan:	100,000						
During Period 1		11,000	5,000	\$ 0	End Period 3	\$0	End Period 3
Start Period 2	105,000						
During Period 2		8,000	4,000	\$ 0	End Period 3	\$0	End Period 3
Start Period 3	109,000						
During Period 3		5,000	2,500	\$0	End Period 3	\$0	End Period 3
End Period 3	111,500						
Total		24,000	11,500	\$0		\$0	

Example 2 – Greater than 25,000 accounts enrolled in Retail Choice during the Electric Rate Plan; no net retention achieved during all 3 periods

Period	# RC Accounts – Start/End Period	# Accounts Switched Under Plan	# Accounts Retained During Incentive Period	Switching Incentive Recovery	Timing of Recovery	Retention Incentive Recovery	Timing of Recovery
Start of Electric Rate Plan:	100,000						
During Period 1		17,000	0	17,000 x \$10	End Period 2	\$0	End Period 2
Start Period 2	100,000						
During Period 2		15,000	0	15,000 x \$10	End Period 2	\$0	End Period 2
Start Period 3	100,000						
During Period 3		9,000	0	9,000 x \$10	End Period 3	\$0	End Period 3
End Period 3	100,000						
Total		41,000	0	41,000 x \$10		\$0	

Example 3 – Greater than 25,000 enrolled in Retail Choice during the Electric Rate Plan; net retention achieved not more than enrollment loss during Period 1

Period	# RC Accounts – Start/End Period	# Accounts Switched Under Plan	# Accounts Retained During Incentive Period	Switching Incentive Recovery	Timing of Recovery	Retention Incentive Recovery	Timing of Recovery
Start of Electric Rate Plan:	100,000						
During Period 1		19,000	0	19,000 x \$10	End Period 2	\$0	End Period 2
Start Period 2	91,000						
During Period 2		11,000	5,000	11,000 x \$10	End Period 2	\$0	End Period 2
Start Period 3	96,000						
During Period 3		9,000	4,000	9,000 x \$10	End Period 3	\$0	End Period 3
End Period 3	100,000						
Total		39,000	9,000	39,000 x \$10		\$0	

Example 4 – Greater than 25,000 enrolled in Retail Choice during the Electric Rate Plan; enrollment loss during Period 2

Period	# RC Accounts – Start/End Period	# Accounts Switched Under Plan	# Accounts Retained During Incentive Period	Switching Incentive Recovery	Timing of Recovery	Retention Incentive Recovery	Timing of Recovery
Start of Electric Rate Plan:	100,000						
During Period 1		19,000	9,000	19,000 x \$10	End Period 2	9,000 x \$20	End Period 2
Start Period 2	109,000						
During Period 2		11,000	0	11,000 x \$10	End Period 2	\$0	End Period 2
Start Period 3	95,000						
During Period 3		9,000	0	9,000 x \$10	End Period 3	\$0	End Period 3
End Period 3	99,000						
Total		39,000	9,000	39,000 x \$10		9,000 x \$20	

Example 5 – Greater than 25,000 enrolled in Retail Choice during the Electric Rate Plan; net retention achieved all 3 periods

Period	# RC Accounts – Start/End Period	# Accounts Switched Under Plan	# Accounts Retained During Incentive Period	Switching Incentive Recovery	Timing of Recovery	Retention Incentive Recovery	Timing of Recovery
Start of Electric Rate Plan:	100,000						
During Period 1		19,000	9,000	19,000 x \$10	End Period 2	9,000 x \$20	End Period 2
Start Period 2	109,000						
During Period 2		11,000	5,000	11,000 x \$10	End Period 2	5,000 x \$20	End Period 2
Start Period 3	114,000						
During Period 3		9,000	4,000	9,000 x \$10	End Period 3	4,000 x \$20	End Period 3
End Period 3	118,000						
Total		39,000	18,000	39,000 x \$10		18,000 x \$20	

APPENDIX K

SECONDARY NETWORK LIST

<u>Brooklyn (10)</u>	<u>Manhattan (34)</u>	<u>Queens (7)</u>	<u>Bronx (6)</u>
Bay Ridge	Battery Park City	Flushing	Central Bronx
Borough Hall	Beekman	Jackson Heights	Fordham
Brighton Beach	Bowling Green	Jamaica	Northeast Bronx
Crown Heights	Canal	Long Island City	Riverdale
Flatbush	Central Park	Maspeth	Southeast Bronx
Ocean Parkway	Chelsea	Rego Park	West Bronx
Park Slope	City Hall	Richmond Hill	
Ridgewood	Columbus Circle		
Sheepshead Bay	Cooper Square		
Williamsburg	Cortlandt		
	Fashion		
	Fulton		
	Grand Central		
	Greeley Square		
	Greenwich		
	Harlem		
	Herald Square		
	Hudson		
	Hunter		
	Kips Bay		
	Lenox Hill		
	Lincoln Square		
	Madison Square		
	Park Place		
	Pennsylvania		
	Plaza		
	Rockefeller Center		
	Roosevelt		
	Sheridan Square		
	Sutton		
	Times Square		
	Turtle Bay		
	Washington Heights		
	Yorkville		

APPENDIX L

CUSTOMER SERVICE PERFORMANCE MECHANISM INCENTIVE TARGETS

INDICATOR	MAXIMUM PENALTY AMOUNT	THRESHOLD LEVEL	PENALTY
COMMISSION COMPLAINTS	\$6 million		
		≤2.6	N/A
		>2.6 but <2.8	\$2 million
		≥2.8 but <3.1	\$4 million
		≥3.1	\$6 million
Customer Satisfaction Surveys	\$6.0 million		
Emergency Calls (electric only)		<80.0	\$2 million
Phone Center Calls (non emergency)		<82.0	\$2 million
Service Center Visitors		<83.0	\$2 million
Outage Notification	\$4 million		
New And Additional Service Jobs	\$4 million		
Initial Phase		≥4.0 Days	\$2 million
Final Phase		≥7.3 Days	\$2 million
Calls Answered	\$4 million		
Total Calls Rate Year One		≤94.9 percent	\$4 million
Representative Calls (Answer w/i 30 sec.)			
Rate Year Two		≥53.5	N/A
		<53.5 but >53.0	\$2 million
		≤53.0 but >52.5	\$3 million
Rate Year Three		≤52.5	\$4 million
		≥56.0	N/A
		<56.0 but >55.5	\$1 million
		≤55.5 but >55.0	\$2 million
	≤55.0 but >54.5	\$3 million	
	≤54.5	\$4 million	
Meters Read on Cycle	\$4 million	≤86.9 percent	\$4 million
Billing Accuracy	\$4 million	≤97.2 percent	\$4 million
Routine Investigations (Completed w/in 30 days)	\$4 million	≤94.9 percent	\$4 million
Total	\$36.0 million		

APPENDIX M

REVENUE ALLOCATION

Allocation of Rate Increase Between T&D and MAC
\$000's

	<u>RY 1 Increase</u>	<u>RY3 Increase</u>
T&D Increase Excl. GRT	\$ 149,981	\$ 198,369
MAC Change Excl. GRT	<u>(48,665)</u>	<u>15,110</u>
Delivery & MAC Rate Increase Excl. GRT	<u>\$ 101,316</u>	<u>\$ 213,479</u>
GRT on T&D Increase	\$ 4,862	\$ 6,431
GRT on MAC Change	<u>(1,578)</u>	<u>490</u>
GRT on Delivery & MAC	<u>\$ 3,284</u>	<u>\$ 6,921</u>
T&D Increase Incl. GRT	\$ 154,843	\$ 204,800
MAC Change Incl. GRT	<u>(50,243)</u>	<u>15,600</u>
Total Rate Change Inc. GRT	<u>\$ 104,600</u>	<u>\$ 220,400</u>

Rate Change Allocation - Rate Year 1 Ending 3/31/06

Revised RY1 T&D Revenue @ Current Rate Level	Step 1			Step 2	Step 3	Step 4				Step 5				RY1 T&D Revenue @ Proposed RY1 Rate Level (Incl SIT Roll-In)			
	Initial Surplus / (Deficiency)	Adjustment to Surplus to be Revenue	Re-Alignment	Re-Aligned Delivery Service Revenue	Proposed T&D&MAC Rate Increase Before Rate Moderation	Proposed Rate Allocation	Proposed T&D&MAC Base Rate Increase After Rate Moderation	Re-Aligned Proposed T&D&MAC Base Rate Increase	% Change	Base Rate Increase Applicable to Con Edison Customers Only	Proposed T&D Base Rate Increase	RY1 T&D Revenue @ Proposed RY1 Rate Level (Excl SIT Roll-In) a	% Change in T&D Rate (Excl SIT Roll-In)	SIT Roll-In to T&D Rates	RY1 T&D Revenue @ Proposed RY1 Rate Level (Incl SIT Roll-In)	% Change in T&D Rate (Incl SIT Roll-In)	
	(1)	TABLE 1(A)	Neutral	(4)=(2)+(3)	(5)=(1)+(4)	(6)	(7)	(8)=(6)-(7)	(9)=(8)-(4)	(10)=(9)-(1)	(11)	(12)=(9)+(11)	(13)=(1)+(12)	(14)=(13) vs.(1)	(15)	(16)=(13)+(15)	(17)=(16) vs.(1)
Base Rate Increase					\$ 101,316,000												
Additional Cost of Low Income ^b					\$ 3,400,000												
Rate Moderation ^c					\$ 187,700,000	\$ 187,700,000											
Total Rate Increase Applicable to All Customers					\$ 292,416,000												
Base Rate Increase Applicable to Con Edison Customers										\$ 48,665,000							\$ 22,882,999 ^c
NYPA	\$ 251,609,000	\$ (5,250,000)	\$ -	\$ (5,250,000)	\$ 256,859,000	\$ 28,460,479	\$ 15,382,000	\$ 13,078,479	\$ 18,328,479	7.3%	\$ -	\$ 18,328,479	\$ 269,937,479	7.3%	\$ 2,181,651	\$ 272,119,130	8.2%
EDDS	\$ 25,539,000	\$ 1,362,000	\$ (1,095,730)	\$ 266,270	\$ 25,272,730	\$ 2,800,268	\$ 1,983,000	\$ 817,268	\$ 550,998	2.2%	\$ -	\$ 550,998	\$ 26,089,998	2.2%	\$ 221,443	\$ 26,311,441	3.0%
CONED	\$ 2,361,939,000	\$ 52,833,000	\$ (47,849,270)	\$ 4,983,730	\$ 2,356,955,270	\$ 261,155,253	\$ 170,335,000	\$ 90,820,253	\$ 85,836,523	3.6%	\$ 48,665,000	\$ 134,501,523	\$ 2,496,440,524	5.7%	\$ 20,479,905	\$ 2,516,920,430	6.6%
System	\$ 2,639,087,000	\$ 48,945,000	\$ (48,945,000)	\$ -	\$ 2,639,087,000	\$ 292,416,000	\$ 187,700,000	\$ 104,716,000	\$ 104,716,000	4.0%	\$ 48,665,000	\$ 153,381,000	\$ 2,792,468,001	5.8%	\$ 22,882,999	\$ 2,815,351,001	6.7%
SC1	\$ 986,723,000	\$ (5,707,000)	\$ -	\$ (5,707,000)	\$ 992,430,000	\$ 109,963,185	\$ 71,722,008	\$ 38,241,177	\$ 43,948,177	4.5%	\$ 20,491,100	\$ 64,439,277	\$ 1,051,162,277	6.5%	\$ 8,555,680	\$ 1,059,717,957	7.4%
SC1 WH	\$ 3,539,000	\$ -	\$ -	\$ -	\$ 3,539,000	\$ 392,128	\$ 255,760	\$ 136,368	\$ 136,368	3.9%	\$ 73,071	\$ 209,439	\$ 3,748,439	5.9%	\$ 30,686	\$ 3,779,125	6.8%
SC2	\$ 171,918,000	\$ 18,473,000	\$ (14,861,536)	\$ 3,611,464	\$ 168,306,536	\$ 18,648,693	\$ 12,163,359	\$ 6,485,334	\$ 2,873,870	1.7%	\$ 3,475,092	\$ 6,348,962	\$ 178,266,962	3.7%	\$ 1,490,667	\$ 179,757,629	4.6%
SC4 I&II	\$ 82,689,000	\$ -	\$ -	\$ -	\$ 82,689,000	\$ 9,162,103	\$ 5,975,858	\$ 3,186,245	\$ 3,186,245	3.9%	\$ 1,707,313	\$ 4,893,558	\$ 87,582,558	5.9%	\$ 716,980	\$ 88,299,538	6.8%
SC4 II	\$ 184,408,000	\$ 17,070,000	\$ (13,732,822)	\$ 3,337,178	\$ 181,070,822	\$ 20,063,001	\$ 13,085,823	\$ 6,977,178	\$ 3,640,000	2.0%	\$ 3,738,642	\$ 7,378,642	\$ 191,786,642	4.0%	\$ 1,598,965	\$ 193,385,607	4.9%
SC5 I	\$ 366,000	\$ 54,000	\$ (43,443)	\$ 10,557	\$ 355,443	\$ 39,384	\$ 25,688	\$ 13,696	\$ 3,139	0.9%	\$ 7,339	\$ 10,478	\$ 376,478	2.9%	\$ 3,174	\$ 379,652	3.7%
SC5 II	\$ 3,132,000	\$ 1,130,000	\$ (909,085)	\$ 220,915	\$ 2,911,085	\$ 322,554	\$ 210,381	\$ 112,173	\$ (108,742)	-3.5%	\$ 60,106	\$ (48,636)	\$ 3,083,364	-1.6%	\$ 27,157	\$ 3,110,521	-0.7%
SC6	\$ 936,000	\$ (209,000)	\$ -	\$ (209,000)	\$ 1,145,000	\$ 126,868	\$ 82,748	\$ 44,120	\$ 253,120	27.0%	\$ 23,641	\$ 276,761	\$ 1,212,761	29.6%	\$ 8,116	\$ 1,220,877	30.4%
SC7	\$ 9,423,000	\$ (158,000)	\$ -	\$ (158,000)	\$ 9,581,000	\$ 1,061,594	\$ 692,410	\$ 369,184	\$ 527,184	5.6%	\$ 197,823	\$ 725,007	\$ 10,148,007	7.7%	\$ 81,705	\$ 10,229,712	8.6%
SC8 I&II	\$ 70,607,000	\$ (512,000)	\$ -	\$ (512,000)	\$ 71,119,000	\$ 7,880,124	\$ 5,139,705	\$ 2,740,419	\$ 3,252,419	4.6%	\$ 1,468,422	\$ 4,720,841	\$ 75,327,841	6.7%	\$ 612,219	\$ 75,940,060	7.6%
SC8 II	\$ 6,140,000	\$ (58,000)	\$ -	\$ (58,000)	\$ 6,198,000	\$ 686,751	\$ 447,924	\$ 238,827	\$ 296,827	4.8%	\$ 127,973	\$ 424,800	\$ 6,564,800	6.9%	\$ 53,239	\$ 6,618,039	7.8%
SC9 I&II	\$ 691,020,000	\$ -	\$ -	\$ -	\$ 691,020,000	\$ 76,566,367	\$ 49,939,383	\$ 26,626,984	\$ 26,626,984	3.9%	\$ 14,267,767	\$ 40,894,751	\$ 731,914,751	5.9%	\$ 5,991,697	\$ 737,906,448	6.8%
SC9 II	\$ 134,710,000	\$ 22,003,000	\$ (17,701,422)	\$ 4,301,578	\$ 130,408,422	\$ 14,449,508	\$ 9,424,497	\$ 5,025,011	\$ 723,433	0.5%	\$ 2,692,595	\$ 3,416,028	\$ 138,126,028	2.5%	\$ 1,168,044	\$ 139,294,072	3.4%
SC12 I&II	\$ 5,352,000	\$ -	\$ -	\$ -	\$ 5,352,000	\$ 593,012	\$ 386,784	\$ 206,228	\$ 206,228	3.9%	\$ 110,505	\$ 316,733	\$ 5,668,733	5.9%	\$ 46,406	\$ 5,715,139	6.8%
SC12 II	\$ 8,048,000	\$ 240,000	\$ (193,080)	\$ 46,920	\$ 8,001,080	\$ 886,535	\$ 578,231	\$ 308,304	\$ 261,384	3.2%	\$ 165,202	\$ 426,586	\$ 8,474,586	5.3%	\$ 69,783	\$ 8,544,369	6.2%
SC13	\$ 2,904,000	\$ 507,000	\$ (407,882)	\$ 99,118	\$ 2,804,882	\$ 310,786	\$ 202,706	\$ 108,080	\$ 8,962	0.3%	\$ 57,914	\$ 66,876	\$ 2,970,876	2.3%	\$ 25,180	\$ 2,996,056	3.2%
Special Prov.	\$ 24,000	\$ -	\$ -	\$ -	\$ 24,000	\$ 2,659	\$ 1,734	\$ 925	\$ 925	3.9%	\$ 496	\$ 1,421	\$ 25,421	5.9%	\$ 208	\$ 25,629	6.8%
CONED	\$ 2,361,939,000	\$ 52,833,000	\$ (47,849,270)	\$ 4,983,730	\$ 2,356,955,270	\$ 261,155,252	\$ 170,334,999	\$ 90,820,253	\$ 85,836,523	3.6%	\$ 48,665,001	\$ 134,501,524	\$ 2,496,440,524	5.7%	\$ 20,479,906	\$ 2,516,920,430	6.6%
NYPA		\$ (5,250,000)															
EDDS		\$ 1,362,000															
CONED		\$ 52,833,000															
System		\$ 48,945,000															
Total Surplus		\$ 60,839,000															
Total Deficiency		\$ (11,894,000)															
Grand Total		\$ 48,945,000															

a RY1 revenues exclude an \$11 million imputation related to sales adjustments

b Of the \$12.5 million annual allowed cost of low income, \$9.1 million is reflected in the revenue requirement, the remainder will be implemented through revenue allocation from all customers

c The total accounting credits shown in Appendix A are \$187.7 million, of which only TCC Auction Proceeds related amount will be applicable to all the customers based on the ECOS Allocator D03,

and the remainder will be applicable to Con Edison customers

d Set forth in Joint Proposal

e Excluding approximately \$5.5 million SIT, which will be rolled into the MAC

Rate Change Allocation - Rate Year 3 Ending 3/31/08

	Step 1										Step 2	Step 3	Step 4				Step 5				
	Revised RY3 T&D Revenue @ Current Rate Level (A)	% Change in T&D Rate (Incl SIT Roll-In) in RY1 (B)	Estimated RY3 T&D Revenue @ RY1 Rate Level (1)	Surplus / (Deficiency) Remaining After RY1 (2)	Adjustment to Surplus to be Revenue Neutral (3)	Re-Alignment (4)=(2)+(3)	Re-Aligned Delivery Service Revenue (5)=(1)+(4)	Proposed T&D&MAC Rate Increase Before Rate Moderation (6)	Proposed Rate Moderation Allocation (7)	Proposed T&D&MAC Base Rate Increase After Rate Moderation (8)=(6)-(7)	Re-Aligned Proposed T&D&MAC Base Rate Increase (9)=(8)+(4)	% Change (10)=(9)/(1)	Base Rate Increase Applicable to Con Edison Customers Only (11)	Proposed T&D Base Rate Increase (12)=(9)+(11)	RY3 T&D Revenue @ Proposed RY3 Rate Level (Excl SIT Roll-In) (13)=(1)+(12)	% Change in T&D Rate (Excl SIT Roll-In) (14)=(13) vs.(1)	SIT Roll-In to T&D Rates (15)	RY3 T&D Revenue @ Proposed RY3 Rate Level (Incl SIT Roll-In) (16)=(13)+(15)	% Change in T&D Rate (Incl SIT Roll-In) (17)=(16) vs.(1)		
																				Base Rate Increase	RY3 T&D Revenue @ Proposed RY3 Rate Level (Excl SIT Roll-In)
Base Rate Increase							\$ 213,479,000														
Additional Cost of Low Income							\$														
Rate Moderation ^a							\$ 187,700,000	\$ 187,700,000													
Total Rate Increase Applicable to All Customers							\$ 401,179,000														
Base Rate Increase Applicable to Con Edison Customers												\$ (15,110,000)									
NYPA	\$ 255,963,000	8.151588%	\$ 276,828,049	\$ (5,250,000)	\$ -	\$ (5,250,000)	\$ 282,078,049	\$ 39,009,880	\$ 15,382,000	\$ 23,627,880	\$ 79,868,858	10.4%	\$	\$ 28,877,880	\$ 305,705,929	10.4%	\$	\$ -	\$ 305,705,929	10.4%	
EDDS	\$ 20,310,000	3.024555%	\$ 20,924,287	\$ 1,095,730	\$ (978,198)	\$ 117,532	\$ 20,806,755	\$ 2,877,463	\$ 1,983,000	\$ 894,463	\$ 776,931	3.7%	\$	\$ 776,931	\$ 21,701,218	3.7%	\$	\$ -	\$ 21,701,218	3.7%	
CONED	\$ 2,442,799,000	6.561619%	\$ 2,603,148,405	\$ 47,849,270	\$ (42,716,802)	\$ 5,132,468	\$ 2,598,015,937	\$ 359,291,658	\$ 170,335,000	\$ 188,956,658	\$ 183,824,190	7.1%	\$ (15,110,000)	\$ 168,714,190	\$ 2,771,862,595	6.5%	\$	\$ -	\$ 2,771,862,595	6.5%	
System	\$ 2,719,072,000	6.678977%	\$ 2,900,900,741	\$ 43,695,000	\$ (43,695,000)	\$ -	\$ 2,900,900,741	\$ 401,179,001	\$ 187,700,000	\$ 213,479,001	\$ 213,479,001	7.4%	\$ (15,110,000)	\$ 198,369,001	\$ 3,099,269,742	6.8%	\$	\$ -	\$ 3,099,269,742	6.8%	
SC1	\$ 1,022,497,000	7.397715%	\$ 1,098,138,414	\$ -	\$ -	\$ -	\$ 1,098,138,414	\$ 151,866,648	\$ 71,997,790	\$ 79,868,858	\$ 79,868,858	7.3%	\$ (6,386,747)	\$ 73,482,111	\$ 1,171,620,525	6.7%	\$	\$ -	\$ 1,171,620,525	6.7%	
SC1 WH	\$ 3,493,000	6.785109%	\$ 3,730,004	\$ -	\$ -	\$ -	\$ 3,730,004	\$ 515,840	\$ 244,552	\$ 271,288	\$ 271,288	7.3%	\$ (21,694)	\$ 249,594	\$ 3,979,598	6.7%	\$	\$ -	\$ 3,979,598	6.7%	
SC2	\$ 176,429,000	4.590098%	\$ 184,474,335	\$ 14,861,536	\$ (13,267,439)	\$ 1,594,097	\$ 182,980,238	\$ 25,291,355	\$ 11,990,267	\$ 13,301,088	\$ 11,706,991	6.3%	\$ (1,063,627)	\$ 10,643,364	\$ 195,117,699	5.8%	\$	\$ -	\$ 195,117,699	5.8%	
SC4 I&III	\$ 83,583,000	6.785108%	\$ 89,254,197	\$ -	\$ -	\$ -	\$ 89,254,197	\$ 12,343,376	\$ 5,851,817	\$ 6,491,559	\$ 6,491,559	7.3%	\$ (519,100)	\$ 5,972,459	\$ 95,226,656	6.7%	\$	\$ -	\$ 95,226,656	6.7%	
SC4 II	\$ 186,666,000	4.868339%	\$ 195,753,534	\$ 13,732,822	\$ (12,259,795)	\$ 1,473,027	\$ 194,280,507	\$ 26,867,951	\$ 12,737,709	\$ 14,130,242	\$ 12,657,215	6.5%	\$ (1,129,931)	\$ 11,527,284	\$ 207,280,818	5.9%	\$	\$ -	\$ 207,280,818	5.9%	
SC5 I	\$ 371,000	3.730055%	\$ 384,839	\$ 43,443	\$ (38,783)	\$ 4,660	\$ 380,179	\$ 52,577	\$ 24,926	\$ 27,651	\$ 22,991	6.0%	\$ (2,211)	\$ 20,780	\$ 405,619	5.4%	\$	\$ -	\$ 405,619	5.4%	
SC5 II	\$ 3,131,000	-0.685922%	\$ 3,109,528	\$ 909,085	\$ (811,574)	\$ 97,511	\$ 3,012,017	\$ 416,546	\$ 197,478	\$ 219,068	\$ 121,557	3.9%	\$ (17,518)	\$ 104,039	\$ 3,213,567	3.3%	\$	\$ -	\$ 3,213,567	3.3%	
SC6	\$ 936,000	30.435577%	\$ 1,220,877	\$ -	\$ -	\$ -	\$ 1,220,877	\$ 168,841	\$ 80,045	\$ 88,796	\$ 88,796	7.3%	\$ (7,101)	\$ 81,695	\$ 1,302,572	6.7%	\$	\$ -	\$ 1,302,572	6.7%	
SC7	\$ 9,356,000	8.561095%	\$ 10,156,976	\$ -	\$ -	\$ -	\$ 10,156,976	\$ 1,404,655	\$ 665,927	\$ 738,728	\$ 738,728	7.3%	\$ (59,073)	\$ 679,655	\$ 10,836,631	6.7%	\$	\$ -	\$ 10,836,631	6.7%	
SC8 I&III	\$ 72,290,000	7.553160%	\$ 77,750,179	\$ -	\$ -	\$ -	\$ 77,750,179	\$ 10,752,432	\$ 5,097,573	\$ 5,654,859	\$ 5,654,859	7.3%	\$ (452,193)	\$ 5,202,666	\$ 82,952,845	6.7%	\$	\$ -	\$ 82,952,845	6.7%	
SC8 II	\$ 6,281,000	7.785651%	\$ 6,770,017	\$ -	\$ -	\$ -	\$ 6,770,017	\$ 936,257	\$ 443,866	\$ 492,391	\$ 492,391	7.3%	\$ (39,374)	\$ 453,017	\$ 7,223,034	6.7%	\$	\$ -	\$ 7,223,034	6.7%	
SC9 I&III	\$ 720,857,000	6.785107%	\$ 769,767,919	\$ -	\$ -	\$ -	\$ 769,767,919	\$ 106,454,771	\$ 50,468,674	\$ 55,986,097	\$ 55,986,097	7.3%	\$ (4,476,952)	\$ 51,509,145	\$ 821,277,064	6.7%	\$	\$ -	\$ 821,277,064	6.7%	
SC9 II	\$ 140,804,000	3.402919%	\$ 145,595,446	\$ 17,701,422	\$ (15,802,710)	\$ 1,898,712	\$ 143,696,734	\$ 19,872,487	\$ 9,421,260	\$ 10,451,227	\$ 8,552,515	5.9%	\$ (835,737)	\$ 7,716,778	\$ 153,312,224	5.3%	\$	\$ -	\$ 153,312,224	5.3%	
SC12 I&III	\$ 5,300,000	6.785108%	\$ 5,659,611	\$ -	\$ -	\$ -	\$ 5,659,611	\$ 782,694	\$ 371,064	\$ 411,630	\$ 411,630	7.3%	\$ (32,916)	\$ 378,714	\$ 6,038,325	6.7%	\$	\$ -	\$ 6,038,325	6.7%	
SC12 II	\$ 7,811,000	6.167607%	\$ 8,292,752	\$ 193,080	\$ (172,370)	\$ 20,710	\$ 8,272,042	\$ 1,143,979	\$ 542,344	\$ 601,635	\$ 580,925	7.0%	\$ (48,110)	\$ 532,815	\$ 8,825,567	6.4%	\$	\$ -	\$ 8,825,567	6.4%	
SC13	\$ 2,970,000	3.169972%	\$ 3,064,148	\$ 407,882	\$ (364,131)	\$ 43,751	\$ 3,020,397	\$ 417,705	\$ 198,028	\$ 219,677	\$ 175,926	5.7%	\$ (17,567)	\$ 158,359	\$ 3,222,507	5.2%	\$	\$ -	\$ 3,222,507	5.2%	
Special Prov.	\$ 24,000	6.787500%	\$ 25,629	\$ -	\$ -	\$ -	\$ 25,629	\$ 3,544	\$ 1,680	\$ 1,864	\$ 1,864	7.3%	\$ (149)	\$ 1,715	\$ 27,344	6.7%	\$	\$ -	\$ 27,344	6.7%	
CONED	\$ 2,442,799,000	6.561619%	\$ 2,603,148,405	\$ 47,849,270	\$ (42,716,802)	\$ 5,132,468	\$ 2,598,015,937	\$ 359,291,658	\$ 170,335,000	\$ 188,956,658	\$ 183,824,190	7.1%	\$ (15,110,000)	\$ 168,714,190	\$ 2,771,862,595	6.5%	\$	\$ -	\$ 2,771,862,595	6.5%	
NYPA				\$ (5,250,000)																	
EDDS				\$ 1,095,730																	
CONED				\$ 47,849,270																	
System				\$ 43,695,000																	
Total Surplus				\$ 48,945,000																	
Total Deficiency				\$ (5,250,000)																	
Grand Total				\$ 43,695,000																	

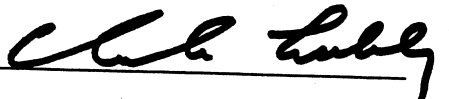
a The same amount of Rate Moderation applied in RY1 will be applicable to RY3
b Set forth in Joint Proposal

Appendix I
Signatories to Joint Proposal

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.

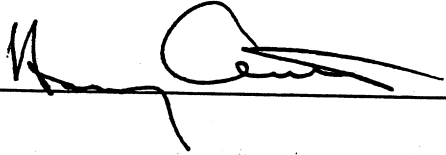
CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.

Dated: Dec. 2, 2004

By 

NEW YORK STATE DEPARTMENT OF
PUBLIC SERVICE STAFF

Dated: December 2, 2004

By  _____

CITY OF NEW YORK

Dated: December 2, 2004

By Robert M. Loughrey, Counsel

CON EDISON SOLUTIONS

Dated: 12/1/04

By JoAnn F. Ryan

**JoAnn F. Ryan
President and CEO
ConEdison Solutions**

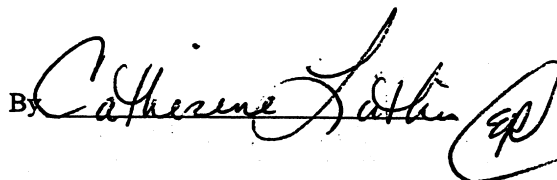
CONSTELLATION NEWENERGY, INC.

Dated: 12/1/04

By 
SARA M. O'NEILL

CONSUMER POWER ADVOCATES *

Dated: 12/1/04

By Catherine Latta  (EP)

* CPA excepts from its agreement and reserves its right to oppose section J entitled "Demand Management"

CONSUMERPOWERLINE

Dated: 11/30/2004

By 

MICHAEL GORDON

PRESIDENT & PRINCIPAL

DIRECT ENERGY SERVICES, LLC

Dated: 12/2/04

By CH Kallala

CASE 04-E-0572

1st ROCHDALE COOPERATIVE GROUP, LTD.

Dated: 11-30-2004

By Gregory L. Worham

CASE 04-E-0572

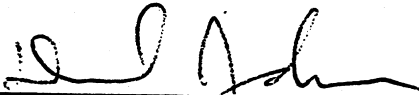
GOTHAM POWER ZEREGA LLC

Dated: 11-30-2004

By Gregory L. W. Sham

INDEPENDENT POWER PRODUCERS
OF NEW YORK, INC.

Dated: December 1, 2004

By: 
David B. Johnson, Counsel

Independent Power Producers of New York, Inc.'s (IPPNY) execution of the Joint Proposal does not express its agreement to the terms of Section J (Demand Management), on which IPPNY expresses no opinion.

CASE 04-E-0572

JOINT SUPPORTERS

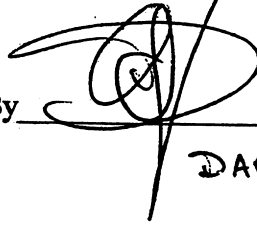
Dated: Dec. 1, 2004

By Arthur J. Boers

METER SERVICE PROVIDER
ASSOCIATION OF NEW YORK, INC.

Dated: 12/1/04

By

A handwritten signature in black ink, consisting of several overlapping loops and a vertical stroke that extends downwards. A thin line from the top of the signature points towards the company name above.

DARIO GRISTINA - PRESIDENT

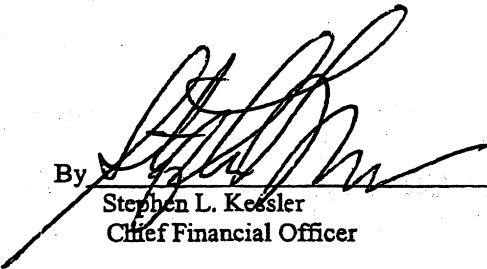
Case 04-E-0572 Joint Proposal

METROPOLITAN TRANSPORTATION
AUTHORITY

Dated:

12-1-04

By


Stephen L. Kessler
Chief Financial Officer

MID-ATLANTIC POWER SUPPLY
ASSOCIATION

Dated: 12/1/04

By Walter Fogel, Counsel

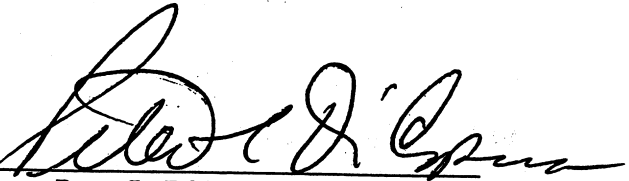
NATIONAL ENERGY MARKETERS
ASSOCIATION

Dated: December 1, 2004

By Craig Goodman
CRAIG GOODMAN
PRESIDENT, NEM

NEW YORK ENERGY CONSUMERS
COUNCIL, INC.*

Dated: December 1, 2004

By 
Peter L. DiCapua, Co-President

Dated: December 1, 2004

By _____
Jay Raphaelson, Co-President

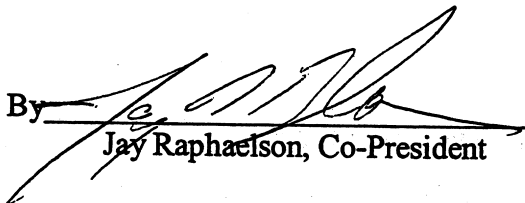
* NYECC excepts from its agreement and reserves its right to oppose section J entitled "Demand Management," including, but not limited to, the proposed funding, in the amount of approximately \$244 million, for the Targeted EE/DG and the System-Wide EE/DG/LM programs.

NEW YORK ENERGY CONSUMERS
COUNCIL, INC.*

Dated: December 1, 2004

By _____
Peter L. DiCapua, Co-President

Dated: December 1, 2004

By 
Jay Raphaelson, Co-President

* NYECC excepts from its agreement and reserves its right to oppose section J entitled "Demand Management," including, but not limited to, the proposed funding, in the amount of approximately \$244 million, for the Targeted EE/DG and the System-Wide EE/DG/LM programs.

NEW YORK ENERGY RESEARCH AND
DEVELOPMENT AUTHORITY

Dated:

December 2, 2004

By

Peter L. Smith

The above signature represents acceptance of Section J, "Demand Management," of this Joint Proposal, and NYSERDA takes no position on all other sections contained within the Joint Proposal.

NEW YORK POWER AUTHORITY

Dated: 12/2/04

By David A. Glabe
Executive Vice President,
Secretary & General Counsel

NORTH AMERICAN ENERGY, INC.

Dated: 12/1/04

By [Signature]
DARRYL L. STEED
Vice President

SMALL CUSTOMER MARKETER
COALITION

Dated: 12/1/04

By Allen Vogel, Counsel

STERLING PLANET, INC.

Dated: 12/1/2004

By Robert A. Maddox, Jr.

Robert A. Maddox, Jr.
Northeast Regional Manager
Sterling Planet
P.O. Box 186
Litchfield, CT 06759

STRATEGIC ENERGY, LLC

Dated:

December 1, 2004


By:

Francis Pullaro

Francis E. Pullaro, Esq.
Regulatory Affairs Manager

THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY

Dated: December 2, 2004


By CRUZ C. RUSSELL
Deputy Chief of Strategic Planning

APPROVED	
TERMS <i>RM</i>	FORM SF by RMS RMS

CASE 04-E-0572

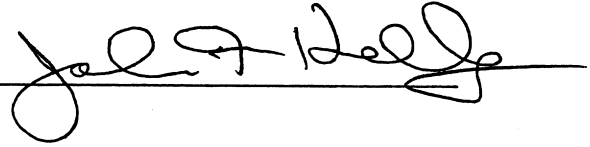
GAS TECHNOLOGY INSTITUTE

John Kelly

Executive Director

Dated: 12-06-04

By

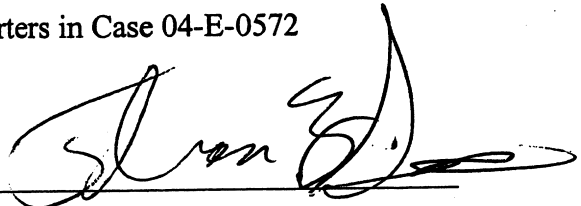
A handwritten signature in black ink, appearing to read "John Kelly", written over a horizontal line.

CASE 04-E-0572

Equity Office Properties
Two North Riverside Plaza, Ste, 2100
Chicago, IL 60606

Joint Supporters in Case 04-E-0572

Dated: 12/8/09

By 


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CASE 04-E-0572

Energy Concepts Engineering, P.C.
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Joint Supporters in Case 04-E-0572

Dated: 12/10/04

By William Cristofaro 

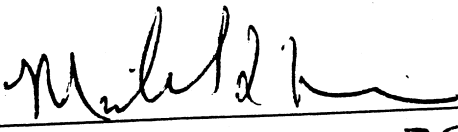
William Cristofaro, PE - President

CASE 04-E-0572

ALLIED UTILITY NETWORK LLC and ALLIED ENERGY LLC

Joint Supporters in Case 04-E-0572

Dated: 12/14/04

By 
MICHAEL L. HORNE, PE
VP - BUSINESS DEVELOPMENT
ALLIED UTILITY/ENERGY

CASE 04-E-0572

NATIONAL ASSOCIATION OF ENERGY SERVICE COMPANIES

Joint Supporters in Case 04-E-0572

Dated: 12/20/04

By J E Singer

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

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